

Hennepin County Examiner of Titles

Instructions and Sample Forms for the Appointment of Guardian Ad Litem  
of Minor, when an Adverse Party Applies for the Appointment

May 4, 2012, revised February 7, 2013

Procedural posture: 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 the petitioner must have a guardian ad litem appointed for the minor child.

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 guardian ad litem ("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 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.

Under the procedural posture in the first paragraph, the petitioner should proceed as follows:

1. The minor should be named as a defendant in the Order to Show Cause, and subsequently served with the Order to Show Cause. 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 minor is under the age of 14, serve also the minor's mother or father. If neither parent is in the state, serve the resident guardian if there is one. If there is no resident guardian, then serve the person having control of the minor, or the person with whom the minor resides or by whom the minor is employed.

2. Apply for appointment of the GAL. Minn. R. Civ. P. 7.02 and 17.02.

- a. Provide a proposed Order and file Application for Appointment of Guardian Ad Litem along with Notice of Motion and Motion with Examiner's Deputy Court Administrator. Minn. R. Civ. P. 7.02. (Contact Deputy Court Administrator *Susan.K.Thompson@co.hennepin.mn.us* for motion date.) The appointment of the GAL must be sufficiently in advance of the order to show cause hearing to allow at least 10 days for the GAL to file an Answer or report on the minor's behalf.
  - b. Serve Application and Order, Notice of Motion and Motion as set out in Rule 5.01 by mail on the minor, minor's spouse, parent, custodian or other guardian. Rule 17.02.
  - c. Notify the Examiner's deputy court administrator if you intend to appear at the motion hearing as no appearance by Applicant is required. If the minor or the party acting on the minor's behalf appears and objects to the appointment of the GAL, the matter will be referred to a judge for a later hearing.
3. Serve a copy of the Order signed by the judge upon the minor and the parties identified at paragraph 2.b. above by mail.
  4. File Consent and Oath of GAL.
  5. Provide the GAL with all pleadings and Reports of Examiner. Gen. R. Prac. Dist. Cts. 108.01.

**IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION**

**File No.** \_\_\_\_\_

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**DISTRICT COURT  
FOURTH JUDICIAL DISTRICT**

In the Matter of the Petition of

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

For a new certificate of title  
after mortgage foreclosure

\_\_\_\_\_, 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 the heirs of \_\_\_\_\_, deceased.

2. That the following minor children are heirs of the deceased:

<b>Name</b>	<b>Birth date</b>	<b>Age</b>	<b>Sex</b>	<b>Location/Address</b>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

3. That the name and address of minors' living parent is:

4. That the name and address of minors' custodian or guardian is:

5. That the name and address of minors' spouse is:

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

7. That the following person has indicated his or her willingness to be appointed guardian ad litem for the minors:

Name: \_\_\_\_\_

Age: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Occupation: attorney at law

Wherefore, Petitioner requests an Order appointing \_\_\_\_\_ as guardian ad litem for the above-named minors.

Date: \_\_\_\_\_

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, having been first duly sworn on oath, state 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.

\_\_\_\_\_

Signed and sworn to before me

on \_\_\_\_\_, 2013, by \_\_\_\_\_.

\_\_\_\_\_

Notary Public

**IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION**

File No. \_\_\_\_\_

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**DISTRICT COURT  
FOURTH JUDICIAL DISTRICT**

In the Matter of the Petition of

ORDER APPOINTING  
GUARDIAN AD LITEM

For a new certificate of title  
after mortgage foreclosure

Pursuant to the Application for Appointment of Guardian Ad Litem, filed on \_\_\_\_\_, 2012, and based on all the files and proceedings herein, IT IS HEREBY ORDERED, as follows:

1. That \_\_\_\_\_, attorney at law, is hereby appointed guardian ad litem for \_\_\_\_\_ and \_\_\_\_\_ without bond.

2. That the guardian ad litem shall file a consent and oath with the court administrator.

3. That the Order to Show Cause in the above matter must be provided to the guardian ad litem at least 2 weeks prior to the order to show cause hearing scheduled for \_\_\_\_\_ (insert date) which is a reasonable period of time in advance of the hearing.

4. That at least 10 days prior to the Order to Show Cause hearing, the guardian ad litem shall file either a report in the matter indicating either (a) that it is in the best interest of the minors to not oppose the proposed order recommended in the Report of Examiner, or (b) that the minors oppose the proposed order.

5. That the compensation of the guardian ad litem shall be paid by Petitioner.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge of District Court

The statements in the Application filed on \_\_\_\_\_, 2013 were found by me to be true after due hearing and the entry of this Order is recommended.

\_\_\_\_\_  
Deputy Examiner of Titles

**IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION**

**File No.** \_\_\_\_\_

**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 a new certificate of title  
after mortgage foreclosure

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

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 \_\_\_\_\_ and  
\_\_\_\_\_ in the above matter, to the best of my ability. So help me God.

\_\_\_\_\_  
\_\_\_\_\_

Signed and sworn to before me  
on \_\_\_\_\_, 2013, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public