

**YAVAPAI COUNTY
Self-Service Center**

**INFORMATION ON GIVING LEGAL NOTICE
FOR GUARDIANSHIP AND/OR CONSERVATORSHIP CASES**

1. **WHAT IS “LEGAL NOTICE TO ALL INTERESTED PARTIES?”** After you have completed **AND** filed the guardianship and/or conservatorship Petition and other papers with the Court **AND** received a hearing date, you must tell all interested parties about the papers and about the hearing. There are some important things you must know to do this correctly:

A. COURT DOCUMENTS:

When you are required to give legal notice, you usually have to do this by giving copies of certain documents to everyone entitled to legal notice. Here are the documents you are required to copy and provide to legally notify the persons who are entitled to notice:

- ✓ **PETITION:** This is the document you filed saying what you want the Judge to do and why.
- ✓ **DISCLOSURE AFFIDAVIT:** This document tells the Court about the person who you want to be named guardian and/or conservator.
- ✓ **NOTICE OF HEARING:** This tells the date and time of the hearing, where it will be and the name of the Judge who will hear the case.
- ✓ **ORDER APPOINTING:** This must be signed by the judge before you provide a copy of it to the persons entitled to notice and it may appoint an attorney, an examiner and/or a court investigator. This usually happens after a hearing.

A good rule to follow is to give people copies of any documents you filed with the Court. That way you know you gave copies of the right documents. Later, you will list the names of all the documents and the names of the people to whom you gave the documents in the **Proof of Notice** (see section C, below.)

B. WHAT ARE THE WAYS TO GIVE LEGAL NOTICE?

- ✓ **PERSONAL SERVICE** is the term used for giving formal notice required in some cases for some persons. It requires that a registered process server or the sheriff serve the documents on the interested persons. When **PERSONAL SERVICE** is required, it means the law is written to make sure a person who needs notice of a case gets the notice. Generally the process server or sheriff will file with the Court an affidavit stating when and where the party was served.
- ✓ **MAIL OR HAND DELIVERY** is a less formal, but still very important, way of giving notice to other persons in some cases. When you are required to give notice by mail, 1st class postage-prepaid mail is sufficient. Certified or Registered mail is an extra step you can take to prove that the person you want to have notice did get the notice. Remember, even when the law does not require **PERSONAL SERVICE**, it might require **MAIL** or **HAND-DELIVERY** on interested persons. If you mail Certified or Registered, the party must sign a green card when accepting the envelope. This green card is then attached to an affidavit that you will sign and file with the Court.

- ✓ **PUBLICATION** is used when you do not know the address of the person to whom you need to give notice. Before you can use PUBLICATION, you must make a diligent effort to find the person who is supposed to get notice, and show the Court everything you did to try to find the person or to get the address first. You will be required to complete a sworn statement about what you did to try to find the person and the judge may question you about your search, **under oath**, at the hearing. If you still want to publish the Notice of Hearing, take it to a newspaper in the county where the hearing is to be held. The Notice must be published at least 3 times, 14 DAYS PRIOR TO THE HEARING. This method requires you to pay the newspaper to publish the Notice of Hearing unless you receive a waiver or deferral of the cost. Forms to apply for assistance with the cost are available at the Clerk's office. There are financial restrictions for qualification. The application for assistance will require you to explain to the Court what you did to try to find the party and why your circumstances call for this method.

C. PROVING THAT YOU GAVE LEGAL NOTICE

- ✓ **PROOF OF NOTICE** is the document you will sign and file with the Court to show how you gave notice to interested parties: What documents were given, to whom, when and how you did it (sheriff, hand-delivery, etc.)
- ✓ **AFFIDAVIT OF PUBLICATION** is a document provided to you by the newspaper that published the Notice of Hearing. You are required to file the original Affidavit of Publication with the Court to show proof that the Notice was published at least 14 days before the hearing. An **AFFIDAVIT OF UNKNOWN RESIDENCE** must also be completed and filed before, or at the same time as, you file the **AFFIDAVIT OF PUBLICATION**. The Affidavit of Unknown Residence is a sworn statement telling the Court what steps you took to locate any interested party you say you cannot find. It is important to try very hard to find each party. The Court may review your Affidavit and delay your hearing if it believes you did not try hard enough.

D. WHEN CAN YOU SKIP GIVING LEGAL NOTICE?

- ✓ **WAIVER OF NOTICE OR ACCEPTANCE OF SERVICE:** A person who is required to get notice may waive (give up) this right by signing a Waiver or Acceptance document. Generally, but not always, a person who is required to be **PERSONALLY SERVED** can **WAIVE** or **ACCEPT** the service by signing a form called **WAIVER OF NOTICE OF HEARING** or another form called **ACCEPTANCE OF SERVICE**. The person's signature on either of these documents is proof to the Court that the person is aware of the proceedings. The signed **WAIVER** or **ACCEPTANCE** must be filed with the Court before the hearing.

2. TIME FRAMES TO GIVE LEGAL NOTICE:

Generally, you must give **PERSONAL SERVICE** or **MAIL** or **HAND DELIVERY** of court papers at least 14 days before the court hearing. If you are giving notice by **PUBLICATION**, the first publication must be at least 14 days before the hearing date.

3. WHO IS ENTITLED TO LEGAL NOTICE OF THE COURT PAPERS:

The following sections, **A, B, C, D, E and F** will help you determine when, and to whom, you must give notice of guardianship and/or conservatorship Court papers:

A. PETITION TO APPOINT OR REMOVE A GUARDIAN FOR AN ADULT (ARS § 14-5309):

- ✓ **ADULT PERSON WHO NEEDS A GUARDIAN:** PERSONALLY SERVE the adult who you say needs the guardianship.
Important Information -- WAIVER OF NOTICE by the adult is NOT LEGAL unless the adult comes to the court hearing in person.
- ✓ **PARENTS AND SPOUSE OF THE ADULT PERSON WHO NEEDS A GUARDIAN.**
You must PERSONALLY SERVE the spouse and parents of the adult, if they are in the State of Arizona. If they are out of state, you can give notice by MAIL or HAND-DELIVERY or PUBLICATION if you do not know where a person is at all.
- ✓ **OTHERS:** You must give NOTICE by MAIL or HAND-DELIVERY or PUBLICATION to all the following:
 - any adult child(ren) of the person;
 - any person who is serving as the guardian or conservator or who has the care and custody of the person;
 - if the person has no parent or spouse or adult child(ren), then to the closest adult relatives of the person, if any can be found.
 - any person who has filed a demand for notice.

B. PETITION TO ESTABLISH GUARDIANSHIP OF A MINOR (ARS § 14-5207):

- ✓ The law does not require any of these interested parties to be PERSONALLY SERVED **unless** you are also asking for a Conservatorship for the Minor. Make sure you follow the service requirements for conservatorship if you are asking for Guardianship and Conservatorship.
- ✓ NOTICE: Give notice by MAIL or HAND-DELIVERY or PUBLICATION to all the following:
 - To the minor, if 14 years or older;
 - To the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
 - To any living parent of the minor.

C. ANNUAL REPORT OF GUARDIAN:

Every year, a guardian must file a report with the Court. All the persons listed above under "Adult" or "Minor" are entitled to a copy of the Report. These must be provided by the guardian to all entitled persons by MAIL or HAND-DELIVERY. Publication is not required for entitled persons whose whereabouts are unknown to you.

D. PETITION TO ESTABLISH A CONSERVATORSHIP -- ADULT or MINOR (ARS § 14-5405):

- ✓ **ADULT OR MINOR WHO NEEDS PROTECTION:** Notice must be PERSONALLY SERVED on the protected person or the person who needs protection, if that person is 14 years of age or older, and if the person is in the State of Arizona. If the adult or minor who needs protection is not in the State of Arizona, you can give NOTICE by MAIL or HAND-DELIVERY or PUBLICATION. WAIVER OF NOTICE by the person is not legal unless the person comes to the court hearing in person.
- ✓ **SPOUSE AND/OR PARENTS OF PERSON WHO NEEDS PROTECTION:** If the spouse and/or parents of the person who needs protection can be found within the State of Arizona, they must be PERSONALLY SERVED. If they are out of state, you can give notice by MAIL or HAND-DELIVERY or PUBLICATION if you do not know where a person is at all.
- ✓ **OTHERS:** Adult children of the person who needs protection, any person serving as guardian or conservator or who has the care and custody of the person who needs protection, and anyone who has filed with the Court a Request for Notice, such as creditors of the person, can be served by MAIL or HAND-DELIVERY or PUBLICATION.

E. TEMPORARY AND/OR EMERGENCY GUARDIANSHIP OR CONSERVATORSHIP WITHOUT NOTICE ON AN ADULT OR A MINOR (ARS §§ 14-5310, 5401):

- ✓ **IF TEMPORARY BUT WITH NOTICE TO INTERESTED PARTIES BEFORE THE ORDER:** Give notice to everyone just like a Petition to Appoint or Remove a Guardian or Conservator.
- ✓ **IF EMERGENCY AND WITHOUT NOTICE TO INTERESTED PARTIES BEFORE THE ORDER** (these are very rare): After the emergency order is signed by the judge, you must give notice to the person you say needs the emergency guardianship or conservatorship by PERSONAL SERVICE within 72 hours of the date and time of the order. No other method of notice is allowed in these cases. Give notice to everyone else just like a Petition to Appoint or Remove a Guardian or Conservator.

F. PETITION FOR APPROVAL OF ACCOUNTING (ARS § 14-5419):

Every year a conservator is required to file, and request the Court's approval of an accounting of the way the protected persons property was handled during the year. The following persons are entitled to be notified of the filing of a Request for Approval of Annual Accounting.

- ✓ **NOTICE TO THE PROTECTED PERSON:** You can give notice by MAIL or HAND-DELIVERY.
- ✓ **OTHERS:** you can give notice by MAIL or HAND-DELIVERY or PUBLICATION to:
 - The guardian, if the person has one unless it is the same person as the conservator;
 - If there is no guardian OR if the person is also the conservator, then to the spouse.

- If the spouse is the conservator or is incapacitated, then to a parent or adult child who is not serving as conservator;
- To the guardian ad-litem if one was appointed by the Court.

4. THE METHODS OF PERSONAL SERVICE: There are several ways to give personal service that will be accepted by the Court.

- ✓ **ACCEPTANCE OF SERVICE OR WAIVER OF NOTICE:** The person must sign the acceptance form in front of a notary and return it to you, but the person cannot sign before the date you filed the court papers. The signature on this form does NOT mean the person agrees with the papers; it DOES mean that he or she admits receiving the papers, without being served in person by a Sheriff or Process Server.
- ✓ **PROCESS SERVER:** A process server charges a fee for each party to whom papers are served. You are responsible to pay the cost of this type of notice. A process server will give the papers to the person at their home, their work, or other location. The process server will then file with the Court a sworn Affidavit stating how, when and where the person was served. There is a greater cost for this method of service than mailing or delivering the papers. If you decide to use this method, look under "PROCESS SERVER" in the Yellow Pages to find someone who can serve your papers.
- ✓ **SHERIFF:** This method requires you to contact the Sheriff's Office in the County where the person lives to arrange for a deputy to serve the papers. There is a fee to the Sheriff's office, unless you receive a waiver or deferral of this fee. Forms to apply for assistance with this fee are available at the Clerk's office. There are financial restrictions for qualification. The application will require you to explain to the Court why your circumstances call for this method.

5. WHAT ELSE TO KNOW ABOUT LEGAL NOTICE:

Even if you are required to PERSONALLY SERVE someone, you may have to give notice by MAIL or HAND-DELIVERY to other interested persons. And you will have to sign and file the PROOF OF NOTICE to show the judge that you gave notice to everyone as required by law. Be sure you understand this -- read section 1 of these instructions, because this is very important to know and do correctly. If you do not give proper notice to the right persons and according to the law, your hearing will be delayed.

6. A PERSON WHO GETS NOTICE CAN OBJECT TO THE PETITION:

Sometimes a person who receives notice wants to object to the Petition, or tell the judge something in addition to what is in the Petition. The Self-Service Center has a packet for objecting to a court process about a guardian or conservator that includes Court forms and instructions to file a written Objection.

7. AFTER YOU HAVE GIVEN EVERYONE NOTICE AS APPROPRIATE, COMPLETE THE PROOF OF NOTICE:

After notice to all parties is done, you must complete the PROOF OF NOTICE form. Be sure to list the copies of papers that were given, and the names of the persons to whom you gave the copies. Also list the date you gave the person copies, the method, and the relationship between the person to whom you gave copies and the person who has or will have the guardian and/or conservator.

8. AT LEAST 10 BUSINESS DAYS BEFORE THE HEARING, FILE ANY WAIVERS OR ACCEPTANCES (signed by interested parties) AND THE PROOF OF NOTICE WITH THE CLERK OF THE COURT:

- ✓ **GO TO THE CLERK'S OFFICE:** Take the **original and 2 copies** of the **Proof of Notice** and any **Waiver of Notice or Acceptance of Service**. The clerk will file and keep the original and "conform" stamp each of the two copies and return them to you.
- ✓ **KEEP COPIES:** Keep a copy of each document for your records.
- ✓ **SEND** THE OTHER COPY TO THE ATTORNEY (if any) FOR THE PERSON WHO HAS OR WILL HAVE THE GUARDIAN AND/OR CONSERVATOR.
- ✓ **IF YOU GAVE NOTICE BY PERSONAL SERVICE:** Check with the Clerk of the Court to be sure that the AFFIDAVIT OF PERSONAL SERVICE has been filed by the Sheriff or Process Server.

9. AT LEAST 5 BUSINESS DAYS BEFORE THE HEARING

- ✓ **IF YOU GAVE NOTICE BY PUBLICATION:** Take the **original and 2 copies** of the **Affidavit of Publication** to the Clerk of the Court who will file and keep the original and stamp "copy" on each of the two copies and return them to you. One is for your records. **Send the other to the attorney proposed for the ward.**

10. OTHER HELP:

If you still have questions about this procedure, contact an attorney for help and legal advice. Attorneys are listed in the Yellow Pages of the telephone directory.

11. THE FOLLOWING FORMS MENTIONED ABOVE ARE AVAILABLE WITH THIS PACKET:

AFFIDAVIT OF SERVICE BY REGISTERED/CERTIFIED MAIL
AFFIDAVIT OF UNKNOWN RESIDENCE
ACCEPTANCE OF SERVICE
PROOF OF NOTICE OF HEARING and INSTRUCTIONS

GO ON TO: WHAT TO DO WITH THE DOCUMENTS AFTER I HAVE COMPLETED THEM