

# **GUIDELINES FOR GUARDIANS OF INCAPACITATED PERSONS**

Honorable Kenneth G. Valasek, President Judge  
Armstrong County Court of Common Pleas  
Orphans' Court Division

## **Introduction**

Thank you for your willingness to serve as a guardian for an incapacitated person. These Guidelines are intended generally to set forth your duties to the incapacitated person as well as your responsibilities to the Court. Your specific duties and authority are described in Title 20 of the Pennsylvania Consolidated Statutes (Probate, Estates and Fiduciaries Code) at Chapter 55.

This outline is not intended to be taken as legal advice. Please do not ask Court personnel for legal advice on general or specific issues, as they are not permitted to give any advice. If you have legal questions, seek the advice of legal counsel.

The guiding principle to be followed is to act in a manner that is in the incapacitated person's best interests. In doing so, the expressed wishes or preferences of the incapacitated person shall be respected to the greatest extent possible. If these expressed wishes and preferences, however, conflict with your independent judgment of what is in the incapacitated person's best interests, then you should follow your independent judgment, but only to the extent necessary to further the incapacitated person's best interests.

## **Court Order Appointing You as a Guardian**

The Court order appointing you as guardian delineates your responsibilities, and you must carefully review the terms and conditions of your guardianship. If you are appointed as a "limited" guardian, your authority specifically is limited with regard to what you can do, and you must not exceed this authority. If you are appointed as "plenary" guardian, you are not subject to the same limitations as if you were a limited guardian. A Limited Guardian is appointed for an individual who is found by the court to be partially incapacitated and in need of some guardianship services. A Plenary Guardian is appointed for an individual who is found by the Court to be totally incapacitated and in need of plenary guardianship services.

If you are required to enter a surety bond (insurance), you must provide for the entry of an appropriate sized bond and file an Affidavit that the bond has been obtained from an insurance agent before you can act on behalf of the incapacitated person.

As appropriate, the Court may appoint one or more guardians of the incapacitated person's "person" or his/her "estate" or both.

If the incapacitated person obtains a new residence outside of Armstrong County, or if you obtain a residence outside of the Commonwealth of Pennsylvania, you must petition another appropriate court to accept jurisdiction over this guardianship, and you must also petition this Court to transfer jurisdiction.

### **Guardian of the Estate**

#### Assets:

You must inquire and investigate as to the existence and whereabouts of any assets of the incapacitated person. The fair market value on the date of your appointment should be determined. Appraisals of realty, personal property, antiques, jewelry, art, bank accounts, securities and other personal property must occur. Risky investments are not permitted, unless specifically authorized by the Court.

Once the assets have been identified, you have a duty to safeguard them from being dissipated, lost, stolen or destroyed. You must also manage these assets using the standard of reasonable prudence to ensure that income will be generated for the well-being of the incapacitated person. It may be appropriate for you to consult professional financial advisors.

#### Inventory:

Within 90 days of your appointment as guardian, you must file with the Clerk of Orphans' Court an inventory and appraisal of the real and personal property that the incapacitated person has acquired or expects to acquire in the future. The Office of the Clerk of Orphans' Court has forms that are available through its Internet Site or directly from that office for completing the inventory.

#### Expenses:

Generally you are authorized to pay reasonable debts, obligations and expenses of the incapacitated person. These expenses may generally include medical expenses, support, rehabilitation and maintenance expenses and when appropriate, educational expenses.

#### Use of Principal and Income of the Estate:

You must carefully distinguish between income and principal and know when it is appropriate to make expenditures from income versus principal, and when prior Court approval is required. Please refer to Section 5536 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. Section 5536).

### Fiduciary Duties as Guardian:

As a Guardian, you become a fiduciary who is responsible to:

- Exercise prudent judgment in managing the estate of the incapacitated person;
- Avoid conflicts of interest or decisions which may benefit you;
- Avoid using the monies or assets of the incapacitated person for your own use;
- Invest the assets reasonably to ensure sufficient income for the incapacitated person (an example are to put a checking account into a savings or money market; vacant property should be leased);
- Hire experts to assist you in properly managing the assets of the incapacitated person; and
- Pay all reasonable expenses on time.

### Estate Planning:

If the assets of the incapacitated person for whom you are guardian are substantial, you may request the Court to authorize estate planning on behalf of the incapacitated person or the members of his or her family, to include establishing trusts, making of gifts, disclaiming interests in property or exercising powers of appointment, all of which may be needed to manage and properly dispose of the incapacitated person's assets. In such an effort, the advice of a qualified attorney, investment adviser, and/or CPA will likely be very helpful, if not essential.

### Initial/Annual Report of the Estate:

You must file a report on an annual basis on each anniversary of your appointment. The following information shall be supplied in detail:

- The current principal of the Estate;
- The expenditures of the Estate;
- A listing of all real estate;
- A listing of all bank accounts and balances;
- A listing of all money market funds and balances;
- A listing of investments and values;
- The current income of the estate; and
- All other valuable assets of the estate including but not limited to, personal property, antiques, jewelry and works of art.

### Final Report:

Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing court orders, you must file a final report with the Court. The final report shall include the information required in the annual reports, and if the incapacitated person has died, a certificate of death must be attached.

## **Guardian of the Person**

### General Care, Maintenance and Custody:

When authorized by Court Order, you have the general responsibility for the care, custody and maintenance of the incapacitated person. Your primary guiding principle is to follow what is in the best interests of the incapacitated person, even if your personal beliefs or interests conflict with what is in the incapacitated person's interest. You should balance the incapacitated person's best interests with his/her family's input with your independent judgment.

Should your own beliefs and interests be irrevocably in opposition to the best interests of the incapacitated person, you may apply to the Court for guidance or to be relieved from your guardianship duties. You must avoid any conflict of interest with the incapacitated person.

### Place of Residence:

You may be empowered by the Court Order to select the place in which the incapacitated person may reside. In making this decision, you should consult with members of the incapacitated person's family and you must consider the overall circumstances, including the incapacitated person's wishes and in your independent judgment, his/her best interests.

### Supportive Services:

When possible, you should assist in developing a plan for services that are supportive of the incapacitated person's care and that encourage the incapacitated person to handle his/her own affairs whenever he or she is able to do so.

### Provision of Medical, Psychological or Educational Services:

Should the Order authorize you to provide these services, you may undertake providing these services, when appropriate, to the incapacitated person. You should encourage the incapacitated person to express his/her wishes with respect to these services.

### Consents or Approvals:

Should the Court Order authorize you to give the authority to enter consents or approvals for medical, psychological, surgical or other alternative treatment, you should encourage the incapacitated person and/or family members to state their wishes. However, if these wishes conflict with the best interest of the incapacitated person or his/her family's wishes, your independent judgment should not be overridden by these wishes.

### Powers That Must be Court Approved:

Unless approved by the Court, you do not have the power to:

- Consent, on behalf of the Incapacitated Person, to abortion, sterilization, psychosurgery, electro-convulsive therapy, or the removal of a healthy body organ;
- Prohibit the marriage or consent to the divorce of an incapacitated person;
- Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure, or participation in any biomedical or behavioral experiment.

### Annual Report of the Person:

You are required to file an Annual Report on or before the anniversary of your appointment or by a date certain set by the Court. The Office of the Clerk of Orphans' Court has forms that are available through its Internet Site or directly from that office.

The Annual Report shall describe:

- The current address and type of placement of the incapacitated person;
- The major medical or mental problems of the incapacitated person;
- A brief description of the living arrangements, social, medical, psychological and other supportive services the incapacitated person is receiving;
- Your opinion of whether the guardianship of the person should continue, be modified or terminated and your reasons for this request; and
- The number and length of times in which you have visited the incapacitated person and the dates on which each of the visits occurred. You should visit the incapacitated person at least once a month.

### Final Report:

Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing court orders, you must file a final report with the Court. The final report shall include the information required in the annual reports, and if the incapacitated person has died, a certificate of death must be attached.

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