

*This Manual has been prepared by the Elder Law Committee of the Allegheny County Bar Association. The instructions that follow present a general summary of the responsibilities and duties of guardians and are not intended to be a substitute for legal advice. You should consult with your attorney on any specific questions that may arise during your administration as guardian.*

## **SO YOU'RE A GUARDIAN: NOW WHAT?**

### **INSTRUCTIONS FOR THE GUARDIAN OF THE PERSON AND OF THE ESTATE**

Congratulations on your appointment to serve as the Guardian of the Person and the Estate of an incapacitated person. (Rather than repeating the term “incapacitated person” throughout, we will refer to this person as your “ward.”) Being a Guardian is a serious responsibility that will require your careful attention and commitment. We have prepared these instructions to help you understand what your responsibilities as Guardian of the Person and of the Estate will entail.

Please be aware that these instructions are meant to be only of a general nature, and you should not rely on them as a substitute for legal advice. Consult with your attorney on any specific questions that may arise during your guardianship.

## **DUTIES OF GUARDIAN OF THE PERSON**

### **Overview**

As Guardian of the Person you will be called upon to make decisions regarding your ward's health care and physical needs, including the following:

- Medical treatment decisions, including giving or withholding your consent to proposed medical or surgical procedures or health-care treatment that would otherwise require the consent of the ward.
- Evaluation and decisions regarding the administration of prescription drugs.
- Residential placement decisions, including determining the level of care that the ward requires, e.g. in-home services, personal care home, intermediate care, or skilled nursing care, and then selecting the facility that will provide care.
- Determination regarding the ward's day-to-day life, and need for assistance with the activities of daily living
- Investigation and acquisition of services and benefits that may be available to the ward, whether through a government program such as Medical Assistance,

or private medical or long-term care insurance.

As Guardian of the Person your primary duty is to assert the rights and best interests of the ward. You should make health care decisions based on what the ward himself or herself would have decided if he or she were still able to make decisions, based on the evidence available to you concerning the ward's expressed preferences as to specific types of medical or surgical procedures or health-care treatment. As part of this process, you must provide the ward with an opportunity to participate in decision-making to the greatest extent possible. If the ward did not express any preference on a proposed treatment, you as Guardian should make decisions based on what you believe to be in the ward's best interests.

Your role as Guardian will also require you to secure and participate where appropriate in the development of a plan of supportive services that will meet your ward's needs, and which will explain how such services will be obtained.

### **Statutory Limitations**

There are some matters that are considered so significant, and would have such a substantial effect on the ward's life, that they require prior Court approval before you as Guardian would be permitted to authorize them. These include:

- Consent to abortion, sterilization, psycho-surgery, electroconvulsive therapy, or removal of healthy bodily organs.
- Prohibition of the ward's marriage or the consent to his or her divorce.
- Consent to experimental biomedical or behavioral procedure or the ward's participation in such experiments.

### **Visitation Responsibilities of the Guardian of the Person**

As Guardian of the Person you should visit the ward at least once a month. During your visits you should pay close attention to (and inquire of the ward and care providers as necessary regarding) the ward's: well-being in the residential placement; general social interaction skills, willingness to take necessary medications, proper nourishment and sleep patterns, participation in social functions and travel outside of the residence; interaction with other family members and persons who have historically expressed an interest in caring for or befriending the ward; and general personal hygiene.

Discuss any issues you may have with the care providers and social workers at the facility where your ward is living, or who are providing care to the ward at his or her residence.

## **Annual Report**

For each year of the guardianship, you are required to file an Annual Report with the Court that will disclose the following information:

- Current address and type of placement of the ward
- Major medical or mental problems of the ward
- A brief description of the ward's living arrangements and the social, medical, psychological and other support services he or she is receiving
- Your opinion as Guardian as to whether the guardianship should continue or be terminated or modified and your reasons why
- Number and length of times you visited the ward in the past year

The Court will review your Annual Report to make sure that the ward's current residential placement is appropriate, and that your ward is receiving necessary social, medical, psychological and other support services.

## **DUTIES OF GUARDIAN OF THE ESTATE**

### **Overview**

While the Guardian of the Person deals with health-care matters, the Guardian of the Estate is involved with the ward's property. The Guardian of the Estate is responsible first for gaining control of the ward's property, and then prudently managing and investing it, and distributing it (with Court approval when required) to provide for the ward's needs. Other duties of the Guardian of the Estate may include selling the ward's assets if necessary, and seeking Court approval of an estate plan that will benefit the ward and his/her family.

It is imperative that you keep your own funds and financial affairs separate from those of your ward. Commingling your ward's assets with your own is strictly prohibited. For example, you should never deposit the ward's money into your own bank account. Likewise, you should never use the ward's money to pay the bills of anyone else, including your own.

### **Duty to File Inventory**

Within three months after the ward's real estate or personal property comes into your possession, you are required to file with the Court a verified Inventory, which must include an appraisal of such personal property, a statement of such real estate, and a statement of any real or personal estate that you expect to acquire thereafter. This Inventory is important because it will establish the initial value of the ward's estate, from which all future accountings will be based.

### **Principal and Income**

You should be aware that guardianships deal with two types of assets, referred to as principal and income. "Principal" generally means the property that the ward owned on the date you were appointed as Guardian. Examples of principal include:

- Real estate
- Securities, including stocks, bonds, and mutual funds
- Bank accounts
- Tangible property (e.g., cars, jewelry) and household goods
- Collections, such as a coin, art, or stamp collection.
- Pension and annuity benefits that are payable to the ward, either in lump sum in installments
- Cash value of life insurance policies
- Miscellaneous assets, such as tax refunds, unused insurance premiums, and loans or other payments that are owed to the ward

"Income" refers both to the earnings (e.g., interest, dividends, rents) on the principal assets, as well as periodic payments to which the ward is entitled, such as Social Security payments, retirement benefits paid under an IRA or 401K plan, annuities, and disability insurance payments. In the guardianship context, "income" also includes later-acquired assets.

### **Annual Report**

The Guardian of the Estate is required to file an Annual Report with the Court containing certain information, including:

- Current principal and how it is invested
- Current income
- Expenditures of principal and income since the last Annual Report
- Needs of the ward for which you as Guardian have provided since the last Annual Report.

The initial Annual Report is due within the first 12 months of your appointment as Guardian. Thereafter the Reports are due at least annually.

## **Authorization of Expenditures On Behalf of Ward**

A guardianship is created by the Court, and the Court will retain oversight over the ward's property. Thus you should be aware that in certain cases you will have to obtain prior Court approval before you will be permitted to expend the ward's assets.

**Income.** You are permitted to expend income (as defined above) to provide for the ward's care and maintenance, if you deem it advisable in the exercise of reasonable discretion, without the need to obtain prior Court approval. To be safe, however, you should review with your attorney whether a proposed expenditure of income comes within the meaning of "care and maintenance."

**Principal.** You will generally be required to obtain prior Court approval before you can sell or expend the ward's principal. Expenditures of principal will be allowed by the Court for the care, maintenance, or education of the ward and his or her spouse, children, or those for whom he or she was making such provision before incapacity, or for the reasonable funeral expenses of the ward's spouse, child or indigent parent.

Court approval will also be needed before you can sell any of ward's real estate, pay legal or guardian's fees out of principal, or engage in estate planning techniques for the ward. Consult with your attorney if you wish to obtain approval for any of these transactions.

As soon as reasonably possible after your appointment, you should put together a proposed budget for the ward, based on estimated payments for such items as residential care expenses, taxes, insurance, monthly utilities, food, clothing, etc. With the guidance of your attorney, you should then file a Petition for Allowance with the Court to request approval of future payments of income or principal based on this budget. An updated Petition for Allowance should be filed every twelve months.

The purpose of these Petitions for Allowance is to give the Court a clear picture of the anticipated needs and expenses of the ward over the next one year period, and to weigh those needs and expenses against the assets and income of the ward.

### **Final Words**

Remember, your authority as Guardian comes from the Court, not from the ward. Thus, you will be responsible to periodically report to the Court during the course of your guardianship. This reporting will allow the Court and its investigators to keep track of both your performance and the ward's status, both from a personal and financial point of view. This is not a responsibility to be taken lightly. You must be organized, prepared, empathetic, and have the time necessary to carry out the guardianship role.

Good luck!

## **CHECKLIST FOR GUARDIAN OF THE PERSON**

- Attend the hearing for appointment of a guardian
- Obtain at least one certified copy of the order of court appointing you as guardian of the person and give a copy of the order whenever needed as proof of your appointment.
- Obtain guardianship certificates from the Register of Wills as proof of your appointment as guardian. Guardianship certificates are less expensive than certified copies of your order of court.
- Arrange for a suitable residence for the ward in consultation with medical care providers, social service providers and agencies and your ward.
- Visit your ward on a regular basis to be sure he or she is cared for properly; keep track of the dates, times, length and purpose of your visits.
- Give your name, address and phone number to all health care providers, clergy, family, friends, neighbors, social workers, caregivers and others who are regularly in contact with your ward and advise them that you are the guardian.
- Make healthcare decisions for your ward after consultation with your ward and his or her health care providers.
- Make advance arrangements for funeral and burial needs with the input of your ward, if appropriate.
- Complete annual and final reports of the guardian of the person and deliver them to the guardianship department of the Orphans' Court.

**CHECKLIST FOR GUARDIAN OF THE ESTATE**  
**Immediately After Your Appointment**

- Apply for bond if required by court.
- Obtain at least one certified copy of the order of court appointing you as guardian of the estate and give a copy of the order whenever needed as proof of your appointment.
- Obtain guardianship certificates from the Register of Wills as proof of your appointment as guardian. Guardianship certificates are less expensive than certified copies of your order of court.
- Close or freeze existing bank accounts in sole name of the ward; determine existence of accounts in joint ownership with the ward and another person or persons. Seek legal advice on advisability of invading jointly titled accounts and “in trust for” accounts.
- Open new guardianship accounts with the bank (at least a checking account; possibly a savings account or certificates of deposit) titled as “Name of ward, an ward, by Guardian’s Name, Guardian.” Insure that only the social security number of the ward is on any guardianship account.
- Change address with post office and direct all mail to guardian’s address.
- Contact Social Security to arrange for the direct deposit of checks into the guardianship account.
- Contact pension plans and any other source of income (stock and mutual fund dividends, etc.) to arrange for the direct deposit of checks into the guardianship account or to change mailing address to guardian’s address.
- Notify ward’s creditors of the adjudication of incapacity and that guardian has sole authority to pay bills and commit to obligations to pay on behalf of the ward.
- Arrange for payment for residential placement of the ward – home, assisted living facility or nursing home; discuss placement with Guardian of Person
- If there is a safe deposit box, do an inventory of contents and close out box.
- Search residence of ward for important papers such as wills and deeds, cash, jewelry, photos and other valuables, and remove to safe place after doing inventory and appraisal.
- Appraise Real Estate and personal property prior to sale or any distribution.

- Arrange for sale or removal of furnishings or other items if moving ward from his or her home; place money from sale in guardianship account.
- If you must sell real estate, arrange for court approval of sale, and place money from sale of real estate in guardianship account.
- Advise credit agencies of appointment of guardian.
- Obtain approval of court before using the funds of the ward to pay attorneys' fees, or your own expenses/fees.

NOTE: IF APPOINTMENT IS FOR EMERGENCY GUARDIAN, EMERGENCY  
GUARDIAN MAY NOT DISPOSE OF POSSESSIONS OR PROPERTY OF  
WARD.

**CHECKLIST FOR GUARDIAN OF THE ESTATE**  
**During Your Appointment**

- File an Inventory by the date set by the court in your order which includes the following, showing values as of date of adjudication of incapacity (the date that the court determined that your ward was incapacitated):
  1. appraisal of personal property, such as car, jewelry, clothing, etc;
  2. statement of real estate owned by the ward;
  3. statement of any property which the guardian/ward expects to acquire thereafter, such as inheritance, insurance benefits, income from all sources, etc.;
  4. bank and investment accounts of any nature in the ward's name.
- Invest assets as a prudent investor, with professional advice, if necessary.
- Pay the bills for the ward from the ward's own funds using only the ward's income to do so.

NOTE: If the ward's income is not sufficient to meet all expenses, obtain court approval to use principal (assets) to pay expenses.
- See to the operation of any business owned by the ward.
- Vote any stocks which are held in the name of the ward.
- Surrender or accept a deed in lieu of foreclosure, with court approval.
- Compromise or settle controversies, with court approval.
- Purchase property, casualty and liability insurance, if needed and appropriate.
- Lease property of the estate and collect income and rents.
- File with the court the annual report of the guardian of the estate, to include the following information:
  1. Current assets and how they are invested
  2. Current income
  3. Expenditures of principal and income since the last report
  4. Needs of the ward for which the guardian has provided since the last report

- Keep all of the following records for a reasonable time period after being discharged by the court:
  1. receipts for expenditures paid on behalf of the ward
  2. bank statements
  3. savings
  4. checking
  5. certificates of deposit
  6. Christmas Club
  7. information regarding assets and investments
  8. mutual funds reports
  9. trust funds reports
  10. real estate deeds
  11. information on motor vehicles and other vehicles
  12. savings bonds
  13. annuities and records of payments
  14. IRA and other retirement funds and records of payments
  15. insurance policies and related information
  16. out of pocket expenses incurred in caring for the ward
  17. money gifts made
  18. stocks and bonds
  
- With court approval, do any or all of the following if consistent with prior acts of the ward or if required by prudent planning:
  1. Make gifts
  2. Disclaim interests in property
  3. Exercise powers of appointments
  4. Enter into contracts
  5. Create trusts
  6. Change beneficiaries on life insurance policies
  7. Make certain elections relative to inheriting property
  8. Change domicile of the ward and make other estate planning type arrangements
  9. Retain appropriate assets for the ward's funeral

**CHECKLIST FOR GUARDIAN OF THE ESTATE**  
**On Termination of the Guardianship**

File a final accounting within sixty (60) days:

1. after the ward dies; or,
2. if the court determines that a guardian is not needed; or
3. if a new guardian is appointed.

The final accounting shall cover the period from the date of the appointment of the guardian of the estate to the date of termination of the guardianship or removal of the guardian. You are not to account only from the last annual report. The accounting is for the entire guardianship term.

If the ward has died, the accounting may be merged with the estate accounting (20 Pa C.S. §3501.2), and should include the following, in a form approved by the court:

1. Original assets of the ward
2. Income earned for the guardianship
3. Expenses paid on behalf of the ward
4. Resulting funds available for distribution
5. A suggested schedule of distribution