

GUARDIAN and/or **CONSERVATOR** **For an Adult or Minor**

2

Part 2: Service and Notice of the Court Hearing

(Instructions)

LAW LIBRARY RESOURCE CENTER

**GUARDIANSHIP and/or CONSERVATORSHIP
for an Adult or Minor**

Part 2: SERVICE AND NOTICE

(Instructions Only)

This packet contains court instructions to file guardianship and/or conservatorship for an adult or minor. Items in **BOLD** are forms that you will need to file with the Court. Non-bold items are instructions or procedures. Do not copy or file those pages!

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HELPFUL INFORMATION ON LEGAL NOTICE FOR GUARDIANSHIPS AND CONSERVATORSHIPS

1. WHAT IS “LEGAL NOTICE TO ALL INTERESTED PERSONS”?

After you have filled out and filed the guardianship and/or conservatorship petition and other documents with the Court, you must inform all “interested persons” of what you have filed and what you have asked the court to do. **Interested persons** are people (or agencies) who have a legal right to be notified of court actions that may affect the person said to need the guardian or conservator.

A. WHAT COURT DOCUMENTS AM I REQUIRED TO GIVE NOTICE OF? Copies of which documents have to be delivered according to law?

1. The “**Petition**” explains what you want the court to do and why.
2. The “**Affidavit of Person to be Appointed**” contains information about the person who is to serve as guardian or conservator.
3. The “**Notice of Hearing**” lists the time, date, and location of the court hearing and the name of the Judicial Officer assigned to hear the case.

After notice has been served to all those entitled to receive it and in a manner required or permitted by law, you must then fill out and file a **DECLARATION OF NOTICE PROVIDED** (see section C, below) to tell the Court **who** you gave notice to, **how** notice was given, **what** documents were provided, and when.

B. HOW AM I ALLOWED OR REQUIRED TO GIVE LEGAL NOTICE?

1. **Personal Service** (delivery by sheriff, private process server, or recipient signs an “ACCEPTANCE OF SERVICE”)
2. **Mail or Hand-Delivery** (not always permitted)
3. **Publication** (run a legal notice advertisement. This MAY be permitted if after all reasonable efforts you still cannot find the person or his or her address)

Personal Service requires that a registered process server or the sheriff serves the documents on the interested persons **or** that those persons voluntarily sign an **ACCEPTANCE OF SERVICE** form in the presence of a Notary Public or Deputy Clerk of Court. Personal service is NOT required in all cases. 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. For more detailed information on *personal service*, refer to #4 below.

Mail and Hand-Delivery are less formal methods of giving notice, but are **not permitted in all cases**. When you are permitted to give notice by mail, 1st class postage-prepaid mail is usually acceptable to the court. Certified mail with return- receipt is an optional extra step you can take to prove delivery. Make sure you are allowed to use mail or hand-delivery in the type of case you are involved in, and for any particular persons you want to give notice to by these methods. See **3C** below for more information.

Publication of Notice is used when you do not know the address of the person to whom you need to give notice, and **after** you have done everything you could to try to find the person you are still unable to come up with an address. Notice is then published **at least 3 times** in a newspaper in the county where the court hearing is held.

WARNING! If the Court is not satisfied that you have made every reasonable effort to find an address and have the papers personally delivered, you may be required to take additional steps adding delay and expense to your case, and then have to *publish again*.

For more detailed information on Service by Publication, review the “**Procedures: How to Serve Legal Papers by Publication**”, which is in the #2 “**SERVICE**” packet.

C. HOW DO I SHOW THE COURT THAT I GAVE NOTICE?

- **Fill out and file a DECLARATION OF NOTICE PROVIDED** form with the court to show who you gave notice to, when, and how. Fill out this form **after** the documents have been delivered or you have otherwise served notice on all interested persons.
- **Submit other documents required to support the DECLARATION OF NOTICE PROVIDED. Depending on method(s) of service** (how Notice was given), **this may include one or more of the following:** (an)
 1. **Acceptance of Service** signed by the person receiving notice,
 2. **Affidavit of Publication** supplied by the newspaper if serving by publication,
 3. **Affidavit of Service** signed by the process server or sheriff.

D. WHEN CAN I SKIP GIVING LEGAL NOTICE?

1. **When a person entitled or required to receive notice signs a WAIVER** giving up the right to receive notice of court filings and proceedings in this matter. Please note: If an incapacitated *adult* for whom the guardian or conservator is to be appointed signs a Waiver, he or she **must** attend the hearing for service to be valid.
2. **When the person to receive notice 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. WHEN MUST LEGAL NOTICE BE GIVEN? WHAT TIME FRAMES?

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 date of the first publication* must be **at least 14 days before the hearing**.

Note: The newspaper will provide an **AFFIDAVIT OF PUBLICATION** **after** all 3 notices have been published to show proof that the ad has run.

3. WHO ARE “INTERESTED PERSONS”?

According to Arizona law (A.R.S. § 14-5309 AND 14-5405) notice must be given to:

- A. **THE PERSON TO BE PROTECTED** (incapacitated adult or a minor): **Personally serve the adult** (or a minor aged 14 or over) **said to need the guardian/conservator.**

Neither **ACCEPTANCE OF SERVICE** nor **WAIVER OF NOTICE** by the person said to need a guardian or conservator is legal **unless** he or she **also attends the court hearing.**

- B. **THE PARENTS AND SPOUSE** (if applicable) **of the person to be protected:**

1. **Personally serve the spouse and parents if they are in Arizona;**
2. **Serve by mail or hand-delivery if not in Arizona; or**
3. **Serve by publication if you do not know and cannot find the address *after all reasonable efforts.* You will have to describe those efforts to the court.**

- C. **OTHERS:** You may give notice by mail, hand-delivery or publication to:

1. **Any adult children of the person to be protected;**
2. **Any person who is serving as the guardian or conservator or who has the care and custody of the person to be protected;***
3. **If the person to be protected has no parent or spouse or adult children, then to the closest adult relative, *if any can be found,* AND**
4. **Any person who has filed a “DEMAND FOR NOTICE” with the Court.***

* This may also include *agencies* such as Adult Protective Services or the VA.

4. **THE METHODS OF PERSONAL SERVICE:**

PLEASE NOTE: “PERSONAL SERVICE” DOES NOT MEAN THAT YOU PERSONALLY HAND-DELIVER THE PAPERS*

*though you **MAY** be able to do that **if** the person receiving them is willing to voluntarily sign an **ACCEPTANCE OF SERVICE** as described below.

- A. **ACCEPTANCE OF SERVICE:** This method requires that you give or mail copies of the court papers and include an “**Acceptance of Service**” form. The other party must sign the “**Acceptance**” in front of a Notary and return it to you, or file it with the court himself (herself), but it can’t be signed in advance of the date you filed the petition with the court.

Signing this form does **not** mean the person agrees; only that he or she admits receiving the papers without being served in person by a Sheriff or Process Server.

- B. **PROCESS SERVER:** You must hire and pay a Registered Process Server yourself. You may locate process servers in the commercial section of the phone book under “PROCESS SERVER”, or online by using the search term “Arizona process servers” or similar, or at the web site of the Arizona Process Servers Association at:

<http://arizonaprocessservers.org/>

- **May offer greater flexibility in serving papers “after-hours” or on short notice.**
- **Are paid directly by you, not through the court.**
- **Fees may not be deferred or waived by the court.**
- **Fees vary. Compare.**

- C. **SHERIFF:** This method requires you to contact the Sheriff's Office in the county where the person to receive notice 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 apply for and receive a fee deferral or waiver. A deferral or waiver application is available through the Court in the county service where notice is to be delivered for persons who cannot afford the cost. The Application will require you to explain **why** your circumstances call for service by sheriff.

5. HOW DO I LET THE COURT KNOW NOTICE HAS BEEN GIVEN?

You will be filing the "**Declaration of Notice Provided**" form and supporting documents referred to immediately above and in section "1.C." on page 2 of this document to inform the court of who you gave notice to, when, and how.

6. WHAT ELSE TO KNOW ABOUT LEGAL NOTICE:

A. AFTER "INTERESTED PERSONS" RECEIVE NOTICE, THEY MAY:

1. **Do nothing**, if they agree with, or at least do not want to file papers or show up in court to disagree with your request, **OR**
2. **File a Response**, *if* they want to:
 - **Object to what the Court has been asked to order**,
 - **Disagree with something stated in the Petition or other court papers**, or
 - **Tell the Judge/Commissioner something besides what is in the Petition.**

Filing a Response requires payment of a filing fee, unless *deferred* (granted a payment plan). If the Response is written, copies must be delivered to all the interested parties. The Self-Service Center has a packet titled "**Guardianship and/or Conservatorship: To Object to a Court Proceeding**" with court forms and instructions to file a response.

- B. **AFTER "NOTICE" COMES THE HEARING.*** Carefully read and follow the directions on the applicable instruction and procedure documents in the #2 **SERVICE** packet to properly serve notice and to then file your proof of service with the Court. See Self-Service Center packet #3, "**Preparing for and Attending the Court Hearing**" for court forms and instructions on how to complete the forms you will need to bring with you to the hearing and helpful information on how to otherwise prepare.

***IMPORTANT: BEFORE THE HEARING the proposed guardian or conservator, if not a state-licensed fiduciary, must complete court-approved training. See "Important Notice Regarding Training Requirements" in this packet.**

- C. **OTHER HELP:** Court employees can answer questions about court procedures but only an attorney can give legal advice. The Self-Service Center has a list of lawyers whom you can hire to advise you on how to handle your case yourself, or to help you on a task-by-task basis for a fee, and a list of mediators who may be able to help resolve disputes as well. You will find both lists online.

The **Probate Lawyers Assistance Project (PLAP)** offers a 30-minute consultation for a low flat fee or free, depending on financial situation. Consultations are by appointment only, on Wednesdays, at the offices of the Maricopa County Bar Association at 303 East Palm Lane in Phoenix. Call **602-732-2834** to schedule an appointment.

PROCEDURES: HOW TO SERVE LEGAL PAPERS BY ACCEPTANCE OF SERVICE

in matters of GUARDIANSHIP, CONSERVATORSHIP, INFORMAL PROBATE OF ESTATES, and SALE OF REAL PROPERTY

Before Step 1, you must have filed the court papers.

STEP 1 ASK THE PERSON TO ACCEPT SERVICE OF THE PAPERS:

A. IF THE PERSON BEING SERVED GOES WITH YOU TO THE FILING COUNTER:

- Give the other person his or her set of copies.
- Stay at the counter with that person.
- The person must have valid picture identification with him or her to sign the original ACCEPTANCE OF SERVICE. The person must then sign the Acceptance in front of the Clerk, which the Clerk will notarize for **free**, **OR**

B. IF THE PERSON WILL NOT OR CANNOT GO WITH YOU TO FILE PAPERS:

- Arrange a meeting place and time with the person before a Notary Public. Remind the person being served to bring valid picture identification with him or her to the Notary Public.
- Give the person his or her set of copies.
- Have the original of the court papers with you in case the person wants you to prove that you have it, **OR**

C. IF YOU CANNOT GIVE THE PERSON THE PAPERS BY HAND:

- Mail **all** the copies to the person with an explanation, such as the form letter attached.
- The person must sign and date the original Acceptance.
- The signature must be witnessed by a notary public.
- You should write the date the person signed the Acceptance on your copy.

NOTE: If the person does not send back the Acceptance, or file it with the court himself (or herself), ask him or her again to send it back. If he or she still does not send it back, **then you have to serve him or her by one of the other processes.**

STEP 2 FILE THE ACCEPTANCE OF SERVICE AT THE COURT:

A. FILING THE PAPERS:

- Go back to the Clerk of the Court where you filed your original court papers and file the **original** of the ACCEPTANCE OF SERVICE signed by the person.
- Give the Clerk the **originals** of the following documents:
 - 1) **NOTICE OF HEARING**
 - 2) **ACCEPTANCE**, signed by the person in front of a notary public
 - 3) **WAIVER OF NOTICE** if person signed one

DO NOT BRING CHILDREN TO COURT.

Do not copy or file this page

(YOUR NAME)

(ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

FOR CLERK'S USE ONLY

(DATE)

(PERSON'S NAME)

(ADDRESS)

(CITY/STATE/ZIP CODE)

Re: Acceptance of Court Papers for: _____

Dear _____
(PERSON'S NAME)

I have filed court papers for (list title of petition here)_____. Enclosed is a copy of the following papers for you: (NOTICE: Documents listed should *at the very least* include the **Petition** on whatever matter is before the court, and a **Notice of Hearing** on the Petition)

1. _____
2. _____
3. _____
4. _____
5. _____

Also enclosed is an **Acceptance of Service** form for you to sign in front of a Notary Public to indicate you have received the documents listed. Signing the Acceptance may prevent unnecessary extra expenses as Arizona Rules of Court (A.R.C.P. 4.1 (c)) provide that a person who chooses not to accept service may be charged for additional costs required to achieve service by other methods. After signing, mail the Acceptance back to me in the addressed, postage-paid envelope provided.

Signing the Acceptance does **not** indicate agreement; you still have the right to file a written response or to appear at the court hearing to inform the court that you disagree with what is stated or requested in the Petition.

Sincerely,

(YOUR SIGNATURE)

Enclosures

PROCEDURES: PERSONAL SERVICE BY PROCESS SERVER

HOW TO SERVE LEGAL PAPERS in GUARDIANSHIP, CONSERVATORSHIP, INFORMAL PROBATE OF ESTATES, and the SALE OF REAL PROPERTY by REGISTERED PROCESS SERVER

Before Step 1, you must have FILED the court papers.

STEP 1: FIND. You must hire and pay a Registered Process Server yourself. You may locate process servers in the commercial section of the phone book under "**PROCESS SERVER**", or online by using the search term "Arizona process servers" or similar, or at the web site of the Arizona Process Servers Association at <http://arizonaprocessservers.org/>.

Notice: There is a filing fee for all Petitions or Complaints, and Responses or Answers, and fees for "Service" as well. You may request a Waiver or Deferral of the filing fees (and the Sheriff's Service Fees, if you intend to use the Sheriff's Office for service) at the time you file your papers with the Clerk of the Court. Registered Process Servers:

- May offer greater flexibility in serving papers "after-hours" or on short notice.
- Are paid directly by you, not through the court.
- Fees may not be deferred or waived by the court.

STEP 2: GO. Go to the Registered Process Server's office. **TAKE** with you the following things:

- Copy of "**Summons**" (if your case has a summons)
- Other party's set of copies of the court papers.
- A picture or a written physical description of the other party.
- A written description of the automobile that the other party drives.
- The address where the other party can be served.
- The amount you need to pay for this service. (You can call ahead of time to ask the Process Server what type of payment they require.)

STEP 3: WAIT. The Process Server will mail you a copy of the "**Affidavit of Service**" after he/she serves the other party with the papers. **IMPORTANT: If the Process Server does not file the original "Affidavit of Service" with the Clerk of the Court, you must get the original "Affidavit of Service" from the Process Server and file it.**

STEP 4: COUNT. Look at the "**Affidavit of Service**" to find out the date the other party was served with the court papers and start counting the days for the other party to file a Response or Answer. When counting the days, start counting with the day **after** the other party was served the papers.

DO NOT BRING CHILDREN TO COURT.

PROCEDURES: PERSONAL SERVICE BY SHERIFF

HOW TO SERVE LEGAL PAPERS by SHERIFF in matters of Guardianship, Conservatorship, Informal Probate of Estates, and the Sale of Real Property

Before Step 1, you must have FILED the court papers.

STEP 1 ARRANGING FOR SERVICE BY SHERIFF (in Maricopa County):

- Take your court papers to the Sheriff's Department Civil Process Unit in downtown Phoenix. This is the only location for the Civil Process Unit, so even if you file your case at one of the regional court locations (Mesa, North Phoenix or Surprise), you must still come to the downtown Sheriff's offices to arrange for Service. The address for the Sheriff's office is:

**Maricopa County Sheriff's Office, Civil Unit
111 South Third Avenue, 2nd Floor
West Court Building
Phoenix, Arizona 85003
602-876-1840**

(This building does not have a public entrance. Please enter at 201 W. Jefferson, and proceed to the West Court Building.)

- Just as there are fees for filing papers with the court, there are also fees for service of those papers by the Sheriff's Department. You may apply for a DEFERRAL OR WAIVER of those fees at the time you file your papers with the Clerk of the Court.

STEP 2 DOCUMENTS NEEDED FOR SERVICE:

- Complete the attached sheet for identifying the other person (Page 2) and bring it with you to the Sheriff's Office. **The Maricopa County Sheriff's Office has its own form, but having the attached page already filled out may assist you in filling out the Sheriff's form.**

- **Bring with you:**
 - 1) A set of copies of the court papers for the person being served.
 - 2) A picture or a written physical description of the person being served.
 - 3) A written description of the automobile the other person drives.
 - 4) The address where the other person can be served.
 - 5) A Certified Order Waiving/Deferring Fees **or a \$200.00 deposit** payable by cash or money order. Costs and mileage fees will be deducted **and the balance will be returned to you.***

STEP 3 AFTER SERVICE IS GIVEN:

- The Sheriff will mail you a copy of the **AFFIDAVIT OF SERVICE** after he or she serves the other person with the papers.
- The Sheriff may also file these papers instead of sending them back to you.
- If the Sheriff sends you **TWO**, it is probably intended that **you** file the Affidavit, but either way, make sure that an **AFFIDAVIT** gets filed.
- Bring a copy of the **AFFIDAVIT OF SERVICE** with you to the court hearing.

*As of June 8, 2012, costs are **\$16.00** service fee, **\$8.00** processing fee, and **\$2.40** per mile travel fee, one-way (measured from downtown Phoenix) for each separate attempt at service.

 (YOUR NAME)

 (ADDRESS)

 (CITY/STATE/ZIP CODE)

 (TELEPHONE NUMBER)

 (NAME OF COUNTY) County Sheriff

 (ADDRESS)

 (CITY/STATE/ZIP)

NAME OF PERSON TO BE SERVED: _____
COURT CASE NUMBER: _____

I enclose a copy of the following documents: (LIST ALL DOCUMENTS YOU WANT SERVED)

1. _____
2. _____
3. _____
4. _____
5. _____

Please serve these papers on person named above. Current address and physical description are:

 (HOME ADDRESS) _____
 (HOME CITY/STATE/ZIP) _____

 (WORK ADDRESS) _____
 (WORK CITY/STATE, ZIP) _____

SEX	RACE	BIRTH	HGT.	WGT.	EYES	HAIR	SSN

Please return a notarized **Affidavit of Service** to my address at your earliest convenience. Maricopa County Superior Court requires that each document served be named in the Affidavit of Service.

- I enclose a deposit for \$200.00. I understand there is a \$16.00 service fee, \$2.40 per mile, one way, for each attempt at service travel fee, and an \$8.00 documentation fee. I understand the difference between my deposit and the fees accrued for service will be billed or returned to me. **OR,**
- I enclose a certified copy of the Order for Waiver/Deferral of fees for Service of Process.

Thank you for your cooperation in this matter.

Enclosures: _____
 (YOUR SIGNATURE)

PROCEDURES: HOW TO SERVE LEGAL PAPERS BY PUBLICATION

In matters of GUARDIANSHIP, CONSERVATORSHIP, PROBATE OF ESTATE, and the SALE OF REAL PROPERTY

(Arrange for service AFTER you have filed your papers in court.)

STEP 1 COMPLETE ATTACHED LETTER to NEWSPAPER describing the documents that need to be referenced by the newspaper, and submit copies of those documents along with the letter to the paper.

A. IF YOU HAVE A COURT ORDER WAIVING/DEFERRING COSTS of PUBLICATION, YOU MUST PUBLISH IN *The Record Reporter*.

MAIL OR DELIVER the letter that is attached to this form, a copy of the documents you filed with the Clerk, and the **CERTIFIED ORDER WAIVING/ DEFERRING COSTS of PUBLICATION** to:

The Record Reporter, 2025 N. Third Street, #155, Phoenix AZ 85004.

You may also **fax** the documents to **(602) 417-9910**,

- OR -

B. IF YOU ARE PAYING THE COST of PUBLICATION, YOU MAY USE ANY NEWSPAPER OF "GENERAL CIRCULATION" in this county. Note that:

1. There are **numerous** eligible publications **other than** the one mentioned above;
2. The Arizona Corporation Commission maintains a list of eligible publications along with their contact information online at:

<http://www.azcc.gov/Divisions/Corporations/Newspaper-list-for-publishing.pdf>.

3. **Fees vary.** You may call and ask for "Legal Advertising" to compare prices .

STEP 2 WHEN TO FILE:

- **Wait** (about **5 weeks**) for the newspaper to send you an **AFFIDAVIT OF PUBLICATION**, which will include the notice that was published, and the dates of publication. **Some** newspapers will file this document with the Court for you. If the newspaper sends you **TWO** copies or an original, it is intended for **you** to file one. Always verify with the Probate Clerk that the **AFFIDAVIT OF PUBLICATION gets filed**.

STEP 3 GATHER THE PAPERWORK: (Caution: Be aware of confusingly similar document names.)

- Complete the **DECLARATION SUPPORTING PUBLICATION** (PB25f), found in the Forms packet, to describe the efforts you made to locate and serve notice **before** resorting to publication.
- If the newspaper has **not** already filed the **AFFIDAVIT OF PUBLICATION**, **make sure it gets filed** by submitting it with the **DECLARATION SUPPORTING PUBLICATION**.
- **Copy** of both of the above (Affidavit and Declaration) documents for your records.

STEP 4 FILE YOUR DOCUMENTS WITH THE COURT:

- The original **DECLARATION SUPPORTING PUBLICATION**, and
 - The original of **AFFIDAVIT OF PUBLICATION** (*unless the newspaper filed it for you*).
- (And **bring a copy** of the **AFFIDAVIT OF PUBLICATION** to the hearing.)

LETTER TO NEWSPAPER

Print Your Name: _____

Your Address: _____

Date: _____

Name of Newspaper

Address

To Whom It May Concern:

I need to publish notice in the newspaper about the following matter: Probate Court Case No. _____, which concerns the following: (check one box)

Guardianship and/or Conservatorship matter about (name of person with guardian and/or conservator) _____, OR

Estate of _____, deceased, OR
Print Name

Sale of Real Property _____ . Please Note: The first publication
Print street address of subject property

of this NOTICE must be published at least fourteen (14) days before the scheduled hearing, or by _____.
Print Date

Enclosed is a copy of the following documents stamped by the Clerk of Court (check all that apply):

"Notice of Hearing" for matter about guardian and/or conservator, OR Petition, OR

"Notice to Creditors" for probate of an estate, OR

(If no Will) An **Application for Appointment of Personal Representative without a Will**, OR

(If a Will) An **Application for Informal Probate of a Will and for Appointment of a Personal Representative**.

Please publish Notice in your newspaper about this court case once a week for three successive weeks. Also enclosed is (check one box)

A check or money order in the amount of \$_____ for the cost of the publication as requested, OR,

A certified copy of the Order from the court waiving/deferring the publication costs.

When you receive this letter, please call me at _____ to tell me when the first publication will occur. When all three weeks of publication have been completed, please file the original and send me one copy of the **Affidavit of Publication**.

Sincerely,

Your Signature
Enclosures

IMPORTANT NOTICE

TRAINING REQUIREMENTS

Effective September 1, 2012

The Arizona Supreme Court requires that any person who is not a state-licensed fiduciary (or a financial institution) must complete a training program approved by the Supreme Court **before** Letters of Appointment to serve as a guardian, conservator, or personal representative can be issued by the Clerk of the Court, or within 30 days of a temporary or emergency appointment.

TRAINING SHOULD BE COMPLETED BEFORE THE COURT HEARING
Additional time may be granted for good reason.

You may access and complete the training FREE online at:
www.azcourts.gov/probate/Training.aspx

Go to the section for “**Non-licensed Fiduciaries**” and click on the link to access a narrated slide-show presentation of the materials applicable to your situation.

You may also pick up a printout of the training materials in English or Spanish from the Self-Service Center. AFTER reviewing the materials, you will need to inform the Court that you have completed the training by filing either the Certificate available at the end of the online training, or the Declaration of Completion form available from the Self-Service Center. If you have questions about the training, contact the Probate Clerk at 602-506-3668.