



REGISTER OF WILLS AND CLERK OF ORPHANS' COURT DIVISION
OF DELAWARE COUNTY

201 W. FRONT STREET • MEDIA, PENNSYLVANIA 19063

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MARY J. WALK, ESQUIRE
Register of Wills and
Clerk of Orphans' Court Division

KRISTINE M. DICK
Chief Deputy

PATRICIA HOLLABAUGH
First Deputy

JULIE EVERETT
Deputy

NOTICE

TO: THE COURT APPOINTED GUARDIAN

MANDATORY DEADLINES

- Guardian's Inventory due within 90 days from date of Decree (Guardian of the Estate only)
- First Annual Report due within 12 months from date of Decree (Guardian of the Person and/or Guardian of the Estate)
- Subsequent Annual Reports are due yearly thereafter from date of the First Annual Report filing (Guardian of the Person and Guardian of the Estate)
- Final Report is due within 60 days of the death of the Incapacitated Person

REMINDER: YOU MAY NOT INVADE PRINCIPAL WITHOUT COURT APPROVAL.

FAILURE TO FILE THE REQUIRED INVENTORY OR ANNUAL REPORTS BY THE DUE DATES WILL RESULT IN COURT ACTION AGAINST YOU.

If you have any questions about your duties, please contact your attorney. If you need an attorney, you may call the Delaware County Bar Association Lawyer Referral Service at (610) 566-6625

If you have questions on what county services are provided for senior citizens, the County Office of Services for the Aging (COSA) can assist you. Their phone # is (610) 490-1300.

Also, the Office of Intellectual Disabilities is a county office that assists in providing services for adults with an Intellectual Disability diagnosis. The phone # is (610) 713-2330.

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OF DELAWARE COUNTY, PA

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

DUTIES OF THE GUARDIAN OF AN INCAPACITATED PERSON

Familiarity With The Court Decree Appointing You: You must examine and be familiar with the Court Decree which appoints you as Guardian of the Estate and/or the Person of the Incapacitated Person. Your lawyer will give you a copy of this Decree. This is particularly true in that you may only be authorized to exercise power in certain limited ways, unless you have been appointed "plenary" (general) Guardian of the Estate and/or Person. If your appointment is subject to limitations, you must not exceed those limitations. The following description of duties must, in every case, be limited by the terms of the Decree appointing you. You must also determine whether you have been directed to enter Bond (insurance) and if so, provide for the entry of an appropriate size Bond before undertaking any of your duties. Please do not ask Court personnel to give legal advice on specific issues as they are not permitted nor qualified to do so.

GUARDIAN OF THE ESTATE

Inquiry and Discovery of Assets: You must make reasonable inquiry into the existence and whereabouts of all valuable assets of the Incapacitated Person, including the determination of their fair market value on the date of your appointment, which may require appraisals of realty, personalty, or statements from banks or securities firms as to values of accounts and securities, or appraisals of antiques or jewelry.

Safeguarding of Assets: Once the assets have been discovered and values determined, you are under a duty to provide for reasonable safeguarding of the assets to protect them from being dissipated, lost, stolen, or destroyed.

Management of Assets: You must also manage these assets using the standard of reasonable prudence so that they will produce income for benefit of the Incapacitated Person. However, risky investments are not permitted, unless specifically authorized by the Court.

Payment of Debts, Obligations and Expenses: You are authorized, generally, to pay reasonable debts, obligations and expenses of the Incapacitated Person, and in particular, support, medical expenses and maintenance of the Incapacitated Person which may include education where appropriate. Court permission must be obtained before any real estate is sold or before any principal is used.

Inventory Report: You are required to file an Inventory with the Court within ninety (90) days of your appointment setting forth, to the best of your ability, the assets of the Incapacitated Person. A one (1) page form for the Inventory is attached and is available from the Orphans' Court Clerk, as well as located on the Delaware County Register of Wills website (www.delcopa.gov/row).

Initial/Annual Report: In addition to the Inventory, you are required, within twelve (12) months of the date of appointment, to file what is entitled “Annual Report of Guardian of the Estate.” A form for that report is attached and is also available from the Orphans’ Court Clerk, as well as located on the Delaware County Register of Wills website (www.delcopa.gov/row). The next Annual Report will be one (1) year from the date of your first Annual Report which, as indicated above, is due within twelve (12) months of your appointment. This means your second Annual Report is due one (1) years after you filed your first Annual Report. As your will be able to see from the Annual Report form, you will need to describe in detail the current principal of the Estate and how it is invested, the current income of the Estate, the expenditures of the principal and/or income, and the needs of the Incapacitated Person for which you have provided financially since the date of your last report or the date of your appointment in the case of your initial Annual Report.

Finally, you must also file a Final Report with the Court within sixty (60) days of the death of the Incapacitated Person or within sixty (60) days of an adjudication of capacity (meaning a Court adjudication that the person is no longer an incapacitated person). [Initial and Annual Reports of Guardian of the Person must also filed by the Guardian of the Person of the Incapacitated Person. These Reports are discussed later in this Notice.]

Fiduciary Duty Generally: As Guardian of the Estate of the Incapacitated Person, you are a “fiduciary.” Legally, you are obligated to exercise prudent judgment in the management of the Estate of the Incapacitated Person for his or her benefit only and to avoid conflicts of interest or decisions which may benefit yourself. You may not invest the Incapacitated Person’s assets in businesses or corporations owned or controlled by you nor may you loan the Incapacitated Person’s funds to yourself for such enterprises unless you have requested permission to do so from the Court, in writing, and have specifically been authorized beforehand.

However, you should also not allow the Incapacitated Person’s assets to remain idle. Any idle assets which fall into your management should, with prudence, be placed into productive form. Two (2) simple examples are that cash in a checking account should be transferred to a savings or money market account so that income is produced. Vacant residential or commercial property, likewise, should be leased to produced income, where practicable.

As fiduciary, you are also authorized, within reason, to hire experts for advice, including accountants, investment advisors, and attorneys, to assist you in proper management of the assets of the Incapacitated Person. The reasonable fees and commissions for these experts are properly chargeable to the Estate of the Incapacitated Person.

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 establishment of trusts, making of gifts, disclaiming interests in property or 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 the qualified attorney, investment advisor, and/or CPA will likely be very helpful, if not essential.

- B. Prohibit the marriage or consent to the divorce of an Incapacitated Person;
- C. 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.

Partial List: This list of duties and responsibilities is partial and is by no means complete. If you are the individual Guardian of the Estate and/or the Person and there is no institutional or corporate Co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.



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Finally, you must also file a Final Report with the Court within sixty (60) days of the death of the Incapacitated Person or within sixty (60) days of an adjudication of capacity (meaning a Court adjudication that the person is no longer an incapacitated person). [Initial and Annual Reports of Guardian of the Person must also filed by the Guardian of the Person of the Incapacitated Person. These Reports are discussed later in this Notice.]

Fiduciary Duty Generally: As Guardian of the Estate of the Incapacitated Person, you are a "fiduciary." Legally, you are obligated to exercise prudent judgment in the management of the Estate of the Incapacitated Person for his or her benefit only and to avoid conflicts of interest or decisions which may benefit yourself. You may not invest the Incapacitated Person's assets in businesses or corporations owned or controlled by you nor may you loan the Incapacitated Person's funds to yourself for such enterprises unless you have requested permission to do so from the Court, in writing, and have specifically been authorized beforehand.

However, you should also not allow the Incapacitated Person's assets to remain idle. Any idle assets which fall into your management should, with prudence, be placed into productive form. Two (2) simple examples are that cash in a checking account should be transferred to a savings or money market account so that income is produced. Vacant residential or commercial property, likewise, should be leased to produced income, where practicable.

As fiduciary, you are also authorized, within reason, to hire experts for advice, including accountants, investment advisors, and attorneys, to assist you in proper management of the assets of the Incapacitated Person. The reasonable fees and commissions for these experts are properly chargeable to the Estate of the Incapacitated Person.

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 establishment of trusts, making of gifts, disclaiming interests in property or 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 the qualified attorney, investment advisor, and/or CPA will likely be very helpful, if not essential.

GUARDIAN OF THE PERSON

General Duty: As either limited or “plenary” (general) Guardian of the Person, you have a general responsibility to assert the rights and the best interests of the Incapacitated Person. In doing so, the expressed wishes or preferences of the Incapacitated Person shall be respected to the greatest possible extent. If these expressed wishes and preferences; however, conflict with your independent judgment of what is in the best interests of the Incapacitated Person, then you should follow your independent judgment, but only to the extent necessary to pursue the best interests of the Incapacitated Person.

Plan of Supportive Service: Where appropriate, you should assist in the development of a plan for supportive services for the Incapacitated Person, which will explain how these services will be obtained. This may not be necessary in every case, depending upon the circumstances of the Incapacitated Persons as you find them upon the commencement of your duties.

Encouragement of Incapacitated Person to Participate in Decisions: You must encourage the Incapacitated Person to participate to the maximum extent feasible within the limitations of his or her ability. You should further encourage the Incapacitated Person to act on his or her own behalf whenever he or she may be able to do so. You should further encourage the Incapacitated Person to develop or regain his or her capacity to manage his or her personal affairs insofar as may be possible under the circumstances.

General Care, Maintenance and Custody of the Incapacitated Person: Where authorized by the terms of the Court Decree appointing you, you shall have general responsibility for the care, maintenance and custody of the Incapacitated Person. Your attention to these duties may be limited by the terms of the Court Decree; however, and in exercising these duties, you must not exceed that authority. Your primary guiding principle should be to follow what is in the best interests of the Incapacitated Person, even in situations that may conflict with your personal beliefs, or your personal interests. If the best interests of the Incapacitated Person conflict with your strongly held personal beliefs or personal interest, you may and should apply to the Court for guidance or for relief from your duties and transfer those duties to another person. You must avoid any conflict of interest in your pursuit of the best interests of the Incapacitated Person.

Place for Incapacitated Person to Live: You may be required to select a place in which the Incapacitated Person will reside. Again, you must follow the standard of what is in the best interests of the Incapacitated Person, using your own independent judgment. You should attempt to discern the preferences as expressed by the Incapacitated Person and members of his or her family and to accommodate these with respect to the place in which the Incapacitated Person will be living, except in those instances where your judgment determines that this would conflict with the best interests of the Incapacitated Person.

Responsibility for Training, Education, Medical and Psychological Services of Incapacitated Person: You may need to provide for the training, education, medical and

psychological services or for the social and vocational opportunities to be offered to the Incapacitated Person. You may also need to assist the Incapacitated Person in the development of maximum self-reliance and independence. Again, your guiding principle should be what is in the best interests of the Incapacitated Person and consideration of expressed wishes of the Incapacitated Person or family members would be appropriate where it does not conflict with this principle.

Consents/Approvals for Incapacitated Person: The terms of the Decree appointing you may also give you the authority to enter consents or approvals for various medical, surgical, psychological, or other treatment alternatives which may become available for the Incapacitated Person. As before, you should endeavor to follow the express wishes of the Incapacitated Person and family members to the extent that these do not conflict with the overriding principle of what is in the best interests of the Incapacitated Person. Your independent judgment on these issues; however, should not be overridden by family wishes.

Annual Report: In addition to the overall duties set forth above, you are also required to file an annual Report as Guardian of the Person (this is a separate report from Guardian of the Estate). Your first Annual Report of the Guardian of the Person is due within twelve (12) months from the date of your appointment. Thereafter, they must be filed annually. Please examine the Court Decree for specific instructions. Reporting forms are available from the Orphans' Court Clerk, as well as located on the Delaware County Register of Wills website (www.delcopa.gov/row). The Annual Report must describe the following in detail:

- A. The current address and type of placement of the Incapacitated Person;
- B. The major medical and/or mental problems of the Incapacitated Person;
- C. A brief description of the Incapacitated Person's living arrangements social, medical, psychological, and/or other supportive services he or she is receiving;
- D. Your opinion as to whether or not the Guardianship of the Person should continue, be terminated, or modified, and your reason for this opinion; and
- E. The number and length of times which you have visited the Incapacitated Person during the last year.

You must also, within sixty (60) days of the death of the Incapacitated Person, file a Final Report.

Powers Which May Be Granted by The Court: Unless specifically included within your Guardianship Decree, you **SHALL NOT** have the power to:

- A. Consent, on behalf of the Incapacitated Person, to abortion, sterilization, psycho-surgery, electroconvulsive therapy, or the removal of a health body organ;

- B. Prohibit the marriage or consent to the divorce of an Incapacitated Person;
- C. 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.

Partial List: This list of duties and responsibilities is partial and is by no means complete. If you are the individual Guardian of the Estate and/or the Person and there is no institutional or corporate Co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.