

Navigating Guardianships Part Two: The Petition Process

By Elizabeth Green

Determining the Need for a Guardian

Part Two of this guardianship series will examine the court process and what is required and needed. In cases involving minors, the legal need for a guardian is clear. However, determining the need for a guardian is far less concrete in adults with limited capacity. Giving control of an adult's personal affairs to another party is not a decision to be made lightly, and the Court carefully considers guardianship. The incompetence required to appoint a guardian is subjective and open to interpretation. This post, and the rest of this series, will focus on adult guardianship.

Naming a Guardian

A guardian must be at least 18 years old, mentally competent, and have no criminal history. The last requirement has room for interpretation, with some states considering certain crimes more disqualifying than others. Even if the prospective guardian is named in other legal paperwork, a petition must be filed to grant them guardianship rights.

The Petitioning Process

The guardianship petition process touched on in the first installment of this series requires extensive preparation and documentation. Only an interested person can petition for guardianship. This can be an immediate family member, a health care agent or government agency, a person nominated by the alleged disabled person during a prior period when they were competent, or the disabled person themselves.

The petition must include:

- Information about the petitioner and the alleged disabled person; name, address, birth date, and the relationship between petitioner and alleged disabled person.
- A detailed description of the alleged disabled person's disability and how it impedes their ability to manage themselves and their

finances.

- A complete list of the alleged disabled person's assets (if a guardian of the property is being sought).
- Information about the prospective guardian(s) (if someone other than the petitioner).
- Names and addresses of any other interested parties, such as family members of the petitioner and alleged disabled person, and any public or private agency assisting the alleged disabled person.
- An appearance notice of the petitioner's attorney

Using this information, the petitioner must explain why appointing a guardian is the best solution, including why less restrictive options would not work.

A petition can be rejected or returned by the Court for insufficient evidence or improperly completed documents. The Court rejected a petition that Altman & Associates recently filed for an incomplete medical certificate and the determination that less invasive measures could be applied. To further the petition process, the petitioner had to explain why guardianship of the property for their two soon-to-be adult children, both of whom had intellectual disabilities, was the best option. To ensure a complete petition, any potential contests to guardianship should be considered and addressed.

Physician's Certificates

A guardianship petition must also include two certificates from health care professionals to confirm the alleged disabled person's disabilities. Two licensed physicians or one licensed physician and one nurse practitioner, licensed psychologist, or licensed social worker can provide the physician's certificates. In the case Altman handled for a senior citizen with schizophrenia, a social worker completed a certificate describing how the alleged disabled person's condition rendered them unable to manage their self-care and finances. Supporting medical evidence is key to the Court's decision to grant guardianship.

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Show Cause Order

Once a petition is filed, the Court signs and releases a Show Cause Order. The petitioner is responsible for sharing this Order, along with the guardianship petition and all exhibits filed with the alleged disabled person's attorney (the Court will appoint an attorney after the petition is filed if the alleged disabled person does not already have legal counsel) and all other interested persons. In Maryland, this documentation is via certified mail. One of Altman's guardianship cases required sending individual notices to seven interested parties and the alleged disabled person's attorney. These notices had to be sent via certified mail and standard mail twice.

The Show Cause Order outlines the next steps in the guardianship petition process. It gives the alleged disabled person (through their attorney) and any other interested persons 20 days to respond to the Order after it's received. It also sets a date and time for a hearing on the petition. The Order also includes a "Notice to Potential Guardians," informing the guardian(s) named in the petition of the need to complete state-required training. The next post in this series will discuss the responsibilities of guardians.

Court Ruling

Like many legal proceedings, getting approval for a guardianship petition takes time. In another current case, the Order to Show Cause listed a hearing date almost two months after the Order was entered. The timeline from submitting the petition to the Court appointing a guardian can be from a few months to a year.

Should guardianship matters be on your radar, or you have questions, contact the Altman & Associates team at [301 468 3220](tel:3014683220) or fill out our [contact form](#).

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