

Manual For Guardians

THE NEW JERSEY JUDICIARY

Supreme Court Judiciary-Surrogates Liaison Committee

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I. INTRODUCTION

You have been appointed as Guardian of the person and/or of the property of someone who has been found to be incapacitated and unable to handle his/her personal or financial affairs. This is a very important position and will require a considerable time commitment from you.

The essential responsibilities of a Guardian of the person are to decide where the Ward will live and how personal and medical care, meals, transportation, socialization and recreation will be provided. The primary responsibilities of the Guardian of the property are to identify, collect and take control of the Ward's property (real and personal), to establish a budget, to pay the Ward's debts, according to ability and priority, to prudently invest the Ward's property when appropriate, and to report as directed to the court about the status of the Ward's estate.

All New Jersey Guardians are appointed by the Superior Court of New Jersey. The court establishing the Guardianship has an obligation to ascertain that the Guardianship is functioning in the best interests of the Ward. To meet this obligation, the court is sometimes assisted by a Guardianship Monitoring Program which utilizes Court Visitors for personal visits to review the Ward's physical status and care, and by assisting the Surrogate in auditing accountings as ordered by the court. After appointment as Guardian, you may be contacted by a member of the monitoring program as a means of assisting you in meeting your responsibilities. Any questions you may have about your

responsibilities or the guardianship proceeding should be first addressed to your attorney. The attorney is entitled to be paid from funds of the Ward if available, an amount ordered by the court for the legal work in connection with your appointment and for follow-up advice and in preparing inventories and accountings of the Ward's property as ordered by the court. A close working relationship with your attorney will make these tasks and your role as Guardian an easier experience. Guardians are not required to use their own resources for the benefit of the Ward.

You may request the court to compensate you from the Ward's estate for the work you do, based upon the size of the estate. You are also entitled to receive reimbursement for reasonable and necessary expenses paid from your own funds for the Ward's benefit. You should always keep good records of the expenditures made on the Ward's behalf and retain receipts for them. Although final authority to make decisions regarding the Ward's care will rest with you, subject in certain cases to the court's approval, you should discuss all such decisions, if possible, with members of the Ward's family. Doing that may avoid misunderstandings, animosity and further legal controversy.

After you have read this handbook in its entirety, you should meet with your attorney to discuss any questions you may have regarding your responsibilities as guardian and what tasks have to be accomplished and who will be of the best assistance to you in seeing that the steps are properly completed.

II. RESPONSIBILITIES AS GUARDIAN OF THE PERSON

As Guardian of the person, you will make all medical and personal decisions for the Ward, such as where the Ward will live, and how meals, medical and personal care, transportation, socialization and recreation will be provided. The extent of your involvement will be determined by the level of the Ward's mental and physical disability. You should strive to make the decision which preserves, to the greatest degree, the Ward's self esteem and dignity, dependent on available assets.

1. Ward's Residence

As Guardian of the person, you determine where in New Jersey the Ward should live. This power is not unlimited. For example, you should not place the Ward into a situation which would deny him/her of the pleasures of visiting with family and friends. You must notify the court whenever you change the residence of the Ward for anything other than a temporary period of time, and you cannot move the residence of the Ward to a place outside New Jersey without prior court approval. The Ward should be allowed to remain in his/her usual residence as long as there are sufficient assets for proper and affordable help available at the residence to make it safe and comfortable for the Ward, and it is otherwise advisable. Most Wards require some assistance in connection with day-to-day living. This assistance can range from paying someone to do simple errands

up to arranging for twenty-four hour nursing care. Moreover, if you are also appointed Guardian of the Ward's estate, you will be responsible for hiring help and verifying employment eligibility, liability insurance, filing employment tax returns, contacting and paying health care providers, local utility suppliers and the like. You may wish to consult with some of the community and social service agencies listed in Appendix A to assist you in meeting these responsibilities.

At some point in time, it may no longer be feasible, for either physical, mental or financial reasons, for the Ward to continue to reside in his/her own residence. If this occurs, it is the Guardian's responsibility to find a new residence, within his/her financial budget and arrange for the move. It may also be necessary to file for certain entitlements such as PAAD, Medicaid or Welfare in order to assist with certain costs for living arrangements.

Even if the Ward is placed in a care facility, it remains the Guardian's responsibility to make sure that the Ward receives appropriate health care, nutrition, grooming, recreation and social stimulation. The Ward should be visited periodically and the Guardian should regularly review the Ward's placement facility situation and medical notes made by the attending physician to ensure that appropriate care and follow-up are being given.

2. Health Care

The Guardian is responsible for decisions regarding medical treatment to be given to the Ward. As a declared incapacitated person, the Ward no longer has the legal capacity to make decisions concerning his/her medical treatment. As Guardian, you have exclusive authority to make such health care decisions. However, your Ward may still be able to make some simple decisions concerning his/her health care even though a guardian has been appointed. If you are unsure of your Ward's capabilities to assist in the decision-making process, you should speak to the attending physician and consult with family members.

The Guardian should make such decisions based on competent medical advice. It is important to continue to use the health care providers the Ward has used in the past, as long as these persons are qualified and available to provide the required medical care. You may, when necessary, request a second or third medical opinion. If the Ward suffers from a special medical problem such as Alzheimer's disease or alcoholism, the Guardian should educate himself/herself about the progress of such conditions.

The Ward may have executed an advance directive for health care (more commonly known as a "Living Will") or a Durable Power of Attorney. These documents specify what action

is to be taken with regard to prolonging life through life support systems, should the person not be able to participate in the decision making process. The document may appoint some third party to serve as medical proxy and if so, that person will be the one to make these decisions. The Guardian must respect those wishes as long as the document was executed when the Ward was able to understand the nature of the document. As guardian, you should notify hospitals or physicians of your involvement and give a copy of any such document pertaining to health care decisions to the hospital, nursing home, doctor or other health caregiver.

It is the Guardian's responsibility, within the limitations of the Ward's estate, to make sure that the Ward has appropriate health insurance if it is available. This may include Medicare, a health maintenance organization, Medicare supplemental insurance, third party insurance, long-term care insurance and if eligible, Medicaid. Appendix A contains some basic information on these programs.

3. Activities

As Guardian, you have a duty to ensure that appropriate activities are provided for the Ward if he/she has the physical ability to enjoy these activities. Determine what the Ward would like to do. If he/she likes to read, make sure that reading material is continually available. If he/she has hearing problems,

make sure there is a properly working hearing aid. Even extremely impaired people enjoy being taken on periodic outings. Some of the organizations listed in Appendix A will make daily telephone calls to the Ward and many churches have volunteers who will visit the Ward on a regular basis. If it is appropriate, you should encourage and arrange for the Ward to attend a senior center or an adult day care/medical center that offers a variety of other activities. Appendix A contains a list of centers in this county.

As Guardian, you are responsible for maintaining control over the Ward. If he/she becomes a danger to himself/herself or others, you must take all reasonable steps necessary to reduce the danger, even if it means a short involuntary commitment for evaluation purposes or relocation to a different caregiver/provider (i.e., residential, boarding home or nursing home).

4. Death of Ward

When the Ward dies, in addition to family members you must immediately notify the Surrogate's office in the county where you were appointed and send to that office a certified copy of the death certificate. If you are not also the guardian of the property, immediately notify that person or bank, as well. If the Ward died having a will, you should present it to the Surrogate of the county in which the Ward resided at death, and if

possible notify the person named as Executor in the will. If in doubt, contact the Surrogate's office which issued your Letters of Guardianship.

5. Burials

It is a wise decision after consultation with family members to make burial arrangements and pay for them in advance with the Ward's funds or as the Ward's funds become available. In order to avoid any misunderstandings, if a person is on Medicaid or Municipal Welfare, you should contact the respective office before commencing any advance burial arrangements.

III. RESPONSIBILITIES AS GUARDIAN OF THE PROPERTY

As Guardian of the property, it is your responsibility to manage and use the Ward's property primarily for his/her benefit. To do this you must: identify, collect and take control of the property, make sure that it is adequately protected against loss, especially if the Ward has many investments; establish a budget for the Ward; pay the Ward's debts as they become due, and according to priority within his/her financial ability to pay; invest the property as permitted by law and in a manner suitable to the Ward's circumstances (you may need to seek professional advice of an accountant, if the Ward has a large portfolio); and periodically furnish a written report (accounting) to the court about the assets, receipts and disbursements of the estate. At the outset of your appointment, the court may fix a bond for the faithful performance

of your duties in an amount deemed appropriate.

Much of this can be done without prior court approval. However, there are certain acts, discussed below, which require prior court approval. If you have any doubts, you should contact your attorney before taking action.

1. Take Control of Property

Your first duty as Guardian of the property is to take control of the Ward's property. This involves identifying what the Ward owns, which may include cash and uncashed checks, bank accounts, stocks, bonds, notes receivable, partnership interests, life insurance policies, real estate, furniture, jewelry and automobiles, as well as the right to receive payment from the government, pensions, insurance companies, tenants, third parties, employers and trusts. You may want to take pictures of personal property for documentation of assets at the time of your appointment. You must identify the value or amount of all assets as of the date of your appointment.

You must open a checking account, a savings or money market account and, if appropriate, a safe deposit box all in your name as Guardian of the property of (Ward's name), to serve as a place to deposit funds, documents and property that you discover. You must use the Ward's Social Security number for the accounts, not your own. Separately record each receipt

and each expenditure (with a description) in the checkbook register so that you will later have the details necessary for the accounting you may be required to prepare and submit to the court. If the checking account balance is larger than immediate needs, you should write a check and deposit the excess in a savings account. You should have an anticipated budget and if there are surplus funds it may be prudent to purchase other financial instruments which will give higher returns. If you later need money to pay bills, withdraw the money from the savings account and deposit it into the checking account and pay the bills with checks drawn on that account. The law requires you to keep the Ward's property separate from your own property at all times. Thus, you should never put the Ward's money in the same bank account in which you put your own funds. The Guardian may never use the Ward's property for the Guardian's benefit.

The Guardian must review the Ward's financial records, such as current bank and broker statements, income tax returns, account ledgers, deeds and insurance policies. You have a right to enter the Ward's safe deposit box and to inventory and remove the contents, upon presenting a certified copy of your Letters of Guardianship (a document which has been issued to you by the Surrogate) to the financial institution. If the box is rented with another person, that other person should be present when the box is opened. It may be appropriate to close a joint ownership box with the consent of the jointholder.

You also have a right to question other people who may have knowledge of the Ward's property, such as the Ward's family, accountant and stockbroker. You may want to send a letter to all banks and savings and loan associations in the area to find out what accounts the Ward owned as of the date of your appointment. Generally, you should limit to \$100,000, including accrued interest, the amount of total deposits with any one financial institution (so that you do not exceed the \$100,000 FDIC guaranteed limit). You must contact pension funds or social security from which sources the Ward may be receiving regular monthly benefits, to designate yourself as guardian, as the proper recipient.

Very often the Ward will be entitled to receive payments from the government, insurance companies, (former) employers (i.e., pension) and trusts. You must contact the Social Security Administration, Civil Service Retirement System and the Veterans Administration to determine whether the Ward is eligible for benefits and arrange for the benefit checks to be sent to you as Guardian. If the Ward is entitled to receive retirement or disability benefits from an employer or an insurance company, you should contact the payor and arrange for the benefits to be sent directly to you as Guardian for the Ward. If the Ward is a beneficiary of a trust, you should review the terms of the trust with the trustee and arrange for trustee distributions to be sent directly to you. If the Ward was a Trustee of a trust for someone else's benefit, consult a lawyer for advice.

If the Ward has investments in foreign countries, attempt to contact them by letter informing parties of your involvement and to have benefits sent to you. Many countries may require letters to be translated and require a raised notary's seal on all documents.

If the Ward owns property which is rented to others, you should review the lease documents and direct the tenant to pay all rent to you as guardian.

You should get the certificate of ownership of the Ward's automobile and make sure that no unauthorized person drives it. No one should drive the automobile unless it is adequately insured. If you decide to store the automobile in a garage, remember to keep the registration, inspection and auto insurance current. If the Ward will not be making use of the vehicle you may want to consider selling it, rather than carrying costs, which may only lead to depleting the estate unnecessarily.

In the case of automobiles, real estate and household effects, you should check to see that the property is insured against fire, theft and other hazards (for its replacement value), as well as against liability to third parties (including worker's compensation claims of household help). You may insure the property for the Ward and yourself as Guardian using the Ward's money without prior court approval.

You should also consider canceling charge accounts,

ATM cards, telephone credit cards and all other credit cards in the Ward's name to make sure that no unauthorized purchases are made.

2. Prepare the Inventory

If the Court so orders, the guardian should file with the county Surrogate an inventory of all assets owned by the Ward. (A sample inventory and appraisal is set forth in Appendix B.) The value of the non-cash assets should be appraised. The inventory and appraisal will advise the court of the extent of the Ward's estate and indirectly of the income likely to be received for the Ward's support; assist the court in determining the amount of the bond; and serve as the initial listing of property for which you are accountable.

3. Establish a Budget

You should prepare a budget for the Ward. The budget should project income from all sources, including investments, employment, the government, royalties, insurance companies, annuities, former employers, pensions, rents, Social Security and trusts. It should also project expenses, including housing, food, clothing, personal care, in-home assistants, medical care, transportation, insurance, utilities, taxes, entertainment, estate administrative costs (such as bond premiums, Guardianship fees, accounting fees and attorney fees). In establishing a

budget, you should remember your sole responsibility is to the Ward. You should not deprive the Ward of any reasonable item merely to permit his/her heirs to inherit more property. Your responsibility is to the Ward, not to heirs.

You will need to plan how various expenses should be paid. As Guardian of the property, you should pay the expenses directly by guardianship check. You should arrange to have the bills of regular suppliers of goods and services sent directly to you.

The Ward's investments should be reviewed (perhaps with a qualified financial consultant) to determine whether they are appropriate in light of the Ward's age, life expectancy, income requirements and size of the estate. In general, the court does not approve investments in unsecured loans, secured loans to relatives, or obligations of foreign countries or foreign corporations.

A. Level of Care

The budget may be dependent on the level of care needed by your Ward. Level of care means whether the individual can stay at home with minimal or 24-hour care, or may require assistance for a few hours versus placement in a boarding home, residential facil-

ity or long-term placement. You may want to seek the assistance of a geriatrician to assist in this assessment. The New Jersey Department of Health and Senior Services may have additional resources to help identify what you should look for in placement.

B. Alternative Resources

Supplemental sources of income may be available such as SSI, Medicaid or General Assistance.

In addition, if the individual remains at home, he or she may be eligible for Lifeline Assistance or other community resources. Contact utility companies, local Boards of Social Services, the county Department of Aging, or New Jersey Division of Aging area agencies.

C. Disposition of Assets

As guardian you should be aware that if the Ward has no savings and is eligible for Medicaid, SSI or Municipal Welfare, a review will be made to determine that all assets were expended for the benefit of the Ward. Medicaid looks back at least 36 months and may look back as far as 60 months. Therefore, it is important for you to maintain accurate, up-to-date records, receipts and checking/savings statements for a minimal

period of 5 years in order to avoid any finance issues at the time of application for said benefits.

When cash is needed, you must choose between raising the cash by borrowing, by the sale of assets, or both.

Generally, the sale of real estate requires prior court approval and you should consult your attorney before making any final decision to sell. The sale of real estate also normally requires court confirmation of the specific sale agreement you enter into. You may use an agent to sell the property. However, you must obtain court approval before you can enter into an exclusive contract with a realtor to sell any real property.

4. Pay Taxes

As Guardian of the property, you are responsible for filing tax returns on behalf of the Ward. You may hire and pay a tax preparer to prepare the returns, assuming the Ward has the ability to pay for the preparer. You should check to see if there are free tax preparer services if funds are not available. The Ward may be entitled to a homeowner's rebate even if there is minimal income. If you suspect that the Ward has not filed all required returns, you should contact the Internal Revenue Service and New Jersey Division of Taxation to obtain copies of prior

returns that have been filed and to ascertain what returns are missing. There are penalties for both a failure to file a return and a failure to pay the tax. A failure to file penalty generally will not be assessed if it can be shown that the failure was due to reasonable cause and not due to willful neglect. The fact that the Guardianship has been created may be sufficient grounds for waiving the penalty. You should ask for any prior form 1099's that Internal Revenue Service may have received, to assist you in preparing any past due returns.

You should also make sure that real estate taxes, personal property taxes and employment taxes (e.g., for in-home help) are paid when due. If the Ward does not have money, you should contact the local tax collector to discuss options regarding property taxes.

5. Account to the Court

If the court so orders, you will have to file an accounting with the court, at stated times, and upon termination of the Guardianship. In general, the court must approve the accounting before either you or your attorney may be paid for the work that has been done.

The accounting must show all receipts and expenditures, investment transactions and property on hand at the beginning and at the end of the accounting period. Appendix C contains a sample format of accounting. To prepare the ac-

counting properly, you must keep detailed records and documentation (e.g., bills). A detailed check register is most helpful. Appendix D contains some useful forms for record keeping. If in doubt as to the preparation or filing of the accounting, seek the advice of your attorney.

6. Death of Ward

As guardian of the property, you should immediately give notice to the Surrogate's office where you received your Letters of Guardianship and show a certified copy of the death certificate to that office. If the Ward died having a will, you should present the will to the Surrogate of the county wherein the Ward died. You should also, if possible, notify the person named as Executor in the will. For further guidance, contact the attorney who has assisted you with the Guardianship Estate or the Surrogate who issued the Letters of Guardianship. At that point you are required to file your final accounting with the court, and seek its approval for such allowances to you (and your lawyer) for services rendered. Upon approval you will be discharged as guardian of the property and your bond (if any) will be canceled.

IV. COMPENSATION

You are entitled to be compensated based on a 6% commission of income collected, as well as a percentage of the Ward's assets for

which you are responsible. This will be taxable income to you as received. You may also be reimbursed for any other reasonable expenditure made on behalf of the Ward assuming there are sufficient assets of your Ward. You must always use reasonable and prudent judgment as the guardian in spending money and when in doubt seek advice.

V. CODE OF ETHICS FOR GUARDIANS

Guardians appointed by the New Jersey courts shall:

- avoid a conflict or the appearance of a conflict of interest when dealing with the needs of the Ward;
- attempt to maximize the dignity, autonomy, self-reliance and independence of the Ward;
- involve the Ward, to the extent of the Ward's abilities, in making decisions concerning the Ward's housing, which shall be in the least restrictive environment consistent with the Ward's safety;
- promote and personally monitor the Ward's health and well-being;
- competently manage the Ward's estate consistent with the Ward's best interests;

- exercise extreme care and diligence in making decisions on behalf of the Ward;
- exhibit the highest degree of trust and loyalty to the Ward; and
- provide informed consent on behalf of the ward for the provision of care, treatment and services.