
GUIDELINES FOR GUARDIANS OF INCAPACITATED PERSONS

*York County Courts
Orphans' Court Division*

Introduction

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

This outline is not legal advice. Do not ask Court personnel for legal advice on any issue(s) because they are prohibited from providing it. If you have legal questions, seek the advice of an attorney.

Your guiding principle is to act in a manner that is in the incapacitated person's best interests, which means that his or her wishes or preferences shall be respected to the greatest extent possible. If such desires, however, conflict with your independent judgment, then you should abide by that judgment, but only to the extent necessary to pursue the incapacitated person's best interests.

Court Order Appointing You as a Guardian

The Court Order that appointed you sets forth your responsibilities as a guardian. You must carefully review those terms and conditions of your guardianship.

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 it has been obtained from an insurance agent before you can act on the incapacitated person's behalf.

As appropriate, the Court may appoint one or more guardians of the incapacitated person's "person," or his/her "estate," or both. Depending on the Court Order, the scope of the guardianship appointments may be "limited" or "plenary."

A Limited Guardian is appointed for an individual whom the Court determines is partially incapacitated and needs some guardianship services. Accordingly, a limited guardian's authority is expressly limited by the Court's Order and must never be exceeded

A Plenary Guardian is appointed for an individual whom the Court determines is totally incapacitated and in need of complete guardianship services. Therefore, a plenary guardian is not subject to a limited guardian's restrictions.

If the incapacitated person obtains a new residence outside York County, or if you obtain a residence outside 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.

ELECTRONIC FILING

The Clerk of Orphans' Court will mail you a letter with an access code so you can electronically file forms G-02 (Guardian's Report of the Person), G-03 (Guardian's Report of the Estate), and G-05 (Guardian's Inventory for an Incapacitated Person) when appropriate (see below) through the PA Guardianship Tracking System ("GTS"). The Office of the Clerk of Orphans' Court has those forms available on its website, <https://yorkcountypa.gov/courts-criminal-justice/court-courtrelated-offices/clerkorphanscourt/forms-clerk-of-orphans.html>, by clicking the link entitled "Unified Judicial System of PA – Orphans' Court Forms," <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>.

Upon obtaining an access code, please visit <https://ujportal.pacourts.us/> and select the GTS icon for instructions on how to create your secure account. For administrative efficiency, the Clerk of Orphans' Court strongly prefers that you file all aforementioned documentation through GTS.

Guardian of the Estate

ASSETS

Upon your appointment, you must inquire, investigate, and discover the incapacitated person's assets and determine their fair market value through appraisal. Valuation of realty, personal property, antiques, jewelry, art, bank accounts, securities and other personal property must occur. Risky investments are not permitted without the Court's specific authorization.

After identification, you have a duty to safeguard such assets from dissipation, loss, theft, or destruction. You shall also manage those assets as a reasonably prudent person to assure that they will produce income for the incapacitated person's well-being. In doing so, you may need to consult a professional financial advisor.

INVENTORY - FORM G-05

Within 90 days of your appointment, you must use GTS to file with the Clerk of Orphans' Court an inventory and appraisal of the incapacitated person's real and personal property that he or she has acquired or expects to acquire. A \$10.00 fee is required at the time of filing.

EXPENSES

Generally, you are authorized to pay the incapacitated person's reasonable debts, obligations and expenses, including: 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. § 5536).

FIDUCIARY DUTIES AS GUARDIAN

As a guardian you become a fiduciary who must:

- 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 personal use;
- Invest the assets reasonably to assure income for the incapacitated person (examples 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
- A guardian must not commingle his or her funds with the incapacitated person's money. An incapacitated person must have a separate account.

ESTATE PLANNING

If the incapacitated person's assets are substantial, you may seek Court approval to estate plan on his or her behalf. Estate planning may include establishing trusts, making of gifts, disclaiming interests in property or exercising powers of appointment, all of which could be necessary 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 - FORM G-03

You must use GTS to file with the Clerk of Orphans' Court a report on an annual basis on each anniversary of your appointment. The following information shall be supplied in detail:

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

FINAL REPORT

You shall file a final report with the Court within 60 days of the incapacitated person's death or adjudication of capacity and modification of existing court order(s). The final report must include the information required in the annual reports.

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 guiding principle is to make decisions based on the incapacitated person's best interests, even if your personal beliefs or goals conflict. You should balance the incapacitated person's best interests and his/her family's input with your independent judgment.

If your own values and interests are concretely opposed to the incapacitated person's best interests, you may petition the Court for guidance or relief from your 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 where the incapacitated person resides. In making that selection, you should consult with the incapacitated person's family members and must consider the overall circumstances, including the incapacitated person's wishes and his or her best interests according to your independent judgment.

SUPPORTIVE SERVICES

You should aid in planning for services that support the incapacitated person's care, and encourage the incapacitated person to handle his/her own affairs whenever possible.

PROVISION OF MEDICAL, PSYCHOLOGICAL OR EDUCATIONAL SERVICES

If the Court Order authorizes you to provide these services, you may administer such care, 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

If the Court Order authorizes you to give consent(s) or approval(s) for medical, psychological, surgical, or other treatment alternative, you should encourage the incapacitated person and/or family members to state their wishes. If such desires conflict with the incapacitated person's best interests, however, your independent judgment should not be overridden.

POWERS THAT MUST BE COURT APPROVED

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

- Give consent on the incapacitated person's behalf to undergo an abortion, sterilization, psychosurgery, electro-convulsive therapy, or removal of a healthy body organ;
- Given consent on the incapacitated person's behalf to undergo any experimental biomedical or behavioral medical procedure, or participate in any biomedical or behavioral experiment; and/or
- Prohibit the incapacitated person from marriage or divorce.

ANNUAL REPORT OF THE PERSON - FORM G-02

You are required to use GTS to file with the Clerk of Orphans' Court an Annual Report on or before the anniversary of your appointment or by a date certain set by the Court. 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

See information regarding final report under "Guardian of the Estate" section above.