

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.