

Opening a Guardianship

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GUARDIANSHIPS

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-1 et. seq.

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-1 et. seq.

WARD

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-2
- A person 18 years or older who is unable to manage his person and/or estate because of one of the following:
 - Mental deterioration or physical incapacity
 - Mental illness or developmental disability
 - Gambling, idleness, debauchery, or excessive use of intoxicants or drugs
 - Fetal alcohol syndrome/effects

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-1
- A person who has not yet attained the age of 18

GUARDIAN

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-5
- At least 18 years old
- Resident of USA
- Not of unsound mind
- Not an adjudged disabled person
- Not convicted felon (unless in the ward's best interests)

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-3
- [SAME]

JURISDICTION

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- Petition filed
 - by Reputable person; or
 - by the alleged disabled adult
- Court's own motion

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(a)
- Petition filed
- Court's own motion

JURISDICTION

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- Petition filed
 - by Reputable person; or
 - by the alleged disabled adult
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GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(b)
- No jurisdiction if parent whose parental rights have not been terminated and whose whereabouts are known and who is able to make and carry out the day-to-day childcare decisions

JURISDICTION

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- Petition filed
 - by Reputable person; or
 - by the alleged disabled adult
- Court's own motion

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(b)
- EXCEPTIONS to lack of jurisdiction:
 - Parent(s) voluntarily relinquish physical custody of the minor
 - After receiving notice of hearing, parent(s) fail to object
 - Parent(s) consent to the appointment

JURISDICTION

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- Petition filed
 - by Reputable person; or
 - by the alleged disabled adult
- Court's own motion

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(c)
- If the minor is at least age 14, the minor may nominate a guardian, subject to court's approval

VENUE

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-7
- If proposed ward is resident of IL, then in the county in which he resides
- Otherwise, in county where his real or personal estate is located

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-6
- [SAME]

PETITION

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-8
- Relationship of the Petitioner to Respondent
- Name, DOB, place of residence of respondent (alleged disabled adult)
- Reasons for Guardianship
- Current guardian or POA Agents
- Nearest relatives of Respondent
- Person with whom (or facility in which) Respondent resides
- Approx value of the personal and real estate
- Amount of anticipated gross income
- Proposed Guardian

PETITION

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-8
- Name, DOB, place of residence of minor
- Nearest relatives of minor
- Person with custody of minor
- Approx value of the personal estate
- Amount of anticipated gross income
- Proposed Guardian
- Any written designation
- Info regarding any juvenile, adoption, parentage, dissolution, or guardianship court actions pending

NOTICE OF HEARING

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-10
- Unless potential ward is the petitioner, summons served upon him at least 14 days prior to hearing
 - Large bold type
 - NOTICE OF RIGHTS OF RESPONDENT

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-10.1
- Unless excused for good cause shown, notice of hearing to:
 - Minor, if age 14+
 - Nearest relatives (including parents)
 - Short-term Guardian
- At least 7 days prior to hearing

GUARDIAN AD LITEM

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-10
- Court SHALL appoint guardian ad litem unless the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-10.1(b)
- Court MAY appoint guardian ad litem

PHYSICIAN'S REPORT

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-9
- Physician's Report should accompany the petition
- Otherwise, court shall order appropriate evaluations to be performed by a qualified person and a report be prepared and filed
- PRACTICE POINTER: This Report should be filed under seal

PHYSICIAN'S REPORT

GUARDIANSHIP OF DISABLED ADULT

- Contents of Physician's Report (755 ILCS 5/11a-9):
 - Description of nature and type of respondent's disability and an assessment of how the disability impacts respondent's ability to make decisions or function independently
 - Analysis and results of evaluations of the respondent's mental and physical condition (and, if appropriate, educational condition, adaptive behavior, and social skills)
 - Opinion as to whether guardianship is needed and the type and scope thereof
 - Recommendation regarding living arrangements / treatment and habilitation plan, and reasons therefor
 - List of persons who performed the evaluations, including licensed physician

FINDINGS

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- Respondent is a person with a disability and thus:
 - Lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person; and/or
 - Is unable to manage his estate or financial affairs

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(a)
- Best Interests

FINDINGS

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- “Guardianship shall be utilized only as is necessary to promote the well-being of the person with a disability, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence.”

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(a)
- Best Interests

FINDINGS

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-3
- “Guardianship shall be ordered only to the extent necessitated by the individual’s actual mental, physical, and adaptive limitations.”

GUARDIANSHIP OF MINOR CHILD

- 755 ILCS 5/11-5(a)
- Best Interests

APPOINTMENT

- Letters of Office
- Oath and Bond
 - 755 ILCS 5/12-2
 - Oath or affirmation that the individual will faithfully discharge the duties of the office
 - Bond binding the individual representative
- With Sureties
 - 755 ILCS 5/12-3
 - Not less than 2 sureties
 - (Or one surety company)

TRAINING

GUARDIANSHIP OF DISABLED ADULT

- 755 ILCS 5/11a-12(e)
- Guardian of the Person shall be required to complete training program
- <https://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Training.aspx>

INVENTORY

- 755 ILCS 5/14-1
- Within 60 days after appointment