

For Clerk's Use Only

IN RE: _____, AN ALLEGED PROTECTED PERSON

DATE: _____ CASE NUMBER _____ - G - _____

PETITION FOR THE APPOINTMENT OF A GUARDIAN/CONSERVATOR

[West Virginia Code: § 44A-1-1, et seq.]

INSTRUCTIONS TO APPLICANT

- A. All information must be printed or typed and be clearly readable.
- B. All information requested *MUST* be provided, if known. If unknown, you must state it is unknown.
- C. Any petition which does not provide the necessary information, or is unreadable, may be dismissed for incompleteness. Please be sure you read and answer all questions.
- D. In this document, the PROTECTED PERSON is the person for whom a guardian or conservator is sought. The person requesting the appointment is the PETITIONER. (Two or more petitioners may apply to serve as co-guardians or co-conservators. If so, the required information must be completed for all petitioners.)
- E. Answers to some questions may require more space than provided. If so, attach additional pages as needed and label each response on such page(s) with the number of the applicable question.
- F. Additional guidelines and instructions are contained on Page 7. Please read these instructions carefully since substantial delays may result from failure to perform all the requirements of law.
- G. **WARNING: If a guardian or conservator is appointed for an individual who is unable to handle their affairs due to mental illness or insanity, the individual will be:**
 - (1) prohibited from possessing and receiving firearms and ammunition, in some cases for his or her entire life,
 - (2) required to immediately surrender ANY firearms owned or in his or her possession,
 - (3) reported to both federal and state database registries used for firearm purchases and permits/licenses to carry concealed weapons, and
 - (4) subject to future criminal charges for possession or receipt of firearms or ammunition. Conviction in West Virginia can result in a fine up to \$1,000.00 or jail time of up to one year. Federal conviction is a FELONY and can result in fines and jail time up to TEN years. (See, W.Va. Code § 61-7-7 and 18 U.S.C.A. § 924(a)(2))

PART I

INFORMATION ABOUT THE PETITIONER

- 1. PETITIONER'S [your] FULL NAME: _____
- 2. PETITIONER'S [your] PLACE OF RESIDENCE: _____
- 3. PETITIONER'S [your] POST OFFICE ADDRESS: _____
TELEPHONE NUMBER: WORK: () _____ HOME: () _____
- 4. WHAT IS YOUR RELATIONSHIP TO THE PROTECTED PERSON: _____

PART II

INFORMATION ABOUT THE PROTECTED PERSON

- 5. FULL NAME OF PROTECTED PERSON: _____
- 6. PROTECTED PERSON'S DATE OF BIRTH [MMDDYYYY]: _____/_____/_____
- 7. PROTECTED PERSON'S PLACE OF BIRTH [state or country]: _____
- 8. PROTECTED PERSON'S RESIDENCE ADDRESS: _____
- 9. PROTECTED PERSON'S CURRENT LOCATION: _____
- 10. PROTECTED PERSON'S POST OFFICE ADDRESS: _____
- 11. PROTECTED PERSON'S GENDER [initial one]: _____ male or _____ female
- 12. PROTECTED PERSON'S RACE [initial one]: _____ White, _____ Black or African American, _____ Hispanic or Latino, _____ Asian, _____ American Indian or Alaska Native, or _____ Native Hawaiian or Other Pacific Islander, or _____ unknown
- 13. PROTECTED PERSON'S HEIGHT [initial one]: _____ feet, and _____ inches
- 14. PROTECTED PERSON'S NATURAL EYE COLOR [initial one]: _____ brown, _____ blue, _____ green, _____ hazel, or _____ other

PART III

INFORMATION ABOUT THE PROTECTED PERSON'S RELATIVES

You are required to provide information about the Protected Person's nearest relatives. You must answer each question fully and completely. If additional space is needed, attach additional page(s) as necessary.

- 15. DOES THE PROTECTED PERSON HAVE A SPOUSE AND/OR CHILDREN? _____ YES _____ NO.

If you have answered "YES," complete the following and then go to PART IV. If you have answered "NO," go to question 16.

SPOUSE'S FULL NAME: _____

SPOUSE'S POST OFFICE ADDRESS: _____

FULL NAME(S) AND **POST OFFICE ADDRESSES** OF EACH OF PROTECTED PERSON'S CHILDREN:

16. DOES THE PROTECTED PERSON HAVE PARENTS, BROTHERS AND/OR SISTERS? _____YES _____NO.

IMPORTANT NOTE: Complete this question ***ONLY*** if you answered "NO" to Question 15 above. If you have answered "YES," to this question, complete the information requested below and go to PART IV. If you have answered "NO," go to question 17 below.

FULL NAME(S) AND **POST OFFICE ADDRESSES** OF EACH OF PROTECTED PERSON'S PARENTS **AND** BROTHERS **AND** SISTERS:

_____.

17. ***IMPORTANT NOTE:*** Provide the following information ***ONLY*** if you have answered "NO" to ***BOTH*** questions 15 and 16 above.

LIST THE PROTECTED PERSON'S NEAREST KNOWN RELATIVES, **AND THE POST OFFICE ADDRESS(ES) FOR EACH**, WHO WOULD BE ENTITLED TO SUCCEED TO THE PROTECTED PERSON'S ESTATE BY INTESTATE SUCCESSION AS SET FORTH IN *WEST VIRGINIA CODE: § 42-1-1, et seq.* : _____

_____.

PART IV

OTHER REQUIRED INFORMATION

18. LIST ANY INDIVIDUAL AND/OR FACILITY, INCLUDING ANY PERSON ACTING AS A DE FACTO GUARDIAN , DE FACTO CONSERVATOR, MEDICAL POWER OF ATTORNEY, REPRESENTATIVE, OR APPOINTED SURROGATE, THAT IS RESPONSIBLE FOR THE PROTECTED PERSON'S CARE OR CUSTODY.

NAME OF THE INDIVIDUAL OR FACILITY: _____

INDIVIDUAL'S OR FACILITY'S PLACE OF RESIDENCE OR LOCATION: _____

INDIVIDUAL'S OR FACILITY'S POST OFFICE ADDRESS: _____

IMPORTANT NOTE: If you have named any individual and/or facility in this question, you MUST provide a detailed listing of the acts performed by any and all such persons and/or facilities on behalf of the protected person on a separate sheet which MUST be attached to this petition.

19. HAS ANY PERSON BEEN DESIGNATED AS A SURROGATE DECISION MAKER FOR THE PROTECTED PERSON? A "surrogate decision maker" is an adult individual or individuals who are reasonably available, are willing to make health care decisions on behalf of an incapacitated person, and are identified as such by the person's attending physician in accordance with West Virginia Code: § 16-30B-3(p). _____ YES _____ NO.

If "YES," provide information requested below. If "NO," go to Question 20.

NAME(S) OF THE SURROGATE DECISION MAKER(S): _____

SURROGATE(S) PLACE OF RESIDENCE(S): _____

SURROGATE(S) POST OFFICE ADDRESS(ES): _____

20. DOES THE PROTECTED PERSON HAVE A REPRESENTATIVE OR REPRESENTATIVES DULY APPOINTED UNDER A DURABLE POWER OF ATTORNEY, MEDICAL POWER OF ATTORNEY AND/OR A LIVING WILL?

_____ YES _____ NO. *If "YES," complete the information requested below AND attach a copy of any such document with this petition. If "NO," go to Question 16.*

NAME(S) OF REPRESENTATIVE(S): _____

REPRESENTATIVE(S) PLACE OF RESIDENCE OR LOCATION: _____

REPRESENTATIVE(S) POST OFFICE ADDRESS(ES): _____

21. WILL THE PROTECTED PERSON'S INCAPACITY PREVENT THE PROTECTED PERSON FROM ATTENDING THE HEARING ON THIS PETITION? _____ YES _____ NO. *If "YES," you must provide the reason(s) in the space below.*

REASON(S): _____

_____.

IMPORTANT NOTE: The Court cannot conduct a hearing on the merits of this petition without the presence of the protected person unless one of the following is submitted to the Court at the beginning of the hearing: (1) a physician's affidavit (GC Form 5), (2) qualified expert testimony or, (3) evidence that the person refuses to appear. SEE: West Virginia Code: § 44A-2-9(c).]

22. WHAT TYPE OF GUARDIANSHIP OR CONSERVATORSHIP IS BEING REQUESTED? *Check all appropriate spaces:*

_____ TEMPORARY GUARDIANSHIP

_____ TEMPORARY CONSERVATORSHIP

_____ LIMITED GUARDIANSHIP

_____ LIMITED CONSERVATORSHIP

_____ GUARDIANSHIP

_____ CONSERVATORSHIP

LIST THE REASON OR REASONS SUPPORTING THE TYPE OR TYPES OF GUARDIANSHIP OR CONSERVATORSHIP

REQUESTED: _____

_____.

23. IF A LIMITED **GUARDIANSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF PROTECTION AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT: _____

_____.

24. IF A LIMITED **CONSERVATORSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF MANAGEMENT AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT: _____

_____.

25. NAME OF THE PROPOSED GUARDIAN:

PROPOSED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

26. NAME OF THE PROPOSED CONSERVATOR:

PROPOSED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

27. HAS THE PROTECTED PERSON NOMINATED A GUARDIAN OR CONSERVATOR DIFFERENT FROM THE PROPOSED GUARDIAN OR CONSERVATOR? _____ YES _____ NO. *If "YES," complete the following:*

NOMINATED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

NOMINATED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

28. PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY GUARDIAN OR CONSERVATOR CURRENTLY ACTING ON BEHALF OF THE PROTECTED PERSON IN WEST VIRGINIA OR ELSEWHERE:

ACTING GUARDIAN: _____

POST OFFICE ADDRESS: _____

ACTING CONSERVATOR: _____

POST OFFICE ADDRESS: _____

29. HAS ANY INDIVIDUAL PROPOSED, NOMINATED OR ACTING GUARDIAN OR CONSERVATOR, WHOSE NAME IS LISTED IN ANY OF THE ANSWERS TO QUESTIONS 25 THROUGH 28, EVER BEEN CONVICTED OF A CRIMINAL OFFENSE OTHER THAN A TRAFFIC OFFENSE? [check one] _____ YES _____ NO. *If the answer to this question is "Yes," list the name of each such individual **AND** provide the **CRIMINAL HISTORY** of that individual:*

I, the Petitioner named in the foregoing *Petition for the Appointment of a Guardian/Conservator* hereby respectfully request that the Circuit Court set this matter for hearing and, following such hearing, appoint a guardian and/or conservator for the protected person named herein as requested and petitioned.

Given under my hand this _____ day of _____ [month], _____ [year].

PETITIONER'S SIGNATURE

COUNSEL FOR PETITIONER

Bar ID: _____

Address: _____

Phone Number: _____

ALL PETITIONERS MUST NOTE THE FOLLOWING MATTERS ABOUT FILING THIS PETITION:

1. This petition must be filed in the Office of the Clerk of the Circuit Court of the County in West Virginia where the Protected Person resides, ***OR*** the County where the Protected Person has been admitted to a health care or correctional facility ***OR***, in the case of a missing person (a person who is absent from his or her usual place of residence in West Virginia and whose whereabouts are unknown for a period of six months or more), the petition must be filed in the County in which the missing person last resided . If this is not the case, ask for assistance from the Circuit Court Clerk.
2. You are required to pay a filing fee of \$ 110.00 to the Clerk of the Circuit Court upon filing of this petition. As the Petitioner, you are responsible for the payment of this fee and any other fees required for service of process, court costs, and for copies of court documents and transcripts. Once a guardian or conservator has been appointed, such fees may be reimbursed by the Protected Person's estate, but only if an appointment is made and only if funds are available for reimbursement. ***West Virginia Code: §§ 44A-2-1(c) and 59-1-1, et seq.***, provide that if you are pecuniarily unable to advance these fees, you will not be required to pay the fees and costs. Ask the Court Clerk for assistance if you are unable to advance these fees and costs.
3. You are required to submit additional documents with this petition. Unless the Court, for good cause shown, has waived it, you ***MUST*** file an ***EVALUATION REPORT***, GC Form 4, which is a required evaluation and report on the condition of the Protected Person which must be completed by a licensed psychologist or physician. If you do not have this report, you may obtain a blank form from the Circuit Court Clerk. It is your responsibility to arrange for an examination and completion of this form prior to filing. You may also be required to file a ***PHYSICIAN'S AFFIDAVIT***. See the note to Question 21. If the Protected Person has executed a durable power of attorney, a medical power of attorney or a living will, you must attach copies of these documents to this petition as directed by Question 20.
4. Upon proper and complete filing of the Petition, the Court will issue a ***NOTICE OF HEARING*** that establishes the date, time and location of the hearing on the Petition. It is the ***PETITIONER'S*** responsibility to insure that the following parties are served with a copy of court documents as follows:
 - (a) The Protected Person must be served by ***Personal Service of Process*** not later than fourteen (14) days prior to the date of the hearing. The documents which must be served upon the Protected Person are:
 1. The Notice of Hearing, and
 2. This Petition, and
 3. The Evaluation report.Upon request and payment of the appropriate fee, the Court Clerk can arrange to have this accomplished by the County Sheriff. As an alternative, you may employ a private process server to effect service, provided that service is made as required by law.
 - (b) You must also serve every individual who has reached the age of seven (7) years or older, and every entity whose names and post office addresses appear in the Petition. The documents required to be served upon these individuals/entities are:
 1. The Notice of Hearing, and
 2. This Petition.

This service is made by sending each Notice and Petition by certified mail, return receipt requested, ***at least*** fourteen (14) days before the hearing. You are further required to submit the certified mail return receipts to the Court Clerk for filing on or before the hearing date. It is your responsibility to obtain proper service and file the required documentation with the Circuit Clerk **BEFORE** the hearing.

IMPORTANT NOTE: *A failure by the Petitioner to properly serve the Protected Person and/or other individuals as required by law will likely result in delay of the hearing or, possibly, dismissal of the petition. Make sure ALL parties are served as required. The Protected Person cannot waive this requirement. If you have questions, consult an attorney for advice.*

5. Under ***West Virginia Code***: § 44A-2-7, the Circuit Court is required to appoint an attorney to represent the Protected Person. You have the right to retain an attorney of your choosing to represent you in this matter, which is not mandatory, but is mentioned merely to insure that you understand that you have the right to be represented by an attorney at this hearing.
6. If you are seeking the appointment of a conservator, you ***MUST*** file a “Statement of Financial Resources” with the Court any time ***prior to the hearing***. The Circuit Clerk has a blank form which you may obtain for completion before the hearing.
7. A person who is appointed as a guardian or conservator will be required to complete mandatory education within thirty days of a finding that he or she should be appointed as a guardian or conservator and must file an affidavit indicating that such education has been completed. If you are unsure about any matter contained in these instructions, you may ask the Circuit Clerk for assistance. However, the Court and Clerk are prohibited from providing legal advice. ***If you need legal advice, you should contact an attorney.***