



## LAW AT LAST, INC.

Attorney Robinzina “Zina” Bryant  
2024 Hickory Road, Ste. 102  
Homewood, Illinois 60430

708.816.8015 (O) | 708.469.2888 (Fax)  
Email: [attorneyzina@lawatlast.com](mailto:attorneyzina@lawatlast.com)  
[www.lawatlast.com](http://www.lawatlast.com)

### **GUARDIANSHIP OF PERSONS UNDER A LEGAL DISABILITY**

One can become a Guardian of another’s **person** or of their **estate** or of **both which is called a Plenary Guardian**. A guardian of the person is needed when the court determines an individual is unable to make or communicate responsible decisions regarding his/her personal care due to a mental, physical or developmental disability. A guardian of the estate is needed when the court determines an individual is unable to communicate responsible decisions regarding management of his/her finances due to a mental, physical or developmental disability. The person who has a Guardian is legally called a **Ward**. Disabled Adult Guardianship matters are governed by various sections in Chapter 755, Article XIa of the Illinois Compiled Statutes (ILCS) of the Illinois Probate Act.

One starts the process of seeking Guardianship by **filing a Petition for Guardianship** and having a date set within 30 days for a hearing before the judge on the petition filed. The Petition must state statutorily specified information (755 ILCS 5/11a-8) and **include a Report** (755 ILCS 5/11a-9) from a **medical doctor** describing in part the nature and type of any disability the individual has over whom guardianship is sought; how such disability affect the individual’s ability to handle their personal and financial affairs, their ability to live independently and if full or partial (aka limited) guardianship is needed amongst other things assessed. The examination upon which this report is based is required to have been performed within three (3) months of the date of filing the petition. This report will be discussed at the scheduled hearing.

The filed petition is **served by a Sheriff** on the individual for whom guardianship is sought. The filer of the petition is called the **Petitioner** and the individual over whom guardianship is sought is called a **Respondent**. The respondent gets an opportunity to respond and contest any proposed guardianship which indeed will infringe upon his/her independence. In fact, the Court likely will appoint a **Guardian Ad Litem**, deemed the “eyes and ears of the court,” to interview and observe the respondent and explain with specificity what the implications of guardianship entail and ascertain any objections.

The Guardian Ad Litem, prepares and submits a report to the Judge assigned to preside over the scheduled hearing and such is discussed at the scheduled hearing. The respondent, if in objection to having the specific petitioner or **any** guardian appointed, is allowed to retain a lawyer or have one appointed to represent his/her interests as well as to have a jury trial (as opposed to the typical bench hearing in front of the Judge), present evidence & cross examine any witnesses.

The Court must find that the proposed Guardian: (755 ILCS 5/11a-5a)

- Has attained the age of 18
- Is a resident of the United States
- Is not of unsound mind
- Is not an adjudged disabled person
- Has not been convicted of a felony (with some subjectivity of the judge) but definitely not a felony which involved harm or threat to an elderly or disabled person, including a felony sexual offense

If the Petitioner is successful in obtaining guardianship after the hearing, or hearings if several are needed, something called **Letters of Guardianship** are awarded and the petitioner now officially is recognized as the Guardian, either limited or plenary, and the respondent as the Ward. Be advised that the court may determine a guardian is indeed needed but in its discretion may appoint someone other than the initial petitioner.

A Ward is a Ward of the Court because the Court closely monitors all guardianships to insure the persons and the estates of wards are managed properly and are not physically harmed or financially exploited. *A Guardian is required to submit a Report on the Ward and/or an Accounting annually to the Court. This allows the court to assess if any changes are needed in the best interest of the ward.*

**Summarizing the Duties of the Guardian of the Person** See 755 ILCS 11a-17 for Complete Detail

- Custody of the ward **and** the ward's minor and adult dependent children & shall procure for them & make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate.
- Assist the ward in the development of maximum self reliance & independence.
- The guardian of the person may petition the court for an order directing the guardian of the estate to pay an amount periodically for the provision of the services specified by the court order.
- If the ward's estate is insufficient to provide for education & the guardian of the ward's person fails to provide education, the court may award custody of the ward to some other person for the purpose of providing education.
- The guardian of the person **may not** admit ward to a mental facility except at the Ward's request as provided in Article IV of the Mental Health & Developmental Disabilities Code & unless the ward has the capacity to consent to such admission as provided in Article IV of the Mental Health and Developmental Disabilities Code.
- Possibly initiate but definitely maintain a petition for divorce filed by the ward before the ward was adjudicated disabled.
- File a report on the ward at intervals determined by the court (usually annually) covering topical areas prescribed by the court such as the current mental, physical and social condition of the ward and the ward's minor and adult dependent children; their present living arrangements, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; a summary of the medical, educational, vocational, and other professional services given to them; a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; a recommendation as to the need for continued guardianship; and any

other information requested by the court or useful in the opinion of the guardian. The Office of the State Guardian shall assist the guardian in filling the report when requested by the guardian.

- A guardian of the person acting as a surrogate decision maker under the Health Care Surrogate Act shall have all the rights of a surrogate under that act without court order including the right to make medical treatment decisions such as decisions to forgo or withdraw life-sustaining treatment. A court order is required for any decisions to forgo or withdraw life-sustaining treatment which is not authorized under the Health Care Surrogate Act. If the guardian is also the ward's agent under a valid health care power of attorney, the guardian may act without a court order unless the court has acted under Section 2-10 of the Illinois Power of Attorney Act.
- A guardian of the person has a duty to make decision on behalf of the ward by conforming as closely as possible to what the ward, if competent would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. When ward's past preferences cannot be ascertained, decisions shall be made always with an eye towards the best wishes of the ward as determined by the guardian.

**Summarizing the Duties of the Guardian of the Estate** See 755 ILCS 11a-18 for Complete Detail

- The guardian of the estate shall have the care, management and investment of the estate, shall manage the estate frugally and shall apply the income & principal of the estate so far as necessary for the comfort and suitable support & education of the ward, his minor and adult dependent children, and persons related by blood or marriage who are dependent upon or entitled to support from him/her, or for any other purpose which the court deems to be for the best interests of the ward, and the court may approve the making on behalf of the ward of such agreements as the court determines to be for the ward's best interests.
- The guardian may make disbursements of his/her ward's funds and estate directly to the ward or other distributee or in such manner and in such amounts as the court directs. If the estate of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or similar benefits made directly to the estate by the Veterans Administration, notice of the application for leave to invest or expend the ward's funds or estate, together with a copy of the petition and proposed order, shall be given to the Veteran's Administration Regional Office in this State at least seven (7) days before the hearing on the application.
- The probate court, upon petition of a guardian, and after notice to all other persons interested as the court directs, may authorize the guardian to exercise any or all powers over the estate and business affairs of the ward that the ward could exercise if present and not under disability.
- The court may authorize the taking of an action or the application of funds not required for the ward's current and future maintenance and support in any manner approved by the court as being in keeping with the ward's wishes as far as they can be ascertained.....Actions or application of funds may include, but shall not be limited to, the following:

- 1) making gifts of income or principal, or both, of the estate, either outright or in trust;
- 2) conveying, releasing or disclaiming his/her contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;
- 3) releasing or disclaiming his/her powers as trustee, personal representative, custodian for minors, or guardian;
- 4) exercising, releasing, or disclaiming his or her powers exercised as a power of appointment;
- 5) entering into contracts;
- 6) creating for the benefit of the ward or others, revocable or irrevocable trusts of his/her property that may extend beyond his/her disability or life;
- 7) exercising options of the ward to purchase or exchange securities or other property;
- 8) exercising the rights of the ward to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of right under any one or more of the following:
  - i) life insurance policies, plans or benefits,
  - ii) annuity policies, plans or benefits,
  - iii) mutual funds and other dividend investment plans,
  - iv) retirement, profit sharing and employee welfare plans and benefits;
- 9) exercising his/her right to claim or disclaim an elective share in the estate of his/her deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer;
- 10) Changing the ward's residence or domicile
- 11) modifying by means of codicil or trust amendment the term's of the ward's will or any revocable trust created by the ward, as the court may consider advisable in light of changes in applicable tax laws.

The guardian in his/her petition shall briefly outline the action or application of funds for which he/she seeks approval, the results expected to be accomplished thereby, and the tax savings, if any, expected to accrue. The proposed action or application of funds may include gifts of the ward's personal property or real estate, but transfers of real estate shall be subject to the requirements of Section 20 of the Probate Act titled Administration of Real Estate. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the ward or may be

made to individuals or charities in which the ward is believed to have an interest. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the ward insofar as they can be ascertained, and if the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidents of various forms of taxation and the partial distribution of his/her estate...The guardian shall not, however, be required to include as a beneficiary or fiduciary any person who s/he has reason to believe would be excluded by the ward.

A guardian SHALL be required to investigate and pursue a ward's eligibility for governmental benefits.

- Upon the direction of the court which issued his/her letters, a guardian may perform the contracts of his/her ward which were legally subsisting at the time of the commencement of the ward's disability. The court may authorize the guardian to execute and deliver any bill of sale, deed or other instrument.
- The guardian of the estate shall appear for and represent the ward in all legal proceedings unless another person is appointed for that purpose as guardian or next friend.....this section goes on to discuss attorney fees.
- Adjudication of disability shall not revoke or otherwise terminate a trust which is revocable by the ward. A guardian of the estate shall have no authority to revoke a trust that is revocable by the ward, except that the court may authorize a guardian to revoke a Totten trust or similar deposit or withdrawable capital account in trust to the extent necessary to provide funds for the purposes specified in 1-11 above. If the trustee of any trust for the benefit of the ward has discretionary power to apply income or principal for the ward's benefit, the trustee shall not be required to distribute any of the income or principal to the guardian of the ward's estate, but the guardian may bring an action on behalf of the ward to compel the trustee to exercise the trustee's discretion or to seek relief from an abuse of discretion. A guardian can also receive accountings from the trustee on behalf of the ward.
- Absent court order pursuant to the IL Power of Attorney Act directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian will have no power, duty or liability with respect to any property subject to the agency....
- Upon petition by any interested person (including a standby or short-term guardian), with such notice to interested persons as the court directs and a finding by the court that it is in the best interests of the disabled person, the court may terminate or limit the authority of a standby or short-term guardian or may enter such other orders as the court deems necessary to provide for the best interest of the disabled person. The petition for termination or limitation of the authority of a standby or short-term guardian may, but need not, be combined with a petition to have another guardian appointed for the disabled person.

\_\_\_\_\_  
Date

By my printed name and signature below, I agree that on the date indicated above, I was provided a copy of this document and advised to thoroughly read it to gain a familiarity with the process of obtaining guardianship as well as the legally imposed duties and obligations of a court appointed Guardian. I understand, as advised by the attorney, that it is a summary of the laws contained in 755 ILCS Article XIa titled Guardians for Disabled Adults and not the whole thereof.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature