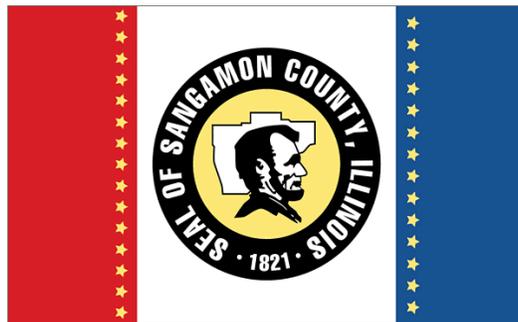


Sangamon County Circuit Clerk's Office



Information for Those Seeking to Petition the Court for Guardianship of a Minor

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IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

This packet was created to help citizens who wish to petition the Court for guardianship of a child under 18 years of age. This packet contains helpful information and the necessary forms to help you through the guardianship process. If you have any questions regarding this packet, please contact the Sangamon County Circuit Clerk's Office at (217) 753-6674. Please be advised that the Circuit Clerks Office is prohibited by law from giving any legal advice.

The Parent Place of Springfield is a community resource that helps citizens who are petitioning for guardianship of a minor. The Parent Place provides a variety of support groups such as the Relatives As Parents Network (RAPN). The Parent Place also has a Court Advocacy Division that provides a court advocate to assist relatives in filing for legal guardianship of a minor. The Court Advocate is available at the courthouse on Mondays from 8:45 a.m. to 10:15 a.m. The Court Advocate is also available Monday-Thursday until 3:00pm at the Parent Place Office. Please contact The Parent Place for more information regarding their guardianship services.

The Parent Place
314 South Grand Avenue West
Springfield, IL 62704
(217) 753-8730
www.tppos.org

Contained in this packet are some commonly asked questions and their respective answers to help you through the guardianship process. Please consult these questions when filling out the attached forms. If you have any further questions, please contact the Circuit Clerk's Office at (217) 753-6674.

Definitions for Terms Found in the Guardianship Process & Preliminary Questions to Ask When Petitioning the Court for Guardianship of a Minor

1) Is Sangamon County the appropriate venue for my case? (755 ILCS 5/11-6)

If the minor is a resident of this State (Illinois), the proceedings shall be instituted in the court of the county in which he/she resides. If the minor is not a resident of this State (Illinois), the proceedings shall be instituted in the court of a county in which his/her real or personal estate is located.

2) Who is a minor? (755 ILCS 5/11-1)

A minor is:

A person who has not attained the age of 18 years.

A person who has attained the age of 18 years is of legal age for all purposes except as otherwise provided in the Illinois Uniform Transfers to Minors Act (See 760 ILCS 20 for the language of that Act.)

3) Am I qualified to act as a guardian of a minor? (755 ILCS 5/11-3)

A person is qualified to act as guardian of the person and as guardian of the estate of a minor if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the minor and that the proposed guardian meets the following criteria:

- A. Has attained 18 years of age;
- B. Is a resident of the USA;
- C. Is not of unsound mind;
- D. Is not an adjudged disabled person as defined in this Act (See 755 ILCS 5/11a-2 for the definition of a disabled person.); and
- E. Has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the minor's best interests, AND as part of the best interest determination, the court has considered (a) the nature of the offense, (b) the date of offense, and (c) the evidence of the proposed guardian's rehabilitation. **NO PERSON SHALL BE APPOINTED TO BE THE GUARDIAN OF A MINOR WHO HAS BEEN CONVICTED OF A FELONY INVOLVING HARM OR THREAT OF HARM TO A CHILD, INCLUDING A FELONY SEXUAL OFFENSE.**

NOTE: It is possible for one person to be appointed guardian of the person and another person to be appointed guardian of the estate.

4) Under what circumstances does this Court appoint a guardian for a minor?

You must prove that the parents are unable to care for the child. You can petition for guardianship if (a) both parents are deceased, (b) one parent is deceased and one cannot be located or is unable to care for the child, or (c) both parents cannot be located or are unable to care for the child.

5) What must I prove in order to be awarded guardianship of a minor?

You must first prove that you have **standing**. You do this by showing that neither parent is willing or able to care for the child, in that they cannot make and carry out day to day child care decisions concerning the minor.

Once standing has been proven, you must then prove that it is in the **best interests of the minor in question** that guardianship be awarded to you.

6) What is the difference between being guardian of the person of a minor and being guardian of their estate? (Definitions taken from illinoislegalaid.org.)

The **guardian of the person** is responsible to feed, clothe, house, and educate the minor. For example, the guardian can enroll the minor in school, request special education services, take the minor to the doctor, get medical care, and get any public benefits the minor may be entitled to. To become guardian of the person, you must file court papers and the Judge must approve the guardianship.

The **guardian of the estate** is responsible for making decisions about the minor's income and property. If a minor inherits money or receives money from a lawsuit, they will need someone to file to be guardian of their estate. The guardian has the duty to properly protect and invest the minor's income. To become guardian of the estate, you must file court papers and the Judge must approve the guardianship.

7) Do I want to be the guardian of the minor's person or of their estate?

The Illinois Legal Aid website (illinoislegalaid.org) provides some useful information to help you determine which guardianship is right for you and your situation. The Parent Place may also be able to assist you in answering this question.

8) Does this Court grant "emergency" Petitions for guardianship of a minor?

No. A new petition for guardianship will be scheduled for hearing approximately 2 weeks after the filing of the petition. The reason for this time period is to allow you time to send notice to the minor's parents or other legal guardians about the guardianship hearing.

NOTE: There are extremely rare exceptions made in the cases of minors with time-sensitive medical emergencies.

9) **Can I receive guardianship of a minor for the sole purpose of having him/her attend a specific school?**

No. This Circuit Court is unaware of any statute that allows guardianship for this purpose.

EXCEPTION: A Judge will consider granting guardianship for educational purposes if the minor is a high school senior and would like to finish his/her senior year at the high school he/she attended in the past. (This type of guardianship usually will arise when the parents of the minor must move out of the minor's current school district for job opportunities.)

10) **Can the minor nominate a guardian for themselves? (755 ILCS 5/11-5)**

If the minor is 14-years-old or older, the minor may nominate the guardian of their person and estate, subject to approval of the court. If the minor's nominee is not approved by the court or if, after Notice to the minor, the minor fails to nominate a guardian of their person or estate, the court may appoint the guardian without nomination.

11) **How can guardianship of the minor be revoked or terminated? (755 ILCS 5/11-14.1)**

Guardianship of a minor can be terminated when the minor reaches the age of majority (18-years-old) by filing of a petition with the Circuit Clerk's office.

A Petition to Revoke Guardianship of a Minor may be filed by a minor's biological, adoptive, or adjudicated parent, whose parental rights have not been terminated. A hearing will be conducted and the parent filing the petition to revoke must show **by a preponderance of the evidence** either that a material change in the circumstances of the minor or the parent has occurred since the entry of the Order appointing the guardian. **The guardian must show by clear and convincing evidence that termination of the guardianship would not be in the best interests of the minor.** In determining what the minor's best interests are, the court shall consider all relevant factors including:

- A. The interaction and interrelationship of the minor with the parent and members of the parent's household;
- B. The ability of the parent to provide a safe, nurturing environment for the minor;
- C. The relative stability of the parties and of the minor;
- D. The minor's adjustment to his/her home, school, and community, including the length of time that the minor has lived with the parent and the guardian; and
- E. The nature and extent of visitation between the parent and the minor and the guardian's ability and willingness to facilitate visitation.

12) Can another guardian be appointed for the minor if I am eventually no longer able to act as guardian? (755 ILCS 5/11-18)

Upon the death, incapacity, resignation, or removal of a guardian, the court may appoint a successor guardian.

Procedural Questions to Ask When Petitioning the Court for Guardianship of a Minor

13) What is the procedure to petition the Court for guardianship of a minor?

You must fill out the first three (3) forms attached to this packet (Petition for Guardianship, Order of Guardianship, and Letters of Guardianship) and present them to the Circuit Clerk along with the payment for your particular filing costs. The other two (2) forms in this packet (Notice of Hearing and Certificate, Affidavit of Service) are for you to use after the Clerk has filed your Petition. Please see the Forms Instructions page for guidance.

14) How much does it cost to file the required documents with the Circuit Clerk?

The Circuit Clerk has divided the filing fees according to the type of guardianship you are seeking. There are two general types of guardianship, guardianship of the person and guardianship of the estate. The definitions of these two different types of guardianships were discussed in the previous section under the heading, “What is the difference between being guardian of the person of a minor and being guardian of their estate?”

Filing Fees

- A. If you are seeking guardianship of the person of the minor only, the filing fee is \$131.00.
- B. If you are seeking guardianship of the minor’s estate and the estate is **less than \$15,000**, then the filing fee is \$121.00.
- C. If you are seeking guardianship of the minor’s estate and the estate is **more than \$15,000**, then the filing fee is \$131.00.

15) To whom must I give Notice of the guardianship hearing?

You **MUST** give notice of the guardianship hearing to **ALL** parties to the case. Those parties are: (a) the minor (if they are 14-years-old or older), (b) the minor’s parents, and (c) any legal guardians of the minor.

16) Which documents must be contained in this Notice?

You **MUST** give each of the parties a copy of the following two (2) documents: (a) the Petition or Order filed by the Circuit Clerk's Office and (b) a completed Notice of Hearing Form, which is available in the Circuit Clerk's Office.

17) How do I send proper Notice?

There are four ways in which you can properly notify the necessary parties.

- A. **Notice in Person:** To notify a party in person, you must give the documents listed in the above question to the party and then fill out the Affidavit of Service on the back of the Notice of Hearing Form and file it with the Circuit Clerk's Office.
- B. **Notice by Mail:** To notify a party by mail, you must mail the documents listed in the above question to the party and then fill out the Affidavit of Service on the back of the Notice of Hearing Form and file it with the Circuit Clerk's Office.
- C. **Notice by Publication:** You may notify a party by publication in a newspaper if the location of the party is unknown and notice cannot be completed by mail. The Circuit Clerk's Office will have the appropriate forms you need in order to notify a party by publication. There may be additional fees for this type of Notice.
- D. **Notice by Service:** You may serve a party with notice through the Sangamon County Sherriff's Office or a private Process Server. The Circuit Clerk's Office will have the appropriate forms for this method of Service. There may be additional fees for this type of Notice.

18) What if one or both of the parents agree to the Petition for Guardianship?

The parent(s) may fill out the Appearance & Consent form for Guardianships of a Minor, which is attached to this packet and is Appendix IV in the Table of Contents. This form is to be used when one or both of the parents agree to and approve your actions in seeking a guardianship case. This form may be filled out to indicate to the Judge that they know about the guardianship case, and are waiving their right to be present at any hearing, and consents to the Judge's order granting you guardianship.

Forms Instructions Page

The forms contained in this packet are provided for the filing of a Petition for Guardian of a Minor who is under 18-years-old. Listed below are the forms contained in this packet and simplified instructions to aid you in their completion. The forms are provided as a courtesy only. The Circuit Clerk's Office is prohibited by law from giving any legal advice. Please consult the beginning pages of this packet to make sure these are the correct forms for you.

- **Attachment: Petition for Guardian of a Minor**

o How to fill out this Petition:

- The Court names the person wanting guardianship as the Petitioner and the child as the Minor. Fill out the Petition by entering the Minor's name at the very top of the page and your full legal name on Line 1. Complete the rest of the Petition with the information in the spaces provided.
- **NOTE:** Please consult the beginning pages of this packet for definitions on the different types of guardianships listed in Section 6. Please state the factual reasons why guardianship is necessary in the space below Section 6 and complete the final paragraph with your information since you are the Petitioner asking for guardianship of the minor. Please sign on the back side of the Petition.

- **Attachment: Nomination**

o How to fill out this attachment:

- If the minor is at least 14-years-old, he/she can nominate a person to be their guardian. This form is on the back of the Petition for Guardian of a Minor and is to be filled out by the minor.

- **Attachment: Order Appointing Guardian of a Minor**

o How to fill out this Order:

- Even though you have not been appointed guardian of the minor yet, you must still complete a portion of this form so that the Judge may easily sign it at your hearing if you are appointed as guardian of the minor. Complete this form with the necessary information in the spaces provided in the beginning paragraph and in Section 1 only. Leave Sections 2, 3, and 5 blank.
- **NOTE:** The beginning line of the Order will indicate that you filed a Petition of Guardianship of a Minor. The line in Section 1 is asking for your name so that you may be appointed as the guardian of the minor.

- **Attachment: Letters of Guardianship (Minor)**

o How to fill out the Letters:

- This form must be completed by you, the Petitioner, to ease the burden on the Judge if he/she appoints you the guardian of the minor. Complete this form with the necessary information in the spaces provided.

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- **Attachment: Notice of Hearing; Guardianship of Minor Case**
 - o How to fill out this attachment:
 - You must give each parent and/or guardian notice of your Guardianship Petition by filling out this Notice of Hearing form and **mailing** a copy of the Notice along with the Guardianship Petition. To fill out this form, please enter the mailing address of the parent or guardian at the top of the Notice. Then, enter your hearing date information from the Clerk's Office underneath the address.
 - **NOTE:** You must place the parent or guardian's address in the space provided and **not your address**. A **separate** Notice of Hearing For must be used for each parent or guardian.

- **Attachment: Certificate/Affidavit of Service; Guardianship of Minor**
 - o How to fill out this attachment:
 - After you have mailed the Notice of Hearing and the Guardianship Petition to each parent and/or guardian, you must bring a copy of that Notice to the Clerk's Office along with this form. To fill out this form, place your name in the first blank and enter in date the Petition was filed and the subsequent date the Notice and Petition were mailed to each parent and/or guardian.
 - **NOTE:** This form **cannot** be completed and notarized by the Clerk's Office until **after** you have mailed the Notice and the Petition to each parent and/or guardian. This means that you will have to come back to the Clerk's Office at a date later than when the Petition was filed to complete this form.

- **Attachment: Appearance & Consent; Guardianship of a Minor**
 - o How to fill out this attachment:
 - The child's parent must fill out this form with their name in the first and last blanks of the paragraph and the child's name in the second blank. Also, please circle the appropriate answers on the form when it asks you to. A Notary Public must sign the bottom of this form.

Filing Fees must be paid at the time of filing. Once your case has been filed, your case will be assigned to a family Judge. The clerk will give you the information needed to set your case for hearing. If you have any questions regarding the filing of the forms attached to this packet, please contact the Circuit Clerk's Office at (217) 753-6674.