

HOW TO FILE A GUARDIANSHIP APPLICATION IN SUPREME COURT OF NOVA SCOTIA

1. Civil Procedure Rule 71 allows a person to seek his/her appointment as: guardian under the *Guardianship Act* for a child; a guardian under the *Incompetent Persons Act* for a person who is not capable of managing their affairs; to dispose of property owned by a person who is not capable of managing their affairs and to approve a contract on behalf of a child without a guardian.
2. The person seeking appointment as guardian under the *Guardianship Act* or *Incompetent Persons Act* must open a court file by filing a Notice of Application in Chambers (Form 5.03.) The filing fee is \$218.05 plus the law stamp fee of \$25.00 + HST.
3. A copy of a Notice of Application to appoint a guardian for a child must be delivered to each of the following persons in accordance with Civil Procedure Rule 71.03 and 71.04, unless a judge otherwise directs -
 - a) the child who is the subject of the application must be notified;
 - b) each parent of the child other than the Applicant or, if the child has no parent who is not an applicant, the child's next of kin other than the Applicant;
 - c) a child who is twelve years of age or older must be informed about each step in the proceeding, unless a judge direct otherwise;
 - d) a person, other than the Applicant, who has custody of the child under an agreement or order.
4. A copy of a Notice of Application to appoint a guardian for a person who is not capable of managing their affairs must be delivered to each of the following persons in accordance with Civil Procedure Rule 71.03 and 71.04 , unless a judge directs otherwise -
 - a) a parent, spouse and adult child of the person other than the applicant, or if the person has no living parent, no spouse, or adult child other than the Applicant, the person's next of kin other than the Applicant;
 - b) if the person resides in a place where care is provided, the manager of the residence
5. An Applicant must file the following documents no less than ten (10) days before the day the application is to be heard.
 - a) Notice of Application in chambers (Form 5.03)
 - b) Affidavit in support of application (Form 39.08) including the following information for an appointment under the *Guardianship Act*
 1. proof of the child's date of birth by birth certificate

2. if the child is over 12 years old but less than 16 years old, the child's position on the proposed appointment
 3. if the child is 16 years old or more, whether the child consents to the proposed appointment and, if not, the reasons for going against the child's wishes
- c) for an order under the *Incompetent Persons Act* there must be affidavits of 2(two) medical practitioners giving evidence of the present state of health of the person alleged to be incapable of managing their affairs.
 - d) an Affidavit proving serving of that the documents no less than 10 (ten) days before the day the application is heard.
 - e) Draft Orders (Form 78.05) - no less than three copies
 - f) Brief of Law (two copies)

Please Note: an Order appointing a guardian must provide for the filing of a bond, which bond may be executed by a recognized surety company or the Applicant personally with two sureties. Where the Applicant's bond is used, it must be supported by two sureties . The sureties must provide affidavits of justification showing that the sureties personally have non encumbered assets, worth at least the amount of the bond, available for realization on a judgment.

6. An inventory must be filed subsequent to the order which includes a concise description of each item of property, a concise description of the basis on which it was valued, the valuation amount and a total.
7. A guardian may make a motion for an order for sale, mortgage, lease or other disposition of property in the proceeding in which the guardian is appointed. A party who obtains an order for disposition of property must file a report on the sale no more than twenty-five (25) days after the day it is completed.

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