

INSTRUCTIONS FOR APPOINTMENT OF A CONSERVATOR/GUARDIAN

PETITION FOR GUARDIANSHIP/CONSERVATORSHIP

At the time the petition is filed, a **\$1,500.00 security deposit is required** and must be paid to the Court.

Pursuant to §26-2A-133, the following **must** be in the petition:

- 1) Interest of Petitioner.
- 2) The full name of the minor or alleged ward and their age. (Need date of birth)
- 3) Residence, which includes the full address of the Person to be protected.
- 4) Names and addresses of all persons who are to be given notice: A) Person Alleged to be Incapacitated, her or his spouse (if any), and adult children, or if none, parents; B) any person serving as guardian/conservator, or who has custody of the alleged person; C) In case of no other person is notified under A), at least one of the nearest adult relatives residing in this state, if any can be found; and D) Any other person as directed by the Court.
- 5) General statement of the person's property with an estimate of value thereof, including any compensation, insurance, pension, or allowance to which the person is entitled. (This includes any monthly income and it needs to list source and amount. If real property is listed, state the address, value and whether or not there is any rental income)
- 6) The reason why appointment of a conservator (or guardian) or protective order is necessary.
- 7) Whether bond has been relieved.
- 8) The name and address of the person whose appointment is sought.
- 9) The basis of the claim to priority for the appointment and list appropriate code section(s) that apply to petitioner. §26-2A-104 (Guardian) & §26-2A-138 (Conservator)

Before filing the petition, the attorney and petitioner should go over the Conservator Handbook, which can be found on our website, www.mc-ala.org/probate. The Certificate found in the Conservator Handbook must be signed and filed with the petition. After filing the petition, notice must be given by the petitioner and proof of same given to the Court on or before the day set to hear; 14 days notice must be given before the hearing. If notice has to be given by publication, we will need the Affidavit for Publication. (Affidavit and publication forms are available on our web site) (§26-2A-103 & 134)

Guardian ad litem may be appointed. If the alleged disability is mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs or chronic intoxication, the Court can appoint a personal representative to interview the person and a doctor must be appointed to examine the person (adult only). (§26-2A-135)

Bond: Aggregate capital value of the property, plus 1 year's estimated income and minus the value of securities deposited under arrangements requiring an order of the Court for their removal and the value of any kind which the fiduciary lacks the power to sell or convey without Court authorization. (§26-2A-139)

An inventory must be filed with the Court within 90 days of appointment. An accounting must be given to the Court every three years unless the Court directs otherwise. (§26-2A-146)

NOTE: NO INITIAL FILING FEE. ALL COURT COSTS ARE DUE ON THE DAY OF HEARING. NO LETTERS WILL BE RELEASED UNTIL COURT COSTS ARE PAID.

INSTRUCTIONS TO ATTORNEY FOR PETITIONER REGARDING NOTICE
REQUIREMENTS UNDER THE UNIFORM GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ACT IN THE PROBATE COURT OF MONTGOMERY COUNTY
{§26-2A-103 Guardianship and §26-2A-134 Conservatorship}

NOTICE:

1. The petitioner in any proceeding under said act is responsible for giving notice of the date, time and matter set for the hearing to those entitled thereto. Refer to order setting hearing and Code of Alabama for those parties who should be given notice.
2. The Court requires that a copy of the petition, motion, etc., be attached to the notice given to the minor, ward, protected person, or other party, etc.
3. PROOF OF SERVICE **must** be submitted to the Court ***before*** the date of the hearing. In this regard, the Court will accept the following as proof of service where the type of service mentioned is allowed under the said act.
 - a. FIRST CLASS MAIL: Proof: Petitioner's Notice of Hearing form, which includes a signed certificate by the attorney mailing the notice.
 - b. CERTIFIED/REGISTERED MAIL: Proof: Petitioner's notice of Hearing form and the original signed green card from the USPS.
 - c. PERSONAL SERVICE: Proof: Petitioner's Notice of Hearing form, which includes a Certificate of service on face of notice signed by the process server or Deputy Sheriff. **{Ward must receive personal service}**
 - d. PUBLICATION: Proof: Standard sworn affidavit from newspaper with copy of notice attached to same. Affidavit from attorney or petitioner stating the grounds for publication **MUST** be filed, or same must be set forth in the pleading. (Affidavit and Publication forms are online) [§26-2A-50(b)(3)]
4. Waivers of notice are accepted from certain parties. A person who is alleged to be incapacitated, ward or the protected person (minor) **may not** waive notice.

NOTE: – **FOR ALL NOTICES (except publication), a minimum of 14 days** is required by law on the alleged incapacitated person in proceedings to appoint a guardian, conservator, or to issue a protective order. Other parties of interest that should be served in these type proceedings, namely the alleged ward's spouse, adult children, or if none, parents, **must also** be served **personally** if they reside within the state.

NOTE:

By Law, the Probate Court and its staff are not permitted to give legal advice or provide any forms. If you are seeking action under the "Alabama Small Estates Act" and the summary distribution procedures, it is suggested that you obtain the assistance of an attorney to prepare and file the necessary paperwork with the Probate Court and provide representation generally for this proceeding.

THIS INFORMATION PAGE, WHICH IS BASED ON ALABAMA LAW, IS TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

If you need a referral for an attorney, you may contact the Alabama State Bar Association at (800)392-5660 or 334-269-1515.