

# 17-A Guardianship Proceeding Checklist of Mentally Retarded/Developmentally Disabled Person

(Person and/or Property)

(see Surrogate's Court Form GMD-1, rev. 9/2006)

*This Checklist is provided for your convenience while completing the petition and the checklist need not be returned to the Court.*

**Check All Forms To Make Sure Venue Is Correct - Appropriate County Is Listed**  
**Fill in All Areas On All Pages of Petition - Also Mark When Not Applicable**  
**Where Necessary**

PET ¶ #	DESCRIPTION	YES	NO
	Does the Court have jurisdiction over the subject MR/DDP, hereinafter referred to as <u>respondent</u> [see SCPA §1702]?		
<p><b>NOTE: The respondent must be domiciled in the county, have sojourned in the county immediately preceding the application for guardianship, or if a non-domiciliary of the state, must have property situate in the county. The domicile of the respondent's parent(s) or spouse if respondent is married, or custodial parent in the case of an infant respondent is the domicile of the respondent.</b></p>			
	Is the captioned name the same as the birth certificate and ¶2 of petition? [see 22NYCRR §207.15(a) and SCPA §1752(1)]		
<b>1.</b>	<p><b>Is the petitioner a proper party?</b> [see SCPA §1751]</p> <p><b>Is the petitioner ...</b>    <b>both parents or the survivor, or one parent;</b></p> <p style="padding-left: 40px;"><b>any person eighteen (18) years of age or older, including a corporation authorized to serve as a guardian, interested in the welfare of the respondent;</b></p> <p style="padding-left: 40px;"><b>the respondent when such person is eighteen (18) years of age or older.</b></p> <p><b>Complete all required information.</b></p> <p style="padding-left: 40px;">Are all A/K/A's listed?</p>		
<b>2a.</b>	<p><b>Is the name and date of birth of the respondent in ¶2 the same as that listed on the Birth Certificate?</b> [see SCPA §1752(1)]</p> <p style="padding-left: 40px;">Attach Birth Certificate from official registrar (not hospital) to be filed with petition [see NYCRR §207.15(a)]</p> <p><b>Complete all required information.</b></p>		
<b>2b.</b>	<p><b>Check whether respondent is admitted to a group home or facility.</b> [see MHL §1.03 and/or Article 15]</p> <p><b>If admitted, complete required information.</b></p>		
<b>3.</b>	<p><b>List the names and post office addresses of the parents and spouse of the respondent.</b> [see SCPA §1752(3)]</p>		

PET ¶ #	DESCRIPTION	YES	NO
3. cont.	<p>If any relatives are deceased their names must still be shown and date of death noted. (Court may require copy of death certificate)</p> <p>If the name of the father is not shown on petition or birth certificate, determine if a proceeding has been brought to establish paternity. (Court may require copy of filiation order) [see page 5 - Comments &amp; Court Notes]</p> <p><i>NOTE: If it is claimed that the identity of the father is unknown, the Court may require an affidavit showing diligent efforts to identify him.</i></p> <p><i>NOTE: If the natural mother was married at the time of respondent's birth, there is a rebuttable presumption that her husband is the father of the respondent and is a necessary party unless a filiation order has established otherwise. [see DRL §24(1)]</i></p>		
4.	List names and addresses of adult children, adult siblings, and their relationship to respondent. [see SCPA §1752(3)]		
5.	If the respondent has a primary care physician other than the physician submitting the certification, complete required information.		
6.	If the father and mother are deceased, list the names and addresses of New York State distributees (those persons entitled to take a share of the respondent's property). [see EPTL §4-1.1]		
7.	If respondent resides with person(s) other than parents or spouse, list names, addresses and relationship to respondent of person(s) charged with their care and custody.		
8.	Give detailed information why those relatives listed in this paragraph are not petitioning to be appointed.		
9.	This paragraph states that proposed guardian(s), standby or alternate standby guardian(s) are of sound mind, adult and competent.		
10a.	Choose the box that reflects the relief requested and indicate reasons.		
10b.	Choose the box that reflects the relief requested and indicate value.		
11a.	Describe and state the value of personal property as directed in this paragraph. [see SCPA §1752(6)]		
11b.	Describe and state the value of real property as directed in this paragraph. [see SCPA §1752(6)]		
11c.	Describe and state the value of annual income as directed in this paragraph. [see SCPA §1752(6)]		
11d.	<p>State the source of all property as directed in this paragraph.</p> <p><i>NOTE: Court only requires information as to respondent's property. All information in paragraph 11 will be used to compare and verify the guardian's report on the first annual account.</i></p>		

PET ¶ #	DESCRIPTION	YES	NO
12.	Confirm that the licensed doctors' certifications (Form GMD-2A and 2B) are attached to petition and that their names and the dates of the certifications are completed on the petition. Check certifications/affidavits to be certain all required information is contained therein. [see SCPA §1750, 1750-a, 1750-b]		
13.	For a limited guardianship, insert applicable employment information. [see SCPA §1756]		
14a. to 14d.	List names and addresses of the proposed guardians (other than petitioner), all standby guardians or alternate guardians are listed and confirm that the boxes checked reflect the relief requested.  Confirm that proper consents/oaths/designations or consents/designations are completed by any proposed alternate/standby guardians. (GMD-4)		
15.	Check appropriate box. If request is made to dispense with respondent's presence, confirm that physician's certification so attests or that other circumstances are stated. [see SCPA §1754]		
16.	Confirm that the respondent has never had a guardian appointed by will or deed or any acting guardian in socage, or a guardian appointed pursuant to Social Services Law §384 or §284-b. [see SCPA §1704(3) and SCPA §1761]		
17.	Check appropriate box. [see SCPA §1704(6) and §1761].  <i>NOTE: If knowledge of a report is indicated, verify that an affidavit explaining circumstances in detail is included.</i>		
18.	Confirm that Request for Information Guardianship form has been submitted.  <i>NOTE: Some Courts may require electronic fingerprinting for each proposed guardian in order to conduct a criminal record search.</i>		
19.	Check appropriate box.		
20.	This paragraph states that there are no other persons interested in this proceeding other than those already mentioned.  Confirm that any necessary waivers/renunciations/consents have been filed. (Form GMD-3)  <i>NOTE: SCPA §1753(1) requires that process shall issue to:</i> <ol style="list-style-type: none"> <li>1. Parent or Parents (if other than petitioner)</li> <li>2. Adult children, adult siblings (if petitioner is other than a parent)</li> <li>3. Spouse (if respondent is married);</li> <li>4. Person having care and custody or with whom respondent resides (if other than parent or spouse);</li> <li>5. The respondent (if fourteen (14) years of age or older).</li> </ol> <i>NOTE: No process or notice is necessary to any person above who has been declared by the court as incompetent or who has, as appears to the Court's satisfaction, abandoned the respondent or to a spouse who is divorced from the respondent. [see SCPA §1754(2)]</i>		

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20. cont.	<p><b>NOTE: SCPA §1753(2) requires that a Notice of Petition (GMD-8) be served by certified mail to:</b></p> <ol style="list-style-type: none"> <li>1. Adult siblings (if petitioner is a parent)</li> <li>2. Mental Hygiene Legal Services</li> <li>3. Director of any State Facility where respondent resides</li> <li>4. Adult children (if petitioner is a parent)</li> <li>5. Any other person Court deems proper</li> <li>6. Any person designated in writing by respondent</li> </ol>		
21.	State whether any prior application for guardianship of the subject respondent has been made in any court.		
	<p><b>Under WHEREFORE Clause: has all relief requested for sections (a) through (i) been checked and completed?</b></p> <p><b>Is petition dated, signed, verified, properly notarized (including proper jurat and expiration date of notary's commission)?</b></p> <p><b>Is attorney's name, address and phone number listed?</b></p> <p><b>Is oath and designation signed?</b></p> <p style="padding-left: 40px;"><b>does it set forth proposed guardian's physical address?</b></p> <p><b>Is proposed guardian a Bank?</b></p> <p style="padding-left: 40px;"><b>has corporate consent and designation been submitted? [see SCPA §708(4)]</b></p> <p><b>Is Part 130 Certification completed by attorney or self-represented party?</b></p> <p style="padding-left: 40px;"><b>if <u>NOT</u>, has a separate certification as to Part 130 signing requirements been included?</b></p>		
<b>If forms are computer generated, has a certification pursuant to Court Rules §207.4 been attached?</b>			

FEE SCHEDULE	SCPA/EPTL§ or Rule #
<p><b>Have the proper fees been included with petition?</b></p> <p>\$20.00 for filing petition</p> <p>\$6.00 for each Certificate of Appointment.</p>	2402

COMMENTS AND COURT NOTES		Form Number	SCPA/EPTL§ or Rule #
When Permitted	Whenever the interests of a respondent will be promoted by the appointment of a guardian of the person or of the property or of both person and property.		1750, 1750-a 1750-b

COMMENTS AND COURT NOTES		Form Number	SCPA/EPTL§ or Rule #
Forms Always Required	<ul style="list-style-type: none"> <li>•Petition for Appointment of Guardian</li> <li>•Affidavit of Proposed Guardian</li> <li>•Birth Certificate</li> <li>•Request for Information Guardianship Form</li> <li>•Affidavit (Certification) of Examining Physician or Licensed Psychologist</li> <li>•Affirmation (Certification) of Examining Physician</li> <li>•Citation</li> <li>•Notice of Petition</li> </ul>	GMD-1 GMD-1A  OCFS-3909 GMD-2A  GMD-2B  GMD-7 GMD-8	1751, 1752  207.15(a) 1706(2) 1750,1750-a, 1750-b 1750,1750-a 1750-b 1753(1) 1753(2)
Forms or Documents Sometimes Required	<ul style="list-style-type: none"> <li>•Waiver, Renunciation and Consent</li> <li>•Consent, Oath and Designation of Guardian/Standby Guardian</li> <li>•Decree Appointing Limited Guardian of Property</li> <li>•Affidavit of Due Diligence</li> <li>•Affidavit of Service (Personal/Mail/Publication)</li> <li>•Bond</li> <li>•Death Certificate of deceased spouse, distributee or parent</li> <li>•Birth Certificate of spouse or distributees who are under the age of 18</li> <li>•Copies of Divorce Decrees, Surrenders, Court Orders</li> <li>•Orders of Filiation</li> </ul>	GMD-3 GMD-4  GMD-6	1753(1)  1756  801, 1708, 1761  207.15(b) 207.15(a)
<p>Proofs of Service of Citation must be filed with the Court at least two (2) working days before the return date in compliance with Uniform Rule 207.7(c).</p> <p>Some courts may conduct additional inquiries of Putative Father Registry. (Court submits inquiry form to Registry - NYS OCFS Form LDSS-2725,); some courts may also check if natural father has acknowledged being father in any other manner (possible sources of information may be Family Court, Department of Social Services, hospital of birth, local registrar and/or Department of Health ).</p> <p>Guardian Ad Litem will be appointed when respondent is not a resident of a state facility. Guardian ad litem will be appointed on or before the return day of process for all unknowns and persons under disability (SCPA §403).</p> <p>Documents signed by Power of Attorney (Provide certified copy of POA and comply with Section 13-2.3 EPTL and 207.48 Uniform Rules).</p> <p>Check to be certain all documents are properly acknowledged.</p>			

**THIS MATERIAL IS PROVIDED FOR INFORMATIONAL/TRAINING PURPOSES ONLY.** – It is intended for use in conjunction with review of the applicable statutes and rules of the Surrogate’s Court and the Surrogate’s Court Operations Manual.