

Checklist for Filing Guardianship Petitions

1. **Verification:** When a person comes to the counter to file a Petition for guardianship, check first to make sure that the Petition is verified (Is there is a notary seal on the last page?).
 - a. The petition **MUST** be verified before it is file-stamped.
2. **Filing Fee:** \$100 OR they must file a petition to sue as a pauper.
3. **Exhibits:** If the Petition is being filed with any exhibits (ex: Licensed Physician's Certification or medical records), they must be labeled in the upper-right corner as Petition Exhibit # __. Look at number 16 on the Petition to see if the petitioner checked yes or no.
4. **Criminal Record Check:** If the Petitioner is the proposed guardian, look at number 26 of the Petition and ask if they would like to have a criminal background check run at that time.
 - a. If yes, have them complete a Request for Criminal Background Check form. The fee for criminal background checks will not apply – do not charge.
5. **Assign SP File Number.**
6. **Summons:** Fill in the names and addresses of all parties on the Summons and Order to Appoint Guardian ad Litem (EBCI-35A –Summons-23(1)), and the date of the pre-adjudication hearing and the hearing on the petition.
 - a. Check with Assistant Clerk (Denise Walkingstick) as to the next GAL. Fill in the attorney's information on the Order to Appoint Guardian ad Litem. **DO NOT SIGN THE ORDER.**
 - b. **Interested Parties:** Look at number 9 on the Petition to find the names of the interested parties. If there is more than one interested party, complete a separate Summons for each.
 - c. **Hearing dates** – the pre-adjudication hearing must be within 10 days, and the hearing on the petition must be within 30 days.
 - i. Schedule hearings for Tuesdays, Wednesdays, or Thursdays at 10AM, 11AM, or 2PM
7. **Signature:** Bring the Summons and Order to Appoint Guardian ad Litem to the Clerk of Court to sign the order.
 - a. If the Clerk of Court is not here – have one of the judges sign the order.
8. **Explain Service:** The Petitioner is responsible for serving the Respondent and the interested parties. Inform the Petitioner that the Court will serve the GAL.
 - a. Service may be delivered via personal service (CIPD) or by delivery (EBCI-35A–Summons.Aff.Serv.-23(1)).
 - b. Personal service through CIPD is included in the filing fee.
 - c. If the Petitioner chooses to mail service, use the Affidavit of Service form (EBCI-35A–Summons.Aff.Serv.-23(1)) and explain that they have to bring the delivery receipt with them when they file and that the form must be verified.
9. **Prepare service packets.** This includes: (1) a copy of the Petition (+ any exhibits attached to Petition) and (2) a copy of the Summons and Order to Appoint Guardian ad litem.
 - a. Give the service packets to the Petitioner if they are mailing or drop the packets in the CIPD service stack.
10. **Email Packet to GAL.** The header of the email should be: "Confirm Receipt Requested – Appointment as GAL in SP ____" CC the Clerk of Court on the email.

EASTERN BAND OF CHEROKEE INDIANS
CHEROKEE COURT
 CHEROKEE, NORTH CAROLINA

File No _____



(CASE TITLE) IN THE MATTER OF THE GUARDIANSHIP OF: _____	GUARDIANSHIP SUMMONS <input type="checkbox"/> ORDER APPOINTING GUARDIAN AD LITEM
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C.C. Chapter 35A-1100 et seq; Rule 4

Name and address of Respondent (Person alleged to be in need of a guardian) _____	Name and address of Interested Party (Persons Known to Have an Interest in the Petition) _____
Name and address of Petitioner (Person/Agency Filing Petition) _____	Name and address of Petitioner's Attorney _____

A Petition has been filed in the Cherokee Court alleging that the Respondent is a protected adult or protected child, and requesting that a guardian be appointed.

You are notified to appear and answer the attached Petition as follows:

1. File a written answer to the Petition in the office of the Clerk of the Cherokee Court within thirty (30) days of the date you were served.
2. Serve a copy of your written answer on the Petitioner's attorney, or the Petitioner if an attorney is not listed, by personal delivery or mail at the address listed above.
3. Attend the pre-adjudication hearing.

When: _____ at: _____ AM/PM

Where: EBCI Justice Center, 137 Seven Clans Lane, Cherokee, NC 28719

4. Attend the hearing on the petition.

When: _____ at: _____ AM/PM

Where: EBCI Justice Center, 137 Seven Clans Lane, Cherokee, NC 28719

The Respondent may attend either in person or by electronic means, any court hearings to which they are a party. The Respondent may request that a hearing be held at their location if they unable to attend.

Date Issued	Time Issued : _____ AM/PM (circle one)	<input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Deputy Clerk <input type="checkbox"/> Clerk of Court	Signature of Clerk
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ORDER APPOINTING GUARDIAN AD LITEM

Pursuant to C.C. 35A-1103(h), IT IS HEREBY ORDERED that the following attorney is appointed to serve as guardian ad litem to assist the Court. The role and duties of the guardian ad litem shall be in accordance with Article 4 of Chapter 35A of the Cherokee Code.

Name of Guardian ad Litem

Address of Guardian ad Litem

Telephone No.

Email

Date Issued	Name of Official	Signature of Official
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RETURN OF SERVICE

I certify that a copy of the Petition, Summons, and Order Appointing Guardian ad Litem were received and served as follows:

Respondent

Name of Respondent	Date Served
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Address Where Respondent was Served:

By delivering to the Respondent named above a copy of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian.

By leaving copies of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian at the Respondent's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

Name of Person with whom Copies Left:

Address where Copies Left:

Respondent was NOT served for the following reason:

Guardian ad Litem

Name of Guardian ad Litem	Date Served
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Address where Guardian ad Litem was served:

By delivering to the Guardian ad Litem named above a copy of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian.

By leaving copies of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian at the guardian ad Litem's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

Name of Person with whom Copies Left:

Address where Copies Left:

Guardian ad litem was NOT served for the following reason:

Interested Party

Name of Interested Party	Date Served
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Address where Interested Party was served:

By delivering to the Interested Party named above a copy of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian.

By leaving copies of the Petition and Summons and Notice of Hearings For Petition For Adjudication of Protected Adult and Appointment of Guardian at the Interested Party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

Name of Person with whom Copies Left:

Address where Copies Left:

Interested Party was NOT served for the following reason:

Date Received	Date Delivered
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Full Name of Law Enforcement Officer Delivering Service	Signature of Law Enforcement Officer
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ACCEPTANCE OF SERVICE

Service accepted by Guardian ad Litem.

Date Accepted:

Signature of Guardian ad Litem:

Service accepted by Interested Party.

Date Accepted:

Signature of Interested Party:

**EASTERN BAND OF CHEROKEE INDIANS
 CHEROKEE COURT
 CHEROKEE, NORTH CAROLINA**

▶ File No.

IN THE MATTER OF THE GUARDIANSHIP OF:
Name of Respondent <i>(Person alleged to be in need of a guardian)</i>
Name of Petitioner <i>(Person/Agency Filing Petition)</i>

AFFIDAVIT OF SERVICE BY:
 Registered or Certified Mail
 Designated Delivery Service
 Signature Confirmation

Cherokee Code Chapter 35A-1103(d), (e); Rule 4(j)(2)

The undersigned Petitioner certifies that:

- On _____ *(insert date of mailing)*, I deposited a copy of the Petition and the Summons and Order Appointing Guardian ad Litem ("Petition/Summons"): in the post office for mailing by registered or certified mail, return receipt requested. with a designated delivery service as authorized by Rule 4 of the Rules of Civil Procedure, delivery receipt requested. in the post office for mailing by signature confirmation.
- The Petition/Summons was mailed to the *(select one)*: Respondent, Guardian ad Litem, Interested Party, at the following address *(complete an individual affidavit for each party)*:

<i>(Name of Party)</i>	<i>(Address Where Mailed)</i>
_____	_____

- On _____ *(insert date of delivery)*, the Petition/Summons was in fact received, as evidenced by: *(select one)* the attached registry receipt (registered or certified mail). the attached delivery receipt (designated delivery service). the attached proof of delivery obtained from the United States Postal Service (signature confirmation).
- The delivery receipt or printout of an electronic receipt of signature confirmation is attached to this affidavit.

SWORN TO AND SUBSCRIBED BEFORE ME		Name of Petitioner/Petitioner's Attorney		Signature	
		Date		County Where Notarized	
Name of Notary Public		Signature of Notary Public			
Date Commission Expires		SEAL			

EASTERN BAND OF CHEROKEE INDIANS
CHEROKEE COURT
 CHEROKEE, NORTH CAROLINA



IN THE MATTER OF THE GUARDIANSHIP OF:

Name of Respondent (Person alleged to be in need of a guardian)

Respondent (Check One): Is Indigent Is Not Indigent

Name of Petitioner (Person/Agency Filing Petition)

Petitioner (Check One): Is an Agency Is a person

**PETITION FOR ADJUDICATION OF
 PROTECTED ADULT CHILD
 AND APPOINTMENT OF GUARDIAN**

Cherokee Code Chapter 35A

IMPORTANT: This Petition must be verified before a notary. After you file this Petition in the Clerk's Office, you must serve a copy of the Petition and Summons (which will be given to you by the Clerk's Office) on the Respondent and any persons you identify in Part III as having an interest in the Petition, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

The undersigned Petitioner, being duly sworn, requests the Court, after notice and hearing, adjudicate the Respondent named above to be a (check one: protected adult, as defined in Cherokee Code 35A-1101(r), protected child, as defined in Cherokee Code 35A-1101(s)), and also to appoint the Petitioner's proposed guardian to serve in the capacity indicated. In support of this Petition, the undersigned affirms the following:

Part I. Information About Petitioner

(The Person Filing the Petition)

1. Full Name of Petitioner (or name of personal representative of Agency): _____
2. Date of Birth (mm/dd/year): _____
3. Address of Residence: _____

 Current Mailing Address: _____
 Same as residence Other: _____
4. Physical Location: Same as residence Same as current mailing address Other: _____
5. Relationship to Respondent: _____

 Interest in proceeding (why are you bringing this petition): _____

Part II. Information about Respondent

(Person alleged to be in need of guardian)

6. Full Name of Respondent: _____
7. Date of Birth (mm/dd/year): _____ Age: _____
8. Residence: _____

 Current Mailing Address: _____
 Same as residence Other: _____

Physical Location (include the name and address of any treatment, hospital inpatient, or residential facility/institution): Same as residence Same as current mailing address Other: _____

Respondent has resided at the physical location since (date: _____), and this residence (check one) is on Cherokee Trust Lands. is not on Cherokee Trust Lands.

(Check one) Respondent is not currently residing on Cherokee Trust Lands but has resided on Trust Lands in the past 6 months.
 Respondent is currently residing on Cherokee Trust Lands.

Part III. Other Interested Parties

9. List the names and addresses of any other persons known to have an interest in the Petition, including the Respondent's spouse, caregiver, adult children, and if none, the Respondent's parents and adult brothers and sisters, and if none, at least one adult nearest in

kinship to the Respondent who can be found with reasonably diligent efforts (Continue on an additional sheet if necessary – you must list all interested persons):

Name and Address of Interested Party 1	Name and Address of Interested Party 2
Relationship to Respondent or Interest in Petition	Relationship to Respondent or Interest in Petition
Name and Address of Interested Party 3	Name and Address of Interested Party 4
Relationship to Respondent or Interest in Petition	Relationship to Respondent or Interest in Petition

Provide any additional information about the other interested parties that you believe the Court should know (e.g., are they aware that the Petition is being filed, do they support a guardianship): _____

Part IV. Existing Legal Instruments or Orders

10. There (check one): is a power of attorney (POA) in place. is not a power of attorney (POA) in place.
 - a. The POA is (check one): a general/durable POA. a healthcare POA. other/unknown.
 - b. The name of the person who has the POA is: _____
 - c. The POA: is recorded (give name of county(ies)/state of record: _____). is not recorded.
11. There (check one): is a special needs or other trust in place. is not a special needs or other trust in place.
 - a. The name of the trustee is _____ and the location of the trust is _____.
12. There (check one): is another court proceeding involving Respondent. is not another court proceeding involving Respondent.
 - a. The court proceeding is located in (name of court and the county and state where the court is located): _____
 - b. The type of proceeding is: _____
 - c. The file number for the proceeding is: _____
 - d. The date of the most recent filing is: _____
 - e. The date of the most recent order is: _____
13. There (check one): are other legal or medical or financial instruments or orders in place. are no other legal or medical or financial instruments or orders in place.
 - a. If yes, list all: _____

 - b. If no or unknown, explain any effort you have made to locate any instrument or order; list the name(s) of any individual(s) who would have knowledge of any instrument or order; and list the location (name of court; county; or state) where any instrument or order would have been created, filed, or ordered: _____

Part V. Facts Showing the Need for a Guardianship

14. **Need for Guardianship.** Explain or describe the facts showing that Respondent is a protected adult (a person who is unable to understand, make, communicate or act on decisions about their person or property, as a result of mental illness, mental deficiency, physical illness or disability, advanced, chronic use of drugs, chronic intoxication, or other cause) or a protected child (a minor who is at least 17 ½ years old, who other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning his/her person, family, or property as a result of mental illness, mental deficiency, physical illness or disability) and facts showing why a guardianship is needed, including supporting evidence, date of examination, examples of behaviors: _____

15. For the following section select yes or no based on whether you agree with the statement. Attach additional sheets if extra space is needed.

Respondent is in a coma, persistent vegetative state, or is non-responsive. (If yes, you may move on to 16.)

Communication and Cognition.

- | | |
|---|---|
| <p>A. Respondent understands and participates in conversations. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to understand and respond to verbal communications. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>C. Respondent is able to read and write. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>D. Respondent understands their care needs. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>E. Respondent is able to read and understand various signs (e.g., keep out, stop, danger). <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>F. Respondent has been diagnosed with a neurocognitive disorder (e.g., dementia, Alzheimer's). <input type="checkbox"/> Yes. <input type="checkbox"/> No. <u>Diagnosis:</u> _____ <u>Date of Diagnosis:</u> _____</p> <p>G. Respondent is able to make or communicate decisions concerning family. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|---|---|

Personal Hygiene

- | | |
|--|---|
| <p>A. Respondent is able to bathe independently. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to maintain personal hygiene. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>C. Respondent is able to brush teeth daily and maintain adequate dental care. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>D. Respondent is able to use the restroom without assistance. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>E. When toileting, Respondent uses proper hygiene. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>F. Respondent is able to fully and properly dress and undress themselves. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|--|---|

Health Care

- | | |
|--|---|
| <p>A. Respondent is able to make and communicate choices in regard to medical treatment. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to make and communicate choices in regard to caregivers and/or assistants. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>C. Respondent knows who to notify of symptoms of illness. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>D. Respondent is able to take care of minor health problems such as colds, cuts, etc. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|--|---|

E. Respondent is able to follow proper instructions in taking prescribed medicine. Yes. No. Comments:

F. Respondent is able to communicate medication problems or needs. Yes. No. Comments:

G. Respondent is able to understand the consequences of not accepting medical treatment. Yes. No. Comments:

Personal Safety and Civil

A. Respondent is able to identify abuse and neglect and protect themselves from harm. Yes. No. Comments:

B. Respondent is able to recognize potential danger and respond to emergencies. Yes. No. Comments:

C. Respondent knows who to contact if they are being exploited (e.g., police, PHS/Family Safety/DSS). Yes. No. Comments:

D. Respondent is susceptible to exploitation/undue influence. Yes. No. Comments:

E. Respondent has previously been mistreated. Yes. No. Comments:

F. Respondent is able to avoid common environmental dangers (e.g., oncoming traffic, sharp objects, poisonous products). Yes. No. Comments:

G. Respondent is able to use a telephone to contact help in an emergency. Yes. No. Comments:

H. Respondent is able to communicate wishes regarding legal documents or services Yes. No. Comments.

Employment

A. Respondent is currently employed or has a job. Yes. No. Comments:

B. Respondent is able to interact appropriately with co-workers and authority figures in the workplace. Yes. No. Comments:

C. Respondent is able to make and communicate choices in regard to employment. Yes. No. Comments:

D. Respondent is able to express knowledge of or demonstrate vocational skills. Yes. No. Comments:

E. Respondent is able to use different approaches to find employment (e.g., going to a job fair, responding to ads). Yes. No. Comments:

Independent Living and Nutrition

A. Respondent is currently assisted by a hired or family caregiver or is receiving home/community-based services. Yes. No. Comments:

B. There are concerns about Respondent's mobility. Yes. No. Comments:

C. Respondent is able to arrange transportation. Yes. No. Comments:

D. Respondent is able to safely operate a car. Yes. No. Comments:

E. Respondent is able to make independent decisions regarding eating (e.g., when, where, and what to eat). Yes. No. Comments:

F. Respondent is able to maintain adequate nutrition. Yes. No. Comments:

G. Respondent is able to avoid common dangers when traveling in the community. Yes. No. Comments:

H. Respondent is able to identify their address and return home or seek assistance if lost or stranded. Yes. No. Comments:

I. Respondent is able to independently use community resources, such as the bank, grocery store, post office. Yes. No. Comments:

J. Respondent is able to exercise reasonably good judgement most of the time. Yes. No. Comments:

K. Respondent is able to eat and drink independently. Yes. No. Comments:

- L. Respondent is able to prepare and/or follow a prescribed diet based on a health condition, such as diabetes. Yes. No. Comments:
- M. Respondent is able to make and communicate choices in regard to their residence. Yes. No. Comments:

- N. Respondent is able to maintain shelter that is safe, adequately heated, and adequately ventilated. Yes. No. Comments:

Financial

- A. Respondent is able to make and communicate decisions about paying bills and spending discretionary money. Yes. No. Comments:
- B. Respondent knows the source and amounts of monetary benefits they receive or are eligible to receive on a weekly, monthly, or annual basis. Yes. No. Comments:
- C. Respondent is able to make change for \$1, \$5, or \$10. Yes. No. Comments:
- D. Respondent is able to make and communicate decisions regarding management of personal bank

account, savings, investments, real estate, or other substantial assets. Yes. No. Comments:

- E. Respondent is able to understand the concept of debt, and understand their own debt. Yes. No. Comments:
- F. Respondent is able to identify situations of possible financial exploitation. Yes. No. Comments:
- G. Respondent is able to adequately protect themselves from attempts of financial exploitation. Yes. No. Comments:

16. Petitioner is attaching as an exhibit a medical record, incident report, or affidavit from family, friends, medical professionals, social workers, or mental health workers. (check one) Yes. No. (If yes, and you have more than one exhibit to submit, label each exhibit in the upper-right corner as: Petition Exhibit # _____)

Part VI. Estimate of Respondent's Property, Assets, and Liabilities

(Complete if you are seeking a guardianship of the estate or a general guardianship)

<p><u>Assets</u> Real Property: \$ _____ Vehicles: \$ _____ Tangible personal property: \$ _____ Other personal property: \$ _____</p>	<p><u>Source and amount of anticipated income or receipts:</u> Wages/salaries: \$ _____ Rental income: \$ _____ Pensions: \$ _____ Allowances: \$ _____ Insurance: \$ _____ Other (including SSI/SSDI): \$ _____</p>	<p><u>Liabilities</u> Mortgage loans: \$ _____ Residential costs/rent: \$ _____ Car payment: \$ _____ Student loans: \$ _____ Other secured loans: \$ _____ Unsecured loans: \$ _____</p>
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17. Respondent (check one): is eligible to receive per capita payments. is not eligible to receive per capita payments.
18. (Check one): The value of Respondent's personal property is equal to or greater than \$ 50,000.
 The value of Respondent's personal property is less than \$ 50,000.
19. (Check one): There is a representative payee for government benefits. (Name of payee: _____).
 There is not a representative payee for government benefits.
 It is unknown at this time whether there is a representative payee.

Part VII. Proposed Guardian

20. Petitioner is requesting that the Court appoint a (check one): Limited guardian of the person.
 Limited guardian of the estate.
 Guardian of the person.
 Guardian of the estate.
 General Guardian (guardian of the person and estate).
21. Petitioner recommends or seeks to have the following person appointed as guardian: _____

- 22. The prospective guardian (*check one*): has been convicted of a felony. has never been convicted of a felony.
- 23. The prospective guardian (*check one*): has never been convicted of any crime. has been convicted of a crime.
- 24. The prospective guardian (*check one*): owns an institution where a protected person resides. does not own an institution where a protected person resides.
- 25. The prospective guardian (*check one*): is employed at an institution where a protected person resides. is not employed at an institution where a protected person resides.
- 26. The prospective guardian (*check one only if Petitioner is the prospective guardian*): consents to a criminal background check at this time. does not consent to a criminal background check at this time.

VERIFICATION

I, the undersigned Petitioner, have read and verified this Petition and state that its contents are true to my own knowledge, except those matters stated on information and belief, which I believe to be true. (*Only sign if you are before a notary*)

Date: _____ Name of Petitioner: _____ Signature of Petitioner: _____

SWORN TO AND SUBSCRIBED BEFORE ME		
Date	<input type="checkbox"/> Deputy Clerk <input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Notary	Commission Expiration Date
SEAL	Name of Official	Signature

Contact Information

Name: _____

Address: _____

Phone Number: _____

Email: _____

***** Please provide the correct contact information so that we may reach you to send notices, orders, etc. It is YOUR responsibility to inform the Clerk's office if your contact information changes.**

Signature: _____

Date: _____