



National Association for Court Management

# How to Protect our Nation's Most Vulnerable Adults through Effective Guardianship Practices



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# How to Protect our Nation's Most Vulnerable Adults through Effective Guardianship Practices



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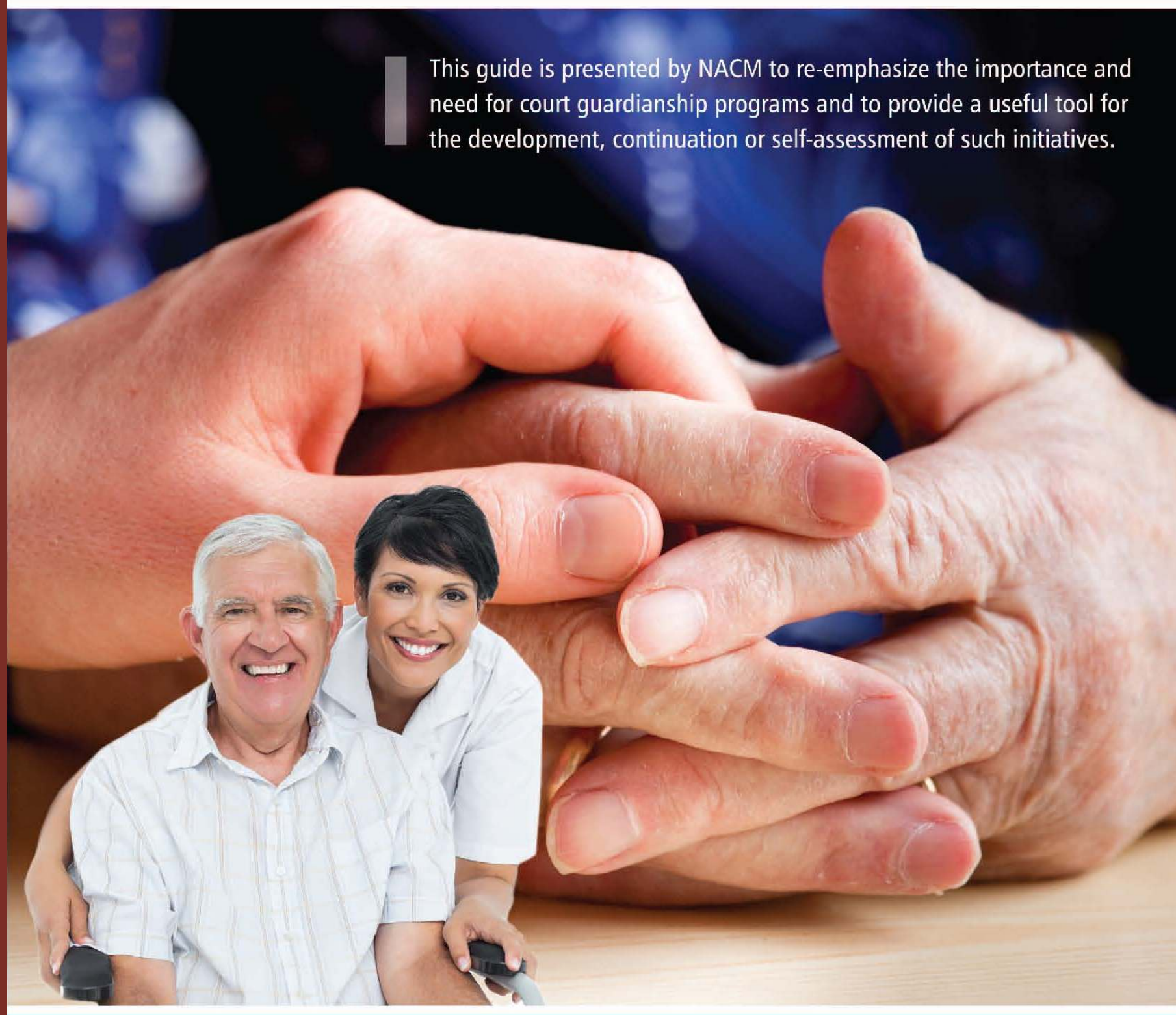
**National Association for Court Management**

2013-2014 GUIDE

# ADULT GUARDIANSHIP GUIDE

A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program

This guide is presented by NACM to re-emphasize the importance and need for court guardianship programs and to provide a useful tool for the development, continuation or self-assessment of such initiatives.



*Located at:* [nacmnet.org](http://nacmnet.org)

# NATIONAL PROBATE COURT STANDARDS



**Borchard Foundation**  
Center on Law & Aging

**SJI**  
State Justice Institute

**ACTEC**  
FOUNDATION

*Located at:* Center for Elders and the Courts



The logo for the Center for Elders and the Courts (CEC) features the letters 'cec' in a stylized, lowercase font. The 'c' is a light blue color, while the 'e' and 'c' are a darker blue. The letters are bold and have a slight shadow effect.

Center for Elders and the Courts

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[www.eldersandcourts.org](http://www.eldersandcourts.org)



# Objectives

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- To provide a general overview of the complexity and importance of guardianship cases
- To share practices that enhance court efficiencies and oversight
- To provide action steps your court can take to improve guardianship practices



*Guardianship is both an essential tool and a dangerous weapon.*

--Joanne Marlatt Otto  
National Adult Protective Services Association



applicant opened a bank account, the balance of which was used for assistance payments of over \$150,000.

... finding back to similar findings in a previous... made to people after their... particular... Another... applicant... as...

**Motion for Discharge of Guardian/Conservator**

... and should be... obtain an... tion holding any... on along with a pri... ed in these pro...

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LAS VEGAS SUN  
Sports book's sponsorship of Outlaws OK with league

509  
\$1.60

LAS VEGAS REVIEW-JOURNAL  
SUNDAY  
APRIL 18, 2010

Obama, Castro start 'path toward the future'

**RJ**

**A FLAWED SYSTEM**

**THE POWER TO HELP, THE POWER TO ABUSE**

County program to protect its weakest citizens inherently ripe for misconduct

... This led to improper... the auditors al... bling an...

**South Jersey Elder Fraud Arrests**

Barbara Lieberman, Esq.  
Jan Van Helt  
Susan Hamilton  
Sandra Sines

New Jersey Office of the Attorney General  
Division of Criminal Justice  
New Jersey State Police

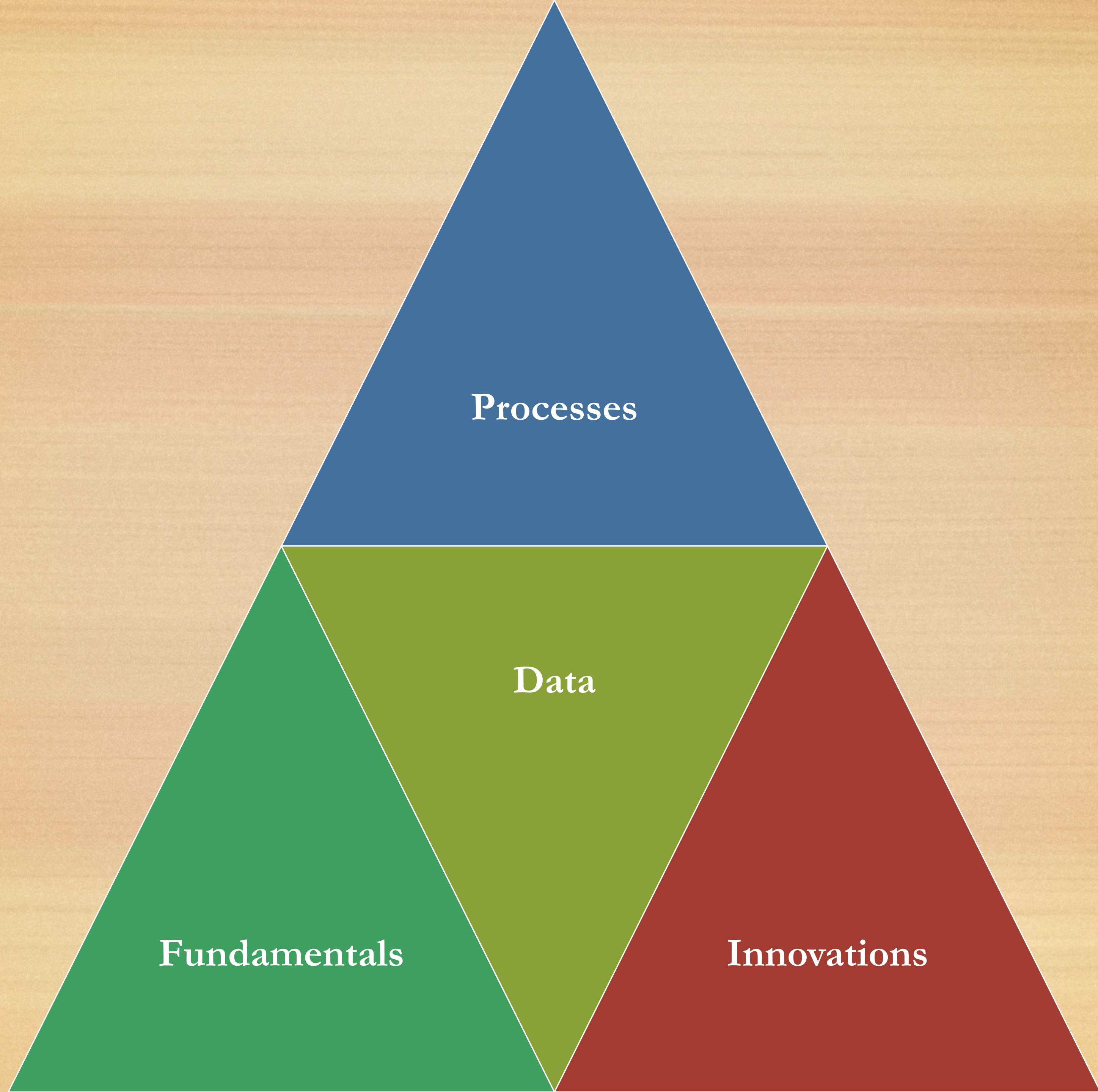


# General Terms

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- Guardianship
  - Guardians of the Person  
*(possess some or all powers with regard to the personal affairs of the individual)*
- Conservatorship
  - Guardians of the Estate  
*(possess some or all powers with regard to the real and personal property of the individual)*
- Person under Guardianship/Conservatorship ... Protected Person...Respondent





**Processes**

**Data**

**Fundamentals**

**Innovations**



# It all starts with....DATA



## CAN YOUR COURT PROVIDE DATA ON?

- How many new guardianships cases were filed in 2014? \_\_\_\_\_ 👍 👎
- How many open/pending guardianship cases are under the court's jurisdiction? \_\_\_\_\_ 👍 👎
- What is the total amount of assets under conservatorships/guardianships of the estate? \_\_\_\_\_ 👍 👎



# Data Goals



1. Documentation of caseloads and trends
2. Demonstrating the importance of guardianship cases in the court structure—especially amount of assets under court's watch
3. Developing and using performance measures, such as the percentage of guardians who are filing annual reports on time

**Data is fundamental to ALL Court Management tasks, driving decisions on staffing, budget, technology, and training.**



# ACTION STEPS



## No Data

Gather basics  
Add fields as needed

## Some Data

Review & code older case files  
Compile complete data

## Great Data

Develop perf. Measures  
Create reports & protocols

Determine what data is missing and the types of data you would like to collect  
(e.g., delinquent reports, contested nature of case, bond levels)



# General Guardianship Process

Pre-Adjudication

Post-Adjudication

Pre-petition

Monitoring

Petition

Termination

Court Hearing



# PLEASE RATE YOUR COURT'S GUARDIANSHIP PRACTICES

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- EXCELLENT
- GOOD
- AVERAGE
- FAIR
- POOR



# ESTABLISHING THE GUARDIANSHIP

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Initial screening to determine if there are less intrusive alternatives

Written notice of the proceeding is provided to the respondent and interested parties

Attorney is appointed to represent the respondent

Hearing is held promptly to determine capacity levels and the need for guardianship

Temporary guardian or conservator *ex parte* is appointed upon showing of emergency

Court appoints a suitable and willing guardian or conservator



# ACTION PLAN

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- ✓ Review Petition Forms and Processes
- ✓ Give Timely Written Notice to Interested Parties
- ✓ Build Resources to Improve Availability and Qualifications of Guardians
- ✓ Provide Training and Assistance
- ✓ Improve Integrity of Process
  - ✓ Expedite Handling of Incapacity and Guardianship Matters
  - ✓ Promote Independent Representation of Alleged Incapacitated Person
  - ✓ Assign Guardian *ad litem* or Court Visitor



# REVIEW PETITION FORMS & PROCESSES

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## COMPONENTS

- Reasons that a guardianship/conservatorship is being sought
- Description of nature/extent of limitations
- Representations that less intrusive alternatives to guardianship have been examined (e.g., advance health care directives, durable powers of attorney)
- Guardianship powers being requested and duration of powers
- Conservatorships: Nature and estimated value of assets, real and personal property included in the estate, estimated annual income

## PROCESS

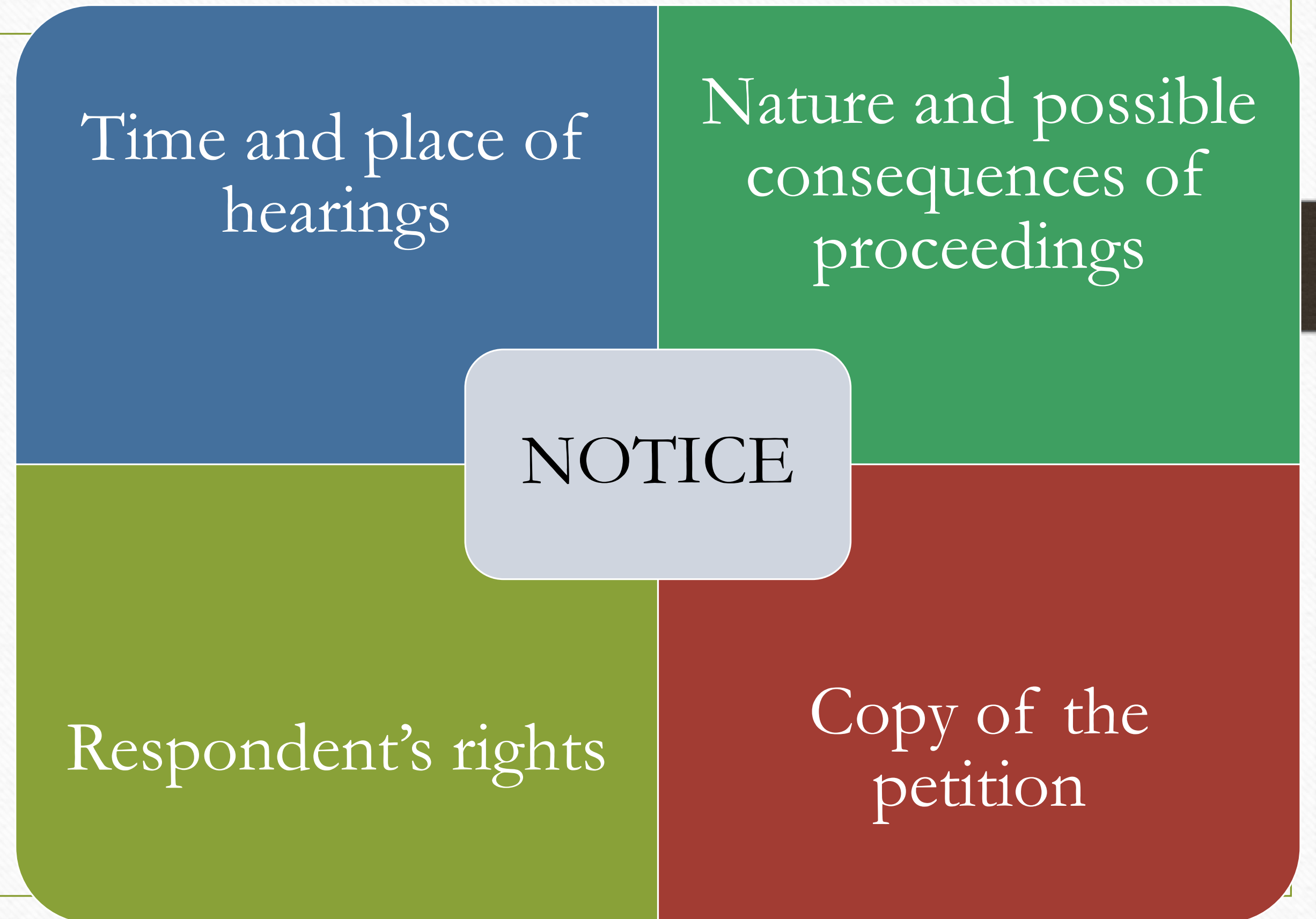
- Petitions available on website
- Fillable plain language forms
- Petitions can be e-filed with Attachments

Example: [17<sup>th</sup> Judicial Circuit of Florida's Probate eFiling Program](#)



# GIVE TIMELY WRITTEN NOTICE

- Plain language and readable type
- Notice to interested parties (family, individuals having care and custody of respondent, agents under financial and health care POAs, etc.)
  - Waived when there are allegations of abuse
  - Procedure allowing interested persons to file a request for notice





# PROVIDE TRAINING

- What training is available for proposed guardians and conservators?
  - Written guides—Online Videos—Formal Classes—Mentoring—Legal clinics
  - Guardianship Assistance Programs (GAP)



**Certification**

Center for  
Guardianship  
Certification



**Membership**

National  
Guardianship  
Association



# TRAIN JUDICIARY & COURT STAFF

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- NCSC's Justice Responses to Elder Abuse (Guardianship Scenario)
- National College of Probate Judges (semi-annual conferences)
- The National Judicial College – Probate Course in Development
- State Judicial Educational Opportunities



# INNOVATIONS

## Building a “Pool” of Qualified Guardians

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### ISSUE

- Courts must find ways to address the ongoing needs for qualified guardians

### TOOLS

- Engage in outreach to social services agencies and community partners
- Develop and maintain a pro bono program—keep a register and rotate through list
- Offer free training and encourage national certification



# INNOVATIONS

## Mediation/Dispute Resolution

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### ISSUE

- Contested guardianships are becoming more adversarial and may require additional court resources

### TOOLS

- Use a mediation/dispute resolution program for contested cases
- Provide additional oversight to cases and consider special conditions to ensure the estate is not eroded by attorney fees (adopt fee schedules)



# INNOVATIONS

## Supporting Guardians

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### ISSUE

- The personal, financial and emotional demands can lead to the resignation of a guardian. Few courts provide ongoing training, support, and resources to guardians.

### TOOLS

- Provide regular free training to lay guardians
- Designate a contact person who can provide additional resources
- Develop mentoring and community building opportunities
- Develop a Guardianship Assistance Program (GAP)



# MONITORING GUARDIANSHIPS

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*The court's responsibilities do not end with the appointment of a guardian. Rather, courts have an ongoing responsibility to make certain that the respondent is receiving the services and care required, the estate is being managed appropriately, and the terms of the order remain consistent with the respondent's needs and condition.*

-National Probate Court Standard 3.3.17



# STAFFING

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## Court Specialists

- Investigative and auditing specialists
- Report directly to the court
- Centralized units/Assigned positions can be economically feasible

## Volunteer Monitors

- Realistic option for low-resource courts
- Requires volunteer coordinator
- Level of expertise dependent on volunteer pool



# GENERAL REQUIREMENTS

	GUARDIANSHIP FILINGS	CONSERVATORSHIP FILINGS
<b>Required at the Hearing or Within 60 days</b>	<ul style="list-style-type: none"> <li>• Guardianship plan</li> <li>• Report on respondent's condition</li> </ul>	<ul style="list-style-type: none"> <li>• Inventory of the respondent's assets</li> <li>• Plan on how resources will be allocated to meet respondent's needs</li> </ul>
<b>Notices Required by the Court</b>	<p>Advance notice of:</p> <ul style="list-style-type: none"> <li>• Respondent's intended absence from the court's jurisdiction in excess of 30 days</li> <li>• Any major anticipated change in the respondent's residence</li> </ul>	<ul style="list-style-type: none"> <li>• Conservators should submit for court approval amended plans if there are any anticipated or real deviations from the approved plan</li> </ul>
<b>Follow-up Reports</b>	<ul style="list-style-type: none"> <li>• Annual updates</li> </ul>	<ul style="list-style-type: none"> <li>• Annual accountings or updates</li> </ul>



# ACTION PLAN

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- ✓ Improve filing processes—standardized forms, e-filing, automated reminders
- ✓ Ensure all plans, reports, inventories and accountings are reviewed properly by staff and/or volunteer monitors
- ✓ Respond to problems by independently investigating the well-being of the respondent and the status of the estate, as needed
- ✓ Develop or refine the citizen complaint process



# IMPROVE FILING PROCESS

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- Use fillable forms and e-Filing
- Document and ensure parties are aware of report due dates
- Send reminders prior to report due dates (“tickler” systems)
- Have backup contacts on file should parties relocate without notifying court
- Provide examples of inventories, accountings, and health status reports
- Offer local or court training/seminars/workshops to improve reporting



# FOLLOW UP ON PROBLEMS

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## Reporting abuse or exploitation

- Know your reporting duties
- Draft and distribute reporting protocol
- Establish contacts with major agencies (e.g., law enforcement, adult protective services)

## Developing graduated sanctions

- Issue “show cause” hearing
- Grant emergency relief (freeze assets)
- Order an immediate accounting
- Impose sanctions—suspension, contempt, removal, appointment of successor



# GRADUATED SANCTIONS (*NPCS 3.3.19*)

## SANCTION ISSUED:

## IN RESPONSE TO:

Contempt citation

Failure to file required reports on time after receiving notice and appropriate training and assistance

Order freezing the assets and suspending the powers of the conservator

Indications of theft or mismanagement of assets

Notice of a show cause hearing to probate court in new jurisdiction

Guardian or conservator has left the court's jurisdiction

Disciplinary action for attorneys

Attorney guardians/conservators may have violated their fiduciary duties to the respondent

Suspension and appointment of a temporary guardian/conservator

Failure to perform duties: Welfare, care or estate of the respondent requires immediate attention



# DEVELOP A COMPLAINT PROCESS

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Streamline complaint procedures for citizens

Establish internal protocols to respond to complaints

Review and evaluate



# INNOVATIONS

## Protection of the Estate

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### ISSUE

- In most jurisdictions, there is no regulation of attorney or guardian fees beyond a “within reason” standard

### TOOLS

- Establish fee schedules (e.g., pay scales based on experience and types of tasks performed, fees as percentage of assets)
- Require conservators to prepare a forward-looking report that will document how the principle of the estate will be sustained



# INNOVATIONS

## Limited Resources

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### ISSUE

- Many courts do not have sufficient staff or resources to actively monitor cases

### TOOLS

- Develop technologies and case management strategies to allocate scarce resources
- Create specialized position(s) and provide training to staff
- Develop volunteer monitoring programs
- Implement Differentiated Case Management (DCM) techniques



# INNOVATIONS

## Distribution of Resources



Technology

### Minnesota

- Conservator Account Auditing Program (CAAP) with MyMNConservator software
- Uses a 4-level auditing system to denote issues with conservatorships
- Plays a critical role in asset recovery
- Resource: [September 21 Workshop](#)

### Nebraska

- Distribution of Workload
  - Urban → Rural
- Specialized Positions: Guardian/Conservator Extra Duty Specialists



# INNOVATIONS

## DCM in Maricopa County, AZ



Phase DCM Applied	Types of Cases	Action Applied to Subset
<b>Pre-Appointment</b>	Uncontested Petitions	Appointment of Fiduciary
	Contested Petitions	<ol style="list-style-type: none"> <li>1. Hearing</li> <li>2. Alternative dispute resolution</li> <li>3. Settlement conference</li> <li>4. Trial</li> <li>5. Appointment of Fiduciary</li> </ol>
<b>Post-Appointment</b>	Minimum Monitoring	Biennial telephone interview with respondent
	Moderate Monitoring	Annual in-person visit with respondent
	Maximum Monitoring	Combination of actions, including case compliance audit or forensic investigation



# PLEASE RATE YOUR COURT'S GUARDIANSHIP PRACTICES

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- EXCELLENT
- GOOD
- AVERAGE
- FAIR
- POOR



# TO WHAT EXTENT ARE IMPROVEMENTS NEEDED IN YOUR COURT'S GUARDIANSHIP PRACTICES?

- Significant improvements are needed
- Some improvements are needed
- No improvements are needed



*Adult guardianship cases offer court managers the opportunity to initiate substantial reforms and improvements in court processes and monitoring practices that strive to protect the well-being and assets of vulnerable adults. Historically, resources to address these cases have been limited, requiring courts to craft innovative financing solutions and sometimes rely on volunteers to staff programs. Despite challenges, the increasing application of technology and the circulation of model court practices may offer a guidepost to future reforms.*

*-NACM's Adult Guardianship Guide, p. 31*





National Association for Court Management

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**Webinar will be posted on NACM's website  
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