

Re: Petition for the Appointment of an Emergency Guardian for an Alleged Gravely Incapacitated Adult

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used for filing a Petition for the Appointment of an Emergency Guardian for an Alleged Gravely Incapacitated Adult pursuant to O.C.G.A. §29-5-8.
2. The following form does not request that an emergency guardian be appointed at the time the petition is filed, to serve until the emergency hearing (which would be held no sooner than 3 nor later than 5 days). It also does not request that the proposed ward's bank or savings accounts be frozen immediately. If the petitioner desires to request any of the foregoing relief, then the prayers on page 4 of the attached petition, and the affidavit on page 6, must be modified as necessary to comply with the statutory provisions quoted immediately below.
3. O.C.G.A. §29-5-8(d)(4) and (5) provide as follows:

“(4) If the threatened risk is so immediate and irreparable that any delay is unreasonable and the existence of such a threatened risk is certified by the affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43 or of a psychologist licensed to practice under Chapter 39 of Title 43, [the court] shall appoint an emergency guardian to serve until the emergency hearing;

“(5) In its discretion, [the court] may order that, pending the emergency hearing, no withdrawals may be made from any account on the authority of the proposed ward's signature without prior approval from the court, if there is a substantial risk of dissipation of any bank or savings and loan account in which the proposed ward has an interest and if the risk is so immediate and the potential harm so irreparable that any further delay would be unreasonable; ...”
4. If any of the relief described above is granted, the court order on page 9 of the form must be modified by adding the appropriate material. Further, if an emergency guardian is appointed to serve until the emergency hearing, then such guardian would have to take an oath, post any required bond, and have appropriate letters of emergency guardianship pending emergency hearing issued.
5. Note that the burden of proof at the emergency hearing is upon the petitioner, and the standard is clear and convincing evidence.
6. In any case involving the creation of a guardianship over property where the ward owns real property, the attached certificate will be completed by the clerk of the probate court and filed with the clerk of the superior court of each county of this state in which the ward owns real property within 30 days of the date of such order.
7. This form consists of 15 pages.

II. General Instructions

General instructions applicable to all Georgia probate court standard forms appear in Volume 255 of the Georgia Reports and are available in each probate court.

**PETITION FOR THE APPOINTMENT OF AN EMERGENCY
GUARDIAN FOR AN ALLEGED GRAVELY INCAPACITATED ADULT**

GEORGIA, _____ COUNTY

TO THE HONORABLE JUDGE OF THE PROBATE COURT:

IN RE:

_____,
ALLEGED GRAVELY INCAPACITATED ADULT, PROPOSED WARD

[NOTE: Unless there are two or more petitioners, the affidavit on page 6 must be completed by a physician or psychologist, based upon an examination within 10 days prior to the filing of this petition.]

1.

_____, whose residence address and telephone
Name of first petitioner
number are _____, and who is the
_____ (relationship) of the proposed ward, is a resident of
_____ County, _____, and

(Complete either a. or b. below):

_____ a. _____, whose residence address and
Name of second petitioner, if any
telephone number are _____
_____, and who is the _____
(relationship) of the proposed ward, is a resident of _____
County, _____.

or

_____ b. attached hereto as page 6 and made a part of this petition is the completed affidavit of
_____, a physician or psychologist licensed to
practice in Georgia, who has examined the proposed ward within ten days prior to the
filing of this petition.

2.

The proposed ward, age _____ (date of birth _____), social security no.
_____, is a resident of _____ County, _____, has a residence
address of _____, and is presently located at
_____.

4.

The law requires notice to be given to the spouse, if any, and to all living adult children, if any, whose addresses are known. If there is no spouse and no living adult child or children whose addresses are known, then two living adult next of kin whose addresses are known must be notified, or if there is only one living adult next of kin whose address is known, that person must be given notice. If there are no adult living next of kin whose addresses are known, then two adult friends must be notified. (In determining the persons to whom notice is required to be given according to the foregoing rules, the petitioner(s) should not be counted as persons receiving notice.) Therefore, the names, addresses, telephone numbers and relationships of the persons to be notified are as follows:

NAME	ADDRESS	TELEPHONE	RELATIONSHIP
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5.

The names and addresses of the proposed ward's representatives appointed under a prior proceeding pursuant to Official Code of Georgia Annotated Chapters 37-7, 37-3 or 37-4 are:

_____ (name)	_____ (address)
_____ (name)	_____ (address)

6.

All known income and assets of the proposed ward are shown on page 7 attached hereto.

7.

[NOTE: If nominations of a person or persons to act as guardian have been made by more than one of the following methods, indicate all nominees and methods. Attach a separate sheet if necessary.]

_____ whose address(es) is/are _____
_____ is/are nominated as guardian(s) of the (person)(and)(property) (respectively) by virtue of:

- _____ a. nomination by the petitioner(s);
- _____ b. selection by the proposed ward in writing, attested by at least two witnesses, prior to the filing of the petition;
- _____ c. selection by will or other writing signed by a deceased parent and attested by at least two witnesses.

The nominated guardian(s) will consent to serve, or has/have consented to serve as shown by the consent on page 5 attached hereto.

WHEREFORE, the petitioner(s) pray(s):

- (a) that service be perfected as required by law;
- (b) that the court appoint an emergency guardianship evaluation physician or psychologist as provided in Section 29-5-8 of the Official Code of Georgia Annotated;
- (c) that the court order an emergency hearing to be conducted not sooner than 3 days nor later than 5 days after the filing of this petition; and
- (d) that an emergency guardian of the person and/or property be appointed for the alleged gravely incapacitated adult.

Signature of second petitioner
(if any and if pro se)

Signature of Attorney
(or first petitioner if pro se)

Typed/printed name of Attorney: _____
 Address: _____

 Telephone: _____

VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned petitioner who on oath states that the facts set forth in the foregoing petition are true.

Signature of second petitioner, if any

Signature of first petitioner

Sworn to and subscribed before me, this
____ day of _____, _____.

Sworn to and subscribed before me, this
____ day of _____, _____.

Clerk, Probate Court/Notary Public

Clerk, Probate Court/Notary Public

CONSENT TO SERVE AS GUARDIAN

RE: Petition for the appointment of an emergency guardian for _____
_____, an alleged gravely incapacitated adult.

I, _____, having been nominated as guardian of the (person)(and)(property) of the above-named alleged gravely incapacitated adult, do hereby consent to serve as such.

Proposed Guardian

AFFIDAVIT OF PHYSICIAN OR PSYCHOLOGIST

STATE OF GEORGIA
COUNTY OF _____

PROBATE COURT OF _____ COUNTY

RE: Petition for appointment of an emergency guardian for _____,
an alleged gravely incapacitated adult.

I, being first duly sworn, depose and say that I am a physician licensed to practice under Chapter 34 of Title 43 of the Official Code of Georgia Annotated or a psychologist licensed to practice under Chapter 39 of Title 43 of the Official Code of Georgia Annotated, that my office address is _____, Georgia, that I have examined the above-named alleged gravely incapacitated adult on the _____ day of _____, _____, and that I have found him/her to be gravely incapacitated by reason of:

- | | | | | |
|---------------------------------------|----|--------------------|----|---------------------------------|
| Circle the specific incapacity | 1. | Mental illness | 4. | Physical illness or disability |
| | 2. | Mental retardation | 5. | Chronic use of drugs or alcohol |
| | 3. | Mental disability | 6. | Other cause: _____ |

to the extent that said alleged gravely incapacitated adult:

- Circle A or B or both**
- A. (re guardianship of person:) lacks sufficient understanding or capacity to make significant responsible decisions concerning his/her person or is incapable of communicating such decisions, and there is an immediate, clear, and substantial risk of death or serious physical injury, illness, or disease unless an emergency guardian is appointed.
 - 2. (re guardianship of property:) is incapable of managing his/her estate, and there is an immediate, substantial risk of irreparable waste or dissipation of the estate of the proposed ward unless an emergency guardian is appointed.

The following facts support said diagnosis: _____

The foreseeable limits on the duration of such incapacity are:

WITNESS MY HAND AND SEAL this _____ day of _____, _____.

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public
My commission expires on the _____ day
of _____, _____.
(NOTARIAL SEAL AFFIXED)

Signature of (Physician)(Psychologist)
Typed Name _____

NOTE: The examination on which this affidavit is based must occur WITHIN TEN DAYS prior to the filing of the petition.

INCOME AND ASSETS

Below are listed all of the known income and assets of the proposed ward:

REAL PROPERTY

Description	County	State	Approximate equity
Parcel_1_____	_____	_____	_____
Parcel_2_____	_____	_____	_____
Parcel_3_____	_____	_____	_____

INCOME FROM ALL SOURCES

Source	Yearly Total
Social_Security_____	_____
SSI_(Supplemental_Security_Income)_____	_____
Retirement_benefits_____	_____
VA_benefits_____	_____
Other_monthly_income_____	_____

YEARLY TOTAL OF ALL INCOME

PERSONAL PROPERTY

Description including applicable account numbers, numbers of shares, models and years, any other descriptive information	Approximate value
Checking_account_____	_____
Savings_account_____	_____
Certificate_of_deposit_____	_____
Bonds_____	_____
Stocks_____	_____
Automobile_____	_____
Other_items_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

TOTAL PERSONAL PROPERTY VALUE

TOTAL YEARLY INCOME + TOTAL PERSONAL PROPERTY VALUE

ORDER FOR DISMISSAL BEFORE EVALUATION

STATE OF GEORGIA

COUNTY OF _____

PROBATE COURT OF _____ COUNTY ESTATE NUMBER: _____

Re: Petition for the appointment of an emergency guardian for _____
_____, an alleged gravely incapacitated adult.

The above and foregoing petition having been read and considered pursuant to Section 29-5-8 of the Official Code of Georgia Annotated, and it appearing that there is not probable cause to believe that the proposed ward is gravely incapacitated and in need of an emergency guardian, it is hereby ordered that the petition be, and hereby is, dismissed.

Ordered further that a copy of the petition and this order be served on the proposed ward by first-class mail, and a copy of this order be served in the same manner upon the petitioner(s).

So ordered this ____ day of _____, _____.

JUDGE OF THE PROBATE COURT

CERTIFICATE OF MAILING

This is to certify that I have this day served the proposed ward with a copy of this petition and order for dismissal by placing a copy of same in an envelope addressed to the proposed ward and depositing same in the U.S. Mail, first-class, with adequate postage thereon. I have also served a copy of the above order upon the petitioner(s) in the same manner.

This ____ day of _____, _____.

CLERK OF THE PROBATE COURT

**ORDER FOR EVALUATION AND
NOTICE OF HEARING**

GEORGIA - PROBATE COURT OF _____ COUNTY

PROPOSED WARD: _____ ESTATE NUMBER _____

The above and foregoing petition having been read and considered, and it appearing that there is probable cause to believe that the proposed ward is gravely incapacitated within the meaning of §29-5-8 of the Official Code of Georgia Annotated, it is hereby ordered that _____, _____, is appointed to evaluate the above-named alleged gravely incapacitated adult at _____ o'clock ____M., on _____ at _____.

Ordered further that the above-named alleged gravely incapacitated adult shall submit to evaluation at the time and place stated above and that a written report shall be furnished to the Court and made available to the parties within 72 hours after the filing of the petition;

Ordered further that an emergency hearing shall be conducted at the Probate Court of _____ County, _____, at _____ o'clock ____M., on _____ (which is not sooner than three days nor later than five days after the filing of the petition);

Ordered further that _____ is hereby appointed as attorney to represent the proposed ward;

Ordered further that the Clerk of the Probate Court immediately notify the proposed ward of these proceedings by having a copy of the petition and this order served personally on the proposed ward;

Ordered further that the Clerk shall mail by first-class mail copies of the petition and this order to:

NAME	RELATIONSHIP	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

So ordered this _____ day of _____, _____.

Judge of the Probate Court

CERTIFICATE OF MAILING

This is to certify that I have this day served the above-named persons, who were ordered to be served by first-class mail, with a copy of the foregoing petition and order, by placing a copy of same in an envelope addressed to each and depositing same in the U.S. Mail, first-class, with adequate postage thereon.

This ____ day of _____, _____.

Clerk, Probate Court

APPOINTMENT OF SPECIAL AGENT

_____ is hereby appointed special agent to serve _____, proposed ward, with a copy of the foregoing petition and order.

This ____ day of _____, _____.

Judge of the Probate Court

RETURN OF SHERIFF/SPECIAL AGENT

I have this day served _____ personally with a copy of the within petition and order.

This ____ day of _____, _____.

Deputy Sheriff _____ County,
Georgia/Special Agent

(If return is by special agent:
Sworn to and subscribed before me, this
____ day of _____, _____.

Notary Public/Clerk, Probate Court
My commission expires _____.

EVALUATOR'S REPORT

EMERGENCY GUARDIANSHIP PROCEEDINGS

PETITIONER(S) _____

PROPOSED WARD _____

In compliance with the Order of the Probate Court of _____ County dated _____, I performed an evaluation of the above-named proposed ward on _____. This evaluation took place at _____ beginning at _____. The evaluation continued for _____.

The following questions and tests were utilized in the evaluation:

Below is a list of all persons and other sources of information consulted in evaluating the proposed ward:

The following is a description of the proposed ward's mental and physical state and condition, including all observed facts considered by me:

The following is a description of the overall social condition of the proposed ward, including support, care, education, and well-being:

The following are my findings as to the needs of the proposed ward and their foreseeable duration:

I find the proposed ward to be incapacitated by reason of:

- | | | | | |
|---------------------------------------|----|--------------------|----|---------------------------------|
| Circle the Specific incapacity | 1. | Mental illness | 4. | Physical illness or disability |
| | 2. | Mental retardation | 5. | Chronic use of drugs or alcohol |
| | 3. | Mental disability | 6. | Other cause:_____ |

to the extent that said alleged incapacitated adult:

- | | | |
|-----------------------------------|----|---|
| Circle A or B or both or C | A. | (re guardianship of person:) lacks sufficient understanding or capacity to make significant responsible decisions concerning his/her person or is incapable of communicating such decisions, and there is an immediate, clear, and substantial risk of death or serious physical injury, illness, or disease unless an emergency guardian is appointed. |
| | 2. | (re guardianship of property:) is incapable of managing his/her estate, and there is an immediate, substantial risk of irreparable waste or dissipation of the estate of the proposed ward unless an emergency guardian is appointed. |
| | C. | I do not find that the proposed ward meets the standards for emergency guardianship set out in either A or B above. |

 Physician licensed under Chapter 34 of Title 43 of the
 Official Code of Georgia Annotated
 or
 Psychologist licensed under Chapter 39 of Title 43 of the
 Official Code of Georgia Annotated

Sworn to and subscribed before me
this ____ day of _____, _____.

Notary Public/Clerk, Probate Court

NOTE: This report must be filed with the Probate Court no later than 72 hours after the filing of the petition.

STIPULATION AND WAIVER BY PROPOSED WARD'S ATTORNEY

GEORGIA, _____ COUNTY

TO THE PROBATE COURT OF SAID STATE AND COUNTY

IN RE: PETITION FOR THE APPOINTMENT OF AN EMERGENCY GUARDIAN FOR
_____, ALLEGED
GRAVELY INCAPACITATED ADULT

The undersigned, as the attorney representing the above-named alleged gravely incapacitated adult in these proceedings, does hereby stipulate into evidence the affidavit(s) of _____

Name of Affiant

_____, which is the evaluation report Ordered by the Court in this matter (, and _____, being the affidavit referred to

Name of Affiant

in Paragraph 1(b) of the petition). I hereby waive the appearance of such affiant(s) at any hearing concerning the said petition.

I further waive the appearance of my client (the proposed ward) at said hearing for the following reason(s):

Date

Attorney

[NOTE: If a guardian ad litem is appointed by the Court to represent the proposed ward, then the above or a similar Stipulation and Waiver should be signed by the guardian ad litem if such guardian ad litem agrees with the substance of such document.]

PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN THE MATTER OF) ESTATE NUMBER _____
)
_____,)
ALLEGED GRAVELY) RE: PETITION FOR APPOINTMENT OF
INCAPACITATED ADULT) AN EMERGENCY GUARDIAN FOR AN
) ALLEGED _GRAVELY_ INCAPACITATED
) ADULT

FINAL ORDER

A hearing was held on the above-referenced petition on _____, _____, and after considering the pleadings, the evaluation report and the evidence taken at the hearing, the Court makes the following:

FINDINGS OF FACT

1.

All procedural requirements of §29-5-6 and §29-5-8 of the Official Code of Georgia Annotated have been met.

2.

The above-named alleged gravely incapacitated adult (hereinafter referred to as "the ward") is incapacitated by reason of _____ to the extent that the ward lacks sufficient understanding or capacity to make significant responsible decisions concerning his/her person or is incapable of communicating them and there is an immediate, clear and substantial risk of death or serious physical injury, illness, or disease, and is incapable of managing his/her estate and there is an immediate, substantial risk of irreparable waste or dissipation of the estate, unless an emergency guardian of the person and property is appointed.

3.

The current value of the personal property of the ward is approximately _____. The ward has an interest in real property in _____ County(ies), _____.

4.

_____ should be appointed emergency guardian of the person and _____ should be appointed emergency guardian of the property because _____

CONCLUSIONS OF LAW

The duration of the guardianship is for 45 days or until a hearing concerning the permanent guardianship is held, whichever occurs first. _____ should be, and hereby is, appointed emergency guardian of the person and _____ should be, and hereby is, appointed emergency guardian of the property of the ward. Letters of emergency guardianship of the person and of the property shall issue to such guardian(s) upon taking the required oath and upon the guardian of the property's posting bond in the amount of _____. The powers and duties of such emergency guardian(s) are limited to those specified in the letters of emergency guardianship which will be issued in connection with this matter.

Date

Judge/Hearing Officer

CERTIFICATE OF MAILING

I have this date mailed (or handed) a copy of the above Order to the ward, his/her attorney, (his/her guardian ad litem), (his/her representatives,) the guardian(s), and the (petitioner(s)) (petitioner's attorney).

Date

Clerk, Probate Court

Certified copy of order delivered to _____, _____, _____.

CERTIFICATE OF CREATION OF EMERGENCY GUARDIANSHIP

(Pursuant to O.C.G.A. §29-5-6(f)(4))

GEORGIA, _____ County

DATE ORDER ISSUED: _____

GRANTOR: (NAME OF GRAVELY INCAPACITATED ADULT) _____

GRANTEE: (NAME OF EMERGENCY GUARDIAN OF PROPERTY OF ABOVE GRAVELY
INCAPACITATED ADULT) _____

Emergency guardianship of the property has been created for the above-named gravely incapacitated adult. Said emergency guardianship expires 45 days from _____ or whenever an order is entered on a permanent guardianship, whichever first occurs.

Original Certificate delivered or mailed to Clerk of Superior Court of _____
_____ Count(y)(ies) on _____, _____.

I do hereby certify that the above information is true and correct.

JUDGE OF THE PROBATE COURT

By: _____
Clerk, Probate Court of _____ County

**CERTIFICATE IN ACCORDANCE WITH
UNIFORM PROBATE COURT RULE 21(F)**

I certify that the content of the foregoing is identical in all material respects with Georgia probate court standard form entitled **Petition for the Appointment of an Emergency Guardian for an Alleged Gravely Incapacitated Adult**, except for additions or deletions indicated as required by the Uniform Probate Court Rules.

Date

Signature of Attorney
Address:

Telephone Number:
State Bar#: