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GUARDIANSHIP WHEN THE DISABLED CHILD TURNS 18

In Illinois, the law considers a “disabled person” to be a person 18 years or older, who because of mental retardation or mental illness, or physical incapacity or developmental disability, is unable to fully manage his or her own personal or financial affairs in a safe manner and is therefore in need of a guardian.

The court may appoint a “guardian of the person” or a “guardian of the estate” or appoint both, a “guardian of the person and estate.” A guardian of the person refers to the authority of the guardian to make decisions concerning the personal and physical care of the “disabled person,” including health care decisions and living arrangements. A guardian of the estate refers to the authority of the guardian to handle the money, property, bills and other financial affairs of the “disabled person.”

Frequently Asked Questions:

Q. What Happens If I Don't Obtain Guardianship Over My Disabled Adult Son or Daughter ?

A. With respect to medical care, sometimes doctors and hospitals will accept the consent of the parents, but this does not always happen. With respect to living and social arrangements, if a "friend" or "stranger" persuades the disabled person to socialize or live with them, generally law enforcement will honor the desires of the disabled person if there has been no guardian of the person appointed. Without appointment of a guardian, all the parents can do is try to persuade their adult child to choose differently.

Q. If My Developmentally Disabled Adult Son Or Daughter Gives Me "Power Of Attorney," Will This Avoid The Need For Guardianship ?

A. No. Many parents have incorrectly been told to get "power of attorney" from their disabled child. In order for a power of attorney to be valid, the person granting or signing the power must have the legal capacity to consent and fully understand what he or she is doing, which generally does not exist for a person who is developmentally disabled. Even assuming that the developmentally disabled person is high functioning and has some capacity to consent, that person would also have the right to cancel or revoke the power at anytime in the future.

Q. If I Am Appointed Guardian, Will I Be Responsible To Pay The Disabled Person's Bills Out Of My Funds ?

A. No. You are not responsible to pay any debts from your own assets.

PROCEDURE FOR APPOINTMENT OF GUARDIANSHIP

A Petition for Guardianship is filed in Court. The Petition is usually filed by the proposed guardian in the county where the disabled person lives. A doctor's statement about why a guardianship is necessary also should be filed at this time. The person filing the petition must send a notice of the time and place of the hearing to the disabled person by way of "Summons" and by way of "Notice" to his or her immediate relatives - parents and adult siblings. The purpose of the hearing is for the judge to decide whether the person is a "disabled person" under the law. If the judge makes a finding of disability, the judge will appoint a guardian of the person, the estate, or both. The judge will decide whether the guardian will have plenary (full) power, or will be authorized to handle only a limited range of matters.

"SAMPLE FORMS" FOR APPOINTMENT OF GUARDIANSHIP IN DUPAGE COUNTY, ILLINOIS

The "**Petition For Guardianship**" should be filed in the County where the disabled person resides. Every County has their own forms and own procedures. If you are going to handle the Guardianship by yourself, then you should first go to the Clerk of the Court for that County and obtain the necessary forms and have them explain to you the procedures that are required in that County or required by the Judge handling the guardianship cases in that County.

For purposes of illustration, enclosed are filled in "**sample forms**" for the appointment of a "Guardian of the Person" (Co-Guardians) in Dupage County, Illinois. In the "sample" case, both parents are seeking guardianship over their developmentally disabled child, and the developmentally disabled child is appearing with the parents in Court. (If the Court is able to observe the child and ask questions to the child if the child is able to communicate, then the Court may not find it necessary to appoint an attorney for the child (guardian ad litem) to investigate the facts of the case.)

Court Forms:

- Petition For Appointment Of Guardian For Disabled Person
- Report of Physician
- Summons For Appointment Of Guardian For Disabled Person
- Oath of Office
- Bond Of Legal Representative - No Surety
- Order Appointing Plenary Guardian For A Disabled Person

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE: THE ESTATE OF:

Name of Disabled Person

CASE NUMBER

ALLEGED DISABLED PERSON

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Name of Parent

, on oath states:

- 1. Name of Disabled Person whose date of birth is insert and place of residence is insert, *is a disabled person.
2. The relationship to and interest of the Petitioner to the Respondent is: Parent
3. The reason(s) for the guardianship is that the Respondent is a disabled person due to: insert diagnosis from Physician Report and because of such disability: ** lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of the Respondent's person.
4. The approximate value of the estate: Personal: \$ -0- Real: \$ -0- The anticipated gross annual income and other receipts of the Respondent are \$ -0-
5. The names and post office addresses of the Respondent's nearest relatives and guardian, if any, are (list spouse and children; if not, the Respondent's parent brothers and sisters; if none, nearest kindred.) Insert names and addresses of relatives
6. The name and address of the person with whom, or facility in which the Respondent is residing: insert

Petitioner asks that Name of Disabled Person be adjudged a disabled person and that insert names of both parents qualified and willing to act, be appointed the guardian of the Respondent's (estate) (person) (person and estate).

The guardianship shall be for the limited purpose of:

No less restrictive means will reasonably protect the assets and/or ensure the safety of the alleged disabled person.

Name: Name of Parent PRO SE

X //signature//

DuPage Attorney Number: n/a

Address: insert

Attorney for: n/a

City/State/Zip: insert

Address:

Date

City/State/Zip:

Telephone:

CIRCUIT COURT CLERK/NOTARY PUBLIC

*If alleged disabled person is a nonresident, add "owning real estate in this county" or "owning no real estate in Illinois, but owning personal estate in this county.

** (a) Lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of the Respondent's person.

(b) Is unable to manage the Respondent's estate or financial affairs.

(c) both (a) and (b)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE ESTATE OF

CASE NUMBER

Name of Disabled Person

Alleged Disabled Person

File Stamp Here

REPORT OF A PHYSICIAN

_____, a physician licensed to practice medicine in all branches in the State of Illinois, submits the following report on _____ an alleged disabled person, based on an examination of the respondent on _____.

NOTE: The examination must have occurred no earlier than three months before the Petition for Guardianship is filed.

1. Describe the nature and type of the respondent's disability and provide an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently. (Please state underlying diagnosis, as well as manifestations of disability.)
2. Provide an analysis and results of evaluations of the respondent's mental and physical condition and, where appropriate, describe educational conditions, adaptive behavior, and social skills.
3. State whether, in your opinion, the respondent is TOTALLY or only PARTIALLY incapable of making PERSONAL and FINANCIAL decisions, and if the latter, the kinds of decisions which the respondent can and cannot make. Include the reasons for this opinion.
4. What, in your opinion, is the most appropriate living arrangement for the respondent, and if applicable, describe the most appropriate treatment or rehabilitation plan. Include the reasons for your opinion. Please indicate what restrictions are reasonably necessary to protect the assets and/or ensure the safety of the alleged disabled person.

(Print or type physician's name)

Signed _____

License No. _____

Address _____

City/State/Zip _____

Telephone _____

*See page 2 on Reverse

*This report must be signed by a physician. If the description of the respondent's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, all professionals preparing evaluations must also sign the report. Evaluation on which the report is based must have been performed within 3 months of the date of the filing of the petition.

5. Provide a statement describing the certification, license or other credentials of the physician preparing this report.

Names and signatures of other persons who performed evaluations upon which this report is based:

Name _____

Address _____

Certification, licenses or other credentials _____

Signature _____

Name _____

Address _____

Certification, licenses or other credentials _____

Signature _____

Name: Name of Parent PRO SE

DuPage Attorney Number: n/a

Attorney for: n/a

Address: insert

City/State/Zip: insert

Telephone: insert

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE ESTATE OF
Name of Disabled Person

CASE NUMBER

ALLEGED DISABLED PERSON

File Stamp Here

SUMMONS FOR APPOINTMENT OF GUARDIAN FOR DISABLED PERSON

TO: Name of Disabled Person
Address of Disabled Person

YOU ARE SUMMONED AND COMMANDED to appear at a hearing on a petition to adjudge you a disabled person and to have a guardian appointed to make decisions for you regarding yourself or your property or both.

Date & Time of Hearing: _____ M.
Place of Hearing: Courtroom _____ DuPage County Judicial Center
505 North County Farm Road, Wheaton, Illinois
Name of Assigned Judge: Hon. _____ Phone: 630-407-_____

**NOTICE OF RIGHTS OF RESPONDENT
PRINTED ON THE REVERSE SIDE OF THIS SUMMONS
IS INCORPORATED HEREIN AND MADE PART OF THIS SUMMONS**

To the Officer:
This summons must be served on the alleged disabled person personally and not later than 14 days before the date of appearance. The summons must be returned by the officer or other person to whom it was given for service with endorsement of service and fees, if any, not later than 2 days after service. If service cannot be made on the alleged disabled person personally, this summons must be returned so endorsed. **This summons may not be served later than 30 days after the date of issuance by the Clerk.**

Name: Name of Parent PRO SE
DuPage Attorney Number: n/a
Attorney for: n/a
Address: insert
City/State/Zip: insert
Telephone: insert

WITNESS: CHRIS KACHIROUBAS, Clerk of the Eighteenth Judicial Circuit and the seal thereof at Wheaton, Illinois
Dated: _____

Clerk of the Eighteenth Judicial Circuit Court

IF YOU NEED LEGAL ADVICE CONCERNING YOUR LEGAL RESPONSIBILITY AS A RESULT OF THIS SUMMONS BEING SERVED UPON YOU, AND YOU DON'T KNOW A LAWYER, YOU MAY CALL THE DU PAGE BAR ASSOCIATION LAWYER REFERRAL SERVICE AT (630) 653-9109.

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT
WHEATON, ILLINOIS 60189-0707

NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a disabled person. If the court grants the petition a guardian will be appointed for you. A copy of the guardianship petition is attached to this summons.

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you visit and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make those decisions for yourself.

YOU HAVE THE FOLLOWING LEGAL RIGHTS:

- 1) You have the right to be present at the Court hearing.
- 2) You have the right be represented by a lawyer, either one that you retain, or one appointed by the judge.
- 3) You have the right to ask for a jury of six persons to hear your case.
- 4) You have the right to present evidence to the court and to confront and cross-examine witnesses.
- 5) You have the right to ask the judge to appoint an independent expert to examine you and give you an opinion about your need for a guardian.
- 6) You have the right to ask the court hearing be closed to the public.
- 7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO THE COURT AND TELL THE JUDGE.

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE ESTATE OF

CASE NUMBER

Name of Disabled Person

- MINOR
- DISABLED PERSON

File Stamp Here

OATH OF OFFICE

The undersigned, on oath states that he/she will faithfully execute the duties of the office of:

- Estate
- Person
- Estate and Person
- _____
- _____
- _____

YOU MUST COMPLETE THE INFORMATION REQUESTED ON THE SECOND PAGE OF THIS OATH OF OFFICE. THIS INFORMATION WILL NOT BE INCLUDED IN THE PUBLIC FILE

Each parent must submit a separate Oath of Office form

Name: Name of Parent PRO SE

DuPage Attorney Number: n/a

Attorney for: n/a

City/State/Zip: insert

Telephone Number: insert

Signature of Party

Signed and sworn to before me

Date

Circuit Clerk or Notary Public

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE ESTATE OF

Name of Disabled Person

- MINOR
- DISABLED PERSON

CASE NUMBER

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OATH OF OFFICE

The undersigned, on oath states that he/she will faithfully execute the duties of the office of:

- Estate
- Person
- Estate and Person
- _____
- _____
- _____

THIS INFORMATION IS REQUIRED BY THE COURT

Address Insert Parent's information
City/State/Zip insert
Telephone insert
Drivers License insert

THIS INFORMATION WILL NOT BE INCLUDED IN THE PUBLIC FILE

Name: Name of Parent PRO SE
DuPage Attorney Number: n/a
Attorney for: n/a
City/State/Zip: insert
Telephone Number: insert

Each parent must submit a separate Oath of Office.

Signature of Party

Signed and sworn to before me

Date

Circuit Clerk or Notary Public

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE OF THE ESTATE OF

Name of Disabled Person

CASE NUMBER

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BOND OF LEGAL REPRESENTATIVE - NO SURETY

I, We, names of both parents, bind myself to the
People of the State of Illinois that I will discharge faithfully the duties of the office of Guardian of the Person

The obligation of this bond is limited to \$ 1,000.00

* both parents sign here
Address insert
City/State/ZIP insert

Name: Parents
DuPage Attorney No.: n/a
Attorney For: n/a
Address: Insert address
City/State/Zip: Insert
Telephone: Insert

I certify that the person whose name is signed above is known to me and appeared before me and acknowledged that he/she signed it voluntarily.

APPROVED IN OPEN COURT
DATE: _____

JUDGE

Clerk of Court/Notary Public

* First name of legal representative must be written in full.

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE: THE ESTATE OF:

Name of Disabled Person

CASE NUMBER

ALLEGED DISABLED PERSON

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ORDER APPOINTING GUARDIAN FOR A DISABLED PERSON

On the verified petition of Name of Parent for an adjudication of disability and the appointment of a guardian for the Estate Person Estate and Person of the above named alleged disabled person, the Court having heard the evidence presented FINDS:

1. The Respondent is:

- A disabled person and is totally without understanding or capacity to make or communicate decisions regarding his or her person.
- A disabled person and is totally unable to manage his or her estate or financial affairs.
- Is an alleged disabled person and a temporary guardian is necessary for the immediate welfare and protection of the alleged disabled person and his or her estate.

2. The factual basis for the finding of the Court is as follows as per record.

3. No less restrictive means will reasonably protect the assets and/or ensure the safety of the alleged disabled person.

IT IS HEREBY ORDERED THAT:

1. Names of both parents is appointed temporary plenary guardian of the Estate Person Estate and Person of the disabled person.

2. The duration and term of the guardianship shall be _____

3. Letters of guardianship shall issue in accordance with the provisions of this order.

4. The Guardian of the Estate shall file an initial inventory within 60 days or on or before: _____

5. The annual Report and Accounting shall be presented in Courtroom _____ at 9A.M. on _____

A copy of the Annual Report and Accounting shall be delivered to the Assigned Judge 30 days prior to the court date.

Name: Parent PRO SE

DuPage Attorney Number: n/a

Attorney for: n/a

DATED: _____

Address: _____

City/State/Zip: _____

Telephone: _____

JUDGE