Legal Aid
OF NEBRASKA



GUARDIANSHIP HANDBOOK

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Important Disclaimer

Use of this informational Guardianship Handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska's attorneys. The information provided to you through this Handbook is intended for educational purposes only. Nothing in this Handbook should be considered legal advice or as a substitute for legal advice.

Please understand that the information contained in this Handbook is based upon generally applicable Nebraska law. Some laws and procedures may vary depending on which county in Nebraska you live and the specifics of your case. If you want legal advice about your specific issue you must consult an attorney in your area.

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INTRODUCTION

Guardianship is the legal process used to take care of individuals who cannot take care of themselves. A person may petition the court to become guardian of an adult who is deemed incapacitated or of a minor who does not have the care from a parent. The person to be protected is called the ward. A guardian has the capacity to make decisions on behalf of the ward.

Guardianships can be temporary or permanent depending on the circumstances surrounding the need for a guardianship. Temporary guardianships should be sought when there is an immediate and urgent need, such as when the ward is in the hospital and in need of immediate medical care. Permanent guardianships are granted when the ward will always need someone to take care of them.

Guardianships are heard in probate court. A judge decides if the burden has been met to show the ward needs a guardian and who should be appointed as guardian. This process is slightly different depending on if the ward is an adult or a minor. Adult guardianships require a finding that the adult is incapacitated and unable to understand and make decisions on their own. Minor guardianships require a finding that the parents are unable to provide the care necessary to the minor.

Before a guardian is appointed, the court must find that a person is "incapacitated". This means they are unable to understand and make decisions on their own or that a minor child does not have the adequate support of a parent to take care of them. The person petitioning to be guardian has the responsibility of proving that the ward is incapacitated. This is typically demonstrated through medical records for adults or testimony of the proposed guardian in cases of minor children. The petitioner must also demonstrate that there are no other less restrictive ways the ward's needs could be taken care of. For instance, if the ward has signed a power of attorney or the ward could hire someone to help around the house, or other means that would retain the freedom of the ward while still meeting their needs. Once it is determined a guardianship is necessary, the court decides if the petitioner is the right person to be appointed as guardian.

WHEN A GUARDIANSHIP IS NEEDED

A guardianship is needed when a person is unable to take care of themselves. For adults, that requires a showing of incapacity. For minors, that requires a showing that there is not a parent available to provide those needs.

Adult guardianships are necessary when an adult is unable to understand and make decisions on their own in order to take care of their own needs. This includes any person who is impaired due to a mental illness, mental deficiency, physical illness, or chronic use of drugs.

Minor guardianships are necessary when a minor child is without the proper care of parents. The mother and father are the natural guardians of their minor children and are entitled to their custody. When parents are absent or not taking care of their child's needs, a guardianship may be necessary.

Situations in which a minor guardianship is necessary include if all parental rights have been voluntarily or by court order terminated or suspended, if a parent is terminally ill and wishes to appoint someone for after their death, or if a parent is unable to care for the child for reasons of mental illness, mental deficiency, physical illness, or chronic use of drugs.

WHO CAN BE A GUARDIAN

Once a showing of needing a guardian has been made, the court will consider who the best person to be appointed guardian is. There is a priority of appointment for who will be appointed as a guardian in Nebraska statutes. No matter if it is for an adult or a minor, the court is tasked with selecting a guardian that is in the best interest of the ward. The court can skip over a person with priority if it is in the best interest of the ward.

For a minor guardianship, (1) parents are the first priority, (2) followed by any person a parent has selected to care for the child in the event of their death, and (3) then any person acting in the best interest of the child. If the minor is fourteen years old or older, they may nominate a person to serve as their guardian. Neb. Rev. Stat. §§ 30 2608 to 2610.

For a guardianship of an incapacitated adult, the priority (1) a person nominated under a power of attorney or acting as attorney in fact has first priority, (2) the spouse of the incapacitated person, (3) an adult child of the incapacitated person, (4) a parent of the incapacitated person, including a person nominated by will of a deceased person, (5) any relative of the incapacitated person with whom they have resided for more than six months prior to filing the petition, (6) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person, and (7) The Public Guardian. Neb. Rev. Stat. § 30 2627.

The Office of the Public Guardian is appointed in cases where there is no other individual willing or able to serve as guardian. The Office of Public Guardian has limited capacity and can reject a case if they do not have the current capacity to accept it

TYPES OF GUARDIANSHIP

As mentioned above, there are different types of guardianships depending on the circumstances. The severity of the incapacitation determines if it is a limited or full guardianship. The length of the incapacitation determines if it is a temporary or permanent guardianship. The age of the ward determines if it is an adult or minor guardianship.

Adult Guardianship or Minor Guardianship

This is the easiest difference to see. In determining which one is appropriate, all you need is the age of the ward. If the person is nineteen (19) or older, they are an adult in the state of Nebraska and you would file for an adult guardianship. If the person is under the age of nineteen (19), then they are a minor and you would file for a minor guardianship. The difference in these legal processes will be explained in the next section.

Temporary Guardianship or Permanent Guardianship

No matter if it is for an adult or a minor, the length of the guardianship is based on the urgency of the situation and how long a guardian will be needed. When deciding what to petition for consider the two following questions: When does the ward need care and how long will the ward need care?

Temporary guardianships are for when an action needs to be taken immediately to ensure the care of a person. These are most commonly used when some sort of medical care is needed. Such as an incapacitated adult who needs someone to apply for Medicaid on their behalf while they are in the hospital. Or a minor who needs someone to take them to doctor's appointments while parents are in jail.

Temporary guardianships do not typically require a hearing. A temporary guardianship lasts for ninety (90) days after the judge approves it. Temporary guardians do not have the same abilities as a permanent guardian. Temporary guardians are restricted to only actions necessary to address the ward's emergency. While a temporary guardianship can be extended for an additional ninety (90) days, it may be in the best interest of the ward to seek a permanent guardianship instead of an extension.

Permanent guardianships sometimes start out as a temporary guardianship. Once the emergency is addressed, the ward is sometimes still in need of care. Or, if an emergency does not exist, a person may petition the court for a permanent guardianship. A permanent guardian has all the abilities to care for a ward as a parent would of a child. This includes deciding where they live, making medical decisions, caring for their person, and many other things. These can be limited by a judge and will be discussed further below.

Because a permanent guardianship lasts for a long time, the process of appointment is a bit longer than that of a temporary guardianship. There will be a hearing on the matter and evidence will be presented. While they are called permanent guardianships, they may be terminated by making a motion to the court.

Limited Guardianship or Full Guardianship

When a permanent guardian is appointed, the court will specify what powers the guardian has over the ward. A full guardianship grants a guardian all powers, while a limited guardianship only grants some specific powers. Limited guardianships are granted when the ward only needs help in a certain areas such as making their medical decisions or handling their money. The powers that a court can grant a guardian are as follows:

i. Selecting where the ward lives
ii. Arranging for the ward's medical care
iii. Protecting the personal effects of the ward

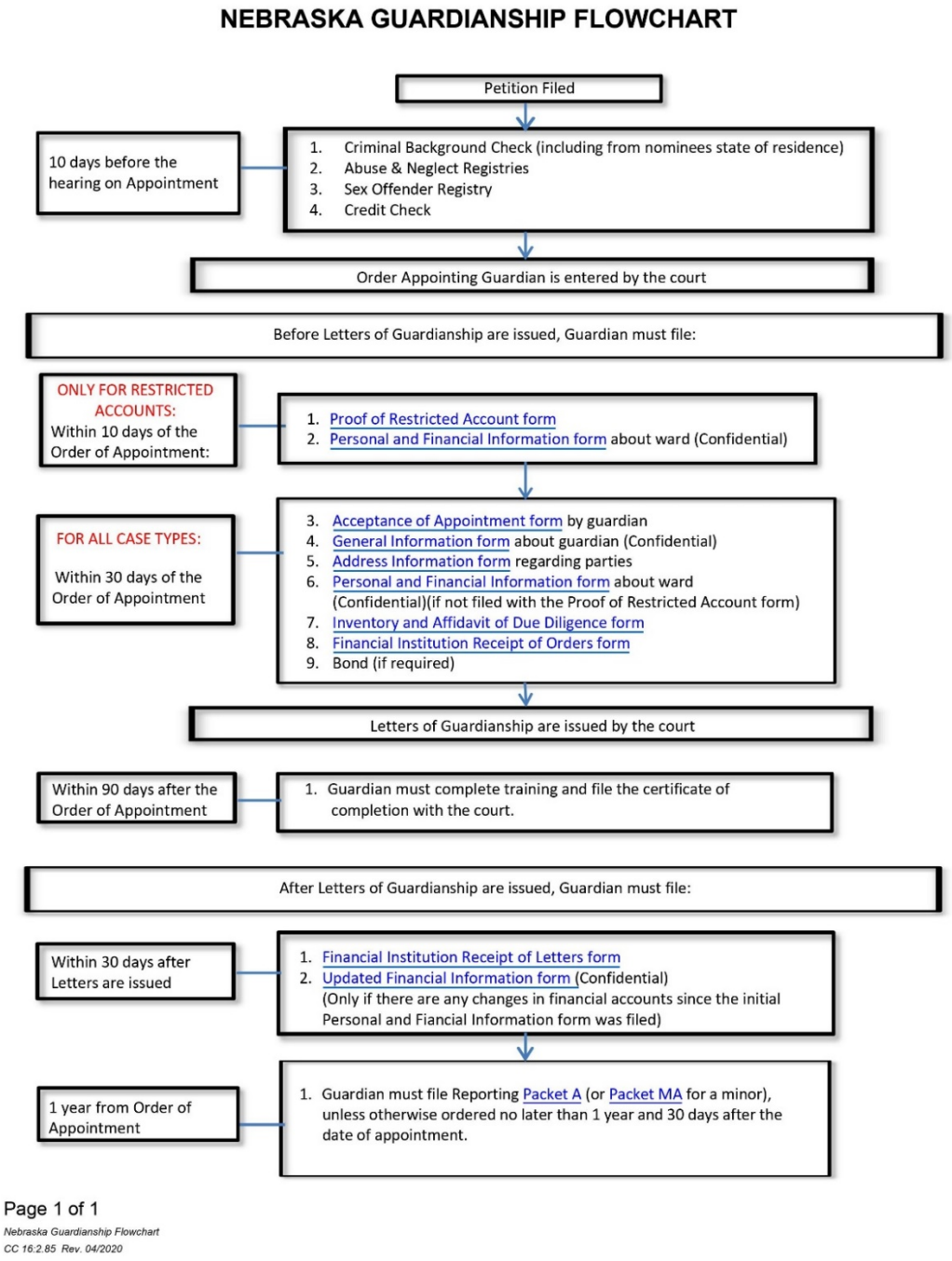
iv. Giving necessary consent, approval, or releases on behalf of the ward
v. Arranging for training, education, or other habilitating services for the ward
vi. Applying for private or governmental benefits to which the ward is entitled
vii. Instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such duty, if no conservator is appointed
viii. Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed
ix. Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board, medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed.

The judge also has the option to write in other specific powers as they deem appropriate and necessary for the care of the ward. The first six legal powers allow the guardian to care for the ward in the same way a parent would care for their child. These six powers cover most of the needs a ward would have. The last three powers are only applicable if no conservator is appointed.

A conservator serves as the guardian of the "estate" of a ward. This means that just as a guardian cares for the person, the conservator care for the finances of the person, often called the estate. In Nebraska, a guardian has the power over finances unless a conservator has been appointed. Conservators are appointed when the ward has many assets. Conservatorships require more complicated yearly reports filed with the court to assure the ward's money is being properly spent and protected. If both a guardian and a conservator are appointed, these individuals are responsible for working together to ensure the best care for both the person and the estate of the ward.

LEGAL PROCESS

The following flowchart was made by the Nebraska Supreme Court to explain the legal process for guardianships.



The legal process is largely similar no matter if for a minor or an adult, and only begins to look different if someone contests the appointment of a guardian. This handbook will go over the legal process for both situations and then expand on the difference between the two. The legal process for a temporary guardianship is much less extensive so this section will primarily go over the process for a permanent guardianship.

To begin, the person seeking to be guardian, or a person concerned about the welfare of the ward, (both known as the petitioner) must petition the court to become guardian. The petition must be filed in either the county where the ward is currently located or where the ward has residency. For example, if a person is receiving medical treatment at a hospital in Lancaster County but owns a property in Omaha, a petition for guardianship could be filed in either Lancaster or Douglas County.

The petition must state the petitioner's relationship to the ward. This is usually a sentence saying "Petitioner is the son of the above-captioned person and is interested in their welfare." The petition must also state if the petitioner is the guardian of any other individuals and if the ward is subject to any other guardianships. The petition must establish the basis for why a guardianship is necessary and that other less restrictive means have been attempted but failed to meet the ward's needs.

For a petition for temporary or temporary and permanent guardianship, the temporary order granting the guardianship will be issued immediately to address the current emergency that requires a temporary guardianship. Temporary orders are issued when substantial evidence has been provided that the ward is in need of immediate assistance and the petitioner is a fit person to provide the assistance. Sometimes the court will order a hearing be held within ten days of the petition being filed to determine whether an emergency exists requiring appointment of a temporary guardian.

All persons who may have an interest in the ward's welfare are required to be listed in the petition and receive notice of the filling of a petition for guardianship. These are called "interested parties" At a minimum, interested parties include the children of the ward, the ward's parents, and spouse. Other people, such as the ward's siblings, aunts, cousins, can be listed however, they are not required. The ward must be personally served with the petition and notice of hearing

A filing fee is required to file the Petition. The filing fee for just a temporary or just a permanent is $44. The filing fee for both a temporary and permanent guardianship is $68. There are additional costs of filing a guardianship, which include the cost of serving the ward, background checks and taking a required guardianship class. Finally, all interested parties must receive notice by certified mail, which adds an additional cost.

Once the temporary guardianship has been issued, the guardian must sign and submit the Acceptance of Temporary Guardianship. A sample of that form can be found in the Appendix. The court will set a date for the hearing on the permanent guardianship. After the acceptance has been

submitted, the guardian has the legal authority to tend to the emergency that required the appointment of a temporary guardianship. The temporary guardianship lasts for ninety (90) days. During that time, the guardian must complete the necessary background checks and prepare for the hearing on permanent guardianship. These include a criminal background check, abuse and neglect registry check, sex offender registry check, and a credit report. Background checks must be completed in the state where the guardian resides. Background checks must be submitted to the court at least ten days before the hearing on the permanent guardianship.

Medical records or an affidavit from the ward's physician must be obtained in order to establish that a person is incapacitated and in need of a guardian. For a minor child, the fact of their minority age typically establishes such a need without the need for further medical evidence.

Interested parties and the ward must receive notice for the hearing on the permanent guardianship. Wards must receive personal service. This is typically done through a sheriff of the county the ward is in. Interested parties must receive notice and this is typically done through certified mail. All parties have the right to be at the final hearing.

Final hearing

At the final hearing the Petitioner will provide evidence, through testimony, to show why they believe the ward is incapacitated and why they believe it is in the ward's best interest they be appointed as guardian. They should be prepared to offer medical records or an affidavit from the ward's physician to support the need for the guardianship. If the court finds that the evidence shows, through clear and convincing evidence, that the ward is in need of a guardian and the petitioner is fit to be that guardian, an order appointing petitioner as guardian will be granted. From here, consult the After Appointment section for next steps.

AFTER APPOINTMENT

Forms

After the court has issued an order appointing a guardian, the petitioner must file a few forms before the Letters of Guardianship are issued, which allow the petitioner to act as guardian for the ward. The forms serve as a safeguard to protect the ward. The forms give the court some information about you and the ward.

The Acceptance of Appointment form is signed by the guardian saying that they accept the appointment as guardian and will perform all the duties as guardian of the ward. This form also says the guardian will file all the other forms with court by the time they need to be filed.

The General Information form. This form is confidential, which means that it will not be available to anyone except the courts. This form serves to provide the court with contact information about the guardian. This includes both the guardian's information and the contact information of people that will always know how to contact the guardian.

The Address Information form provides the address and contact information of the ward and all other interested parties to the court.

The Personal and Financial Information form provides information about the ward's financial information, date of birth, and social security number. This form is confidential, which means that it will not be available to anyone except the courts.

The Inventory and Affidavit of Due Diligence form provides specific information about the ward's assets. This information is used to determine if a bond is appropriate and inform the court about the state of the ward's ability to afford their own care. A bond is typically an insurance policy obtained by the guardian to protect the ward's estate if the guardian mishandles or misappropriates the ward's money or assets. Bonds are typically waived unless the ward has significant assets

The Financial Institution Receipt of Orders form is filled out by the bank where the ward has accounts. It is the bank's acknowledgement it has received the guardianship order and the verification the ward has an account and the current balance of that account.

All of the forms mentioned above must be submitted before the Letters of Guardianship are issued. Once the Letters of Guardianship have been issued by the court, the guardian must file two more forms to the court within thirty days.

The two forms are: the Financial Institution Receipt of Letters form and the Updated Financial Information form. The Financial Institution Receipt of Letters form is similar to the Financial Institution Receipt of Order form. However, this time, the bank is acknowledging the receipt of the permanent letters. The Updated Financial Information form is identical to the form filed when letters were received.

Class

The guardian must complete a training class unless specifically waived by the court. This class is available through the Office of the Public Guardian. The class is available either online or in-person. The class is available in English, Spanish, or a guardian who speaks a different language is free to provide their own interpreter. Arrangements for any language other than English must be made with the Office of Public Guardian prior to registration and payment.

The guardian must register in order to attend. Either in-person or online, the registration can be found on the Office of the Public Guardian's website. It costs $20 for the online version of the class and $35 for the in-person version of the class. The guardian will pay for the class with a credit card when registering for the class online.

The online version of the class is the recommended option because it provides the greatest flexibility and access to the course information as well as being the least expensive option. The online class is always available in either English or Spanish. The guardian can take the course at

any point and access to the course will be sent to the email used to register within seven days of payment.

The in-person classes are offered once a month at various locations throughout the state of Nebraska. Guardians must register online at least one week prior to the course as walk-ins and same day registration are specifically prohibited.

No matter the format, the class will cover how to file the annual reporting forms and other information and resources available to guardians and their wards.

Annual Reporting

A guardian must file an annual report to update the court on the status of the ward and the ward's finances. There is an annual reporting packet to fill out for each type of guardianship. Along with the packet, a $10 filing fee is required if accounting is included or a $5 filing fee if an accounting is not required. The judge will tell the guardian, at the time the Letters of Guardianship are issued, if an accounting is not required. Accounting is typically waived in minor guardianships of young children that do not and will not have any income for the foreseeable future.

Forty-five days prior to the year anniversary of the guardianship being issued, the guardian will receive the packet they are supposed to fill out in the mail. This is one of the many reasons it is important to keep the court updated about the guardian's address. Along with the packet, you will be sent the date the packet is due to the court. The packet is due back to the court one year and thirty days after the guardianship was issued. The packet can be hand filed in the county court where the guardianship hearing took place. The packet, not including financial accounting, must be sent to all interested parties.

APPENDIX

Checklist

- □ File a petition to become guardian
- □ Complete required background checks
  - Criminal Background
  - Abuse & Neglect Registry
  - Sex Offender Registry
  - Credit Check
- □ Obtain relevant medical evidence
  - Doctor's notes or medical history used to show incapacity
- □ If a guardian ad litem is appointed, complete necessary interviews
- □ Prepare for hearing
  - Compile all relevant information and prepare to answer questions
- □ After the court has ordered an appointment of guardian, complete forms
  - Acceptance of Appointment
  - General Information
  - Address Information
  - Personal and Financial Information
  - Inventory and Affidavit of Due Diligence
  - Financial Institution Receipt of Orders
- □ Deposit the bond with the court, if required
- □ After Letters of Guardianship are issued, complete the class
  - File the certificate of completion with the court
- □ On the year anniversary of appointment, submit the appropriate annual reporting packet

Sample Forms

Below are samples of some the forms that need to be filed following an order of guardianship. All of the forms can be found on the Nebraska Supreme Court's website.

- supremecourt.nebraska.gov/programs-services/guardianship
  - Interested Party Forms: supremecourt.nebraska.gov/forms/interested party
  - Orders of Appointment:supremecourt.nebraska.gov/forms/order appointment
  - Acceptance of Appointment:supremecourt.nebraska.gov/forms/acceptance appointment
  - Discharge of Guardian: supremecourt.nebraska.gov/forms/discharge guardian
  - All other Guardian Forms: supremecourt.nebraska.gov/forms/other guardianship forms
  - Annual reporting packets:
    - For adult wards: supremecourt.nebraska.gov/adult packet
    - For minor wards: https://supremecourt.nebraska.gov/minor packet

For people in Lancaster County, the Lancaster County Probate website is a great resource for updated forms as well as questions that might arise while serving as a guardian in that specific county.

- Lancaster county probate