

**YAVAPAI COUNTY**  
**Self-Service Center**

**IMPORTANT INFORMATION ABOUT  
GUARDIANSHIP OF AN ADULT**

**Guardianship of Incapacitated Person – Appointment**

A guardian for an incapacitated person may be appointed in two basic ways: through a parent’s or spouse’s will, or by court order. Arizona Revised Statutes §14-5101 gives the definition of an “incapacitated person” as guidance to when a guardian may be appointed.

**I. Appointment by Will**

The testamentary appointment (by will) process gives parents with a developmentally disabled adult child a way to continue care after their deaths. If the developmentally disabled child is still a minor, the will should describe the incapacity so that the appointment will not terminate when the minor reaches 18. Likewise, a spouse may, by will, appoint a guardian for the other spouse who may be incapacitated for some reason such as drug usage or dementia.

Upon death of the parent or spouse, the person appointed guardian by a will must give seven (7) days notice to the incapacitated person and to the person having his care or to his nearest relative, then file acceptance of the appointment in the court where the will has been formally or informally probated (A.R.S. §14-5301). If the incapacitated person files an objection to the appointment, the appointment terminates. If the appointment is made in an informally probated will that is later denied probate in a formal proceeding, the appointment by will also terminates. In either case, court appointment then becomes necessary.

**II. Appointment by Court Order**

**Petition**

Court appointment of a guardian for an alleged incapacitated person is more involved than appointment in the case of a minor. A formal proceeding must be commenced by petitioning the court for either a limited or general guardianship (A.R.S. §14-5303). A limited guardianship permits the guardian to manage only some of the ward’s affairs. A general guardianship grants the guardian the right to manage all of the ward’s business and personal matters.

**Hearing**

There must be a hearing on the issue of incapacity in the county where the incapacitated person lives or is found, or, if the person has been committed for institutional care, in the committing court. Notice must be given to the person alleged to be incapacitated, and to their spouse, parents and adult children (or if none, then to one of his closest adult relatives) as well as to any person serving as conservator or who has care and custody of the person. The alleged incapacitated person must be served personally **at least 14 days before the hearing**, unless they attend the hearing. If the spouse and parents of the alleged incapacitated person live or are found in Arizona, they must also be served.

**Rights of Person Alleged to be Incapacitated**

The incapacitated person’s right to due process – to appear in person, to be represented by counsel, to present evidence, to cross-examine and to trial by jury – are fully preserved by the law (A.R.S. §14-5303).

If the alleged incapacitated person has no counsel, the court shall appoint an attorney to represent him/her. The court shall also appoint an “investigator” who is trained in law, nursing or social work, and is an officer, employee or special appointee of the court. The investigator will interview the incapacitated person and the person seeking appointment, visit the place where the incapacitated person will reside

and report in writing to the court. An “examiner” (physician, psychologist or registered nurse) appointed by the court must also examine the incapacitated person and submit a written report to the Court. Report forms are available at the Law Library and both Clerk of Court locations. **Although the Court appoints the Attorney, Examiner, and Investigator, in Yavapai County the Petitioner is required to nominate the appointees.**

The court must make a finding that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable to provide continuing care and supervision of the person.

### **Temporary Guardianship**

There is a priority for appointment: the spouse, an adult child, a parent, a person nominated by the parent by will or other writing, a relative with whom the incapacitated person has resided for more than six months and the nominee of a person who is caring for the incapacitated person or paying benefits to him. The person appointed must be competent. If there is an emergency, the court may exercise the power of a guardian until one is appointed, or the court may appoint a temporary guardian pending notice and hearing on a petition for appointment of a permanent guardian.

### **Bond**

Bond may be required of the guardian, but it is not mandatory. Normally a conservator will be appointed if the ward owns substantial property. The guardian has a right to receive funds and statutory benefits, but if the overseen amount is large, undoubtedly the court will require a bond. As a general rule, a “small amount” means the ward does not receive income exceeding \$10,000.00 annually and does not own real property.

### **General Guardian Responsibilities**

Powers and duties of the guardian are set forth in A.R.S. §14-5312 in both general and specific terms. The duties under a limited guardianship may be different for those under a general guardianship.

Unless there is a commitment order, a guardian is entitled to custody of the ward’s person and must make provision for the ward’s care, comfort and maintenance and, if appropriate, must also arrange training and education. A guardian may consent to medical or other professional treatment (other than mental health). If there is a need for mental health treatment or commitment, it should be addressed in the petition. If there is not a conservator appointed, a guardian may receive money and property for the ward and apply it for the ward’s support, care and education; a guardian may not charge for room and board except by order of the Court. A guardian must report to the Court every year. If a conservator is appointed, the guardian must account for funds expended and turn over any excess to the conservator. A conservator must account to the Court every year as to the status of the estate of the protected person.

### **Driver’s License**

Upon appointment of a guardian an incapacitated adult generally loses his or her privilege to obtain or retain a driver’s license. The court may allow the person to retain or obtain a driver’s license **if** the court is presented with sufficient medical or other evidence to establish that the ward’s incapacity does not prevent the ward from safely operating a motor vehicle (**A.R.S. § 14-5304.01(B)**).

**Note: If you believe the person *should* be allowed to drive, you must specifically request that in your Petition AND your request must include medical or other evidence (doctor’s note, etc.) that the person is capable of driving safely.**

### **Voting Rights**

Upon appointment of a guardian an incapacitated adult will lose their right to vote. If you are requesting a limited guardianship, the court may allow the person to retain or obtain their right to vote if you specifically request this right in the Petition and the judge determines at the hearing by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote (A.R.S. § 14-5304.02)).

**Note: If you are requesting a *limited* guardianship and you believe the person *should* be allowed to vote, you must specifically request that in your Petition.**

**AS THE PETITIONER, YOU ARE REQUIRED TO:**

1. Complete and file certain documents.
  - NOTE: [Non-licensed fiduciaries serving as guardians, conservators or personal representatives are required by Rule 27.1 of the Arizona Rules of Probate Procedure to complete training prescribed by the Supreme Court. The training shall be completed before letters to serve as guardian, conservator, or personal representative are issued unless the appointment was made pursuant to sections 14-5310(A), 14-5401.01(A) or 14-5207, or otherwise ordered by the court.] You can complete the training at this web site: <http://www.azcourts.gov/probate/probate.aspx>.
  - You will be required to submit both the Certificate of Completion for the Introduction to Serving as a Non-Licensed Fiduciary training and the Certificate of Completion for the Information on Serving as a Guardian training noted above with the forms you file with the Clerk of Superior Court.
2. Get a hearing date.
3. Serve interested parties with a Notice of Hearing and copies of the other documents you file by either personal service or publication. Information about service can be found in the instructions at the end of this packet.
4. Attend the hearing, bringing the documents required to complete the appointment. These documents may be found in packet #61b that is included.

ARIZONA REVISED STATUTES §§14-5301 to 14-5433 are the laws governing guardianship of an adult. They explain the requirements to be appointed guardian and clearly list the rights and responsibilities of the guardian. It is strongly recommended that you read these sections to be sure you understand what it means to be a guardian. These laws and the Arizona Rules of Probate Procedure are available at the Law Library or on the Supreme Court website [www.supreme.state.az.us](http://www.supreme.state.az.us)

**WHERE TO FILE:** The appropriate venue to file a petition for guardianship is in the county and judicial district where the proposed ward resides.

**IF THE PROPOSED WARD RESIDES IN:** Ashfork, Chino Valley, Dewey-Humboldt, Mayer, Paulden, Prescott, Prescott Valley, Seligman, Skull Valley, Spring Valley, Wilholt, or Yarnell, the Petition should be filed in the office of the Clerk of the Superior Court in Prescott.

CLERK OF THE SUPERIOR COURT  
Yavapai County Courthouse  
120 S. Cortez Street  
Prescott, Arizona 86303

**IF THE PROPOSED WARD RESIDES IN:** Camp Verde, Clarkdale, Cornville, Cottonwood, Jerome, or Sedona, the Petition should be filed in the office of the Clerk of Superior Court in Camp Verde.

CLERK OF THE SUPERIOR COURT  
Yavapai County Superior Court  
2840 N. Commonwealth Drive  
Camp Verde, Arizona 86322

**LEGAL PROCEEDINGS CAN BE COMPLICATED AND MAY HAVE CONSEQUENCES YOU DO NOT EXPECT. IF YOU ARE UNSURE WHETHER THESE FORMS ARE APPROPRIATE FOR YOUR SITUATION OR WHETHER A GUARDIANSHIP IS WHAT YOU SHOULD DO, CONTACT AN ATTORNEY FOR HELP AND ADVICE.**

**GO ON TO:** INSTRUCTIONS FOR PETITION FOR APPOINTMENT OF GUARDIAN FOR AN ADULT