

DUTIES AND RESPONSIBILITIES OF GUARDIANS

A guardianship is an order given by the court to a person (called a “guardian”) giving that person control over another person (called the “ward”). There are three (3) types of guardianships that are appointed by the court: (1) Guardianship of the Person, (2) Guardianship of the Estate, and (3) Guardianship of the Person and the Estate. Additionally, Guardianships of the Person may be granted for (1) those that are under the age of 18 and/or (2) those that are declared to be mentally incompetent.

The type of guardianship that was requested and granted by the court will determine your responsibilities once the guardianship is granted. **If you have been appointed as guardian of both the person and the estate, you are required to fulfill all of the responsibilities set out below.** The following information is designed to provide a checklist of your duties and responsibilities as a guardian.

I. Duties of a Guardian

As a guardian, you must to carry out the following duties required by Arkansas law:

Arkansas Code Annotated § 28-65-301 – Duties of Guardians Generally.

- (a)(1) It shall be the duty of the guardian of the person, consistent with and out of the resources of the ward's estate, to care for and maintain the ward and, if he or she is a minor, to see that he or she is protected, properly trained and educated, and that he or she has the opportunity to learn a trade, occupation, or profession.
- (2) The guardian of the person may be required to report the condition of his or her ward to the court, at regular intervals or otherwise, as the court may direct.
- (3) The guardian of the person shall be entitled to the custody of the ward but shall not have the power to bind the ward or his or her property.
- (b)(1) It shall be the duty of the guardian of the estate:
 - (A) To exercise due care to protect and preserve it;
 - (B) To invest it and apply it as provided in this chapter;
 - (C) To account for it faithfully;
 - (D) To perform all other duties required of him or her by law; and
 - (E) At the termination of the guardianship, to deliver the assets of the ward to the persons entitled to them.

Your position as guardian allows you to make decisions for the ward on a day-to-day basis. However, there are some decisions that Arkansas law has deemed to be important enough to require prior court approval. If one of the following decisions is required to be made on behalf of the ward, you must file a petition in the court and receive permission from the court before you may act,

Arkansas Code Annotated § 28-65-302 – Decisions Requiring Court Approval.

- (a)(2) No guardian appointed on or after October 1, 2001, shall make any of the following decisions without filing a petition and receiving express court approval:
- (A) Consent on behalf of the incapacitated person to abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary in a situation threatening the life of the incapacitated;
 - (B) Consent to withholding life-saving treatment;
 - (C) Authorize experimental medical procedures;
 - (D) Authorize termination of parental rights;
 - (E) Authorize an incapacitated person to vote;
 - (F) Prohibit the incapacitated person from obtaining a driver's license; or
 - (G) Consent to a settlement or compromise of any claim by or against the incapacitated person or his or her estate.
- (b) However, the provisions of subdivision (a)(2) of this section shall not apply to written requests under § 20-17-214.

Arkansas Code Annotated § 28-65-310 – Support of a Minor Ward.

- (a) The support of their unmarried minor children is chargeable jointly and severally upon the property of the husband and the property of the wife, and in the relation thereto, they may be sued either jointly or severally.
- (b) Although the responsibility for the care, maintenance, and education of a minor rests upon his or her parents or persons in loco parentis, if there are such persons, nevertheless in appropriate cases and taking into consideration the relative resources and circumstances of a parent and the minor ward, the court, in its discretion, may authorize the guardian of the estate to expend income or principal of the ward's estate for the ward's care, maintenance, and education.
- (c)(1) As far as necessary for the purpose, except as provided in subsection (b) of this section, the income of the ward's estate shall be first applied to his or her care, maintenance, and education.
- (2) On order of the court, any surplus of the income may be applied to the care, maintenance, and education of the dependents of the ward.
- (3) If the income is not sufficient to care for, maintain, and educate the ward and his or her dependents, the court may order the expenditure of such portion of the principal as it from time to time finds necessary for such purposes.

Other Requirements for the Court-Ordered Release of Ward's Funds:

Each petition filed by the guardian to the court for the release of the ward's funds shall contain, at a minimum, the following information:

1. Age and birth date of the ward;
2. Current address and phone number of the guardian;
3. Original amount of funds deposited to establish the account;
4. Current amount of funds on deposit excluding the current request;
5. Last date funds were requested and the amount requested and approved;
6. Purpose of the last request;
7. How much money has been withdrawn in the current calendar year, to date; and
8. Current amount being requested and the purpose for the request.

Copies of the receipts for, and other documentation of, purchases related to the previous petition for withdrawal and release of the ward's funds must be copied onto standard-size sheets of paper and filed with the Pulaski County Circuit Clerk within thirty (30) days of the *Order* authorizing the release of the funds.

II. Accounting and Reporting Requirements

After you have been issued Letters of Guardianship, your accountability to the court is not finished. If you have been appointed as the guardian of the person or guardian of the person and estate, you are **REQUIRED** to file an Annual Report with the court on the anniversary date of the order appointing you a guardian every year until the guardianship is terminated according to:

Arkansas Code Annotated § 28-65-322 - Reporting requirements.

All guardians shall file an annual report with the court. The report shall contain:

- (1) The person's current mental, physical, and social conditions;
- (2) His or her present living arrangements;
- (3) The need for continued guardianship services;
- (4) An accounting of his or her estate if the guardian has been delegated that responsibility by the court order or as a result of being a guardian of the estate; and
- (5) Any other information requested by the court or necessary in the opinion of the guardian.

If you have been appointed as guardian of the estate or guardian of the person and estate, you are **REQUIRED** to file an Annual Accounting and Inventory with the court within sixty (60) days of the anniversary date of the order appointing you as guardian every year until the guardianship is terminated according to:

Arkansas Code Annotated § 28-65-320 –Accounting Requirements.

- (a) Unless otherwise directed by the court, a guardian of the estate shall file with the court a written verified account of his or her administration:
 - (1) Annually within sixty (60) days after the anniversary date of his or her appointment; and
 - (2) Within sixty (60) days after termination of his or her guardianship.
- (b) Notice of the hearing of every accounting shall be given to the same persons and in the same manner as is required by §§ 28-65-207 and 28-65-208 for notice of the petition for the appointment of a guardian, except that the court may dispense with the giving of notice to a mentally incompetent ward upon a satisfactory showing that the giving of notice would be detrimental to his or her well-being.
- (c) With respect to each item for which credit is claimed, the account shall show whether or not the item has been paid, and, in either event, the court may allow or disallow any item in whole or in part, subject to such protection as is extended the guardian with respect to actions taken by him or her in good faith in reliance upon orders previously made by the court.
- (d) When notice has been given as provided in subsection (b) of this section, the settlement by the court of an account is binding upon all persons concerned, subject to the right of appeal and to the power of the courts to vacate its final order.
- (e) The provisions of §§ 28-52-101, 28-52-103 -- 28-52-105, 28-52-107, 28-52-108, and 28-52-110 relating to accounting by a personal representative shall apply also to accounting by a guardian.
- (f) A guardian who fails to file an accounting within the time limit prescribed by this section may be denied compensation for services performed between the date an accounting should have been filed and the date it is filed.

Other Duties Related to Accounting:

The guardian shall attach copies of receipts for any purchases made on behalf of the ward during the accounting period.

Arkansas Code Annotated § 28-65-321 - Inventory of property.

- (a) The guardian of the estate shall file an inventory of the ward's property in the same manner and subject to the same requirements as are provided in § 28-49-110 for the inventory of a decedent's estate.

III. Termination

Your duties and responsibilities as guardian over the ward last until the guardianship is terminated by the court. The following statute provides the situations which may terminate the guardianship:

Arkansas Code Annotated § 28-65-401 - Conditions requiring.

(a) A guardianship is terminated:

(1) If the guardianship was solely because of the ward's incompetency for a cause other than minority, by an adjudication of the competency of the ward;

(2) By the death of the ward;

(3) If the guardianship was solely because of the ward's minority, the marriage of the ward shall terminate a guardianship of the person, but not of the estate of the ward except with respect to the ward's earnings for personal services; or

(4) If the guardianship was solely because of the ward's minority, by the ward's reaching the age of majority, unless the guardian receives a guardianship subsidy from the Department of Human Services, then the guardianship is terminated when the ward:

(A) Reaches twenty-one (21) years of age; or

(B) Who is eighteen (18) years of age or older requests termination of the guardianship.

(b) A guardianship may be terminated by court order after such notice as the court may require:

(1)(A) If the guardianship was solely because of the ward's minority, and either the ward attains his or her majority or the disability of minority of the ward is removed for all purposes by a court of competent jurisdiction.

(B) However, if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward that the guardianship be continued after the ward reaches majority, the court may order the guardianship to continue until such time as it may be terminated by order of the court;

(2) If the ward becomes a nonresident of this state; or

(3) If, for any other reason, the guardianship is:

(A) No longer necessary; and

(B) No longer in the best interest of the ward.

(c)(1) When a guardianship terminates otherwise than by the death of the ward, the powers of the guardian cease, except that a guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the ward, and for expenses of administration.

(2) When a guardianship terminates by the death of the ward, the guardian of the estate may proceed under § 28-65-323, but the rights of all creditors against the ward's estate shall be determined by the law governing decedents' estates.

Arkansas Code Annotated § 28-65-403 - Discharge proceedings.

(a) Upon the guardian of an estate's filing receipts or other evidence satisfactory to the court showing that he or she has delivered to the persons entitled thereto all the property for which he or she is accountable as guardian, the court shall make an order discharging the guardian and his or her surety from further liability or accountability with respect to the guardianship.

(b) The discharge so obtained shall operate as a release from the duties of his or her office which have not previously terminated and shall be final, except that, upon a petition's being filed within three (3) years of the entry thereof, it may be set aside for fraud in the settlement of the account.

The guardian is required to immediately notify the court and the County Circuit Clerk of all changes in address and contact information.

If the guardian fails to abide by the duties and responsibilities as set out in the prior six (6) pages and set forth in Arkansas Code Annotated § 28-65-101 *et seq.*, an Order to Appear and Show Cause may be issued and a hearing will be set so that the guardian may explain to the court why the guardian should not be held in contempt. If the guardian is found to be in contempt, penalties may result in fines, incarceration, or a termination of the guardianship.