

Guardianship Course – Pt. 2 – Audio Transcript

Audio begins with Slide 5

Slide Number

5.

In Part Two we are going to talk about how to get a guardianship or conservatorship. We'll go over the necessary steps. As with Part One, you can stop the presentation at any point to review what we've covered. And you can find more information on the court's website. Let's begin.

To seek a guardian or conservator for someone, you need to petition the court in a formal court process with several steps.

This process will require some paperwork. With all forms, always be sure to make copies for yourself.

To start, you have to fill out a petition form and submit it to the court. The forms are available from a courthouse or on the court's website.

6.

The form will look something like this.

Let's go over some terms you will need to know:

The **petitioner** is the person who files the paperwork requesting that the court appoint a guardian or conservator for an individual. The petitioner does not have to be the person who will become the guardian.

The **respondent** is the person who appears to need a guardian or conservator.

The court will decide if the respondent is **incapacitated**. That is -- the person cannot take care of his or her affairs without court-ordered assistance.

Alaska Statute 13.26 governs the appointment of guardians and conservators. In this course we are giving only an overview of how the law and court process work.

7.

When you have filled out the form, you should file it at the Superior Court location closest to where the respondent lives.

There is a charge for filing. If you cannot afford the fee, you can file a request for a fee waiver.

8.

You can apply for either a full guardianship or a limited guardianship. If the person only needs help in certain areas of life, a limited – or partial – guardianship might be appropriate.

A full guardianship can also include the powers of a conservator. That is, the guardian will also manage money and assets. There is no need to file a separate petition.

Or a different person can be appointed as conservator.

We will talk more about conservators in a moment. The process is almost the same.

9.

The petition forms require personal knowledge about the respondent. You will need to describe the respondent's current living situation.

The petition requires information about the respondent's family members. It also asks for details about the respondent's finances.

You will need to explain why the respondent is incapacitated -- that is, why the person cannot care for himself or herself. You need to be specific. You can include a doctor's diagnosis if you have one. Describe situations and events that show how the person is unable to care for himself.

As the petitioner, the burden of proof is yours. That is, you have to convince the judge that the respondent needs a guardian.

This is very important. You have to present facts. Describe specific situations that show the respondent's incapacity. Give details, particularly those that show a pattern.

We are providing some examples of ways to present your information.

10.

The video clip linked to this page discusses burden of proof in more detail.

11.

In the petition, you can suggest who should be appointed guardian or conservator.

Remember: The petitioner does not have to be the same person who will serve as guardian. You will need to sign the petition and have it notarized. There are notary publics at the courthouse who can do this for free.

12.

The petition is a legal document. You should not submit a petition without true reason to do so. It is a very important step to ask the court to appoint a guardian. It is giving someone else decision-making authority over important parts of a person's life.

Remember: you need to prove that the respondent needs a guardian. A judge will not appoint a guardian unless convinced that it is in the respondent's best interests.

13.

If you are filing a regular petition, but a person needs immediate assistance because of illness or physical danger, the court can appoint a temporary guardian because of the emergency. There is a separate form to ask for a temporary guardianship. It is necessary to file this to alert the court that there is an emergency. The court will hold a hearing within 72 hours.

If the judge signs an emergency order, it will be temporary. The guardian will only be able to provide the needed assistance. The appointment will last only until a regular guardian is appointed, or until the case is dismissed.

Additional information about temporary guardianship and the proper forms are available on the court's website.

14.

A petition for a conservatorship follows a similar process. You must fill out the necessary form and submit it to the court. The required forms are available on the court's website.

The petition asks about the respondent's situation and finances. As petitioner, you have to show why the respondent needs help with managing his money or other assets. You need to provide details.

15.

If the respondent's need for help with money or property is urgent, you may apply for a temporary conservatorship. You must file both the emergency petition form and the regular petition.

If the court appoints a temporary conservator, the appointment will last only until a regular conservator is appointed, or until the case is dismissed.

16.

After you file a petition, the court will schedule a hearing to be held within 120 days. The court will give you notice of this hearing when you submit the petition or by mail.

The notice will contain other important information.

An attorney must represent the respondent during the guardianship case. If the person cannot afford an attorney, the court will appoint one. This attorney will represent the respondent -- not the petitioner.

As petitioner, you can also have an attorney, but the court will not provide one for you. You do not need an attorney to file a petition.

17.

A court visitor will be appointed to prepare a report. The visitor will talk with both the petitioner and the respondent. The visitor will also talk with other people who have knowledge of the respondent's situation and will review documents in the case.

The visitor will notify the respondent of the hearing and explain the petition and the respondent's rights. No one can formally interview the respondent until the visitor explains his or her rights.

The court will also designate a professional expert to evaluate the respondent. This is usually a physician with expertise in the respondent's condition. The expert's report will be submitted to the court.

If the respondent is unable to understand or participate in proceedings, the court may also appoint a guardian ad litem. This person will protect the respondent's interests. Often the attorney also serves in this role.

18.

As petitioner, it is your responsibility to notify certain other people about the petition and the hearing. Do so as soon as you get the date from the court. There is a form to use for this. It can be found on the court system's website.

19.

In general, the people you will notify about the hearing are called "interested persons." They include:

- The spouse, parents, and adult children of the respondent.
- If the respondent does not have a spouse, parents, or children, another close adult relative.
- Anyone who has performed an evaluation of the respondent within the previous two years.
- Anyone who has served as guardian or conservator or has care and custody of the respondent.
- The respondent's attorney.
- The respondent's guardian ad litem, if one has been appointed.

20.

Notifying is also referred to as “serving.”

At the end of the form is a *Certificate of Service* page for listing the people you notify. This certificate of service must be returned to the court after the petitioner delivers the notices.

This paperwork can seem very confusing at first, but it is fairly simple to do. Basically, the requirement is that you remember to notify all the people involved and keep a record of how you notified them.

21.

A court visitor is a neutral person professionally trained to evaluate a respondent's situation. The visitor will prepare a report for the court.

The court visitor will talk with both the respondent and the petitioner as well as other people who have knowledge about the respondent. The visitor can also arrange for other evaluations.

The visitor's report to the court will include the results of those evaluations and a description of the respondent's current living situation. The report will discuss the respondent's need for care. It will also discuss any need for educational or vocational assistance.

If the petition is for a conservator, the visitor will concentrate more on the respondent's ability to manage money and other property and assets.

22.

This video provides more information about the role of the court visitor.

23.

The visitor will also report to the court on what options other than a guardianship or conservatorship have been considered. The report will include information on financial resources.

The visitor's report will include names and contact information for everyone who examined, evaluated, or interviewed the respondent. It will also include the results of all medical and other examinations.

The visitor can recommend that the court appoint a guardian or conservator or suggest other arrangements that might meet the respondent's needs. The report will discuss whether a respondent's situation might improve to be able to take care of him or herself or make some decisions. It will suggest what treatment or arrangement might help the respondent to improve.

If the visitor recommends that the court appoint a guardian or conservator, the report must identify possible people to be appointed. It must also list the services needed to care for the respondent. It must state the specific, least restrictive authority needed by a guardian or conservator to provide the services.

This report will guide the judge in deciding whether to appoint a guardian or conservator.

24.

Both the petitioner and the respondent will receive a copy of the report. If you wish, you can respond within 10 days of receiving it.

Your response must include the case number and name, the court location, and the date of the visitor's report. It should be titled: "Petitioner's Response to Visitor's Report."

In your response you must list the number of each segment from the visitor's report to which you are responding. This helps the judge when reading it.

You will sign and date your response and include your address and phone number.

25.

You must also send a copy of your response to the respondent's attorney, the visitor, and other involved parties. Follow the directions for notifying that you used for the original petition.

26.

Usually the first court hearing is held within 120 days after the petition is filed. If the case is contested, or if additional medical examinations are required, the court may postpone the hearing or schedule additional hearings.

The respondent has a right to be present at the hearing, to present evidence, and to cross-examine witnesses. The hearings are usually closed to the public, but the respondent may request that it be an

open hearing. Usually a judge or magistrate judge hears the case, but the respondent can ask for a jury trial on the issue of incapacity – that is, if the respondent wishes to argue that he or she isn't incapacitated.

The judge will ask if there are additions or corrections to the visitor's report.

27.

As the petitioner, you carry the burden of proof. That is, you must prove with evidence that the respondent lacks the capacity to take care of herself or himself. You must also show that there are no less restrictive alternatives to a full guardianship or conservatorship.

28.

If the case is contested, the judge will need to determine what the disagreement is about. Is there a question about the respondent's incapacity or about who should be guardian or conservator.

You yourself may need to testify under oath, and as petitioner, you may also need to call witnesses to support your petition.

The judge may order mediation in a contested case. Or the parties themselves can request mediation. Mediation is a process where a neutral mediator will help the people involved in the case communicate to figure out options and solutions to resolve the disputes. The video on this slide gives more information about mediation.

If the case is not contested, the judge will decide whether the respondent needs a guardian or conservator or whether there are other options that would meet the respondent's needs.

29.

After evaluating all the reports and testimony, the judge may decide that an alternative arrangement can meet a respondent's needs. It may be possible to meet the respondent's needs through appointing a limited guardianship or conservatorship. There are also other possibilities.

Alaska law requires the judge to choose the least restrictive option available that will meet the respondent's needs.

30.

In appointing a guardian, the judge must first consider the respondent's preference.

The possible choices for guardian, in order of legal preference are:

1. The respondent's preference; or

2. The spouse of the incapacitated person; or
3. The parent or adult child; or
4. A relative who has lived with the respondent for at least six months in the year prior to the filing of the petition; or
5. A private association or corporation with a guardianship program; or
6. A public guardian.

These choices are given in order of priority, but the judge has some flexibility in choosing the guardian best suited to a respondent's needs.

31.

In choosing a conservator, the court has similar preferences for a close family member or friend but may appoint a professional conservator or public guardian.

There are some people who cannot serve as guardian or conservator. Anyone who provides business or professional services to the respondent or who is likely to become a creditor is disqualified. No one who has interests that may conflict with those of the respondent can serve. Nor can the court appoint an employee of someone who is disqualified in these ways.

32.

When making the appointment, the court will issue a formal order. This order will name the guardian or conservator and include the findings that support the appointment. It states the specific authority given to the guardian or conservator, the restrictions on that authority, and the timeframe of the appointment.

33.

If you are appointed, you will need to file an acceptance. The required forms are available on the court's website.

If you are appointed as a guardian or conservator, remember that your authority depends on the court's order. The protected person retains the right to petition the court for review of the arrangement or for changes.

The court requires one hour of mandatory education either before your appointment or within thirty days afterward. You will need to complete Part 3 of this course to fulfill this requirement.

34.

If you wish to receive pay for your services as a guardian, you will need to discuss this with the court. The court can order a reasonable amount for your services if the protected person's finances are adequate, but the amount needs to be set in the guardianship order.

Also, particularly if the protected person has substantial assets, the court may require you as conservator or guardian to post a bond to protect their estate.

35.

After the court appoints a guardian, the court may refer to the respondent as “the protected person” or “the ward.” You may hear both terms in common conversation, but we will generally use “protected person” in this course.

36.

The guardian who has been appointed will need to submit a preliminary plan for care of the protected person within thirty days. This is referred to as the Guardianship Plan. The form is available on the court’s website.

In this first plan, you, as guardian, will describe your plans for the protected person’s

1. Housing
2. Medical care
3. Mental health treatment
4. Personal care, educational, and vocational services
5. Insurance and government benefits
6. Control of finances and property
7. Other aspects of the protected person’s situation

The plan should limit the protected person’s freedom and decision-making only to the degree needed for protection and safety. The plan should encourage the protected person’s participation in decision-making as much as possible.

The court will review the plan. You must send copies to the protected person, the court visitor, and the attorney who has handled the protected person’s guardianship case as well as all other involved parties.

37.

Within ninety days after your appointment you need to submit an implementation report on the protected person. The form is available on the court’s website.

This is a longer and more detailed report about the protected person. You will now be able to describe the protected person’s health and living situation more completely. The report asks for information about housing, medical care, school and job training, work, social activities, dependents, contacts, and decision-making. It also asks for a list of community organizations that the protected person has contact with.

38.

As conservator, you will have to provide information on the protected person's income and expenses.

The inventory requires you to list bank accounts; brokerage accounts and stock and bonds; real estate; Alaska Native Corporation dividend accounts; commercial fishing interests such as entry permits; vehicles; and personal property.

You will need to state the exact value of all these assets. You will also need to provide information on retirement accounts and insurance policies, and any trusts involving the protected person.

39.

You will also list all liabilities – that is, all debts. This includes loans; mortgages; credit card debt; amounts owed for services; and any judgments or liens.

Do not round numbers. Provide exact values.

It is very important to provide the actual values of all assets and debts because this information will form the basis for how you do your annual reports to the court.

40.

This video provides guidance in doing an inventory.

41.

These reports require a lot of details. You will need much of the information again later as you care for the protected person. Make good copies for your files. Include account numbers and contact information.

Remember to make a copy for yourself of the completed report. You will also need to give copies to the protected person, the attorney, and all others listed on the form.