

Guardian ad Litem Duties Checklist and Guide Va. Code § 64.2-2003

Court: Richmond Henrico Chesterfield Hanover _____

Case caption:

Court file number: _____

Hearing Date: _____

Report Due date: _____

Petitioner's Counsel Name, email, telephone: _____

Ok to send by email? _____

Ok to file by email? _____

Duties:

1. Date: _____ personally visited Respondent.

2. Date: _____ advised Respondent:
 - 2.1. Papers have been filed which say that you need help with your personal and financial affairs. They claim that you cannot make decisions about these things yourself.

 - 2.2. A copy of the papers has been or will be sent to these persons:
 - 2.2.1.1. Your spouse [] none

 - 2.2.1.2. Your children [] none

 - 2.2.1.3. Your parents [] none

 - 2.2.1.4. Your brothers and sisters [] none

2.2.1.5. Your step-children none

Notes: _____

2.3. I am your “guardian ad litem.” A guardian ad litem is a court appointed officer who makes an independent investigation of the facts before the judge.

2.3.1. I am a lawyer, but I am not acting as your lawyer or attorney. What that means is that I have duties under the law. Those duties include:

2.3.2. Reading and investigating evidence to support the papers that have been filed by the person asking the court to decide that you are incapacitated and that someone needs to help you with financial or health care decisions.

2.3.3. Personally appearing at all the hearings in this case.

2.4. The person asking the court to appoint a person to take over your health care decisions and financial decision must prove that you are clearly unable to do these things.

2.4.1. Part of that evidence is a report filed by a physician, a psychologist, or anyone who is licensed by Virginia to assess and treat the conditions which the papers allege make you unable to care for yourself.

2.4.2. A copy of the report is to given to the people who

2.4.3. Witnesses and Examination. You have the right to call witnesses in the hearing. You can have them “subpoenaed,” which means the judge will require them to come and testify. You have the right to ask questions of all persons who testify in the hearing, whether you call them or not.

2.5. My duty is to report to the court what I believe is in your best interest. I will listen to what you and others tell me, but I am not required to do what you tell me to do. I will have a copy of the report sent to you.

3. You have these rights in the hearing before the judge:

3.1. Lawyer. You have the right to be represented by a lawyer of your choice. If you are not represented by a lawyer, the judge may appoint a lawyer before ruling on your case. You can request the appointment of a lawyer to help you, or I can. The judge will do so if the judge decides that a lawyer is needed to protect your interest beyond my appointment as your guardian ad litem. I will tell the judge these two things:

3.1.1. whether you want a lawyer in the case to represent you, and

3.1.2. whether I think you need an independent lawyer to be your attorney in the case.

Respondent [] wishes [] does not] wish a lawyer.

3.1.3. Appearance. You have the right to appear at all hearings in the case.

3.1.4. Jury. You have the right to let a jury decide the facts of the case.

4. Report:

4.1. Whether the court has jurisdiction (Chapter 21 jurisdiction, proper pleadings jurisdiction)

4.1.1. [Chapter 21 jurisdiction.](#)

4.1.1.1. How long has respondent been a resident in Virginia?

4.1.1.2. Home state status at 6 months, jurisdiction is vested.¹

4.1.1.3. If less than 6 months, review Chapter 21.²

4.1.2. Pleadings and process jurisdiction.

4.1.2.1. Notice service.³

4.2. whether a guardian or conservator is needed, and if so:

4.2.1. the extent of the duties and powers of the guardian

4.2.2. the extent of the duties and powers of the conservator;

4.3. the propriety and suitability of the person selected as guardian or conservator after consideration of the nominee's:

4.3.1. geographic location, familial or other relationship with the respondent,

4.3.2. ability to carry out the powers and duties of the office,

4.3.3. commitment to promoting the respondent's welfare,

4.3.4. any potential conflicts of interests,

4.3.5. service in office in the opinion of the respondent

4.3.6. service in office in the opinion of relatives;

4.3.7. a recommendation as to the amount of surety on the conservator's bond, if any;
and

¹ Va. Code § 64.2-2105 (A): “Home state’ means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a conservatorship order or the appointment of a guardian, or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.”

² [§ 64.2-2105](#) Definitions; significant connection factors; [§ 64.2-2106](#) Exclusive basis; [§ 64.2-2107](#) Jurisdiction [§ 64.2-2108](#); Special jurisdiction [§ 64.2-2109](#); Exclusive and continuing jurisdiction.

³ Va. Code § 64.2-2004 (A): “Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. **The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.**”

4.3.8. proper residential placement of the respondent.

4.4. Questions for Petitioner:

4.5. [] Interview Date: _____

4.6. Why is a guardian or conservator needed?

4.7. What are the required duties and powers of the guardian

4.8. What are the required duties and powers of the conservator

4.9. You want whom to serve? _____

4.10. Describe your nominee's:

4.11. geographic location, familial or other relationship with the respondent,

4.12. ability to carry out the powers and duties of the office,

4.13. commitment to promoting the respondent's welfare,

4.14. any potential conflicts of interests,

4.15. service in office in the opinion of the respondent

4.16. service in office in the opinion of relatives.

4.17. Income and Estate. (More detailed Appendix [here](#) and [online here](#), pages 4-8).

4.17.1. What is the respondent's income? _____

4.17.2. Sources:

4.17.3. Estate.

4.17.3.1. Real estate:

4.17.3.2. Bank accounts:

4.17.3.2.1. Bank: _____ # _____ \$

4.17.3.2.2. Bank: _____ # _____ \$

4.17.3.2.3. Bank: _____ # _____ \$

4.17.3.2.4. Bank: _____ # _____ \$

4.17.3.3. Stocks and bonds.

4.17.3.4. Trusts.

4.17.3.5. Insurance (cash value).

4.17.3.6. Motor vehicles.

Interview Checklist

Petitioner's counsel (ok to talk with client?)

Petitioner. Date:

Value of estate under \$25,000?

Entitlements:

Medicaid _____

SSI _____

Medicare _____

Nominee Guardian. Date:

Nominee Conservator: Date:

Non-Resident? 64.2-1426. Nonresident fiduciaries.

Agent for process?⁴

Surety?⁵

⁴ Va. Code § 64.2-1426(A) provides that at “the time of qualification or appointment, each such nonresident shall file with the clerk of the circuit court of the jurisdiction wherein the qualification is had or appointment is made his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, conservator, or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in the Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of the Commonwealth and at such address as the nonresident may appoint in the written instrument. In the event of the death, removal, resignation, or absence from the Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of the circuit court.”

⁵ Va. Code § 64.2-1426(A): “[W]here any nonresident qualifies, other than as a guardian of an incapacitated person, pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal

15. Have you or your spouse sold, transferred, placed in a trust/annuity, or given away any resources, such as your home or other real property, cash, bank accounts, or cars in the last sixty (60) months (5 years)? Yes No — If **yes**, please provide the following information:

Type of Property Transferred	Value at Transfer \$	Amount Received \$	Date of Transfer
From Whom		To Whom	
Explain the Reason for Transfer			

Note: If more than one transfer has occurred, please attach documentation of each transfer.

SECTION 3 Resources and Assets

16. Do you or your spouse have any money/cash on hand that is not in the bank? Yes No — If **yes**, please provide the following information:

Name	Amount \$
Name	Amount \$

17. Do you or your spouse have any of the following resources? Yes No — If **yes**, please check the boxes that apply and provide the information requested below:

- Checking, Savings Deferred Compensation Plan Christmas Club
 Credit Union Certificate of Deposit (CD) Money Market Funds

1. Owner Name		Co-Owner Name	
Name of Bank	Account Type	Account Number	Balance/Value \$
2. Owner Name		Co-Owner Name	
Name of Bank	Account Type	Account Number	Balance/Value \$
3. Owner Name		Co-Owner Name	
Name of Bank	Account Type	Account Number	Balance/Value \$

Is your income (Social Security or SSI benefits, retirement pension, wages, etc.) deposited directly into any of the accounts? Yes No If yes, which account? _____

18. You must report ownership of all annuities you and your spouse have. You and your spouse may have to name the Commonwealth of Virginia as the beneficiary of any annuity you or your spouse own.

Do you or your spouse have any stocks or bonds, trust funds, pension plans, retirement accounts, trusts, annuities, promissory notes, or deeds of trust? Yes No

— If **yes**, please provide the following information:

1. Owner Name		Co-Owner Name	
Where is the Account Held?	Account Type	Account Number	Balance/Value \$
2. Owner Name		Co-Owner Name	
Where is the Account Held?	Account Type	Account Number	Balance/Value \$
3. Owner Name		Co-Owner Name	
Where is the Account Held?	Account Type	Account Number	Balance/Value \$

19. Do you or your spouse have any life insurance? Yes No

— If **yes**, please provide the following information:

1. Owner Name	Person Insured	Type of Insurance (whole life or term)	
Company Name	Policy Number	Face Value \$	Cash Value \$
2. Owner Name	Person Insured	Type of Insurance (whole life or term)	
Company Name	Policy Number	Face Value \$	Cash Value \$
3. Owner Name	Person Insured	Type of Insurance (whole life or term)	
Company Name	Policy Number	Face Value \$	Cash Value \$

20. Do you or your spouse have burial plots, burial arrangements, or trust funds for burial?

Yes No

— If **yes**, please provide the following information:

Owner(s)	Item/Type	Value/Amount Owned \$
Owner(s)	Item/Type	Value/Amount Owned \$
Owner(s)	Item/Type	Value/Amount Owned \$

21. Do you or your spouse have real property, including home property, life rights/estates, shares in undivided heir property, land, buildings, or mobile homes? Yes No

— If **yes**, please provide the following information:

Owner(s)	Type of Property/Number of Acres	Value/Amount Owned \$
Do you live on this property? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is this property currently for sale? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Is this property rented? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you received money from this property <input type="checkbox"/> Yes <input type="checkbox"/> No	

22. Do you or your spouse have any licensed or unlicensed cars, trucks, vans, boats, motors homes, recreational vehicles, utility trailers, motorcycles, or mopeds? Yes No

— If **yes**, please provide the following information:

Owner(s)	Year-Make-Model	Value/Amount Owned \$
Owner(s)	Year-Make-Model	Value/Amount Owned \$
Owner(s)	Year-Make MOdel	Value/Amount Owned \$

23. Do you or your spouse have any property that is used in the operation of a business, such as farm equipment, tools, or livestock? Yes No

— If **yes**, please provide the following information:

Owner(s)	Type	Value \$	Amount Owned \$
Owner(s)	Type	Value \$	Amount Owned \$

24. Do you or your spouse expect a change in resources this month or next month? Yes No
 — If **yes**, please explain below and give the date the change is expected:

Explain

Date Change Expected

SECTION 4 Other Income

25. Do you receive child support? Yes No
 — If **yes**, please provide the following information:

Amount \$	How Often?	Is the payment for past-due child support payments? <input type="checkbox"/> Yes <input type="checkbox"/> No
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26. Do you receive Veteran's Administration benefits? Yes No
 — If **yes**, please provide the following information:

Amount \$	How Often?	Type
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27. Does anyone help you pay, or lend you money to pay rent, utilities, medical bills, or any other bills? Yes No
 — If **yes**, please provide the following information:

Person Receiving Money	Person Providing Help
Type of Help Received	Amount \$
Does the money come directly to you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is this a loan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is repayment expected?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Person Receiving Money	Person Providing Help
Type of Help Received	Amount \$
Does the money come directly to you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is this a loan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is repayment expected?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Sign the application

I am signing this application under penalty of perjury which means I've provided true answers to all the questions on this application to the best of my knowledge. I know that I may be subject to penalties under federal law if I provide false or untrue information.

Signature

Relationship to Applicant

Date