

SECTION 3009 – GUARDIANSHIP AND CONSERVATOR PETITIONS

SUMMARY STATEMENT:	When APS determines that a disabled adult or elder person in need of protection cannot remain protected due to an incapacity and there are no sufficient alternatives to guardianship or conservatorship, a petition for the appointment of a guardian and/or conservator can be filed with a probate court pursuant to the Disabled Adults and Elder Persons Protection Act (O.C.G.A. § 30-5-5(e)).
BASIC CONSIDERATIONS	Prerequisite findings presented to probate court for the appointment of a Guardian or Conservator are as follows:
Guardianship	<ul style="list-style-type: none"> • The court may appoint a guardian for an adult only if the court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety. • No guardian shall be appointed for an adult unless the appointment is in the best interest of the adult.
Conservatorship	<p>Refer to O.C.G.A. § 29-4-1</p> <ul style="list-style-type: none"> • The court may appoint a conservator for an adult only if the court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning the management of his or her property. • No conservator, except a conservator for the estate of an individual who is missing or who is believed to be dead, shall be appointed for any adult except pursuant to the procedures of this chapter (O.C.G.A. Title 29 Chapter 5). • No conservator shall be appointed for an adult unless the appointment is in the best interest of the adult.
	<p>Refer to O.C.G.A. § 29-5-1</p> <p>Note: No guardian or conservator shall be appointed for an adult within two years after the denial or dismissal on the merits of a petition for the appointment of a guardian or conservator for that adult unless the petitioner shows a significant change in the condition or circumstances of the adult.</p>

Alternatives to Guardianship and Conservatorship

Petitions for Guardianship and Conservatorship are to be filed only as a last resort. Consider alternatives provided by [Georgia Probate Court](#) before filing.

PROCEDURES

Evaluating Cognitive Capacity

Case managers, at minimum, shall consider the following whenever guardianship/conservatorship is contemplated.

Can the adult:

- Understand information needed to make an informed decision?
- Give a plausible explanation for decision?
- Weigh the risks and benefits of options?
- Appreciate his/her own situation and its consequences?
- Communicate a choice?
- Score within the range of “*Normal*” cognitive functioning on the SLUMS? (Refer to Section 2007 of this manual)

If the answers are **yes** to all questions, then the adult has demonstrated the capacity to make informed decision. If the answer is **no** to one or more questions, then the adults capacity is in question and further evaluation is necessary.

	Capacity	Capacity Concerns
If All Yes	√	
If Any No		√

Evaluating Level of Risk

- Is it likely that harm or abuse is occurring or will occur in the immediate future?
- Are protective services needed on an ongoing basis to prevent future harm or abuse?
- Do abusers pose on-going risk?
- Does the client have strengths or resources that can mitigate risk?
- Are informal supports available to help?

**PROCEDURES
cont.**

Risk Factors	Mitigating Factors
on-going protective services needed	Client Strengths
a/n/e likely to occur	Resources
abuser pose an on-going risk	Supports

The greater number of risk factors present the greater the risk. However, risk can be reduced by mitigating factors such as the client’s personal strengths, resources and support system.

Balancing Capacity With Risk

When an adult’s capacity is high, no matter what the level of risk, guardianship and/or conservatorship should never be an option.

$$\text{High Capacity} + \text{Any Level of Risk} = \text{No Petition}$$

When an adult’s capacity is low and the level of risk high guardianship and/or conservatorship can be an option, once all other alternatives have been exhausted.

$$\text{Low Capacity} + \text{High Risk} = \text{Guardianship as Last Resort}$$

When an adult’s capacity is unknown or not easily determined the level or type of risk will determine if guardianship and /or conservatorship are necessary.

$$\text{Capacity Unknown} + \text{Any Level of Risk} \Rightarrow \text{Risk Determines Intervention}$$

Limited Guardianship

The guardianships ordered pursuant to the official code of Georgia shall be designed to encourage the development of maximum self-reliance and independence in the adult and shall be ordered only to the extent necessitated by the adult’s actual and adaptive limitations. The authority of the guardian may extend to all personal decisions affecting the protected person or may be limited in scope

PROCEDURES
cont.**Filing**

by the court. It is always preferable to pursue the least intrusive type of appointment that is appropriate to meet the individual's needs.

Completion of the Petition Filing Checklist, an exhaustive search for family or friends willing to assume legal responsibility, as well as Supervisory staffing and approval is required. Supervisory approval is based on information contained in the case record and Supervisor's visit with the adult being considered for guardianship to assure that a DHS Guardianship is only considered as a last resort.

Once approval is given, staff will provide the Petition Filing Checklist, along with a summary of findings to the Public Guardianship Office Section Manager and DAS Associate General Counsel. Staff should await feedback from the Public Guardianship Office prior to moving forward with the Guardianship petition.

Feedback may include but is not limited to:

- Alternatives to guardianship not previously considered;
- Additional methods for seeking out family and friends willing to assume guardianship;
- Limitation of Guardianship to resolve or mitigate presenting risk; or
- Request for a multidisciplinary meeting.

When a decision has been made to move forward with the Guardianship, the Assistant Associate General Counsel will contact the local SAAG (Special Assistant Attorney General) to file the petition on behalf of the Department.

Petitions filed on the behalf of the Department shall not recommend any entity other than the Department of Human Services be appointed guardian or the County Court Appointed Conservator to be conservator. Instead, it should request that a qualified, suitable and available Individual be appointed in accordance with O.C.G.A § 29-4-3 (Guardianship of Adult) and § 29-5-2 and 29-5-3 (Conservator of Adult).

**PROCEDURES
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APS staff may submit a completed electronic copy of the "Petition for Appointment of a Guardian and /or Conservator for a Proposed Ward" form to the SAAG. In lieu of the petition, APS staff should provide information to the SAAG to complete the petition.

Information required by law to file the petition will be gathered to the extent possible by the APS case manager and submitted to the SAAG.

Petition Writing**Petitioner**

The First Petitioner shall be listed as follows:

APS staff members name, Georgia Department of Human Services, Division of Aging Services, Adult Protective Services, pursuant to the Disabled Adult and Elder Persons Protection Act, O.C.G.A. §§ 30-5-1, et seq.

It is preferred that a Physicians Affidavit or that of a Licensed Clinical Social Worker (LCSW) be used in lieu of a Second Petitioner. If it is not possible to get an Affidavit, a Second Petitioner can be used as a last resort. The Second Petitioner must be a DHS employee who is not of the same title and level of supervision (e.g. Case Manager/Supervisor, Supervisor/District Manager or Case Manager/District Manager). The second petitioner is required to meet with the adult prior to filing.

**Facts Supporting the need for a
Guardian/Conservator**

Provide specifics about the type of incapacity that warrants the appointment of a Guardian/Conservator. Restrict comments to the facts (what has been seen or heard) and refrain from giving opinions.

Notice

Every effort must be made to identify by name, address and telephone number at least two adult relatives or close friends who will be sent notice of the petition and any subsequent hearings. (Refer to O.C.G.A. § 29-4-10 (b) (7) for the order of preference).

Assets, Income and Expenses

An accounting of the adult's assets and expenses must be listed in the petitions. Petitions shall include the following:

**PROCEDURES
Cont.**

- Real Property (homes or land owned by the adult alone or in joint ownership);
- Income (i.e. Social Security, SSI, Retirement Benefits, Veterans Benefits, and any other income);
- Personal Property (bank accounts, stocks, bonds, businesses, automobiles and any other valuables);
- Debts owed on any real or personal property (including credit cards); and
- Monthly expenses.

Length of Time in Georgia. Notify the SAAG if the individual for whom a petition for guardianship is being filed has not resided in the state of Georgia for six consecutive months. Under such conditions Georgia probate court can exercise “special jurisdiction” if the individual has a significant-connection to this state and:

- the individual has no home state or the home state has declined to exercise jurisdiction; or
- a petition or order is not pending in the home state.

For any such person, a petition in Georgia will be required to list the prior non-Georgia address and specifically what state. Further, it may require that the petitioner reach out to any prior neighbors, friends, or family who reside in that prior state.

After Filing

[Refer to § 29-11-12](#)

Once a Petition has been filed the following steps must be taken:

1. Open case for APS on-going services pending hearing and court decision.
2. Contact should be made with the Public Guardianship Office (PGO) informing them of all hearing dates related to the proposed Guardianship.

**DHS Guardianship
Appointment**

Note: Notification and staffing with PGO are not required when petitioning solely for conservatorship.

If DHS is appointed Guardian on an active APS case, APS will complete all documentation in the DAS Data System and provide a copy of the hard record to PGO

<p>DHS Guardianship Appointment cont.</p>	<p>within 10 business days. The original record shall remain with APS.</p>
<p>Temporary Substitute Guardian</p>	<p>If DHS is appointed Guardian prior to the completion of the APS investigation, standard APS investigation policy and procedures shall be followed.</p>
<p>Appointment of a Conservator or Non-DHS Guardian</p>	<p>No actions, other than those required as a part of the APS investigation, shall be taken by APS on behalf of the newly appointed DHS Person under Guardianship unless requested by PGO staff.</p>
	<p>If PGO is not present at a hearing where DHS is appointed guardian, APS shall immediately send an email to the PGO Field Operations Manager notifying them of the appointment. APS staff shall take the oath on behalf of the Department if PGO staff is unavailable and PGO request that such actions be taken on their behalf. All applicable Court documents will be submitted to PGO staff.</p>
	<p>When DHS is appointed Temporary Substitute Guardian during either an APS investigation or On-going case then APS will follow standard DHS guardianship appointment procedures.</p>
	<p>When a Conservator or Guardian other than DHS has been appointed an APS on-going case can be opened or remain open in order to provide continuity of services and to ensure a smooth transition.</p>
<p>REFERENCES</p>	<p><u>O.C.G.A. § 30-5-5</u> <u>O.C.G.A. Title 29 Chapter 4 Guardian of an Adult</u> <u>O.C.G.A. Title 29 Chapter 5 Conservator of an Adult Alternatives to Guardianship</u> <u>O.C.G.A. § 29-11-12 Probate Court Forms</u> <u>Petition Filing Checklist</u></p>