


HOW TO GET GUARDIANSHIP OF A PARENT

How to Petition for Guardianship




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Pamela D. Wilson, MS, BS/BA, CSA, NCG

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TODAY'S CONVERSATION




- Each state has a process to petition for guardianship
- Search for “state probate court forms”
- Representing yourself as a “Pro Se” party vs hiring an attorney
- A walk through probate forms

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PRO SE PARTY PROS AND CONS



- What does “pro se” mean?
- Uncontested matters if you do your homework can proceed as a pro se party
- Contested hearings-depending on the degree of disagreement - benefit from retaining an attorney
- Contested hearings can be costly and emotionally stressful

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PROBATE COURT FORMS



- Where to find forms for your state
- County court offices have a “probate” desk and usually offer courses on filing for guardianship and guardianship responsibilities – take the course it’s usually a requirement
- County probate court workers cannot give legal advice
- You can hire a professional fiduciary to help you

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COMPLETING PROBATE FORMS

- Begin with the “Instructions for Appointment of a Guardian – Adult”
- In Colorado this is JDF-840
- Give notice to interested parties including your parent who is the respondent
- Set a court date for a hearing
- Provide your background information to the court to prove suitability if you are the proposed guardian

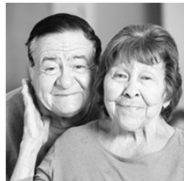


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COLORADO PROBATE FORMS

- JDF705 Probate Case Information Sheet
- JDF714 Affidavit Regarding Due Diligence and Proof of Publication – if you do not have address for an interested party
- JDF 800 Acknowledgement of Responsibilities
- JDF805 Acceptance of Office
- JDF848 Order Appointing Guardian
- JDF849 Letters of Guardianship




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THE PETITION AND GIVING NOTICE

Be Thorough With All Documents and Deadlines – Know the Deadlines

- JDF806 Notice of Hearing to Interested Persons
- JDF807 Notice of Hearing to Respondent
- JDF841 Petition for Appointment of a Guardian



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PETITION FOR APPOINTMENT OF A GUARDIAN

- The petition is the most important document to substantiate the need for guardianship
- Form header
- Court case number
- Name the respondent – your parent or the person for whom you want to establish guardianship

District Court Denver Probate Court
 County, Colorado
 Court Address: _____

In the Interest of: _____

Respondent
 Attorney or Party Without Attorney (Name and Address): _____ Case Number: _____

Phone Number: _____ E-mail: _____
 FAX Number: _____ Job: _____ Division: _____ Courtroom: _____

PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT

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BASIC INFORMATION

- Information about the court location and date of proceeding
- Background of the petitioner who does not have to be the proposed guardian
- The type of appointment

1. No court proceeding is pending in this state or elsewhere concerning the respondent.
 The following proceeding(s) concern(s) the respondent. Identify name of court, case number, state, date, and type of proceeding if any.

Name of Court	Case Number	State	Date of Proceeding	Type of Proceeding

2. The petitioner is:
 a person interested in the welfare of the respondent.
 the respondent.

This is a petition for appointment of a(n):
 Permanent Guardian, (§ 15-14-304(1) and (2), C.R.S.)
 Emergency Guardian, (not to exceed 60 days), (§ 15-14-312, C.R.S.)

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VENUE AND LEGAL DOCUMENTS

- Venue for the hearing
- Status of previous guardianship if applicable
- Name of agent of financial or medical power of attorney
- Also mention of any beneficiary agreement that would transfer property or responsibilities after death

6. Venue for this proceeding is proper because the respondent

resides in this county. (Check this box only if requesting an Emergency Guardian.) (§ 15-14-108(2), C.R.S.)

is present in this county. (Check this box only if requesting an Emergency Guardian.) (§ 15-14-108(2), C.R.S.)

is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county. (Attach copy of the Order to the Petition.)

7. An appointment of a guardian for the respondent has been previously made. (Attach copy of the Order to the Petition.)

8. A Power of Attorney exists for financial or medical matters. (Attach a copy of the Power of Attorney to the Petition.) The agent's name and mailing address is:

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PETITION - SUBSTANTIATION OF NEED

- Confirmation of incapacity according to state statute
- Why is guardianship necessary, check box to supply a physician's letter of medical necessity
- Type of guardianship requested: limited or unlimited

10. The respondent is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that he or she lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. (§ 15-14-102(3), C.R.S.)

11. The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance.

12. Guardianship is necessary due to the following disabilities or impairments: Physician's letter attached.

13. Petitioner requests the powers and duties to be unlimited or unrestricted or limited or with restrictions. The requested limitations or restrictions on the guardian's powers and duties, if any, are as follows:

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PRIORITY OF APPOINTMENT

- Why the nominated person has priority
- Why the person originally nominated by the respondent should not be appointed
- Listing of adult children
- Contact information for all physicians other providers if parent does not live at home

15. The nominated guardian has priority for appointment because he or she is: (§ 15-14-310, C.R.S.)

a guardian currently acting for the respondent in Colorado or elsewhere.

nominated in writing by respondent, including nomination in a durable power of attorney or designated beneficiary agreement.

an agent under a medical power of attorney.

an agent under a general durable power of attorney.

the spouse or partner in a civil union of the respondent.

the parent of the respondent.

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an adult child of the respondent.

an adult with whom respondent has resided for more than six months immediately before the filing of this petition.

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COMPENSATION

- Statement about guardian compensation
- Statement about compensation for the guardian's attorney

21. The guardian may receive compensation.

The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or as an attachment to this petition. *

The basis of compensation has not yet been determined.

* There is a continuing obligation to disclose any material changes to the basis for charging fees. (§ 15-10-602, C.R.S.)

22. The guardian may compensate his, her or its counsel

The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or as an attachment to this petition. *

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LIST OF ASSETS

- Statement of assets and income

23. The respondent's assets are:

Description of Assets (e.g. bank accounts, insurance, pensions, property)	Estimated Value
<input type="checkbox"/> None	
_____	\$ _____
_____	\$ _____
Total	\$ _____

24. The respondent's income is:

Description of Income (e.g. social security, pension)	Estimated Amount of Income
<input type="checkbox"/> None	
_____	\$ _____
_____	\$ _____
Total	\$ _____

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APPOINTMENT AND ADDITIONAL REQUESTS

- Confirmation of the request for appointment
- Other additional requests

25. The petitioner requests that an appointment of a guardian be made after notice and hearing.

In addition, the petitioner requests the following:

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By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

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VERIFICATION AND SIGNATURES

Verification and notarized signatures

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of _____ (state) _____ (month) _____ (year)

Executed on the _____ day of _____ (state) _____ (month) _____ (year)

at _____ (city or other location, and state OR country) at _____ (city or other location, and state OR country)

(printed name) (printed name)

(Signature of Petitioner) (Signature of Co-Petitioner, if any)


Attorney Signature, (if any) Date

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AT THE HEARING

- Unless your parent’s attorney wishes to bring your parent to the hearing, transportation is the prospective guardian’s responsibility
- Be prepared to give testimony and respond to questions from your parent’s attorney
- Return to the probate window or office AFTER the hearing to pay for copies of certified letters and orders




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AFTER THE HEARING

- Make sure you understand the documents you are to mail to all interested parties
- Begin work on the initial guardian report and plan – know the deadline
- Confirm the due date of the annual report
- Continue education and/or hire professionals to assist you




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SUMMARY

Filing for Guardianship Can Be Intimidating


- If not contested, filing as a “pro se” party is possible
- If contested, retaining an attorney may be the path to take
- Hire an elder law or probate attorney with “litigation” experience
- Up next – the responsibilities of guardianship



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HOW TO GET GUARDIANSHIP OF A PARENT



- Pamela D. Wilson, MS, BS/BA, NCG, CSA
- Website: www.PamelaDWilson.com
- Additional programs and caregiver education are available at: <https://support.pameladwilson.com>

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