

Cause No. \_\_\_\_\_

Qualification Date: \_\_\_\_\_

## **GUIDE FOR GUARDIAN OF THE ESTATE**

You have just been appointed by this Court to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. Your duties are not easy. However, you will find them less difficult if you are careful to heed the advice of your attorney.

Texas law requires that you retain the services of an attorney throughout the duration of this guardianship. You may hire and fire attorneys at your discretion. However, you must be represented by an attorney at all times in this matter. **DO NOT FILE ANYTHING WITHOUT YOUR ATTORNEY'S SIGNATURE.**

As a general rule, please remember that **YOU MUST HAVE A WRITTEN ORDER SIGNED BY THE JUDGE BEFORE YOU CAN DO ANYTHING WITH THE GUARDIANSHIP PROPERTY.**

This guide has been prepared as a reference to remind you of deadlines and responsibilities. **It is only a supplement and not a substitute for legal advice.**

### **YOUR QUALIFICATION**

Within **20 days** of receiving your Order appointing you as guardian of the estate, you **must** file both of the following:

- **Oath of Office**
- **Bond**

Your bond must be issued by an authorized corporate surety, and the amount will be specified in the Order appointing you.

### **LETTERS OF GUARDIANSHIP**

Once you have taken the Oath and executed the bond, and the bond has been approved by the Court, you will have “qualified” as guardian of the estate. Your qualification date is important, since many of your duties must be performed within a certain number of days of your qualification date. **Write your qualification date at the top of this page as a reminder.**

You may now request from the Clerk your **Letters of Guardianship**. These “Letters” serve as evidence of your appointment when dealing with third persons concerning the affairs of the ward. Please note that Letters expire and must be renewed each year.

### **NOTICE TO CREDITORS AND HANDLING CREDITOR’S CLAIMS**

Within thirty (30) days after your qualification date, you must publish a **Notice to Creditors** in some newspaper printed in the county advising any unsecured creditor of your appointment. Within four (4) months after your qualification date, you must mail a **certified or registered letter**, return receipt requested, **to each secured creditor** of the estate. Proof of these notices must be filed with the Court.

If a creditor files or sends you a claim, **do not ignore it**. Instead, **notify your attorney as soon as possible**. Once a claim is presented to you, you must either allow it or disallow it within thirty (30) days, or it will be rejected by operation of law. If this occurs, the creditor will have to file suit to secure payment of the claim. If the claim is found to be a just claim that you should have allowed, then you will be **personally liable** for the cost of this suit, and you may be removed from office for your failure to act timely on the claim.

**Do not pay** a claim before consulting with your attorney. If you allow a claim, it must then be presented to the Court for approval or disapproval. In order to pay debts owed by the estate, you must submit an application and the Court must sign an order authorizing payment of the claim. (See discussion below concerning Paying guardianship Expenses).

### **INVENTORY**

Within thirty (30) days after your qualification date, you **must** submit a complete **Inventory, Appraisal, and List of Claims** to be approved by the Court. The Inventory must be verified by a sworn affidavit and reflect fair market value as of your qualification date.

The Inventory must list all estate property. It must include all real property located in Texas that the ward owns and all personal property of the ward, wherever that personal property is located. If at any time during the guardianship you discover additional property, you must file a supplemental Inventory reflecting the newly acquired assets.

**The Judge will remove you as guardian of the estate if you fail to file the Inventory (or an Application to Extend the Filing Deadline for the Inventory) within thirty (30) days of qualification.**

## **MONTHLY ALLOWANCE**

*If the Court did not set a monthly allowance in the Order appointing you as guardian of the estate, then within thirty (30) days after your qualification date, you should file an **Application for Monthly Allowance** for the education and maintenance of the ward and for maintenance of the property of the estate. The amount that will be allowed per month will depend upon the size of the ward's estate. For any expenditure exceeding the approved monthly allowance, you must obtain further Court approval.*

## **INVESTMENTS**

Within 180 days after your qualification date, you **must** have estate assets invested as provided in **Texas Probate Code Section 855(b)** (US and municipal bonds, FDIC-insured bank accounts, certain secured bonds of Texas corporations, and/or FDIC-insured certificate of deposits for one (1) year or less from banks doing business in Texas) **\*\*OR\*\*** file an **Investment Plan**. No investments can be made with guardianship funds except as specifically authorized by the Texas Probate Code or as specifically authorized by **prior** Court Order.

## **POSSESSION AND MANAGEMENT OF GUARDIANSHIP PROPERTY**

Once you have received your Letters, you must **take possession** of all personal **property belonging to the estate**, as well as records of ownership (such as car titles) for such property. You have a duty to collect and preserve this property. All such property should remain in Texas. You should consult with your attorney about **setting up specific guardianship accounts**. You may not put guardianship funds into an account with your own personal funds.

You must also take possession of all real estate belonging to the estate and make sure it is properly insured. Real property should be maintained and you should assure that it is as productive as possible.

You must use ordinary diligence in the collection of all claims and debts owed to the ward. If necessary, you must employ an attorney to recover property belonging to the ward's estate.

Notify a credit reporting agency in writing that the ward has been declared incapacitated. **Cancel** any existing **credit cards** that are in the name of the ward.

Upon court approval, you are authorized, under certain circumstances, to borrow money on behalf of the estate, and also to hire or rent property belonging to the estate. You may also, upon Court approval, make sales of property if it becomes advantageous

for the estate to do so or if this is required to pay expenses, claims or allowances owed by the ward. (See discussion below concerning Selling Guardianship Property).

### **VETERAN'S BENEFITS**

If your ward is a beneficiary of the Veteran's Administration, you must submit any application to expend or invest funds, any claim or any accounting to their office prior to submission to the Court. If the Veteran's Administration wishes to approve your request or account, they will execute a **"waiver of hearing"** so that it can be processed by the Court. No instrument can be processed by the Court without this waiver if the ward is a recipient of Veteran's Administration funds.

### **PAYING GUARDIANSHIP EXPENSES**

In general, **you cannot expend guardianship funds without prior court approval.** The exceptions are (i) paying insurance on guardianship property for protection against fire, theft, or other hazards; (ii) paying taxes; (iii) paying Court costs; and (iv) paying bond premiums.

**IF YOU SPEND GUARDIANSHIP FUNDS WITHOUT PROPER AUTHORITY, YOU MAY BE PERSONALLY LIABLE FOR THOSE FUNDS AND MAY BE REMOVED AS GUARDIAN.**

**DO NOT UNDER ANY CIRCUMSTANCES, EXPEND GUARDIANSHIP FUNDS ON YOURSELF.**

In order to pay your attorney from guardianship funds, your attorney **must** file an itemized application for Payment of Attorney's Fees, which must be signed by you and approved by the Court **before** you have authority to pay such fees.

### **SUPPORT AND MAINTENANCE OF A MINOR WARD**

Funds belonging to a **minor** ward **cannot be spent if you are a natural parent and** can provide for the ward's support and maintenance. If you, as parent or guardian, can satisfy the Court that you are (i) unable to support your child; and (ii) receiving no funds from any agency (i.e. social security, veteran's administration, pensions, trusts, etc.), then you may apply for permission to use guardianship funds to pay expenses, as discussed above. The Court may require documentary evidence of your inability to support your minor child, such as a copy of the IRS Form 1040 you last filed.

## **SELLING GUARDIANSHIP PROPERTY**

You **must** obtain Court approval **before selling** any guardianship property. There are two steps involved in getting that approval, and there is a waiting period for each step, so **please plan ahead**:

1. Before advertising or listing the guardianship property for sale, you must file an **Application for Order of Sale of Real/Personal Property** (requiring ten (10) days of posted citation), and you must wait for the Court's **Order for Sale** of that property; then
2. Before completing the sale of guardianship property, you must file a **Report of Sale** (requiring a five (5) day waiting period) and obtain a **Decree Confirming Sale** from the Court. You should not sign a deed until the court has confirmed the sale.

## **YEARLY REQUIREMENTS**

**Each year** within sixty (60) days of the anniversary of your qualification date, you **must** do the following:

- File a sworn **Annual Account**. The Annual Account must show your beginning balance, all income received during the accounting period, and all expenditures made during the account period (even those expenditures already approved by the Court). The Annual Account must balance out with an attached **Verification of Funds on Deposit** completed by **each** financial institution where guardianship funds are held. You will need to retain each and every bank statement and canceled check for the guardianship, and label where each deposit came from, since that documentation and information will be needed to prepare the Annual Account.
- In the Annual Account, you may also **apply for compensation** for your services as guardian in the amount of 5% of the gross income of the ward's estate for the accounting period **and** 5% of all money paid out of the ward's estate for the accounting period.
- If you are guardian of the person as well as guardian of the estate, file an **Annual Report of the Guardian of the Person**.
- Have **NEW Letters of Guardianship** issued.

- Check to make sure that your **Monthly Allowance** is still adequate. If necessary, file a new Application for Monthly allowance.
- **Renew your bond**, if necessary. Make sure that the amount of the bond is still appropriate to cover the size of the estate. Bonds should be reduced or increased as necessary.

## **CLOSING THE GUARDIANSHIP**

The guardianship of the estate should be **closed** if:

- a minor ward turns 18;
- the ward dies;
- the ward is declared by the Court to be restored to full legal capacity;
- the guardianship estate becomes exhausted;
- the Court determines that a guardianship of the estate is no longer necessary.

To close a guardianship, you must file a sworn **Final Account** showing all property that has come into your hands since the last Annual Account, as well as the disposition that has been made of such property. If any debts are still owing by the estate, these should be reflected in the Final Account, as well as the reason for their non-payment. For example, you will need to allow for the payment of final attorney's fees and any guardians compensation due, as well as any remaining expenses of the estate.

After the Court has audited and approved the Final Account, you may deliver the assets in your possession to the former ward or those persons the Court has determined to be legally entitled to receive such assets. Once this delivery has been completed, you must then file a receipt signed by each person who received the property and/or a sworn **Report of Compliance**.

After all property has been accounted for and the receipts of delivery approved, the Court will enter an **Order Closing the Guardianship** and relieving you and the surety on your bond of any future responsibility in connection with the guardianship.

## **MISCELLANEOUS**

Do not settle a claim on behalf of the guardianship without authority from the Probate Court. Any claims involving the ward must be brought to the attention of the

Probate Court, **and any settlement (even in another court) must be approved by the Probate Court.** This includes a claim already pending when the guardianship is filed.

Before filing a suit against a third party, you must obtain Probate Court approval.

All contingency fee contracts must be approved by the Probate Court.

Pay your bond premiums promptly. You do not need prior Probate Court approval.

File all income tax returns on behalf of the ward that are required (see a tax return preparer for specific instructions).

Your ward has a right to send a letter to the Probate Court once a year asking for restoration or modification of the guardianship.

### **FINAL NOTE**

In the event that you or your attorney fail to satisfy the requirements of the law, you could be **removed** as guardian of the estate, and you and the surety on your bond will be held **personally liable** for all costs incurred in getting the guardianship back on track. It is no excuse that your attorney has misadvised you or has mishandled the case. You are personally liable for any mistakes, and the Court could appoint an Attorney ad Litem to sue you and the surety on your bond, if necessary. You may have the right to sue your attorney, but you will not avoid personal liability.

**ACKNOWLEDGMENT OF GUARDIAN OF THE ESTATE'S RESPONSIBILITIES**

I, \_\_\_\_\_, Guardian of the Estate of \_\_\_\_\_, understand that my responsibilities are:

1. **Retain an attorney to represent me as the Guardian of the Estate at all times.** Although I may change attorneys, I must always be represented by an attorney with regard to the guardianship of the estate.
2. **Submit an Initial inventory and an Annual Accounting.** I will cooperate with my attorney in preparing an Inventory and Annual Account, and I will provide accurate and timely records to my attorney of all financial transactions in this estate.
3. **Invest Assets Appropriately.** I will invest all guardianship assets in accordance with Texas probate Code Section 855(b) or as otherwise set forth in a Court-Approved Investment Plan.
4. **Maintain a Monthly Allowance.** I will review the ward's expenses periodically to ensure that the ward's financial needs are being met within the monthly allowance that has been established.
5. **Get Court Permission Prior to Buying or Selling Anything** I understand that I must have authority from the Court to make purchases or sell property. I also understand that there will be a waiting period to obtain such authority, and I will allow ample time for the Court to grant me authority.
6. **Pay the Bond Premium When Due.** I understand that the bond is for my protection and the protection of the ward, and I will pay the premium to the bond company when it is due. I do not need prior Court approval to pay the bond premium.
7. **Submit a Final Account.** When closing the guardianship is appropriate, I will have my attorney file a final account with the Court.

\_\_\_\_\_  
Signature of Guardian of the Estate

\_\_\_\_\_  
Date

Cause No. \_\_\_\_\_

Qualification Date: \_\_\_\_\_

## CHECKLIST OF DUTIES AS GUARDIAN OF THE ESTATE

This checklist is designed to provide you with guidance in carrying out your duties and responsibilities as Guardian of the Estate. This checklist summarizes the matters that are more fully set forth in the **GUIDE FOR GUARDIAN OF THE ESTATE**. This is only a supplement and not a substitute for legal advice.

1. **Within 20 days of Order appointing you as Guardian of the Estate:**

\_\_\_\_\_ File your **Oath of Office**.

\_\_\_\_\_ Obtain and file your **Bond** in the amount set by the Judge.

2. **Once your Oath and Bond have been filed and approved by the Court:**

\_\_\_\_\_ The date that your Bond is approved by the Court is your “**Qualification Date**.” You should write this date at the top of this checklist.

\_\_\_\_\_ Have your **Letters of Guardianship** issued by the Clerk. You should write this date at the top of this checklist as a reminder.

3. **Within one month of your Qualification Date:**

\_\_\_\_\_ Publish **Notice to Creditors**.

4. **Within 30 days of your Qualification Date:**

\_\_\_\_\_ File sworn **Inventory, Appraisal and List of Claims** for approval by the Court.

\_\_\_\_\_ File **Application for Monthly Allowance** for approval by the Court.

5. **Within four months of your Qualification Date:**

\_\_\_\_\_ Mail **certified or registered letter**, return receipt requested, to each secured creditor of the estate.

6. **Within 180 days of your Qualification Date:**

\_\_\_\_\_ Mail **certified or registered letter**, return receipt requested,  
**to each secured creditor** of the estate.

7. **Within 60 days of the anniversary of your Qualification Date each year:**

\_\_\_\_\_ File **Annual Account**.

## **PRACTICAL GUARDIANSHIP INFORMATION** **GUARDIANSHIP OF THE ESTATE**

**1. If I am the guardian of the estate, can I spend the money any way I want?**

A guardian of the estate can make very few expenditures without Court Orders: bond premiums, court costs, and taxes (property/income). Virtually all other expenditures require prior written Court approval.

**2. Can I sue people for the ward?**

A guardian of the estate cannot file suit or hire counsel for the ward without Court approval.

**3. Is it ok to use the ward's cash to pay for things?**

Do not cash checks for cash and then spend the cash of the ward except for nominal sums specifically authorized by the Court. At the end of the year, cash cannot be traced and you may be held liable for the sums expended.

**4. What do I do if I had to spend money for an emergency?**

If you spend money without authority, contact your attorney and file to have your actions ratified. It is much easier to cure a problem, if you immediately bring it to the Court's attention, rather than it is when the Court auditor does.

**5. What if I do not want to be the guardian of the estate?**

A guardian of the estate cannot simply quit. You must file an application to resign, file a final accounting, get Court approval, deliver the assets to the persons entitled to same, file affidavits and receipts showing the delivery of the estate, and then the Court can discharge you and any sureties on your bond.

**6. Do I have to account to the Court for What I do?**

It is your job, if you are guardian of the estate, to see that the accounting of assets is filed each year within thirty (30) days of the anniversary date of the approval of your bond.

**7. Do I need an attorney?**

Yes. It is much cheaper to ask your attorney a question to avoid a mistake than to pay the attorney to fix your mistakes. Due to the complexity of an annual accounting and

the need to have it in proper form, the Court will require you to have an attorney.

**8. Can the Court tell me how to fill in papers?**

No. Neither the Judge nor the Court Clerk's can practice law for you and answer legal questions.

**9. Should I spend my own money on the ward and write myself a reimbursement check?**

Do not spend your money on the ward, and then write checks to reimburse yourself. Use the ward's checkbook to pay for the ward's expenses.

**10. Can I put the ward's money in my checking account?**

No. Never commingle funds. If you receive SSI or Social Security as Representative Payee, start a separate account and never put the social security check in your own account. The account should be styled in your name with the ward as beneficiary.

**11. What if the ward dies?**

If you are a guardian of the estate, communicate the ward's death to the Court and contact your attorney. You will then need to file a final accounting. Only after the final accounting is approved, can you disburse the assets to the executor, administrator or heirs at law. Contact your attorney to determine which is appropriate under your circumstances and the several steps necessary to accomplish this.

**12. Can I use the ward's money on myself or other family members?**

Do not steal the ward's assets. You are audited. You will be caught. At best, you have to replace the assets and will be removed. You can be sue and a judgment taken against you. Financially exploiting an incapacitated person could result in criminal prosecution.

**13. Does the Court have to give me permission to spend funds?**

You cannot spend the ward's assets without Court permission, except on very limited things. If you do not have a written Court order authorizing the expense, do not spend the money. You may be liable for your choice even if the expenditure was in the ward's best interest.

**14. Do I have to have a bond? After all, I am family.**

The law states that a bond is necessary in order to have a valid guardianship. The bond is to provide a source of funds to cure problems in the event the guardian of the estate does something wrong. A guardian of the estate posts a bond equal to all liquid or readily sellable assets on hand, plus a year's anticipated income. The bond amount does not include the value of land until it is about to be sold.

**15. Am I personally liable for the ward's debts?**

A guardian of the estate is not personally liable for expenses related to the ward just because you are the guardian of the estate. However, if you sign a contract agreeing to pay a debt, you can be held contractually liable for the debt. Nursing homes and hospitals frequently try to have a guardian sign as a "responsible party" and incur liability. It is up to you to cross out all such language and to write on the admission papers affirmatively that you have no personal liability.

**16. How much money can I have on one bank?**

You should not have more than \$100,000.00 in any given bank. You must take into account the interest that will accrue.

**17. Can I invest in any way I want?**

No. The court only allows very safe investments. You must consult your attorney.

**18. Can I sell things?**

You can only sell things upon filing a request and getting a signed Order. Sometimes you need a hearing and posted notice. Selling a house takes at least four steps. If you sell things without approval, the Court can void the sale, you might be removed as guardian of the estate, and you can be held liable. Never sell anything without a Court Order signed before the sale. If you sell something without an Order, contact your attorney immediately so the he or she can seek to have your actions ratified.