

SELF-SERVICE CENTER

INFORMATION ON LEGAL NOTICE FOR GUARDIANSHIP FOR AN ADULT

1. **WHAT IS LEGAL NOTICE:** After you have filled out **AND** filed the guardianship Petition and other court papers with the Court, you must tell **all** interested persons about the papers and Court hearing.

- A. WHAT COURT DOCUMENTS DO I NEED TO GIVE NOTICE ABOUT?** These are the documents you need to give the people who are entitled to notice:
- **Notice of Hearing:** This document provides you with the hearing date, location, and the name of the Judge/Commissioner who will hear the case.
 - **Petition:** This document explains what you want the Judge/Commissioner to do and why.

It is recommended that you give people copies of **all** documents you filed with the court so you know you gave those people copies of the right documents. You then must list in the PROOF OF NOTICE (see section C, below) the names of all the documents you gave copies of, and the people you gave the documents to.

B. WHAT ARE THE WAYS TO GIVE LEGAL NOTICE?

- **“Personal Service”** means giving formal notice that is required in some cases for some persons. It requires that a registered process server or the sheriff serves the documents on the interested persons or that a person accept service of the papers. When personal service is required, it means the law is written to make sure that a person who needs notice of a case is given that notice.

Note: See **Step 4** for instructions on how to give personal service.

- **Mail or hand delivery** is a less formal but important way of giving notice to other persons in some cases. When you are required to give notice by mail, 1st class prepaid postage mail is usually acceptable. Certified or Registered mail with return receipt is an extra step you can take to prove that the person you want to have notice received the notice.

Note: Service by **mail or hand delivery** is only allowed in some cases, so make sure you read the instructions to see if you can use this method of service.

- **Publication of Notice** is when you do not know the address of the person to whom you need to give notice. For publication, you need to try to find the person who is supposed to get notice, and prove to the court you did everything you could to try to find the person or to get the person’s address. Then, you must publish the Notice **at least 3 times** in a newspaper in the county where the court hearing is held. See ARS § 14-1401.

C. HOW DO I SHOW THAT I GAVE LEGAL NOTICE?

- PROOF OF NOTICE is the document you sign and file with the court to prove you gave notice to all interested persons, and how you did it. You must fill out this form after you have served the documents on all interested persons. **(See Step 1A).**

There are other documents that go with the PROOF OF NOTICE to show that service was made. These documents may include the following:

- 1) AFFIDAVIT OF PUBLICATION,
- 2) AFFIDAVIT OF SERVICE signed by the process server or sheriff, **OR**
- 3) ACCEPTANCE OF SERVICE

D. WHEN CAN YOU SKIP GIVING LEGAL NOTICE?

- WAIVER OF NOTICE is when a person required to get notice waives that right and signs the form called WAIVER OF NOTICE. Generally, but not always, a person who is required to be **personally served** can accept service by signing the WAIVER OF NOTICE. However, if the incapacitated adult who needs the guardian signs the Waiver, that adult must also attend the hearing or service is not good, **OR**
- Party is present at the hearing and will accept service. Only rely on this method if you are **absolutely** certain the person will be at the hearing and will accept service.

2. **TIME FRAMES TO GIVE LEGAL NOTICE:** Generally, you must give **all** interested persons notice of the court papers at least **14 days before the hearing**. If you are giving NOTICE BY PUBLICATION, the first publication must be at least **14 days** before the hearing.

Note: The newspaper will not provide the AFFIDAVIT OF PUBLICATION to you until all **3 notices** have been published.

3. **WHO IS ENTITLED TO LEGAL NOTICE:** Here is a guide when, and to whom, you must give notice of guardianship of an adult (ARS 14-5309):

- **INCAPACITATED ADULT: Personally serve** the adult who you say needs the guardianship.

Note: WAIVER OF NOTICE by the adult is **not legal** unless the adult attends the court hearing in person.

- **PARENTS AND/OR SPOUSE OF THE INCAPACITATED ADULT: Personally serve** the spouse and parents of the adult, if they are in the State of Arizona. Otherwise, you can give notice by **mail or hand-delivery** if they are not in the State of Arizona or by **publication** if you do not know the address of the spouse or parents.
- **OTHERS:** Give notice by **mail, hand-delivery or publication** to all the following:
 - 1) Any adult children of the person;
 - 2) Any person who is serving as the guardian or conservator or who has the care and custody of the person;
 - 3) If the person has no parent or spouse or adult children, then to the closest adult relative of the person, if any can be found, **AND**
 - 4) Any person who has filed a Demand for Notice.

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

- **Acceptance of Service:** The person must sign the Acceptance form in front of a notary and return it to you, but the signature date cannot be earlier than the date you filed the court papers. The signature on this form does **not** mean the person agrees with the papers. It means that he or she admits receiving the papers, without being served in person by a Sheriff or Process Server.
- **Process Server:** You generally must pay this person or company to do this for you. A process server will give the papers to the person at home, work, or other location. The

process server will give the Court a sworn Affidavit stating that the person was served. The disadvantage of this method is the cost and that it requires the process server to find the person. 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 Sheriff's deputy to serve the papers. This method requires you to pay a fee to the Sheriff's office, unless you receive a Waiver or Deferral, which is available through the Court for persons who cannot afford the cost of Service. The Waiver or Deferral will require you to explain to the Sheriff 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 still have to give notice by **mail or hand-delivery** to other interested persons. You will still have to sign and file the PROOF OF NOTICE to show the Judge/Commissioner that you gave notice to everyone as required by law.
6. **HOW DOES A PERSON WHO GETS NOTICE OBJECT TO THE PETITION:** Sometimes a person who receives Notice wants to object to the Petition, or tell the Judge/Commissioner something besides what is in the Petition. For more information on objecting to a court process, see Guardianship and/or Conservatorship Packet 3 called **To Object to a Court Proceeding**, which includes Court forms and instructions to file a written Response.
7. **COMPLETE THE NOTICE OF HEARING AND PROOF OF NOTICE:** After Notice is done, you must complete the PROOF OF NOTICE form. Be sure to list the copies of papers given, and the names of the persons to whom you gave the copies. Also list the date you gave the person copies, the type of service, and the relationship between the person to whom you gave copies and the person for whom the guardian is or will be appointed. (This person is called the ward). Be sure the attorney for the ward gets copies, if applicable.

Make **3 copies** of the NOTICE OF HEARING, the PROOF OF NOTICE, the ACCEPTANCE OF SERVICE (if any), the WAIVER OF NOTICE (if any), and assemble them in **4 packets**: the originals and 3 complete sets of copies.

8. **FILE THE NOTICE OF HEARING, ANY WAIVER, AND PROOF OF NOTICE:**
 - A. PREPARE TO FILE:** File the following with the Clerk of the Court, Probate Registrar at least **10 business days** before the schedule hearing date:
 - NOTICE OF HEARING,
 - PROOF OF NOTICE, **AND**
 - Any WAIVER OF NOTICE or ACCEPTANCE OF SERVICE, if applicable
 - B. GO TO THE CLERK:** Take the **original and 2 copies** of the NOTICE OF HEARING, PROOF OF NOTICE and WAIVER OF NOTICE/ACCEPTANCE OF SERVICE (if any) to the Probate Registrar who will file the original and stamp "copy" on each of the **2 copies** and return them to you.
 - C. GO TO PROBATE ADMINISTRATION:** Take **1 conformed (date-stamped) copy** of the NOTICE OF HEARING, PROOF OF NOTICE, and WAIVER OF NOTICE/ACCEPTANCE OF SERVICE (if any). Probate Administration will give these to the Judge/Commissioner who will hear your case.

Note: Keep a copy of each document for your records and bring them with you to the court hearing.

9. **NEXT STEP:** Now you are ready to prepare for the court hearing, and get the rest of the paperwork in order.
10. **OTHER HELP:** If you still have questions about this procedure, you can ask a lawyer for legal advice. You can look up a lawyer in the telephone book under “attorneys.” Also, the Self-Service Center has a list of lawyers who will help you help yourself. The list shows where the lawyers are located, how much they charge to look over the court papers or answer your questions, and what their experience is. **All forms referred to in these instructions are available at the Self-Service Center.**

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