

INFORMATION ON LEGAL NOTICE FOR GUARDIANSHIP AND/OR CONSERVATORSHIP OF AN ADULT / MINOR

1. **WHAT IS LEGAL NOTICE?** After you have completed **AND** filed the “Petition for Permanent Appointment of Guardian and/or Conservator of an Adult” and other Court papers with the Court, you must tell **all** “interested persons” about the papers and Court hearing.

WHAT COURT DOCUMENTS DO I NEED TO GIVE NOTICE ABOUT?

- **The PETITION:** This document explains what you want the Judge/Commissioner to do and why.
- **NOTICE OF HEARING:** This document provides information about the hearing, including the date, location, and the name of the Judge/Commissioner who will hear the case.

It is recommended that you give people entitled to notice copies of **all** documents you filed with the Court. After giving notice to those persons, you must then file a “PROOF OF NOTICE” listing the name of each person given notice and the title of each of the documents you provided.

2. WHO IS ENTITLED TO LEGAL NOTICE?

ADULT: Here is a guide when, and to whom, you must give notice of guardianship and conservatorship of an Adult (A.R.S. §§14-5309 and 14-5405):

- 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 comes to 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 person.
- 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.

MINOR: Arizona law (A.R.S. §14-5207) requires that notice regarding guardianship of a minor must be given to:

- The minor, if 14 years or older;
- The person who has had the principal care and custody of the minor during the 60 days preceding the date of the Petition; AND
- Any living parent of the minor.

3. WHAT ARE THE WAYS TO GIVE LEGAL NOTICE?

A. "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 document 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 gets the notice. 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, go to our website at www.mohavecourts.az.gov to find a list of current private process servers in Mohave County.
- **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.

B. 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 postage-prepaid mail is usually accepted. 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.

C. 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 everything 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.

D. The Court, for good cause shown, may provide for a different method or time of giving notice for any hearing.

E. Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

4. 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.

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".

5. WHEN CAN YOU SKIP GIVING LEGAL NOTICE?

- WAIVER OF NOTICE is when a person required to get notice waives that right and signs

the 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 incapacitated 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.

6. 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.

7. COMPLETE THE NOTICE OF HEARING AND PROOF OF NOTICE:

After Notice has been given, you must complete the "PROOF OF NOTICE" form. Be sure to list the title of any documents given, and the names of the persons to whom you gave the copies. Also list the date you gave each person copies, how they were served (delivered), and the relationship between the person to whom you gave copies and the person who has or will have the guardian and conservator. Be sure the attorney for the person who has or will have the guardian and conservator gets copies.

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

8. FILE THE NOTICE OF HEARING, ANY WAIVER, AND PROOF OF NOTICE:

A. PREPARE TO FILE: At least **10 business days** before the scheduled hearing date, file the original of the following with the Clerk of the Court.

- "NOTICE OF HEARING",
- "PROOF OF NOTICE", **AND**
- "ACCEPTANCE OF SERVICE" (and WAIVER OF NOTICE) (if applicable).

B. TAKE YOUR PAPERS TO THE CLERK: The **original will be kept by the Clerk and 2 copies** of the "NOTICE OF HEARING", "PROOF OF NOTICE" and "ACCEPTANCE OF SERVICE" (and WAIVER OF NOTICE) (if any) will be returned to you.

Note: Keep a copy of each document for your records. Bring them with you to the Court hearing.

NEXT STEP: Prepare for the court hearing and get the rest of the paperwork in order. If you still have questions about this procedure, you can ask a lawyer for legal advice. Go to www.azbar.org for a list of lawyers in Mohave County.