

HENNEPIN COUNTY

MINNESOTA

INSTRUCTIONS AND SAMPLE FORMS FOR THE APPOINTMENT OF A GUARDIAN AD LITEM OF A MINOR OR INCOMPETENT PERSON WHEN AN ADVERSE PARTY APPLIES FOR APPOINTMENT IN A PROCEEDING SUBSEQUENT

Table of Contents

SECTION 1: INTRODUCTION	2
SECTION 2: OVERVIEW	2
SECTION 3: SERVICE REQUIREMENTS	3
SECTION 4: POST-GUARDIAN AD LITEM APPOINTMENT	4
SECTION 5: OBJECTIONS	4
SECTION 6: SAMPLE FORMS	5

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SECTION 1: INTRODUCTION

If a minor is a defendant in a proceeding subsequent under Chapter 508 or 508A, a guardian ad litem (“GAL”) must be appointed for the minor¹. A GAL investigates and provides a report to the court and parties as to the best interests of the minor. Generally, this means the GAL is recommending that the minor object, or not object, to the order requested in the proceeding subsequent. A minor’s parent cannot act as the GAL unless formally appointed as GAL. A minor, or the minor’s parent could file a motion requesting appointment of their preferred party as the GAL, but these forms and instructions are intended for use by the petitioner, as an adverse party.

Minnesota Rule of Civil Procedure 17.02 provides that a party who is an infant or is incompetent, where no representative has been appointed by law, shall be represented by a GAL appointed by the court in which the action is pending or is to be brought. In Torrens actions, Minn. Stat. § 508.18 requires the court to appoint a disinterested person to act as a GAL for minors, and other persons under disability, and for all persons not in being who may appear and have any interest or lien upon the land. The order in a proceeding subsequent will not issue until a GAL has been appointed and filed a recommendation to the court. It is not necessary to wait to see if the minor or minor’s representative makes a motion to appoint a GAL. The petitioner may proceed to request appointment of a GAL as outlined in these instructions.

SECTION 2: OVERVIEW

The petitioner will obtain an Order to Show Cause (“OSC”) for the primary relief (i.e. new certificate after foreclosure) and will apply for appointment of the GAL by application and motion. The GAL must be appointed before the deadline date on the OSC with adequate time to review the matter and file recommendations before the OSC deadline date. It is recommended that the OSC deadline date be set at least 60 days out to ensure sufficient time for completion of the required tasks related to the GAL appointment.

¹ The most common situation requiring a GAL occurs when the holder of sheriff’s certificate of sale commences a proceeding subsequent for a new certificate of title after mortgage foreclosure. The examiner of titles issues a report recommending fee owner as a defendant. Fee owner is deceased and is survived by minor child. The minor child is a defendant in the proceeding subsequent and must have a GAL. Unless the minor or someone on their behalf applies for appointment of a GAL, the petitioner, as an adverse party to the minor, must have a guardian ad litem appointed for the minor child.

SECTION 3: SERVICE REQUIREMENTS

Service requirements are different for an OSC and a motion. Therefore, these instructions suggest serving the OSC first, and then serving the motion separately. The petitioner in the proceeding subsequent should proceed as follows:

1. Obtain Jurisdiction Over the Minor or Incompetent Person

The minor or incompetent person should be named as a defendant in the OSC, and subsequently served with the OSC. Minn. R. Civ. P. 4.03. The court has no jurisdiction over a minor not served with process and all subsequent proceedings in the action are void, *Phelps v. Heaton*, 79 Minn. 476 (1900).

If the individual is an infant under the age of 14 years, also serve the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the petitioner, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed. Minn. R. Civ. P. 4.03

2. Apply for appointment of the GAL

Minn. R. Civ. P. 7.02 and 17.02

The GAL shall not be a lawyer for any party to the action. Minn. R. Gen. Prac. 108.02
However, because the GAL is making recommendations on whether the minor party should object to the requested order affecting real property in which the minor may have an interest, it is helpful if a lawyer with real property expertise is nominated as the GAL.

- a. Contact the Examiner's office (ex.titles@hennepin.us or 612-348-3191) to obtain a motion date. Motions are generally heard on Thursdays at 11:00 AM by remote means, using the Zoom® application.

The appointment of the GAL must be sufficiently in advance of the OSC deadline date to allow at least 7 days for the GAL to file a report on the minor's or incompetent's behalf and it is recommended that the motion date is at least 20 days before the deadline date in the OSC to permit time for the GAL to make and file their report. Minn. R. Gen. Prac. 108.01

- b. File the Application for Appointment of Guardian Ad Litem along with a Notice of Motion and Motion and any supporting documents with the court at least 21 days before the GAL motion hearing; and pay the motion filing fee. Minn. R. Civ. P. 7.02; Minn. R. Gen. Prac. 115.04(a)

- c. [Email](#) a proposed Order for Appointment of Guardian Ad Litem in Word format to the Examiner's office.
- d. Serve the Application, Notice of Motion and Motion, and proposed Order as set out in Minn. R. Civ. P. 5.01 and 5.02 on the party, the party's spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. Minn. R. Civ. P. 17.02
- e. File affidavits of service with the court at least 7 days before the GAL hearing.

The motion hearing will be held by Zoom.

Serve a copy of the Order signed by the judge on the minor or incompetent person and the parties identified at paragraph 2.d. above by mail.

SECTION 4: POST-GUARDIAN AD LITEM APPOINTMENT

1. File the Consent and Oath of GAL

2. Provide the GAL with all pleadings and Reports of Examiner and OSC

We recommend providing these documents not less than 20 days before the OSC deadline date.

Minn. R. Gen. Prac. 108.01

3. GAL Report

The GAL prepares a report stating whether GAL consents to the order proposed in the Report of Examiner, or GAL objects to the proposed order. GAL files the GAL Report in the court file and serves it on petitioner not less than 7 days before the OSC deadline date.

Minn. R. Gen. Prac. 108.01

SECTION 5: OBJECTIONS

1. At or before motion hearing

If the minor or incompetent person, or a party acting on behalf of the minor or incompetent person, responds to the motion by paying the filing fee and filing

responsive papers at least 14 days before the GAL hearing, or appears at the motion hearing and objects to the appointment of the GAL, the Examiner will not recommend entry of the order appointing guardian ad litem. The Examiner will issue an order suspending the OSC deadline date for the minor, and the case will be assigned to a judge for future deadlines and proceedings.

2. By GAL

If the GAL objects to the proposed order in their report, unless the parties inform the court that they have resolved the dispute by the OSC deadline date, a 2-week continuance will be issued for an Answer to be filed on behalf of the minor. If an Answer is filed, the matter is treated as a contested case. See the “[Instructions for contested proceedings subsequent](#)” on the Hennepin County Examiner of Titles webpage.

SECTION 6: SAMPLE FORMS

[Sample forms](#) follow these instructions. These forms are drafted for the appointment of a GAL for a minor. If the situation is for an incompetent person, tailor the sample forms accordingly.

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

27-ET-CV-2_____

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

**DISTRICT COURT
FOURTH JUDICIAL DISTRICT**

In the Matter of the Petition of

For _____

**APPLICATION BY
ADVERSE PARTY FOR
APPOINTMENT OF
GUARDIAN AD LITEM**

_____, the attorney for the Petitioner in the above matter, states as follows:

1. That the Report of Examiner in the above matter recommends that notice of the proceeding be given to _____. _____ is deceased.

2. That the following minor child(ren) is an heir of the deceased:

Name	Age	Address
_____	_____	_____

3. That the parent(s), custodian or guardian of the minor child(ren) are:

Name	Relationship to minor	Address
_____	_____	_____

4. That the name and address of the minor's spouse, if any, is: _____.

5. That pursuant to Rule 17.02, Minn. R. Civ. P., Rule 108, Minn. Gen. R. Prac., and Minn. Stat. § 508.18, it is necessary that a guardian ad litem be appointed for the minor in the above matter.

6. That the following person who is a resident of the state of Minnesota has indicated his or her willingness to be appointed guardian ad litem for the minor:

Name:	_____
Age:	_____
Address:	_____
Occupation:	Attorney at Law

7. All facts and circumstances of the adversity or potential adversity of the person whose appointment is sought to the party, if any, are: _____.

Wherefore, Petitioner requests an Order appointing _____ as guardian ad litem for the above-named minor.

Date: _____

Signature

STATE OF MINNESOTA

COUNTY OF _____

I, _____, deposes and states that I am the attorney for the Petitioner in the above matter, that I have read the foregoing Application and that the same is true of my own knowledge except as to matters therein stated on information and belief and as to such matters I believe them to be true.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Signature

Name (typed or printed)

Date signed

County and State where signed

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

27-ET-CV-2_____

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In the Matter of the Petition of

For _____

NOTICE OF MOTION
AND MOTION FOR
APPOINTMENT OF
GUARDIAN AD LITEM

To: _____ (Minor), _____ (Minor’s spouse), _____ (Minor’s parent);

PLEASE TAKE NOTICE that Petitioner is asking the Court to sign the attached (Proposed) Order appointing _____ as guardian ad litem for _____:

This motion is based on all the pleadings and Reports of Examiner in the court file and on Minn. Stat. § 508.18, Rule 17.02 Minn. R. Civ. P., and Rule 108 Minn. Gen. R. Prac.

The Court will hold a hearing on this motion on Thursday, _____, at 11:00 a.m. This hearing will **not** be held in-person. **The hearing will be held remotely via Zoom and appearances shall be by video unless directed.**

If you wish to object to the entry of the Order set forth above you must contact the Examiner of Titles office at least 3 business days prior to the hearing date, and the Court will email you the Zoom link at least 1 business day before the hearing. The Minnesota Judicial Branch uses strict security controls for all remote technology when conducting remote hearings.

Visit www.mncourts.gov/Remote-Hearings for more information on remote hearings.

Examiner of Titles contact information:

- Phone: 612-348-3191
- Email: ex.titles@hennepin.us

You must provide: your name, mailing address, email address, telephone number, and the court file number.

If no objections are made, the Order may be granted without further notice.

If any objection is made, objecting party will be given time (generally one week) to file an Answer and the case will be assigned to a judge for all further proceedings.

If you DO NOT OBJECT to entry of the Order set forth above, **you are EXCUSED from appearing at the hearing**, and the Order may be entered without you.

Respectfully Submitted:

_____, Attorney for Petitioner

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

27-ET-CV-2_____

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In the Matter of the Petition of

(Proposed)
ORDER APPOINTING
GUARDIAN AD LITEM

For _____

This matter came on for hearing on _____ before the (Deputy) Examiner of Titles on Petitioner’s motion for Appointment of Guardian Ad Litem. The following persons appeared: _____.

Based on all the files and proceedings herein, the Court finds it is appropriate to appoint a guardian ad litem for _____, who is a minor and heir of _____, deceased. Decedent was a holder of an interest in the land that is the subject of this proceeding.

THEREFORE, IT IS HEREBY ORDERED:

1. _____, attorney at law, is hereby appointed guardian ad litem for _____, without bond, in this matter pertaining to Certificate of Title No. _____, for property described as _____.
2. The guardian ad litem shall promptly file a consent and oath with the court administrator, using a form substantially the same as Exhibit A attached to this Order.
3. Petitioner must promptly provide the guardian ad litem copies of the Petition filed _____, Report of Examiner filed _____, Order to Show Cause, and this Order Appointing Guardian ad Litem, in accordance with Gen. R. Prac. 108.01.
4. At least seven days prior to the Order to Show Cause deadline date of _____, the guardian ad litem shall file a report with the Court in this matter, and provide a copy to the Petitioner’s attorney (or Petitioner, if self-represented), to the minor, and to the minor’s parent(s) or other adult served with the Motion to appoint a guardian ad litem. The guardian ad litem’s report shall indicate either (a) that it is in the best interest of the minor to not oppose the proposed order recommended in the Report of Examiner, or (b) that the minor opposes the proposed order.
5. The compensation of the guardian ad litem for completing the duties set forth in this Order shall be paid by Petitioner, and any further compensation award will be by subsequent Order of the Court.

(Exhibit A)

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

27-ET-CV-2_____

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

**DISTRICT COURT
FOURTH JUDICIAL DISTRICT**

In the Matter of the Petition of

**CONSENT AND OATH OF
GUARDIAN AD LITEM**
(Minn. Stat. § 358.06)

For _____

STATE OF MINNESOTA)
COUNTY OF _____)

ss

I, _____, do swear that I will faithfully and justly perform all the duties of the office and trust which I now assume as guardian ad litem for _____ in the above matter, to the best of my ability. So help me God.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Signature

Name (typed or printed)

Date signed

County and State where signed