

THE PHILADELPHIA GUARDIANSHIP HANDBOOK

PRESENTED BY THE GUARDIANSHIP HANDBOOK COMMITTEE OF THE
ELDER LAW SECTION OF THE PROBATE AND TRUST SECTION OF THE
PHILADELPHIA BAR ASSOCIATION.

INTRODUCTION

The Honorable Anne E. Lazarus,
Judge Superior Court of Pennsylvania

It has often been said that practicing in the Orphans' Court is like going through a desert full of mine fields at night without a flashlight. As a past practitioner and a former judge of the Court, I don't know if I agree with that statement but I do know that some of the filings in the court are esoteric and that even though the Orphans' Court is a court of at least equitable principles, it is an entirely statutory court and I's must be dotted and T's crossed to establish jurisdiction and get a case properly before the court.

I am deeply grateful to Keelin S. Barry, Esq., Rise P. Newman, Esq, Anne Maxwell, Esq. as well as the entire Probate Section of the Philadelphia Bar Association for drafting this Guardianship Handbook. It will serve as a road map, or should I now say GPS, to the sometimes and frequent Orphans' Court practitioner. The Handbook was deliberately written as a draft so that we may receive comments from practitioners over the next year to tweak anything that was not stated in optimum fashion or may have been inadvertently left out. I know that this Handbook was a labor of love, respect for the Court, and dedication to those litigants who expect the best from the Orphans' Court. I am deeply honored to have been asked to write an introduction.

Anne E. Lazarus
August 10, 2010

INTRODUCTION

The Guardianship Handbook Committee, a sub-committee of the Elder Law Committee of the Probate and Trust Law Section of the Philadelphia Bar Association, is pleased to present for your review and comments a draft edition of the Philadelphia Guardianship Handbook.

This Handbook was the vision of Orphans' Court practitioners who saw the need to provide guidance to those attorneys unfamiliar with the day to day procedures of serving as a guardian and to provide support for the daunting tasks associated with serving as an individual's guardian. The Guardianship Handbook is intended as a resource to provide some answers and to shed some light on the many questions that arise.

It is the hopes of the of Probate and Trust Section that this Handbook will contribute to expanding the pool of competent lawyers willing to serve as guardians for the court as well as to provide support to the generous members of the Philadelphia Bar who already take on these challenging situations for little or no money.

Because the Guardianship Handbook Committee wants feedback and input from other practitioners, this Handbook is presented as a draft. Your corrections, suggestions for change and additions are welcome. After approximately one year, the committee members will incorporate comments and suggestions to create a "final" Handbook. Of course, given today's technologies, comments and suggestions can continue to be incorporated beyond that time. Send your suggestions and comments to:

guardianshiphandbookcomments@gmail.com

The Co-Chairs of the Guardianship Handbook Committee wish to thank the dedicated members of the Probate and Trust Section of the Philadelphia Bar Association Elder Law Committee's Guardianship Handbook Committee who have put in countless hours creating this valuable resource and who will continue to work toward refining the draft into a final version. The Co-Chairs also wish to thank the Orphans' Court judges who work tirelessly though guardianship cases in order to improve the life of those affected by their decisions.

The Co-Chairs could not have done this without the valuable time and commitment of its members, whose individual biographies appear at the end of the Handbook. A special thanks to Amanda Castonguay, who provided all skills necessary for administrative support, superior font recognition and comic relief. Finally, we wish to thank to John Corenswet, Esquire, editor, for his comments and final review.

In addition to our spouses and families, the Co-Chairs would like to dedicate this Handbook to the memory of our parents. A million thanks would never be enough.

KEELIN S. BARRY, Co-Chair

RISE P. NEWMAN, Co-Chair

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Chapter I

Alternatives to Guardianship: Non-Court Options

A. INTRODUCTION: REASONS FOR ALTERNATIVES TO GUARDIANSHIP

In a free society, self-determination, i.e., the right to make personal decisions such as where to live, whether to receive medical treatment, or how to spend money, is a key part of human dignity. Denying an adult's right to make such decisions by imposing a legal guardianship is a serious matter, one that should be instituted only to the extent absolutely necessary. Providing an individual, instead, with informal help in money management, personal care, and other support will often suffice.

Capacity is contextual and situational,¹ and so it is important to consider the resources available to an individual who is exhibiting an increased need for care. Available supports may be social, such as a caregiver who can monitor the individual's medication regimen; technological, such as an emergency help alert transmitter; change in living situation, such as moving to an assisted living facility; financial, such as automatic bill payment; or legal, such as preparation of a trust or durable power of attorney that enables appropriate management of the individual's financial or other affairs.

Having a Guardian manage assets and make personal decisions can be both costly and intrusive. Several of the legal alternatives available are discussed in the chapter. These arrangements can help individuals ensure that decisions will be made in accordance with their values and goals (and will continue to be made, should they become incapacitated). Such tools can be implemented while a person still has the capacity, for example, to create a trust, to assess options for end-of-life medical decisions, and to select an individual or entity to manage finances and health care in case of future incapacity. Thus they have the potential to make the appointment of a legal Guardian unnecessary.

¹ American Bar Association Commission on Law and Aging and American Psychological Association, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings* (2006).

B. LEGAL ALTERNATIVES TO GUARDIANSHIP

1. REPRESENTATIVE PAYEE

Recipients of federal benefits who are unable to manage their benefits because of physical or mental difficulties may have the applicable agency appoint a representative payee to receive and manage those benefits. The benefits must be used for the sole purpose of paying for the recipient's food, shelter, medical care, and other personal needs. Government agencies that administer representative payee programs include the Social Security Administration (SSA), Department of Veterans Affairs, Office of Personnel Management, and Railroad Retirement Board.²

A relative, friend, agency, or institution may ask to be the designated representative payee. If a suitable representative payee is not found, the federal agency may help locate someone. The appointment process takes approximately 90 days. Once approved, a representative payee must submit an annual account to the federal agency and must keep the beneficiary's funds separate from the representative payee's own funds.

The representative payee for a Supplemental Security Income (SSI) beneficiary must know, and keep up to date about, limitations on beneficiary savings and resources for continued eligibility, and must report changes that may affect eligibility or the amount of payment, such as the following:

- A beneficiary moves to or from a hospital, nursing home, or other institution.
- A married beneficiary separates from his or her spouse or is reunited after separation.
- Someone moves into or out of a beneficiary's household.
- A beneficiary has a change in income or resources.³

Federal agencies consider the representative payee arrangement safer than a power of attorney because of the reporting requirement and oversight. A power of attorney is not accepted for the management of a recipient's benefits.⁴ A legal Guardian may serve as a representative payee and must also submit an account of the use of the recipient's benefits to the appropriate federal agency.

2. PROTECTIVE PAYEE

A protective payee is an individual designated by the recipient of public assistance benefits, or by the Pennsylvania Department of Public Welfare, to receive such benefits on behalf of the recipient or his or her family. The payee must ensure that the benefits are expended for the well-being of the recipient or his or her family and must work cooperatively with the County Assistance Office in fulfilling this role. The payee is responsible for making decisions regarding

² Jeffrey A. Marshall, *Elder Law in Pennsylvania*, 51 (2d ed. PBI 2007).

³ *Id.* at 57.

⁴ *Id.* at 51–52.

the expenditure of the benefits and must account for those expenditures. The payee should discuss expenditures with the recipient or family in advance and should have no separate or independent financial interest. The payee should be capable of managing money and serving as an example for the recipient.⁵

3. POWER OF ATTORNEY

A power of attorney is a written, notarized document by which an individual (the “principal”) grants to one or more persons (the “agent” or “attorney-in-fact”) the authority to act on behalf of the principal pursuant to the terms and conditions specified in the document. The principal must be competent when he or she signs the document and must sign the document voluntarily. The agent or attorney-in-fact is generally a friend, relative, or financial advisor who is aware of the principal’s needs and current life situation. The relationship between the principal and the agent is governed to a significant extent by the statutory requirements set forth in 20 Pa.C.S. § 5601 et seq.⁶

A power of attorney is a key tool for enabling individuals to determine who will make decisions about their health and finances, especially if they become unable to do so in the future. A power of attorney is commonly used to empower an agent to handle the following types of transactions:

- Banking transactions;
- Buying and selling of property;
- Making specified gifts;
- Entering safe deposit boxes;
- Purchasing life insurance;
- Settling claims;
- Entering into contracts;
- Exercising stock rights;
- Buying, managing, or selling real estate;
- Filing tax returns;
- Handling matters related to government benefits;
- Making health care decisions.

An increasingly important function of a power of attorney is to protect the principal’s assets and financial security from the threat of depletion due to health care expenses. A principal may give specific instructions about the circumstances in which the agent will be authorized to divest the principal’s assets in order to preserve the value of those assets for the principal’s spouse or

5 See 55 Pa.Code §§ 291.24(b)(1), (2), or go to www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/su/960/Table%20of%20Contents.htm#P-1_0

6 Marshall at 31.

other beneficiaries. Attorneys should discuss the risks and benefits of such arrangements with their clients when drafting powers of attorney.

A power of attorney may be *limited, full, temporary, or durable*. A limited power gives the agent authority for a specific action, e.g., cashing a check or selling real property. A full power grants authority to the agent to take *any* action on behalf of the principal, including handling all financial affairs. A temporary power of attorney is in effect only so long as the principal is also capable of exercising the powers granted. A power of attorney terminates upon the principal's disability, mental incapacity, or death (except when specific instructions are included for post mortem purposes).

A limited or *plenary* power of attorney may be converted to a durable power of attorney, meaning that the document survives the principal's incapacity (the loss of ability to make reasoned decisions and understand their consequences). Powers of attorney in Pennsylvania are presumed to be durable unless otherwise stated. A durable power of attorney may become effective immediately upon execution or it may specify that it will become effective only at a future time or when a certain contingency occurs, such as the principal's becoming incapacitated. (This is known as a *springing* durable power of attorney.) To avoid confusion, springing durable powers of attorney should contain language describing specifically the criteria for incapacity, how such criteria will be determined, and who will make the determination. Even with such language, conflicts may emerge due to differing opinions among the principal, agent, or other interested parties as to whether the contingency has been met. Conflicts of this nature or other conflicts that may emerge among family members regarding who is selected to be the agent and how the duties are carried out may be resolved through mediation. (See Chapter VI, The Role of Mediation in Adult Guardianship.)

Although a durable power of attorney may make it unnecessary to appoint a Guardian in the future, situations do exist where a guardianship may be necessary even if the principal has executed a durable power of attorney, e.g.:

- The named agent cannot be found, is unavailable, or refuses to act.
- An irresolvable conflict develops between the principal and the agent, and the principal no longer has the capacity to revoke the power of attorney or replace the agent.
- The principal takes harmful actions from which he or she is unwilling to be restrained.
- The agent has a conflict of interest with the principal or is not making decisions in the best interest of the principal, and a petition is filed with the court to remove the agent.

A durable power of attorney has the benefit of being less expensive and complicated to arrange than a guardianship, and of allowing the principal to appoint the agent directly. However, durable powers of attorney are susceptible to abuse, particularly if the principal becomes incapacitated. Unlike a Guardian, an attorney-in-fact is not supervised by the court and thus may be less accountable to act in the principal's best interest.

Because of the complexity and technical knowledge required to properly draft a power of attorney, such an instrument should be prepared or reviewed by an attorney. The attorney should

carefully draft the document to meet the client's goals and to prevent financial abuse. Specifically, the attorney should discuss with the principal his or her desires about the divestiture of funds for the purpose of meeting Medicaid eligibility requirements for long-term care. The principal's gifting intentions and instructions must also be clearly defined and documented in order for the agent to have the authority to carry out the principal's wishes.

Because spouses often name each other as agents and may be close in age and equally subject to incapacity, it may be advisable in these cases to name serial agents, independent co-agents, or joint co-agents. As an additional benefit, naming a co-agent reduces the possibility of abuse, particularly with respect to gifting. If a principal appoints co-agents, it may be advisable to include a dispute resolution mechanism in the document.⁷

Pennsylvania case law provides only limited guidance with respect to the determination of a client's capacity to execute a power of attorney. A power of attorney will typically be upheld if the principal is able to meet the standard for contractual or testamentary capacity⁸ or at least shows the ability to appreciate that he or she is assigning someone the authority to handle his or her affairs. Because capacity fluctuates and is task specific, even clients with a diagnosis of dementia can execute a power of attorney as long as at the time of execution they are oriented to time, place, and person, and understand the nature of the task at hand. A greater standard of capacity may apply if the power of attorney is more complicated or provides gifting powers to the agent.⁹ Attorneys should be alert to any signs of undue influence by family members regarding gifting or selection of an agent, and should meet with the principal alone to assess whether there is undue influence and whether the principal has capacity to execute a power of attorney.

A final issue regarding powers of attorney concerns the growing problem of banks, insurance companies, and investment houses that refuse to honor them because of past misuse by agents. Some of these institutions now require that a form be completed by the principal's physician to attest that the principal had capacity at the time the power of attorney was executed. This practice violates the Pennsylvania statute, which prohibits financial institutions from refusing to honor a valid power of attorney without good cause and which makes them liable for any negative consequences resulting from their refusal. In addition, some financial institutions are requiring that a substitute form be completed by the principal in lieu of a power of attorney. In many instances, the principal is not available or capable of completing such a form. Attorneys should advise an agent faced with such a situation to contact the institution's legal department or have the institution contact the drafting attorney.

⁷ *Id.* at 43.

⁸ American Bar Association and American Psychological Association, *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*, 6 (2006).

⁹ Marshall at 32-34.

4. HEALTH CARE POWER OF ATTORNEY

In November 2006, Pennsylvania enacted new legislation, 20 Pa.C.S. § 5404, which governs health care decision-making for persons who become incapacitated. Under the Act, a principal can appoint one or more decision-makers who are empowered to make health care decisions for the principal if he or she becomes incapacitated, including decisions regarding end-of-life treatment. Subchapter C of the Act governs the authority and responsibilities of an appointed health care agent. Subchapter D contains a form of health care power of attorney, which combines power of attorney provisions with end-of-life treatment instructions typically found in a living will. Use of this form, which is known as Pennsylvania's "Comprehensive Health Care Advance Directive," is optional. The Act also sets forth the standards that an agent is to use in making decisions on behalf of the principal.

Generally, the health care power of attorney and the financial power of attorney are separate, but it is possible to combine the two into one comprehensive document. The principal may designate the same person as agent for health care matters and for finances or may designate different agents for the two roles.

A principal can appoint any competent adult to serve as a health care agent with the exception of the principal's physician, physician's employees, or the owners or employees of a facility where the principal resides or receives care (unless such a person is a family member of the principal). Powers may be limited, plenary, durable, or springing, as described above. A durable power that is valid as of the date it was executed allows a health care agent to act and obtain medical information without any determination that the principal has become incapacitated.

The law also allows for a health care agent to make other decisions for the principal if no other agent has been appointed. A health care agent may be appointed by any person of "sound mind," and if no such person has been designated, the statute creates a default order of priority of persons who may be "close" to the principal and who may act as health care representative. The priority list starts with the spouse of the principal (provided no divorce action is pending), followed by children, parents, siblings, grandchildren, and finally, any adult who is familiar with the principal's preferences and values.

In addition to making decisions about treatment and care, a health care agent has the power to take the following actions:

- receive and inspect the principal's medical records;
- sign releases (for example, to obtain information about the principal);
- authorize admission to or discharge from a health care facility;
- authorize or refuse medical treatment or terminate previously initiated treatment;
- employ or discharge medical personnel;
- authorize nontraditional or unconventional treatment;
- make funeral and other arrangements.

Except as may be limited by the health care power of attorney, the health care agent has “the authority to make any health care decision and to exercise any right and power regarding the principal’s care, custody and health care treatment that the principal could have made and exercised.” 20 Pa.C.S. § 5456(a). This authority may also extend to certain post mortem issues, such as anatomical gifts, disposition of the remains of the principal, and autopsies.

A principal may appoint one or more health care agents and may also provide for a successor agent or agents. If more than one health care agent is appointed, all agents must act together unless the health care power of attorney expressly provides for them to have independent authority.

An agent under a health care power of attorney is required to make decisions on the basis of what the principal would want done. Agents should consult the principal if the principal has capacity or should follow the instructions of an advance directive or living will if the principal has become incapacitated. If an advance directive does not exist or does not give clear instruction regarding an ambiguous health care decision, the agent should make decisions that he or she believes best follows the principal’s wishes and values (substituted judgment). If the agent does not know, he or she is required to do what he or she thinks is in the principal’s best interest.

A principal may revoke the powers of the agent at any time. A health care power of attorney can provide for a limited duration, but if it does not contain a time limitation, it will continue in force until it is revoked by the principal (or by the principal’s Guardian). Section 5460 of 20 Pa.C.S., “Relation to health care agent to court-appointed guardian and other agents,” clarifies that where a Guardian of the person is appointed, the agent under a health care power of attorney is accountable to both the Guardian and the principal.

Health care powers of attorney must be witnessed by two individuals at least eighteen years old, but do not have to be notarized. Signing requirements for health care powers of attorney are similar to those for living wills, but are different from those for financial powers of attorney. Accordingly, if the health care power of attorney is combined with a power of attorney to cover financial matters, advice of a lawyer should be sought in order to make sure the signed document will be valid and enforceable.

5. LIVING WILLS

In Pennsylvania, a living will is an individual’s written advance directive about health care, executed voluntarily by a competent adult. Although Pennsylvania does not require the document to be notarized, it may need to be for acceptance in other states. Like healthcare powers of attorney, living wills are governed by 20 Pa.C.S. § 5404.

A living will sets forth an individual’s wishes and instructions about any life-sustaining treatment desired when terminally ill, in an irreversible coma, or brain dead (in a vegetative state), and when the administration of such treatment would only prolong the moment of death. The living will can describe when a person would no longer desire certain life-prolonging

medical treatments, such as a tube feeding or any artificial or invasive form of nutrition or hydration, or would like any of these to be continued.

The living will is effective when a person no longer has capacity to make medical decisions and the conditions above are met. The living will may be changed or revoked by its author at any time. In order for it to become operative, the author's attending physician must have received a copy of the document and determined both that the principal is incapacitated and has an end-stage medical condition or is permanently unconscious.

The author of a living will should keep a copy readily available, provide a copy to his or her agent for health care, and deliver the document to his or her physician, who in turn is required to make it part of the author's medical record. It is also advisable to provide a copy of the living will to any acute care or long-term care provider.

There is no law in Pennsylvania guaranteeing that a medical provider will follow a living will in all circumstances. A provider is required only to:

- Make a reasonable effort to determine whether:
 - > the living will complies with legal requirements;
 - > a patient is capable of making health care decisions;
 - > a patient has an authorized representative to make health care decisions;
 - > the living will and all actions that the attending physician proposes to take are consistent with the patient's desires.
- Inform the patient or authorized representative of any policy or practice that would preclude the honoring of the living will.
- Help transfer a patient to a facility that will honor the directives of the living will if such directives are valid in Pennsylvania.

It is advisable for authors of living wills to discuss their wishes with their physicians before the need arises. The authors can then better understand under what conditions the physician may or may not honor the directives. It is also important that a living will be carefully drafted to protect the wishes, circumstances, and values of the patient. There is no prescribed form or format for a living will.¹⁰

6. TRUSTS

A trust is an agreement under which money or other assets are held and managed by at least one person or institution for the benefit of another person. Different types of trusts may be created to accomplish specific goals, and they may vary in the degree of flexibility and control they offer. Whether revocable or irrevocable, the common benefits that trust arrangements offer include:

- providing personal and financial safeguards for family and other beneficiaries;

¹⁰ Marshall at 95 4-3.2.9.

- establishing a means of controlling or administering property.

There may be other benefits, such as postponement or avoidance of taxes. This section will not address tax issues, although they should be considered when a trust agreement is created.

The focus of this section is to provide a brief discussion on revocable and irrevocable trusts and how either of these instruments can serve as an alternative to the appointment of a Guardian.

For purposes of this section, the following terminology applies:

- *Grantor*. The person who provides the property and creates the trust (also called Donor, or Settler).
- *Trustee*. The individual, institution, or organization that holds legal title to the trust assets and that is responsible for managing and administering those assets. The grantor may serve as the trustee or may serve as one of the trustees, since it is possible for two or more trustees to serve together.
- *Trust Agreement*. The document that formally expresses the understanding between the grantor and the trustee. Generally it contains instructions to direct the manner in which the trust property is to be held, as well as instructions as to what will happen when one or more of the trustees is unable to continue serving.

A revocable trust is a trust agreement under which the grantor may change the terms of the trust or cancel the trust. The benefit of a revocable trust is that, during the grantor's capacity, the grantor maintains control of the property. In addition, if the revocable trust contains the appropriate provisions, upon the incapacity of the grantor, the trust may continue under the management of a trustee who was appointed by the grantor during his or her capacity, or by a co-trustee who was serving with the grantor at the time of his or her incapacity. Thus the trust assets remain protected and managed, and the need for the appointment of a Guardian of the estate is avoided.

A properly prepared revocable trust provides more flexibility for a trustee than a durable power of attorney provides for an attorney-in-fact. If the agent under a durable power of attorney dies, it is possible that no one else has been named to serve for the Incapacitated Person. Furthermore, institutions housing the principal's assets may not honor a power of attorney and may want the principal to sign that institution's own power of attorney form. If the power of attorney instrument was executed several years before incapacity and the principal is unable to sign the institution's form, the institution may not honor the power of attorney and the agent may need to ask a court to intervene and issue a decree to the institution to honor the existing instrument. (See the discussion of powers of attorneys, above.) Finally, a power of attorney granted to the wrong person may invite fraud, waste, and abuse, whereas a revocable trust has more built-in protections.

Unlike a revocable trust, where the grantor maintains management and control, an irrevocable trust is an arrangement in which the grantor relinquishes ownership and control of property. As with a revocable trust, the grantor appoints a trustee (or trustees), but unlike a revocable trust, the grantor may not serve as trustee or co-trustee. As in a revocable trust, if the

appropriate provisions are included, upon the grantor's incapacity, a trustee or co-trustee appointed by the grantor during capacity will continue to manage the trust. Again, the assets remain protected and managed, and the need for a Guardian of the estate will be avoided. Although there are benefits to an irrevocable trust, such an instrument has limited appeal to many people because the grantor must permanently relinquish ownership and control of the property transferred to the trust.

Since revocable and irrevocable trusts have different tax consequences, it is important to consult with a knowledgeable professional before creating either type of instrument.

7. SPECIAL NEEDS TRUSTS

Special needs trusts (also known as “supplemental needs” trusts) allow a disabled beneficiary to receive gifts, lawsuit settlements, or other funds without losing eligibility for certain government programs. With a special needs trust, individuals can maintain eligibility for public benefits to cover their basic needs of food, clothing, shelter, and medical care, while funds in the trust can be used to provide for “special” or supplemental needs not covered by government benefits. For example, the trust could be used to pay for such things as education, travel expenses, repairs and upkeep on a residence, a wheelchair-accessible van, or dental and other medical care not covered by Medicaid—benefits that could make a significant difference in an individual's quality of life.¹¹

Trusts funded by third parties (parents, spouses, siblings, or others) can be established for the benefit of individuals receiving or potentially eligible for public benefits such as Supplemental Security Income (SSI) and Medical Assistance (Medicaid). Properly structured, these trusts will not interfere with the beneficiary's eligibility for public benefits. Such a trust may be created by will, as a way for an individual to leave assets to a disabled relative. When the beneficiary dies, any unspent funds can be distributed according to the testator's instructions.

42 U.S.C. § 1396p(d)(4)(A) provides that a special needs trust can be funded by an individual's own assets for his or her own benefit and can be structured to preserve the individual's eligibility for public benefits. The law provides, *inter alia*, that a special needs trust:

- can only be established by a parent, grandparent, legal guardian, or court,
- for a beneficiary under 65 years old at the time the trust is funded, and
- any unexpended funds remaining at the death of the beneficiary must first be used to reimburse the state for Medicaid benefits paid during the life of the trust.

Proper drafting of these trusts is critical to their acceptance by the government agencies that pay benefits.

¹¹ 62 Pa.C.S. § 1414.

8. JOINT PROPERTY ARRANGEMENTS

Joint property arrangements include holding bank or securities accounts or other assets in joint tenancy or entering into a community property agreement with a spouse. If a person becomes incapacitated, the joint owner may have the authority necessary to manage the asset without a guardianship.

A significant disadvantage in relying on a joint property arrangement is that it may result in unintended or undesired loss of control over assets, and thus invite financial abuse. For example, if a person adds a family member as a joint owner on a bank or securities account to help manage his or her finances, it may not be clear that the person did not intend to transfer ownership of the account to the joint owner. Thus, if the family member spends the funds inappropriately, has creditors, dies, or dissolves a marriage, some or even all of the funds may be treated as belonging to that family member. A person who transfers an interest in real estate to a family member faces similar risks.

Joint property arrangements may also have undesired or unintended estate planning and tax consequences, including the following:

- Management of assets by the joint owner without knowing and respecting the original owner's estate plan may lead to unintended unequal distribution to heirs after the original owner's death.
- Property that a person receives as a gift may have a less favorable capital gains tax basis than property received by inheritance.
- Gift taxes may be a consideration for some individuals.

Eligibility for public benefits based on financial need such as Medicaid, SSI, and cash assistance for low-income families may be affected by joint property arrangements, for example:

- Benefit eligibility may depend on the amount of assets a person "owns"; thus, adding a person as an owner may affect the new joint owner's eligibility for benefits.
- Some programs penalize people for "transferring" assets, and adding a joint owner may constitute a transfer.

C. CONCLUSION

Older individuals and their families may want to consult an elder law attorney to consider how to put in place some of the legal arrangements described above in order to avoid the need for appointment of a Guardian at some future date—and thus preserve the greatest degree of self-determination—even in the event of incapacity.

D. BIBLIOGRAPHY

American Bar Association and American Psychological Association. *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*. 2006.

American Bar Association Commission on Law and Aging and American Psychological Association. *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*. 2006.

Kapp, Marshal B. *Key Words in Ethics, Law, and Aging: A Guide to Contemporary Usage*. New York: Springer Publishing, 1995.

Marshall, Jeffrey A. *Elder Law in Pennsylvania*, 2d ed. PBI 2007.

Understanding Advance Directives in Health Care: Living Wills and Powers of Attorney in Pennsylvania, www.Igbtheart.org/states/Pennsylvania-%20form.pdf

www.specialneedsanswers.com. (A resource of the Academy of Special Needs Planners.)

Chapter II

Statutes and Legal Mechanics

A. INTRODUCTION

The purpose of 20 Pa.C.S. § 5501 et seq. is to create a system whereby Incapacitated Persons can participate as fully as possible in all decisions which affect them—a system which assists these persons in

- meeting essential requirements for physical health and safety,
- protecting their rights,
- managing their financial resources, and
- developing or regaining their abilities to the maximum extent possible,

and which accomplishes these objectives through the use of the least restrictive alternative; further, that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as Guardians. 20 Pa.C.S. § 5502.

B. DEFINITION OF INCAPACITATED PERSON (IP)

An Incapacitated Person (IP) is an “adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.” 20 Pa.C.S. § 5501.

C. DETERMINATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN

Section 5512.1(a) prescribes the procedures for determining incapacity.

(a) Determination of incapacity. – In all cases, the court shall consider and make specific findings of fact concerning:

- (1) The nature of any condition or disability which impairs the individual’s capacity to make and communicate decisions.*
- (2) The extent of the individual’s capacity to make and communicate decisions.*

(3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.

(4) The type of guardian, limited or plenary, of the person or estate, needed based on the nature of any condition or disability and the capacity to make and communicate decisions.

(5) The duration of guardianship.

(6) The court shall prefer limited guardianship.

20 Pa.C.S. § 5512.1(a).

Total incapacity will result in a plenary guardianship. 20 Pa.C.S. § 5512.1(c) and (e).

D. GUARDIAN OF THE PERSON

1. LIMITED

A limited guardianship will specify the powers and duties assigned to the Guardian, which are consistent with the court's finding of limitations and which may include:

- providing for general care, maintenance, and custody of the Incapacitated Person;
- designating a place for the IP to live;
- Assuring that the IP receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the IP in the development of maximum self-reliance and independence.
- providing required consents or approvals on behalf of the IP.
- 20 Pa.C.S. § 5512.1(b).

2. PLENARY

A plenary Guardian will be appointed, with powers and duties over all decision-making pertaining to a person's health and welfare, only upon a finding that the person is totally incapacitated. 20 Pa.C.S. § 5512.1(c).

3. LIMITATIONS ON POWERS OF GUARDIAN OF THE PERSON

Unless ordered by the court, a Guardian or emergency Guardian shall not

- consent to an abortion, sterilization, psychosurgery, or electroconvulsive therapy or removal of a healthy body organ;
- prohibit marriage or consent to divorce;
- consent to any experimental biomedical or behavioral medical procedure.
- 20 Pa.C.S. § 5521(d), (f).

4. POWERS AND DUTIES NOT GRANTED TO GUARDIAN

The court may not grant to a Guardian powers controlled by other statute, including, but not limited to, the power

- To admit the Incapacitated Person to an inpatient psychiatric facility or state center for the mentally retarded;
- To consent, on behalf of the IP, to the relinquishment of the person's parental rights. 20 Pa.C.S. § 5521(f).

E. GUARDIAN OF THE ESTATE

1. LIMITED

A Guardian will be appointed with powers consistent with the court's finding of limitations; and the portion of assets or income over which the Guardian of the estate is assigned powers and duties will be specified. 20 Pa.C.S. § 5512.1(d).

2. PLENARY

A Guardian will be appointed only upon a finding that a person is totally incapacitated. 20 Pa.C.S. § 5512.1(e).

F. REPORTING REQUIREMENTS

1. A Guardian of the estate must file:
 - Guardian's Inventory, pursuant to 20 Pa.C.S. § 5521(b) referencing 20 Pa.C.S. § 5142;
 - Annual reports pursuant to 20 Pa.C.S. § 5521(c)(1)(i).
2. A Guardian of the person must file:
 - Annual reports pursuant to 20 Pa.C.S. § 5521(c)(1)(ii).
 - Within 60 days of the death of the Incapacitated Person or an Adjudication of Incapacity and Modification of Existing Orders, the Guardian shall file a Final Report with the court. 20 Pa.C.S. § 5521(c)(2).

G. EMERGENCY GUARDIAN

1. APPOINTMENT OF AN EMERGENCY GUARDIAN

The Court may appoint an emergency Guardian of the person or estate when, after a petition and a hearing, it is shown by clear and convincing evidence that a person lacks capacity, is in need of a Guardian, and that the failure to appoint an emergency Guardian will result in irreparable harm to the person or estate. 20 Pa.C.S. § 5513.

2. DURATION OF EMERGENCY GUARDIANSHIP.

- a. An emergency guardianship of the person may be in effect for up to 72 hours and may be extended for no more than 20 days from the expiration of the initial emergency order.
- b. An emergency guardianship of the estate shall not exceed 30 days.
- c. Thereafter, full guardianship proceedings must be commenced under § 5511.

H. PRE-HEARING PROCEDURES

- Filing of petition package.
- Issuance of a Preliminary Decree.
- Issuance of a Citation.
- Service of Preliminary Decree upon the Alleged Incapacitated Person (“AIP”) no less than 20 days in advance of the hearing.
- If requested by the AIP, appointment by the court of counsel to represent his or her interests at the hearing.
- Giving of notice to all interested parties.
- Sending of a “seven-day letter” to the court if counsel has not been retained by or on behalf of the AIP. In appropriate cases, counsel shall be appointed to represent the AIP.
- 20 Pa.C.S. § 5511(a).

I. THE GUARDIANSHIP HEARING

1. THE STANDARD

The court, upon petition and hearing and upon presentation of clear and convincing evidence, may find a person to be incapacitated and appoint a Guardian or Guardians. Petitioner may be any person interested in the Alleged Incapacitated Person’s (AIP’s) welfare. 20 Pa C.S. § 5511(a).

2. EVIDENCE TO BE ESTABLISHED, 20 Pa.C.S. § 5518

The petitioner must establish the AIP's incapacity by presenting testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner:

- regarding the nature and extent of alleged incapacities and disabilities and the person's mental emotional and physical condition, adaptive behavior and social skills;
- regarding the services being utilized to meet essential requirements for the AIP's physical health and safety and to manage the person's financial resources;
- regarding the types of assistance required by the AIP;
- showing that no less-restrictive alternatives would be appropriate;
- regarding the probability that the extent of the AIP's incapacities may significantly lessen or change.

3. PRESENCE OF THE ALLEGED INCAPACITATED PERSON

The AIP shall be present unless there is evidence from a physician or licensed psychologist that his or her physical or mental condition would be harmed by his or her presence, or if he or she is absent from the Commonwealth. 20 Pa.C.S. § 5511(a)(1), (2).

J. THE ROLE OF COURT-APPOINTED COUNSEL TO THE AIP

Although 20 Pa.C.S. § 5511 allows the court to appoint counsel for the AIP if requested by the AIP, the statute does not provide much guidance as to counsel's duties. Generally, counsel should review the petition, meet with the AIP (or at the very least, speak with the AIP prior to the hearing), review the expert's report, speak with the expert, speak with the petitioner, speak with family members, and take any other action to determine if there is a less restrictive alternative. If there is a less restrictive alternative, counsel may discuss this with the petitioner or with the proposed Guardian.

Counsel must be present at the hearing and will have the opportunity to cross-examine the petitioner's expert and other witnesses.

Counsel should review and be familiar with the Pennsylvania Rules of Professional Conduct relating to representing a person with a disability. Rules 1.14, Client with Diminished Capacity, and 1.16, Declining or Terminating Representation, are reproduced in the Appendix.

K. ISSUANCE OF A DECREE

1. THE FINAL DECREE

The Final Decree is issued at or shortly after the conclusion of the hearing and contains findings of fact regarding the following:

- The nature of any condition or disability which impairs the IP's capacity to make and communicate decisions;
- The extent of the IP's capacity to make and communicate decisions;
- The need for a guardianship in the light of other circumstances;
- The type and duration of guardianship.
- 20 Pa.C.S. § 5512.1(a)–(h).

2. SERVICE OF FINAL DECREE ON THE AIP

The court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship. 20 Pa.C.S. § 5512.1(h).

L. UNIFORM FIREARMS ACT – RESTRICTIONS ON THE IP

Sections 6105(a) and (c) of the Uniform Firearms Act, prohibit a person who has been adjudicated an incapacitated person from possessing, using, controlling, selling, transferring or manufacturing, or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in the Commonwealth of Pennsylvania. The Guardian should inquire about the ownership and/or possession of any firearms by the incapacitated person and within 60 days of the Adjudication, should arrange for the sale or transfer of the incapacitated person's firearms to another eligible person who is not a member of the prohibited person's household. As well, an incapacitated person is not permitted to obtain a license to carry a firearm. Any existing license issued to the incapacitated person should be returned to the issuing authority.

M. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Act 108, signed into Pennsylvania law July 5, 2012, amends Title 20 by adding Chapter 59, which addresses jurisdictional, transfer and enforcement issues relating to adult guardianships and adult protective proceedings. More specifically, Act 108 addresses, among other issues, the transfer of guardians/conservators from another country as well as from/to other U.S. jurisdictions. The Act further expands the jurisdiction of certain guardians.

Chapter III

Rights of the Alleged Incapacitated Person and the Incapacitated Person

A. INTRODUCTION

Guardianship in Pennsylvania is “a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them . . . through the use of the least restrictive alternative.”¹ In deciding whether a guardianship is necessary, a court is required to prefer limited guardianship² so as to restrict the rights of the Alleged Incapacitated Person (AIP) as little as possible.

The least restrictive alternative will result in a status and setting that provide the necessary protections with the fewest restraints on personal liberty. In choosing these, consideration will be given to the natural environment, the nature and proximity of services needed, and the person’s strengths and resources as well as the severity of the dysfunction.³

B. RIGHTS OF THE AIP BEFORE INITIATION OF GUARDIANSHIP PROCEEDINGS

Less restrictive alternatives, including powers of attorney, living wills, representative payee, and case management are preferable. (See Chapter One, Alternatives to Guardianship.) The court is required to consider and make specific findings about the need for guardianship in view of other factors⁴ (such as resources available).

The AIP shall be provided evaluation and treatment (to be arranged by the petitioner or other interested person) of medical, psychological, cognitive, nutritional, and other conditions that may be interfering with function. Adequate and appropriate treatment may restore some capacity and function.

1 20 Pa.C.S. § 5502.

2 20 Pa.C.S. § 5512.1(a)(6).

3 For a discussion of least restrictive alternative as it applies to mental health, *see* 50 Pa.C.S. § 5100.2.

4 20 Pa.C.S. § 5512(a)(3); *see also* 20 Pa.C.S. § 5512.1(b)–(e), court must find a need for guardianship services.

C. PROCEDURAL RIGHTS

Pursuant to 20 Pa.C.S. § 5511, the AIP has the right to the following:

1. PERSONAL SERVICE AT LEAST 20 DAYS IN ADVANCE OF THE HEARING

Written notice (of the petition and hearing) shall be given in large type and simple language, explaining the nature and the seriousness of the process and the rights that could be lost, “to the maximum extent in terms the individual is most likely to understand.”⁵

2. IN CONNECTION WITH THE HEARING, THE AIP SHALL BE ENTITLED TO THE FOLLOWING:

- Counsel, which shall be appointed if the court deems it appropriate, including payment if needed;
- A hearing closed to the public, if requested by the AIP;
- A jury, if requested by the AIP;
- A hearing at the residence of AIP, if appropriate;
- To be present at the hearing, unless a physician or psychologist states that such would be harmful or unless the AIP is out of state;
- Independent evaluation of the AIP’s alleged incapacities; the Court will consider an evaluator nominated by the AIP;⁶
- Cross-examination of witnesses by counsel for the AIP.⁷

D. RIGHTS OF THE IP AFTER ADJUDICATION

After adjudication, the IP can expect that:

1. The Guardian will respect the IP’s wishes and preferences to the greatest possible extent and will act in the IP’s best interests⁸ and treat him or her with dignity and respect. In doing so, the Guardian may not always follow professional advice, will examine alternatives, and, after serious consideration, may decide to do as the IP wishes.⁹
2. The Guardian will be reasonably accessible.

⁵ 20 Pa.C.S. § 5511(a)–(b).

⁶ 20 Pa.C.S. § 5511(a)-(d).

⁷ 20 Pa.C.S. § 5518.1.

⁸ 20 Pa.C.S. § 5521(a)

⁹ For a recent case in which the court emphasizes the need to honor the intentions of the IP to the fullest extent possible, see *In re Rosengarten*, 871 A. 2d 1249 (PA Super. 2005).

3. Training, education, medical and psychiatric services, and social and vocational opportunities will be available as appropriate to develop or enhance maximum self-reliance and independence for the IP.¹⁰

4. There will be no abortion, sterilization, psychosurgery, electroconvulsive therapy, removal of a healthy bodily organ, experimental biomedical or behavioral medical procedures, or participation in biomedical or behavioral experiments without specific authorization by the court; and no admission to psychiatric and state MR facilities without court approval.¹¹

5. There will be no prohibition of marriage or consent to divorce without specific court authorization and no efforts to sever parental rights.¹²

6. All legal rights except those designated by the court are retained by a partially Incapacitated Person,¹³ including constitutional and civil rights. Depending on the extent of the incapacity, these *may* include the following rights:

- to vote;
- to hold property;
- to enter into (some) contracts;
- to marry and remain married;
- to receive personal mail;
- to associate and communicate freely with others;
- to make a will;
- to practice religion;
- to maintain and express opinions.

In other words, the IP can expect to control all aspects of his or her life not addressed by the court, as far as capacity allows.¹⁴

E. OTHER RIGHTS OF THE IP

An IP shall also continue to enjoy the following rights:

¹⁰ 20 Pa.C.S. § 5512.1(b)(3).

¹¹ 20 Pa.C.S. § 5521(d), (f).

¹² *Id.*

¹³ 20 Pa.C.S. § 5512.1(g).

¹⁴ *See also* 20 Pa.C.S. § 5521(d)(2).

1. PROCEDURAL RIGHTS (STATUTORY)

An IP is entitled to information on the right to appeal the guardianship and the right to petition to modify or terminate the guardianship, and information on how to exercise these rights.¹⁵

An IP is entitled to representation by an attorney in exercising these rights (which may require court approval).

2. RESIDENTIAL RIGHTS (Statutory)

In a setting such as a nursing home, assisted living residence, or hospital, the IP enjoys all rights granted by law to those who are in such facilities.

The Guardian should be familiar with any rights, including a Bill of Rights, attached to such facilities.¹⁶

3. CONSTITUTIONAL AND HUMAN RIGHTS

Constitutional rights remain with the IP, as least as long as he or she is able to exercise them. Other rights not specifically curtailed may also remain.

Being adjudicated an IP does not mean a loss of human rights. The IP should at all times be treated with courtesy and consideration and be granted dignity and respect.

15 20 Pa.C.S. § 5512.1(h).

16 *See*, for example, 55 Pa.C.S. § 5100.53, Bill of rights for patients.

Chapter IV

Responsibilities and Duties of the Guardian

A. INTRODUCTION

This chapter explains some of the practical tasks that need to be done during the course of the guardianship. Because each guardianship is different, it is not possible to address every situation a Guardian might experience, but this chapter provides basic guidance to surrogate decision-makers about some common situations.

The Final Decree will set forth any limits imposed by the court in a specific guardianship. A careful reading of the decree will clarify these parameters.

State law imposes some limits on every guardianship. Under no conditions may a Guardian admit a person to an inpatient psychiatric facility or State center for the mentally retarded. Under no circumstances may a Guardian consent, on behalf of the Incapacitated Person, to the relinquishment of the person's parental rights. See 20 Pa.C.S. § 5521(f).

Only with specific court permission may a Guardian consent to an abortion, sterilization, psychosurgery, electroconvulsive therapy, or removal of a healthy body organ. Similarly, a Guardian must obtain court approval to prohibit marriage or consent to a divorce on behalf of an IP or to consent to any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment. 20 Pa.C.S. § 5521(d).

This chapter has four sections:

1. *Transition*

Following the adjudicatory hearing, the Incapacitated Person may struggle to understand what guardianship means and the Guardian struggle to understand the health and safety needs of the IP, the financial picture, and the “players” involved in the IP's life. For both the IP and the Guardian, the transition is usually confusing and stressful.

2. *The Incapacitated Person Living in the Community*

When the IP continues to live in the community, the Guardian must plan for, implement, and monitor necessary social and financial support services.

3. *The Incapacitated Person Living in a Long-Term Care Setting*

Often an IP enters a nursing home. The Guardian's role in a nursing home resident's life is more limited than in the community, but remains important in overseeing the health, safety, well-being, and financial integrity of the IP.

4. Ending the Guardianship

A guardianship ends when the IP no longer needs guardianship services. The individual may regain the capacity to manage health and financial affairs or may die. In either case, a Guardian has certain responsibilities to the court in terminating the guardianship.

B. TRANSITION

Adjustment to guardianship can be difficult for the Incapacitated Person, his or her family, and the Guardian. IPs and their families typically are resistant to a Guardian. How the Guardian handles these early rough spots, and the nature of the initial interactions, can shape the rest of the guardianship. This section addresses the following areas:

1. Building a positive relationship with the newly adjudicated IP and the family;
2. Gathering necessary information: legal, financial, social, and personal;
3. Useful forms and resources.

1. BUILDING A POSITIVE RELATIONSHIP WITH THE INCAPACITATED PERSON AND THE FAMILY.

a) The First Meeting

When does the Guardian meet the Incapacitated Person? In Philadelphia Corporation for Aging cases, the first meeting generally occurs at or after the adjudicatory hearing. Since the IP will not necessarily understand what has happened, first impressions at this meeting are likely to shape the relationship. The goal of the first meeting is to build a positive rapport. Basic human courtesies such as being kind, respectful, and honest can help to create a foundation for a positive relationship.

b) Boundaries

As the Guardian begins to build a relationship with the Incapacitated Person, it may be difficult to develop and maintain boundaries or to clarify responsibilities. (The daughter of one IP assumed that if she was unable to stay with her mother the Guardian would move in with the IP and take care of her!) Boundaries can be unclear for Guardians of the estate as well. IPs are accustomed to managing their own finances and may, e.g., continue writing checks on an account whether or not the account is open. Family members may continue to access available funds as before. When control of decisions is transferred to a Guardian, IPs and families may be confused and resentful.

The Guardian can best establish the foundation for an effective guardianship by following these guidelines:

(1) *Be clear.* It is important to be kind, but without hiding or blurring the reality of the guardianship arrangement. When talking with family and the IP, the Guardian needs to be honest. His or her job is to make decisions that protect the best interests of the IP in a way that respects the life that person has created. However, the Guardian has been appointed because the IP is unable to make decisions that adequately protect his or her own safety, health, and financial stability. Significant changes may be needed in how the IP's care and finances are managed. These changes should be communicated as clearly as possible to the IP and his or her family in a style appropriate to that particular family.

(2) *Be realistic.* The Guardian cannot repair many years of negligence, poor choices, or just bad luck. The Guardian can ensure that the IP is safe in the home, or move him or her to a safe residence. The Guardian can also develop a budget that provides for basic needs; but the Guardian cannot reverse the impact of accumulated debt or provide a better standard of living than resources allow.

(3) *Enlist the support of family.* If there are caring people in the IP's life, these people may have their own "issues" that prevented them from being appointed as Guardian. Even so, the family may be helpful in keeping the IP safe and happy. Frequently, family members may not be capable of managing finances and social services but are able and willing to live with the IP or visit regularly and provide support.

(4) *Support the autonomy of the Incapacitated Person to the greatest extent possible.* A person who has been adjudicated as incapacitated may still be able to provide input into decision-making and to make some decisions independently. The Guardian can make an effort to listen to the person's feelings and wishes and to incorporate long-standing values into decisions about housing, property, spending, and daily living. Conflicts may occur between what the IP wants and what the Guardian believes is in his or her best interest. Difficult decisions may need to be made. Guardians may want to consider the use of mediation to help address conflicts that arise. (See Chapter VI, The Role of Mediation in Adult Guardianship.)

2. GATHERING NECESSARY INFORMATION: LEGAL, FINANCIAL, SOCIAL, AND PERSONAL.

Gathering information about an Incapacitated Person can be a challenging process and may require piecing together a picture of the IP's life through information provided by PCA, from papers collected at the home, or by waiting for forwarded mail to arrive. If a Guardian is to make an effort to stand in the shoes of the IP to the greatest extent possible, it will be necessary to form a picture of his or her personal history and values. Sometimes the IP will be able to provide information directly. Other times, the Guardian will need to interview family, friends, and care professionals, and make inferences from information gathered from among the IP's belongings.

The following list can assist the Guardian to create a complete file, transact business, and fulfill his or her responsibilities to the court. (For a checklist of these items and sample forms, see the Appendix.)

Guardian “To do” list

- Obtain Certificates of Guardianship and Final Decree.
- Gather information: Complete Client Info Summary.
- Talk with members of the Incapacitated Person’s support system: family, friends, church, etc.
- Talk with professionals such as doctors, social workers, etc.
- Forward the mail.
- Identify income streams: redirect payment.
- Identify and marshal assets: convert accounts.
- Identify household maintenance costs and status of payments.
- Create a budget.
- Decide whether a credit report is necessary.
- File Inventory within 90 days.
- File Annual Report within one year.
- File Petition for Allowance before using principal.

a) Both the Guardian of the Estate and the Guardian of the Person Should Take the Following Steps:

(1) Obtain Certificates of Guardianship and the Final Decree.

Certified copies of these documents are necessary to transact business on behalf of the Incapacitated Person. They are obtained from the Orphans’ Court Clerk’s Office, Room 300, City Hall. The Guardian will need several certified copies of the Certificate of Guardianship and at least one certified copy of the Final Decree. As of March 2009, a Final Decree costs \$3 per page plus \$5 to have the document certified. A certified Certificate of Guardianship costs \$10. The number of certificates needed will depend on the range of entities with which the Guardian will have dealings, anywhere from three to twenty or more.

(2) Complete the Ward (Incapacitated Person) Information Summary (see sample in Appendix).

Most information needed by the Guardian of the estate and Guardian of the person is included in this sample form. The nature of the IP’s situation will determine how much of this information is required. It should serve as a guide for the first interview. Review it before each meeting with the IP to refresh your memory and to identify additional information that is needed.

(3) Talk with members of the IP’s support system.

Find out about the IP's history, special concerns, and what supports are already in place. The support system may include family, church members, and friends involved in the person's care. Use the Information Summary as a guide for these conversations.

(4) *Talk with professionals.*

Discuss the IP's needs and existing protocols with the caregivers involved, especially health care professionals, social service workers involved in the proceedings leading to appointment of a Guardian, and financial advisers. PCA's Adult Protective Service workers and Office of General Counsel may have a wealth of information to share in PCA cases.

b) The Guardian of the Estate Should Take These Additional Steps:

(1) *Forward the mail.*

The Guardian should have the Incapacitated Person's mail forwarded to the Guardian's address. The Guardian can then collect the information needed to set up a budget and to identify assets and debts. A letter requesting that mail be forwarded from the existing address to the Guardian's address should be sent to City Operations-Philadelphia Division, USPS 3000 Chestnut Street, Philadelphia, PA 19104-9998. Enclose a copy of the Certificate of Guardianship with the request. A photocopy is sufficient. The telephone number is 215-895-8614.

See the sample letter at the end of this chapter.

(2) *Identify income streams.*

The IP is likely to collect Social Security and may have additional pensions or other income streams. The Guardian must identify all sources of income and ensure that the income is being used first, for the maintenance of the IP; second, to meet his or her legal obligations; and finally, as consistently as possible with his or her values and preferences.

(a) *Social Security.* Unless a Personal Care Home, Nursing Home, or other reliable party is already representative payee, the Guardian should request to be designated as representative payee. To become representative payee, the Guardian must complete form SSA-11-BK and present it, along with a copy of the full Final Decree appointing the Guardian, to any Social Security Administration (SSA) office. A copy of the required form is available online at www.ssa.gov/online/ssa-11.pdf. Once known to the SSA office, the Guardian may be permitted to fax future forms. It is a good idea to ask about this when visiting the Social Security Office to file the first representative payee form.

Direct Deposit of the IP's Social Security check to a representative payee can be arranged by completing Standard Form 1199A, also available online at www.socialsecurity.gov/deposit/1199a.pdf.

N.B. In some cases, PCA becomes SSA representative payee pending appointment of a Guardian. After the Guardian is appointed, alert PCA Counsel that PCA is holding funds. The funds will be returned to Social Security and then redirected to the new Guardian as representative payee.

(b) *Pensions.* There are three ways to identify pension sources.

If PCA was involved in the appointment, ask PCA. Often PCA will know.

Review bank account statements. Sources of direct deposit may be listed, together with telephone numbers. If this information is not on the statement, it should be available from the bank.

Once the mail is forwarded, correspondence will eventually arrive from the pension fund. A phone call to the pension fund office will provide information about how to have payments sent to the Guardian or deposited directly into the guardianship bank account. It is a good idea to obtain a benefit letter from the pension fund administrator stating the amount and frequency of the pension payments.

(c) *Investment income.* Information about investments will come from statements mailed to the IP. It is important to remember that the investments are assets, while interest and dividends are income.

(3) *Identify and marshal assets.*

Assets—that is everything of value owned by the Incapacitated Person on the date of the Guardian’s appointment—must be reported to the court in the Inventory within 90 days of appointment. Typical assets include real estate, automobiles, stocks, life insurance policies, bank accounts, CDs, and annuities.

(a) The Guardian of the estate should convert bank and investment accounts to Guardianship accounts.

Title these accounts as “Estate of Jane Doe, Michael Smith, Guardian” or something similar.

Most banks and investment houses will require only a Certificate of Guardianship or Final Decree as proof of a Guardian’s authority. Others may require a medallion or notarized letter. A medallion can be obtained through a bank, preferably one where the IP has accounts.

(b) A Guardian may not spend principal without court approval, which requires the filing of a Petition for Allowance. 20 Pa.C.S. § 5536(a). In rare cases where assets must be spent immediately, a Petition for Allowance *nunc pro tunc* may be filed. In practice, principal is everything of value owned by the IP at the time of the appointment of a Guardian, other than accumulated income.

Principal is defined as “property held in trust for distribution to a remainder beneficiary when the trust terminates or property held in trust in perpetuity.” 20 Pa.C.S. §8102.

(4) *Identify household and personal maintenance costs and status of payments.*

The Guardian should promptly ascertain whether payments for utilities, rent or mortgage, telephone, and other basic expenses are current, whether any utilities have been shut off, and whether there are other critical outstanding payments that need to be made. If PCA’s Adult Protective Services is involved, ask PCA for this information.

(5) *Create a budget.*

Identify all debts, living expenses, payments, and income. Several excellent budget forms are available free of charge on the internet, including forms with imbedded calculators. In most cases, adjustments will need to be made to accommodate shrinking buying power at some point during a guardianship.

(6) *Obtain a Credit Report.*

Every individual is entitled to one free credit report per year from each of the three nationwide consumer credit reporting companies. These reports can be requested through the Federal Trade Commission website or at www.annualcreditreport.com. A credit report will provide an overview of the IP's credit situation and identify most large outstanding debts.

(7) *File the Inventory within 90 days of appointment.*

Assets and income streams of the Incapacitated Person are reported to the court. Find the Inventory and other forms recommended by the State at www.aopc.org/Forms/OrphansCourtForm.htm. Various forms are used. A form recommended by the Orphans' Court is available on the First Judicial District website. (See forms at the end of this chapter.) Go to www.courts.phila.gov/forms/ and scroll down to Orphans' Court Division, Guardianship Forms, Guardian's Inventory. A more detailed form is available on CD from the essential PBI publication *Elder Law in Pennsylvania* by Jeffrey A. Marshall (2d ed. 2007). The court will accept either. A Guardian can e-file the Inventory or file it in person at the Office of Orphans' Court Clerk. To e-file, go to the Philadelphia Courts website, <http://courts.phila.gov/>. In the blue bar at the top of the page you will see "Online Services." Scroll down to and select "FJD Electronic Filing System (Orphans' and Civil)." In the Need Help? Box select "To apply for a User Name, click here." Follow the directions to set up your account.

c) Helpful forms, letters, and other documents:

- Ward (Incapacitated Person) Information Sheet
- First Meeting Checklist
- Letter to Post Office
- SSA-11-BK Form to name designated payee (see Social Security Website)
- Standard Form 1199A Social Security Direct Deposit Form
- Generic Letter of Notification of Guardianship
- Petition for Allowance sample
- Guardian's Inventory

C. THE INCAPACITATED PERSON LIVING IN THE COMMUNITY.

Guardian “To do” list (for a checklist of these items, see the Appendix)

- Review the existing care management plan. (Guardian of the Person)
- Identify appropriate services. (Guardian of the Person)
- Develop a guardianship plan to ensure safety, well-being, and health that incorporates the care management plan. (Guardian of the Person)
- Develop a plan for financial management. (Guardian of the Estate)

1. REVIEW THE EXISTING CARE MANAGEMENT PLAN, IF ANY

Where PCA’s Adult Protective Services has been involved in the appointment of a Guardian, the Adult Protective Services worker can be very helpful in identifying what is being done and what needs to be done to ensure the IP’s health and safety. If a hospital petitioned for the Guardianship, contact the hospital staff for information about the IP’s medical status and treatment plan.

2. IDENTIFY APPROPRIATE SERVICES

a) Philadelphia Corporation for Aging (PCA)

PCA is the best resource for services available to low- and moderate-income seniors living in Philadelphia. Access PCA services by contacting the client’s PCA case worker, if one has been assigned, or by calling the PCA Helpline at 215-765-9040. The following services may be available at low or no cost:

- Adult Day Services, which can arrange for a senior to spend the day at a center that provides medical care, counseling, and entertainment;
- Home-Based Services, such as home-delivered meals, personal care (e.g., bathing and dressing), nursing care, home modifications, and extermination;
- Homeowner’s resources, which provides repair grants, funds for emergency appliance replacement, etc.;
- Housing Options: Domiciliary (Dom) Care, Personal Care Homes, etc.;
- Emergency, Professional, and Social Services: Legal Services, Behavioral and Mental Health Services, Elder Abuse and Financial Exploitation, Emergency Assistance, Counseling and Assessment, and Ombudsman Program for those in long-term care.

N.B. Adult Protective Services will investigate reports of physical assault, neglect, abandonment, or financial exploitation of an older adult. Call 215-765-9040, 24 hours a day, 7 days a week to make a report.

b) Transportation

- CCT Connect, a service of SEPTA, operates van service providing door-to-door transportation for seniors for \$4 per ride. To register, call 215-580-7145. To request a ride, call 215-580-7700 one to three days in advance.
- Logisticare can provide free transportation to medical appointments. To register, talk to the IP's PCA case worker or call 877-835-7412.

c) For Additional Services and Information, see the PCA website www.pca cares.org.

d) Senior Help Lines

- CARIE Line of CARIE (Center for Advocacy for the Rights and Interests of the Elderly) operates a free telephone based advocacy service, which offers help to older adults who are at risk of abuse; solves problems related to accessing services or quality of care; assists local and long-distance family caregivers; helps providers with care of clients, and mediates situations involving distraught and bewildered families. Contact:

100 S. Broad Street	215-545-5728	www.carie.org
1500 Land Title Building	800-356-3606	
Philadelphia, PA 19110-1088	215-545-5372 fax	

- ROAL at NIM (Resources for Older Adult Living at Neighborhood Interfaith Movement) offers free consultation, information, and referral to services and activities in the Northwest Philadelphia region for adults 55 and older. Call 215-843-5602.

e) Private-Pay Services

Private-pay health care agencies can provide a wide range of individualized services to seniors who can afford to pay. Here are a two examples of private-pay social services available:

- Geriatric Care Managers coordinate and monitor health care. Where there are sufficient resources, this approach can be well worth the cost. Geriatric care managers understand the range of services available and the best providers. In addition, the medical expertise of a geriatric care manager supports oversight of medical care. For the names of geriatric care managers working in the Philadelphia area, visit the website of the Philadelphia Area Chapter of Geriatric Care Managers at www.caremanager.org
- Move Managers can be hired to work with the IP or to work on their own to assist with downsizing. For a list of move managers in the Philadelphia area, see the website of the National Association of Senior Move Managers at www.nasmm.org.

f) Public Benefits

Visit www.benefitscheckup.org to learn about benefits, determine which benefits the Incapacitated Person may be eligible for, and apply for them. Some of these benefits include:

- Food Stamps;
- Medicare Rx Extra Help: helps income-eligible seniors with prescription costs;
- Free meals delivered to the IP's home;
- Medicaid: comprehensive health care for income-eligible seniors;
- Subsidized Senior Housing: rent based on income;
- Energy Assistance Programs: help paying for heat;
- Budget Utility Plans: water, gas, electric;
- Lifeline: lower basic phone rate for low-income seniors;
- Transportation.

g) LIFE and PACE Programs

Programs for All-Inclusive Care of the Elderly, also known as Living Independently for Elders, funded jointly by Medicare and Medicaid, provide comprehensive services that allow individuals to live at home while receiving many of the services previously available only in a nursing home setting. The University of Pennsylvania and Mercy Life (formerly LIFE St. Agnes) are the LIFE Programs in Philadelphia.

h) Health Insurance for Seniors

(1) Medicare

Medicare is available to anyone over the age of 65 and also to individuals with kidney failure and individuals with specific disabilities. Qualifying individuals pay a low premium for services. Medicare is funded by the federal government. There are three basic parts.

- Part A covers basic hospital care, up to 90 days of rehabilitative nursing home stay after a hospitalization, and some home health care. The patient must pay part of the costs.
- Part B covers most outpatient physician and laboratory costs. Medical supplies and equipment may also be covered under Part B. The patient will pay part of the costs.
- Part D, Medicare Prescription Drug Coverage, covers much of the cost of prescription drugs through a complex formula, which includes a period of non-coverage. The AARP website offers a wealth of information about Part D. To compare plans, first compile a list of all prescription medicines needed and then go to <http://formularyfinder.medicare.gov/formularyfinder/selectstate.asp> or call 1-800-633-4227.

(2) Medicaid

For seniors and others who qualify by income, Medicaid covers most health care costs including those not covered by Medicare. Medicaid is funded by both the federal and state governments. Like most states, Pennsylvania will pay Medicare premiums for those over 65 who qualify for Medicaid, so that these individuals will first draw upon Medicare for health care expenses and then access Medicaid funds. Most people who reside in nursing homes for more

than three months receive a Medicaid Nursing Home Grant, which pays the difference between their income and the cost of nursing home care.

(3) *Medigap*

Medigap is insurance purchased through a private provider to cover costs not paid for by Medicare. For individuals with considerable assets and income, this is a necessity. Buying this coverage requires careful evaluation of services covered, current and future premiums, and other costs such as co-pays. For those who have lower incomes and qualify for Medicaid, prescription assistance, or other government assistance, Medigap may not be a good investment.

i) Grocery Shopping

Grocery shopping can be one of the more difficult and most important problems to solve. Home health aides limit shopping to within a few blocks of the Incapacitated Person's home and will pick up just a few items. Finding a family member or friend who is willing to do the shopping may be a solution. For those with enough money, having groceries delivered may work. However, most IPs will not be computer literate enough to order online. If ordering online is the plan, someone must be assigned to that task.

3. DEVELOP A GUARDIANSHIP PLAN TO ENSURE SAFETY, WELL-BEING, AND HEALTH, AND WHICH INCORPORATES THE CARE MANAGEMENT PLAN

If PCA or other care giving agencies are involved, the Guardian can build upon existing services to ensure that all appropriate services are provided. The Guardian must monitor service providers and advocate for any necessary changes.

- *Cars* – When an Incapacitated Person cannot safely operate his or her automobile, the Guardian of the person may have to remove the car. The Guardian's responsibility is first, to protect the person, and second, to preserve the assets of the estate. If it is determined that an IP cannot drive, the Guardian can file a Petition for Allowance for permission to sell the car.

4. DEVELOP A FINANCIAL MANAGEMENT STRATEGY

a) Create a household budget and decide who will implement it

In most cases, the Incapacitated Person is not able to manage a budget alone. With the assistance of a relative or close friend, the IP may be able to manage part of a budget.

b) Consider opening a separate account with a bank card for the IP

The Guardian can transfer money into this account to cover expenses managed by the IP or those who live with him or her. The Guardian should closely monitor such an account to avoid incurring large fees for using out-of-network bank machines and to watch for misuse of funds.

c) Monthly bill payment

In most cases, the Guardian of the Estate will pay the bills, but the IP living in the community will nearly always need access to some cash.

d) Investment management

In cases where there are extensive investments, it may be appropriate to hire a financial management consultant. The court will require a Guardian to post a bond where resources are extensive. 20 Pa.C.S. §§ 5515, 5122.

e) Tax preparation and payment

The Guardian must make sure that taxes are paid. For any tax returns that are not simple, it might be best to hire an expert to complete the returns. The IP's estate should pay these professional fees (as with the fees of all outside professionals).

D. THE INCAPACITATED PERSON LIVING IN A LONG-TERM CARE SETTING

1. HOUSING OPTIONS

Depending upon the needs of the IP, the following housing options may be available to those who cannot live alone.

a) Personal Care Boarding Homes provide some services such as meals, housekeeping, and personal care assistance. No medical or nursing care is provided. These homes vary widely in size and quality. Medicaid will not pay for care in a Personal Care Boarding Home.

b) Assisted Living facilities provide a greater level of services and supervision than a Personal Care Boarding Home, but less than a nursing home. Residents have greater autonomy, privacy, and decision-making opportunities than in a nursing home. In Pennsylvania, new regulations for Assisted Living facilities are being adopted in 2010. Previously, they were regulated under the Personal Care Home regulatory laws.

c) Nursing and Rehabilitation Centers or Nursing Homes provide 24-hour skilled nursing care. However, many nursing home residents do not need or receive skilled nursing care. Medicaid will cover the cost of nursing home care for eligible individuals. Medicaid Nursing Home Grant eligibility rules are complicated. *Pennsylvania Medicaid: Long-Term Care* by Robert C. Gerhard III (Bisel 2007) is an essential reference in this area.

d) Continuing Care Retirement Communities or Life Care Communities provide various levels of care at one site. Housing, healthcare, and meals are provided for the resident's lifetime. Typically, an individual pays a large entrance fee in addition to monthly fees. Medicaid and Medicare may pay for long-term care at the skilled-nursing-facility level of care if the individual is income eligible.

e) Domiciliary Care (Dom Care) allows an IP who cannot live alone to live in a family setting. Individuals live in a provider's home. Providers assist with laundry, food, personal hygiene, medication administration, and other daily needs. Dom Care offers a non-institutional, family-like setting.

f) See the "Senior Services/Housing Options" page of the PCA website for more information about levels of care and specific providers.

2. OBTAINING AND ARRANGING PLACEMENT

N.B. A Guardian should never place an Incapacitated Person in a facility with which the Guardian is not familiar.

a) The MA-51 Medical Evaluation form is completed by a doctor and specifies the level of care appropriate for the Incapacitated Person. The MA-51 allows the physician to designate one of five levels of care.

- Nursing Facility Clinically Eligible (NFCE)
- Personal Care Home
- ICF/MR Care (Intermediate Care facility for the Mentally retarded)
- ICF/ORC Care (Intermediate Care Facility / Outpatient Rehabilitative Care)
- Inpatient Psychiatric Care

Only with a doctor's assessment that an IP is "nursing home clinically eligible" can an individual be admitted to a nursing home. (For a copy of MA-51, see www.dpw.state.pa.us/omap/provinf/maforms/omapma51.pdf.)

b) The Application – Medicaid will pay the costs of nursing home care for income-eligible Incapacitated Persons. To qualify for a Medicaid Nursing Home Grant, an extensive application must be completed. A copy is attached in the Appendix.

(1) *If an IP has more than \$2,000 of assets, excluding a home and car, great care should be taken to follow the spend-down guidelines. Two invaluable resources are available to help understand the Medicaid spend-down guidelines: Pennsylvania Medicaid: Long-Term Care by Robert C. Gerhard III, and Elder Law in Pennsylvania by Jeffrey A. Marshall.*

(2) *If an IP is married*, great care should be taken to follow the spousal impoverishment guidelines. Two essential resources for understanding these rules are Gerhard, *Pennsylvania Medicaid: Long-Term Care*, and Marshall, *Elder Law in Pennsylvania*.

(3) *Assistance with the application* – When an IP resides in a nursing home, the nursing home will eagerly assist with the Medicaid Nursing Home Grant application. Where PCA’s Long-Term-Care Office is involved, the long-term-care worker will assist.

c) The MA-162 is the Medicaid form that informs an IP of Medicaid eligibility and sets the amount that the individual must contribute to the cost of care in a nursing home. In addition, the MA-162 indicates the Medicare Premium amount, \$45 Personal Care Allowance, and \$100 per month guardianship fee (if the court has ordered guardianship fees). A copy of the MA-162 is in the Appendix.

(1) *Appeal* – On behalf of the IP, the Guardian can appeal the results within 30 days of the date of the MA-162. In some cases, corrections can be made beyond the 30-day period.

(2) *Guardianship fees* – To ensure that guardianship fees are included in the MA-162, fax to the CAO a copy of the Final Decree and state that guardianship fees have been ordered. If guardianship fees are omitted on the MA-162, calling the CAO worker who supervises the IP’s nursing home and faxing the decree to the worker should clear up the problem quickly without an appeal. However, sometimes it is necessary to file an appeal. In those cases, the CAO will usually correct the problem before the hearing. If so, the Guardian can withdraw the appeal by using a form provided by the CAO worker.

d) From Hospital to Residential Facility – A Guardian should work closely with hospital discharge planners. An IP cannot be discharged from a hospital without a safe discharge plan, nor without the Guardian’s approval. Hospital discharge planners have a strong incentive to help a Guardian find an acceptable placement—if there is no medical need for hospitalization, the hospital might not be paid for services provided.

3. MANAGING THE ESTATE OF THE INCAPACITATED PERSON IN A RESIDENTIAL SETTING

a) Selecting the Representative Payee for Social Security and pension payments – The nursing home ordinarily prefers to have a resident’s Social Security and pension checks deposited directly to the nursing home. This arrangement simplifies the Guardian’s monthly bill paying and allows the nursing home to manage most communication regarding these benefits. The Guardian should discuss with the facility arrangements for receiving guardianship fees.

b) The House – As long as a nursing home resident “intends to return home,” Medicaid will not require a him or her to sell a home and use the proceeds to pay nursing home fees. However, the Contribution to Cost of Care for a Medicaid Nursing Home Grant recipient will not make allowance for home maintenance expenses unless the resident’s spouse continues to live in the

house. When a low-income nursing home resident has no spouse and no real prospect of returning to live in a residence, it is often necessary to sell the house.

(1) *Petition to Sell Real Estate at Public Sale* – See 20 Pa.C.S. §§ 5521, 3353, and Phila. O.C. Div. Rule 12.9.A. Additional notice requirements for Public Sale of Real Estate are set forth in Phila. O.C. Div. Rules 5.1.B. and 5.4.A.(2).

(2) *Petition to Sell Real Estate at Private Sale* – see 20 Pa.C.S. § 5521 and Phila. O.C. Div. Rule 12.10.A.

c) Other Assets

(1) *If the Incapacitated Person is on a Medicaid Nursing Home Grant*, the Medicaid rules must be followed carefully. Two essential resources for understanding these rules are Gerhard, *Pennsylvania Medicaid: Long-Term Care*, and Marshall, *Elder Law in Pennsylvania*.

(2) *If the IP has substantial assets*, the Guardian must evaluate whether it is appropriate to hire a financial management consultant. The Court will require a Guardian to post a bond where resources are extensive. 20 Pa.C.S. §§ 5515, 5122. The fee for the bond is paid by the estate.

4. RESPONSIBILITIES OF THE GUARDIAN OF THE PERSON IN A RESIDENTIAL SETTING

a) Frequency of Visits – The Guardian of the Person in a residential setting must monitor the Incapacitated Person’s care and advocate for services when necessary.

Care Conferences are held by nursing homes for each resident every 90 days—where important changes occur, more often. Care conferences often last only about fifteen minutes but provide the Guardian the opportunity to meet with several individuals responsible for many facets of the IP’s care. Frequently these conferences are attended by the dietitian, the social worker, the nurse, an administrator, and others. The Guardian, or a representative, should attend care conferences and ask questions about the care.

b) Advocacy is required to ensure that nursing home residents receive the services needed. The quality of personnel varies widely from facility to facility, and even within a facility can change from month to month. Whenever a Guardian requests the nursing home to provide services, it is paramount that the Guardian follow up to make sure the services are provided.

c) Random visits and checks with the staff providing care are a good way to ensure that the IP receives the highest level of care. In nursing homes, those residents who have more frequent and more inquisitive visitors receive more attention. Most residents with a court-appointed Guardian have few visitors. A Guardian’s random inquiries can result in the staff paying more attention to the IP.

5. HELPFUL FORMS, LETTERS, AND OTHER DOCUMENTS

- MA-51
- MA-162
- Petition for Sale of Real Estate at Public Sale

E. ENDING THE GUARDIANSHIP

A guardianship terminates upon a finding that the Incapacitated Person has regained capacity or upon the IP's death.

1. IF THE INCAPACITATED PERSON REGAINS CAPACITY

- The Guardian should request a hearing and seek an order terminating the Guardianship. 20 Pa.C.S. §§ 5512.2, 5517.
- A final report must be filed with the court within 60 days of an adjudication of capacity and modification of existing orders. 20 Pa.C.S. § 5521(c)(2).

2. UPON THE INCAPACITATED PERSON'S DEATH

a) A final report must be filed with the court within 60 days of the IP's death. 20 Pa.C.S. § 5521(c)(2).

b) Social Security must be notified immediately and any checks issued in the month of death must be returned.

c) Funeral and Burial Arrangements – Under 20 Pa.C.S. § 5537, if the court has authorized the Guardian to set aside funds for burial expenses, the Guardian can disburse those funds upon the death of the IP without getting further approval of the court.

d) If the IP dies intestate, the Guardian is not responsible for probating the estate. (See Chapter VII, Estate Planning for the Incapacitated Person.)

e) If the IP dies with a will that preexisted the guardianship, or if the court has allowed estate planning, the will determines who will be appointed executor and how assets will be distributed.

F. HELPFUL FORMS, LETTERS, AND OTHER DOCUMENTS – SEE APPENDIX

1. Ward (Incapacitated Person) Info Summary
2. First Meeting Checklist
3. Sample Letter: mail forward
4. Social Security Rep Payee Form 11 BK
5. Social Security Direct Deposit Form 1199A
6. Inventory
7. Sample: Petition for Allowance
8. MA-51
9. Medicaid Nursing home Grant Application
10. MA-162
11. MA-162 Appeal Form
12. Petition for Sale of Real Estate at Public Sale

Chapter V

Health Care Issues in Guardianship

The goals of this section are twofold: to aid the Guardian in providing the best possible care to an Incapacitated Person according to his or her preferences as they are understood; and to save the Guardian from having to scramble for resources and make hasty and ill-informed decisions in an emergency.

A. UPON BEING NAMED GUARDIAN OF AN INCAPACITATED PERSON

As soon as possible after becoming acquainted with the IP, the Guardian should take the following steps:

1. Determine whether the IP has executed advance directive documents, i.e., a living will or a health care proxy.
2. Determine whether funeral arrangements for the IP have been made. The IP's religious advisor may know.
3. Discuss with the person(s) named as healthcare proxy the IP's values and preferences.
4. At appropriate times, discuss preferences with the IP. Although an IP's judgment and other cognitive faculties may be diminished, his or her values and preferences may remain stable. However, as an IP's health deteriorates, his or her preferences may change, and periodic conversations are advised.

Family members and caregivers may have heard the IP express his or her wishes, and these statements may help a Guardian make decisions consistent with the IP's preferences. One reason such conversations are important is that an IP may have wishes that have not been expressed in legal documents, e.g., the desire to remain on life support long enough to give all family members time to gather, or the desire for last rites.

5. Communicate the IP's preferences and wishes to physicians, mental health clinicians, and any other health care personnel.

6. Provide physicians with copies of any advance directives, together with a letter from the Guardian stating the IP's preferences.

7. Develop or support a system for making and keeping an IP's appointments with doctors and other health care providers (including home care, if appropriate); and for ensuring that medications are taken or administered on schedule.

B. IF THE INCAPACITATED PERSON SHOULD BECOME SERIOUSLY ILL OR NEED EMERGENCY CARE

1. Review the IP's advance directive and other preferences with the IP's primary physician.

2. Consider requesting DNR orders for both home and hospital.

3. Arrange for hospice care, if appropriate.

4. If a difficult decision must be made but there is no emergency, a Guardian need not feel pressured into giving an immediate response. Generally, if further treatment would not promote the IP's well-being, there may be no rationale for it.

Chapter VI

The Role of Mediation in Adult Guardianship

A. INTRODUCTION

Adult guardianship proceedings often involve emotional, personal, and family issues, whether at the pre-filing, petition, adjudication, or post-adjudication stage. Conflicts may arise because of differing perceptions over, e.g., the following issues:

- the need for appointment of a Guardian and the extent of guardianship powers;
- the selection of the Guardian;
- decisions made by the Guardian;
- the ongoing relationship between the Guardian and the ward and his or her family.

Mediation is a process that can help resolve conflicts during all phases of the guardianship process.

Mediators do not have decision-making authority and do not make determinations about the need for guardianship; instead, they address the issues that surround this decision. Mediation is a voluntary, confidential, informal, and non-adversarial process that is less traumatic than a court procedure. The mediator, who is a third party neutral, facilitates conversations that allow all parties to discuss both the emotional and legal issues and to work toward a solution that can solidify and preserve relationships. Mediation is not intended to be synonymous with a settlement conference. Reaching an agreement is only one possible outcome. Giving parties a time and space to speak openly, gain clarity about their situation, and increase interpersonal understanding are all values of the process.

Mediation supports the principle of self-determination and thus the autonomy of the Alleged Incapacitated Person or Incapacitated Person, while simultaneously addressing issues of safety. An important value of mediation is the retention of decision-making power in the hands of those directly involved. However, the process is not always appropriate, such as in cases of abuse or exploitation. Mediators are trained to screen for and to report such cases.

B. ISSUES APPROPRIATE FOR MEDIATION

Mediation can be an effective means to identify alternatives to guardianship. (See Chapter I, Alternatives to Guardianship.) The process can be used even when no particular conflict has

arisen. Mediators bring family members and other involved people together to address the issues and emotions that arise when a person has physical or cognitive deficits. They help participants assess what is needed, identify community resources, and work together on behalf of the care recipient, potentially eliminating the need for a guardianship.

Issues appropriate for mediation may include:

1. Health/Medical Care Decisions.
 - Who should provide the care?
 - What care is needed?
 - Who should make medical decisions?
 - Concerns about quality of care.
 - End-of-life decisions.
2. Financial/Legal Matters.
 - How should money be spent? Concerns over “unwise” spending.
 - How should investments be handled?
 - Who will control the money?
 - Who should be agent under a Power of Attorney?
3. Living Arrangements.
 - Where, and with whom?
 - Who should decide?
 - How much independence will be granted or supervision be needed?
4. Communication Issues.
 - What information is needed or missing?
 - How should information be shared with those who need it?
 - How can the parties talk to each other in a more productive manner?
5. Family Relationship Issues (new or longstanding).
 - How should the family deal with sibling rivalries that impact the current care of a parent?
 - In the event of the death of a spouse or caregiver or other changes in relationships, what steps should be taken?
6. Respite Care and Support for Caregivers.
 - How should care giving responsibilities be shared?
 - How should outside resources be accessed?
 - Understanding caregiver stress and limitations.
7. Decision-making.
 - Who should have authority to make decisions?
 - What input, if any, should others have?
 - Who should serve as Guardian, if one is needed?

8. Personal and Household Care and Maintenance.
 - Identify caregivers and service providers.
 - What type of care or services are needed?
 - What services is the care recipient entitled to?
9. Safety, Risk-taking, and Autonomy.
 - What safety issues have been identified?
 - Is the level of risk understood and accepted?
 - Should autonomy be limited?
10. Needs of Other Family Members.
 - Dependent children.
 - Grandparents caring for grandchildren.
 - Career demands.
 - Reimbursement for services.
 - Visitation.

C. THE ROLE OF THE AIP OR IP IN MEDIATION

A key feature of mediation is the involvement of the Alleged Incapacitated Person or Incapacitated Person in the process to the greatest extent possible. Considerations are given to the meeting place (often the AIP's or IP's residence), time of day, effect of medication, and length of session. The process may also include support persons, attorneys, and other advocates who can help the AIP or IP participate directly or can give voice to his or her wishes and longstanding values if he or she is unable to articulate them or is unable to attend a session.

D. THE ROLE OF ATTORNEYS IN MEDIATION

Attorneys play an important role in the mediation process. They function as advocates for the AIP's or IP's wishes, longstanding values, and best interests, both during and outside of the session. Attorneys can encourage and support an older person to speak for him- or herself when family members and informal and professional care providers might otherwise overwhelm his or her voice. Attorneys also provide legal information to the family and advice to the AIP or IP, so that all participants can make informed decisions.

E. HOW DOES MEDIATION WORK?

An attorney, the Guardian, a social service agency, the AIP or IP, a family member, or another interested party may contact a mediator to begin the process. Adult guardianship mediation may be held at the mediator's office but is often held at a location convenient to the participants, including the residence of the AIP or IP.

The mediator will work with the parties, usually during an intake process, to determine who should attend the session. Attendees may include therapists, attorneys, advocates, geriatric specialists, and other individuals whose role is to provide information or support the voice and involvement of the AIP or IP.

Sessions are scheduled at times convenient to the participants and take into consideration the impact of time of day and length of session upon the AIP or IP, in order to support his or her maximum participation. A single session may suffice, or multiple sessions may be required.

A possible outcome of mediation is a Memorandum of Understanding, which will reflect the decisions reached during the mediation process and may identify issues that remain unresolved.

F. HOW TO SELECT A MEDIATOR

Mediators who work with adult guardianship issues should have received specialized training in the following areas:

- the adult guardianship process, including legal issues, terms and roles of all persons potentially associated with adult guardianship, and laws of the jurisdiction in which the petition is filed;
- the facilitation of highly emotional, multi-party, multi-issue discussions;
- ensuring that an AIP or IP is adequately represented;
- the mental and physical effects of aging and disability;
- issues involving incapacity and the use of accommodations;
- screening for abuse and reporting obligations;
- the potential impact of ageism and other biases on the mediation process;
- the impact of family dynamics;
- how to address power imbalances;
- collaboration with and knowledge of community resources;
- ethical issues associated with adult guardianship mediation.

Chapter VII

Estate Planning for Incapacitated Persons

A. INTRODUCTION

The Guardian of an Incapacitated Person's estate may wish to engage in estate planning as part of managing the IP's finances. Estate planning is particularly relevant if the IP's assets are likely to exceed his or her lifetime needs, or if it is likely that he or she will receive property from a third party.

Most estate planning strategies require pre-death planning. Typical planning techniques include gifting; obtaining life insurance; making (and verifying) beneficiary designations; writing a will; creating and funding inter vivo trusts; and creating a fund for, or prepaying, funeral expenses.

This chapter discusses estate planning techniques available to IPs.

B. ESTATE PLANNING FOR THE INCAPACITATED PERSON

1. ESTATE PLANNING PERFORMED BY AN AGENT UNDER A POWER OF ATTORNEY

A power of attorney is a document by which the signer, or "principal," grants another person, the "agent," the power to act for the principal. For a discussion of powers of attorney, see Chapter I, Alternatives to Guardianship.

In Pennsylvania, unless the document specifically provides otherwise, a power of attorney is "durable" and is not affected by the principal's subsequent incapacity.¹ Acts performed by the agent during the principal's incapacity "have the same effect . . . and bind the principal and his successors in interest as if the principal were competent."²

An agent may be able to conduct estate planning for the principal under a power of attorney. Powers of attorney often include the power to make gifts;³ create a trust or make additions to an

1 20 Pa.C.S. §§ 5601.1, 5604(a).

2 20 Pa.C.S. § 5604(b).

3 But a principal may authorize an agent to make unlimited gifts "only by specifically providing for and defining the agent's authority in the power of attorney." 20 Pa.C.S. § 5601.2(c). Unless carefully drafted, a power to make gifts is statutorily limited to the power to make certain gifts excluded from federal gift tax to statutorily-specified classes of beneficiaries. *See* 20 Pa.C.S. §§ 5601.2, 5603(a). Moreover, under any power of attorney, an agent and donee are liable to the extent a court finds the gift to be "inconsistent with prudent estate planning or financial

existing trust for the principal's benefit; claim an elective share; disclaim interests in property; withdraw and receive monies from trusts; and engage in property, insurance, and retirement plan transactions.⁴ A principal also may nominate a person to serve as Guardian of the principal's estate or person in the event the principal is found to be incapacitated.⁵ 20 Pa.C.S. § 5602 describes some powers principals typically grant to their agents.

The statutes do place limits on an agent's powers. In addition to the constraints upon an agent's power to make gifts,⁶ if the power of attorney uses the statutory language given in § 5602 to describe a power, or "includ[es] other language showing a similar intent on the part of the principal," the agent's power may be limited under § 5603's definition of that power.⁷ In general, these statutory limits are designed to preserve the Incapacitated Person's estate. Often they are significant. For example, under § 5603(b), an agent's power "to create a trust for [the principal's] benefit" is a power to create a revocable trust for which the principal is the sole beneficiary, and which requires that unexpended trust funds be distributed to the principal's estate upon his or her death.⁸

If a person executes a valid power of attorney and later is adjudicated to be incapacitated, the agent acting under the power of attorney is accountable to the court-appointed Guardian as well as to the principal.⁹ A Guardian has the power to revoke or amend the power of attorney to the extent the principal would have had if not incapacitated.¹⁰

Because a power of attorney is significantly less restrictive than either limited or plenary guardianship, a valid durable power of attorney that addresses the needs of the principal may make a guardianship proceeding unnecessary.¹¹ Conversely, the fact that a guardianship exists may indicate that the court found that the agent's power or ability to act for the principal was not adequate, or may indicate that the court had concerns about the agent.

management for the principal or with the known or probable intent of the principal with respect to disposition of the estate." 20 Pa.C.S. § 5601.2(e).

4 20 Pa.C.S. § 5602(a) lists powers typically granted to agents. Section 5603 defines more specifically the broad powers listed in § 5602(a).

5 20 Pa.C.S. § 5604(c)(2). The court must appoint the Guardian nominated by the principal "except for good cause or disqualification."

6 Discussed *supra* note 3.

7 20 Pa.C.S. § 5602(a).

8 For other limits, *see* § 5603(c), (d), (e), (p).

9 20 Pa.C.S. § 5604(c)(1).

10 *Id.*

11 When available and appropriate, courts prefer that the least restrictive means of assistance be used to help a person who is not able to manage independently. Pennsylvania law underlies this preference. When making a determination of incapacity, the court "shall consider . . . [t]he need for guardianship services, . . . in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts."

20 Pa.C.S. § 5512.1(a)(3). The same statute requires the court to prefer limited guardianship.

20 Pa.C.S. § 5512.1(a)(6). For an example of a court deferring to powers of attorney, *see Robinson, Incapacitated Person*, 28 Fiduc. Rep.2d 65, 79–84 (O.C. Div. Montg. 2008) (limited guardian appointed to perform duties not anticipated in power of attorney documents).

2. ESTATE PLANNING PERFORMED BY AN INCAPACITATED PERSON

20 Pa.C.S. § 5524 addresses the effect of an adjudication of incapacity on a person's ability to make instruments, including wills and powers of attorney. A partially Incapacitated Person "shall be incapable of making any contract or gift or any instrument in writing in those specific areas in which the person has been found to be incapacitated."¹² A totally incapacitated person "shall be incapable of making any contract or gift or any instrument in writing."¹³

Although the statute states that incapacity renders a person incapable of executing an instrument, the authorities of the Commonwealth read the statute merely to impose a *presumption* of incapacity upon a person adjudicated incapacitated.¹⁴ The proponent of the instrument bears the burden of proving, by clear and convincing evidence, that the person executing it had the capacity¹⁵ required to execute it at the time of execution.¹⁶

Many of the cases that state this rule are will contests. In at least one case, however, the rule has been applied to capacity to execute a valid beneficiary designation for group life insurance benefits.¹⁷ In that case, the Pennsylvania Superior Court indicated that the rule applies to all "instruments" under § 5524:

Our [Pennsylvania] supreme court decided the *effect* of an adjudication of incompetency on an incompetent's *ability* to make a will as an "instrument in writing." Essentially, the question asked in those cases was whether an incompetency determination conclusively established incapacity. The court found it did not. In this case, no credible argument can be made that a designation of a beneficiary on a life insurance policy, however characterized, does not fall within

¹² 20 Pa.C.S. § 5524.

¹³ *Id.*

¹⁴ Recent cases that state the rule are *Estate of Vanoni*, 798 A.2d 203, 207-08 (Pa. Super. Ct. 2002) (applying rule but not discussing its relation to § 5524), *Hummel Will*, 26 Fiduc. Rep.2d 48, 50 (O.C. Div. Northampton 2004) (applying rule but not discussing § 5524), and *Lepo Will*, 24 Fiduc. Rep.2d 141, 142 (Mont. Co. Register of Wills 2003) (citing *Vanoni* but finding rule inapplicable on basis that ward's incompetency never extended to testamentary capacity).

¹⁵ Different levels of capacity are required to execute different instruments. A testator possesses testamentary capacity if he has an intelligent knowledge regarding those who are the natural objects of his bounty, of what his estate consists, and of what he desires done with it, even though his memory has been impaired by age or disease. *Franz Will*, 84 A.2d 292, 295 (Pa. 1951). For a discussion of the capacity needed to execute a power of attorney absent an adjudication of incapacity, see Jeffrey A. Marshall, *Elder Law in Pennsylvania* 32-34 (2d ed. PBI 2007) ("there is no general agreement regarding the level of capacity required . . . the limited Pennsylvania case law seems to support a lenient 'general understanding' standard"), *Robinson*, 28 Fiduc. Rep.2d at 82 ("I have done exhaustive research in an attempt to determine to what extent appellate case law has identified . . . the requisite capacity to sign a valid power of attorney . . . And there is none . . . I think at a minimum [the incapacitated person] had to understand the nature of the authority he was giving his [agents], and . . . what assets he owned that would be subject to that power, and . . . what the plain language of that notice meant.").

¹⁶ For example, *Vanoni*, 798 A.2d at 207-08.

¹⁷ *Fulkroad v. Ofak*, 463 A.2d 1155 (Pa. Super. Ct. 1983).

the purview of [§ 5524] as an “instrument in writing” and therefore also subject to the statute’s interpretation.¹⁸

The discrepancy between the plain language of § 5524 and its jurisprudence has been noted by practitioners.¹⁹

3. PLANNING FOR GIFTS FROM OTHERS

Gifts and inheritances received by an Incapacitated Person can render the recipient ineligible for Supplemental Security Income, Medicaid, mental health/mental retardation (“MH/MR”) services, and Section 8 housing. These programs impose stringent limitations on the income and assets a recipient can receive. Exceeding the limits renders the recipient ineligible for program benefits.

A special needs trust (“SNT”) is a planning device that preserves a person’s eligibility for benefits by requiring that trust assets be used only for supplemental expenses and not for the beneficiary’s support and maintenance. If a Guardian anticipates that a ward may receive property from others, it is advisable to contact those parties likely to make gifts and suggest that they make their gifts through an appropriately designed trust. SNTs require specific terms to be effective. See the discussion on SNTs in Chapter I, Alternatives to Guardianship.

4. ESTATE PLANNING PERFORMED BY THE COURT, 20 Pa.C.S. § 5536(b)

The court, upon petition and for good cause, may “substitute its judgment for that of the incapacitated person with respect to the estate and affairs of the incapacitated person for the benefit of the incapacitated person, his family, members of his household, his friends and charities in which he was interested.”²⁰ The section goes on to give a nonexclusive list of examples of acts the court can take on behalf of an Incapacitated Person. These include making gifts, outright or in trust;²¹ creating revocable or irrevocable trusts of the Incapacitated Person’s property for the benefit of the IP or others;²² exercising rights and privileges under life insurance plans, annuity contracts, and the like;²³ and modifying, by means of codicil or trust amendment, the terms of the Incapacitated Person’s will or revocable trust in light of changes in applicable tax laws.²⁴

The court may also adopt a plan of gifts if it is satisfied that the Incapacitated Person has assets that are not required for his maintenance, support, and well-being.²⁵ The gift plan must

18 *Id.* at 1157 (emphasis in original).

19 Margaret E. W. Sager, *Guardianships of Incapacitated Persons*, in 1 13TH ANNUAL ESTATE LAW INSTITUTE, PBI. No. 4462, M-1, M-53-54 (PBI 2006).

20 20 Pa.C.S. § 5536(b).

21 20 Pa.C.S. § 5536(b)(1).

22 20 Pa.C.S. § 5536(b)(6).

23 20 Pa.C.S. § 5536(b)(8).

24 20 Pa.C.S. § 5536(b)(11).

25 20 Pa.C.S. § 5536(b). The “maintenance, support, and well-being” requirement is a barrier to making gifts,

either minimize tax or carry out a lifetime giving pattern.²⁶ Courts differ on whether to adopt plans of gifting to accelerate Medicaid eligibility.²⁷ A Guardian's failure to obtain a court order prior to making a gift may cause the gift to be charged to the Guardian rather than to the IP's estate.²⁸

When exercising its judgment for an Incapacitated Person, the court is required to consider the IP's testamentary and inter vivos intentions insofar as they can be ascertained.²⁹

5. RESERVE FOR FUNERAL, 20 PA.C.S. § 5537

The court may authorize a Guardian to create an irrevocable burial reserve account to hold assets for the anticipated expense of the Incapacitated Person's funeral, including the expense of a burial lot or other resting place.³⁰ Properly segregated, these assets are exempt from all claims.³¹

After the IP's death, the financial institution will disburse the costs of the funeral and burial upon presentation of the death certificate and invoices. Any part of the assets not disbursed for funeral expenses becomes a part of the IP's estate.³² A request for a burial reserve usually is filed as part of a Petition for Allowance.

Alternatively, a Guardian may petition the court for authorization to purchase a non-cancelable prepaid funeral and burial contract from an undertaker. Such a request usually is filed as part of a Petition for Allowance. A copy of an estimate or prepayment agreement with a funeral director should be attached to the petition as an exhibit.

especially where long-term care expenses loom large. *See, e.g., Corbett, Incapacitated Person*, 26 Fiduc. Rep.2d 254, 255 (O.C. Div. Erie 2006) (petition for permission to gift denied where guardian failed to establish that quality of ward's care would remain the same if she relied on Medicaid rather than privately paying nursing home expenses); *Swiantek Guardianship*, 18 Fiduc. Rep.2d 124 (O.C. Div. Fayette 1997) (petition to transfer assets of ward living in nursing home denied where ward's expenses exceeded income under rationale that assets may be required for ward's future care and support).

26 20 Pa.C.S. § 5536(b). *See also Corbett*, 26 Fiduc. Rep.2d at 255 (no pattern of gifting established where ward executed estate planning documents but failed simultaneously to make inter vivos gifts); *Pazul, Incapacitated Person*, 24 Fiduc. Rep.2d 129 (O.C. Div. Westm. 2002) (pattern of gifting established where ward had made holiday gifts to daughter and "helped her out financially whenever she could").

27 *See cases cited supra* note 25; *see also Alder, Incapacitated Person*, 23 Fiduc. Rep.2d 340 (O.C. Phila. 2003) (gift plan refused; Medicaid planning criticized).

28 *See Kearney Estate*, 17 Fiduc. Rep.2d 161 (O.C. Lack. 1995).

29 20 Pa.C.S. § 5536 (b).

30 20 Pa.C.S. § 5537.

31 *Id.*

32 *Id.*

GLOSSARY

Activities of Daily Living (ADLs)

Basic activities of self-care, including bathing, dressing, toileting, eating, and walking.

Advance Directive

A written document that explains, under certain circumstances, what care a person would like to receive or not receive should he or she become unable to express these wishes at a later time. An advance directive may take many forms and is commonly referred to as a “living will.” In Pennsylvania, a living will is known as an advance directive for health care. Although a living will may cover a range of treatments, including those desired and not desired, it generally applies to life-sustaining treatment when terminally ill, in an irreversible coma, or in a vegetative state, and when the application of such treatment would only prolong the time of death. The living will can describe when a person would or would not want certain life-prolonging medical treatment, including tube feeding or any artificial or invasive form of nutrition or hydration.

Affidavit

A sworn, signed, and witnessed statement.

AIP

An alleged incapacitated person.

Appeal

Request to a higher court to review a decision of a lower court.

Area Agency on Aging (AAA)

A regional planning body of governments that plans, coordinates and advocates for the development of a comprehensive service delivery system to meet the needs of older people in a specific geographic area. Together with the federal-level Administration on Aging, the State Offices on Aging, and local service provider agencies, they comprise the “aging network.” Philadelphia is served by PCA.

Autonomy

The ability to make and carry out (or instruct others to carry out) decisions that are informed and uncoerced.

Best Interests

A standard of surrogate decision-making for an incapacitated person whose wishes are unknown, based on what is thought to best promote his or her welfare.

Burden of Proof

Responsibility of a party to prove a fact. The amount of proof required varies with the type of case. In guardianship matters, the burden of proof is clear and convincing evidence.

Case Management

A collaborative, standardized process that focuses on the coordination of services needed by vulnerable citizens. It includes an objective assessment of client needs; the development of an individualized, goal oriented, and time limited care plan; arrangement of services; and reassessment, including monitoring and follow-up.

Change of Venue

Transfer of the court matter to another county or location.

Civil Lawsuit

A legal action brought to seek relief for injuries or monetary loss.

Conservator

A term used in certain states, usually referring to a guardian of the estate only, or a person with legal responsibility for the financial affairs of someone incapable of handling them. May require little due process and no determination of incapacity.

Contested

Objected to by any party to the petition or the hearing.

Continuance

Agreement by the court to postpone the hearing date.

Decisional Competence

A legally determined categorical conclusion (i.e., a person either possesses it or not) arrived at by a court in order to determine whether an individual had capacity in the context presented. It is task specific (e.g., the cognitive requirement to execute a will is less than that required to make a valid contract).

Decision-Making Capacity

A clinical concept existing on a continuum beginning with the ability to simply express a view or communicate a choice, and extending to understanding the choice's factual basis, appreciating how it affects one's life, and articulating the thought processes that support it.

Dementia

A syndrome characterized by acquired impairment in at least three of five neurophysical and behavioral domains: memory, language/speech, visuospatial ability, cognition (the ability to manipulate previously learned information), and mood/personality. A diagnosis of dementia requires that cognitive deficits be severe enough to cause significant impairment in social or occupational functioning.

Diminished Capacity

Inability because of cognitive, psychological, or emotional deficits to understand and process information and make rational decisions based upon it.

Due Process

A principle expressed in the United States Constitution guaranteeing individuals certain protections against government action. Procedural due process includes an individual's right to be adequately notified of charges or proceedings, to have the opportunity to be heard at these proceedings, and to have an impartial person or panel make the final decision over the proceedings.

Estate

A person's income, assets, real estate, or any other financial holdings.

Expert Testimony

Testimony about a scientific, technical, or professional issue given by a person qualified to testify because of familiarity with the subject or special training in the field; in guardianship proceedings usually a physician specializing in geriatric medicine or psychiatry.

Final Decree

The concluding judgment issued by a court at the end of a legal proceeding.

Functional Assessment

An inventory of basic activities of daily living for evaluating whether and how well a person can perform them. There are various scales for this purpose.

Guardianship

A legal arrangement under which one person, a guardian appointed by a court, has the legal right and duty to care for another, the ward, because of the ward's inability to legally act on his or her own behalf due to minority or mental or physical incapacity. Guardianship takes several forms, including the following:

A *full* or *plenary guardian* is responsible for all major decision-making for the incapacitated person. Even with a plenary guardianship, the guardian must consider the wishes of the incapacitated person; and the authorization of the Court must be sought for certain actions and decisions.

The court may assign a *limited guardian* if the incapacitated person is able to make some, but not all, major life decisions or for guardianships that are time-limited. The guardianship may be *of the person* or *of the estate*, and the Court may specify the areas of responsibility and the decisions the guardian is responsible for making.

A *corporate guardian* is a private agency authorized to serve as a guardian for an incapacitated person.

A *guardian ad litem* (GAL) is a lawyer appointed by the court to represent the best interests of the incapacitated person in legal proceedings including guardianship and conservatorship hearings.

A *temporary guardian* may be appointed for a specified period if a rapid decision must be made regarding the health or safety of an incapacitated person.

In emergency situations where the process of petitioning for a general guardianship is reasonably expected to cause danger to the alleged incapacitated person's personal safety or financial security, an *emergency guardian* may be appointed, generally for a specific, brief period or particular action.

Hearing

A court proceeding conducted before a judge or referee, which allows a person or persons to sufficiently present their case in a meaningful manner.

Incapacity

The inability of a person to physically, mentally, or cognitively handle his or her own property or personal affairs. An incapacitated person is an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such an extent that he or she is partially or totally unable to manage his or her financial resources or to meet essential requirements for his or her physical health and safety.

Indigent

A person with little money or property.

Instrumental Activities of Daily Living (IADLs)

Activities such as making appointments, paying bills, shopping, meal preparation, handling medications, and using the telephone.

Inventory

A document describing all assets of the incapacitated person.

IP

An incapacitated person.

Least Restrictive Alternative

The concept that the status and setting that provide protection and services must do so with the fewest restraints on personal liberty. The choice of these considers the natural environment, the nature and proximity of services needed, and the person's strengths and resources as well as the severity of the dysfunction. Alternatives to the appointment of a guardian must be explored and ruled out prior to petitioning for the appointment of a guardianship.

Living Will

In Pennsylvania, an advance directive for health care. See advance directive.

Mediation

A voluntary, confidential, informal, and nonadversarial process of alternative dispute resolution in which a mediator, who is a third party neutral, facilitates conversations that allow all parties to discuss both the emotional and legal issues and work toward a solution that can solidify and preserve relationships.

Notice

Written notification to an all interested persons stating that a legal process has begun. In a guardianship proceeding, notice includes a statement that a petition has been filed and the time and place of the hearing, as well as an explanation of the nature of the proceedings and the potential result, and the alleged incapacitated person's rights. Adequate notice may require reading the document to the alleged incapacitated person.

Notarize

The process by which an authorized public officer (the "notary") verifies the signature on a document. The signing of the document must take place in the presence of the notary.

Oath

A sworn promise to perform and act faithfully and truthfully, including giving testimony.

Order to Show Cause

An order requiring a party to appear and show why a previous order has not been complied with, or why a proposed order should not be made.

Petition

A legal document requesting action or relief from the court.

Petitioner

The person who brings a petition before the court.

Philadelphia Corporation for Aging (PCA)

The Area Agency on Aging for Philadelphia. See Area Agency on Aging.

Power of Attorney (POA)

A written, notarized statement that allows an individual (the “principal”) to give the authority to one or more persons (the “agent(s)” or “attorney(s)-in-fact”) to act for him or her on the terms and conditions specified in the document. A POA is presumed in Pennsylvania to be durable, that is, to remain in force even if the principal becomes incapacitated; however, a more specific time period or particular responsibility may be defined. In addition, A Health Care Power of Attorney gives the authority to an agent to make health care decisions when the principal is no longer able to do so.

Preliminary Decree

A document required to be attached to every petition to adjudicate a person incapacitated: it establishes a hearing date for the petition, orders the Clerk to issue a citation to the alleged incompetent, and directs that notice be given to those parties in interest who have not consented to or joined in the petition.

Psychological Assessment

A comprehensive assessment of an individual involving the integration of information from multiple sources, including various tests of personality, intelligence, and function; interviews with the subject; and the collection of collateral information from family and caregivers.

Representative Payee

An individual or organization that receives Social Security and/or SSI payments for someone who cannot manage or direct the management of his or her money. Payees must use the funds for the current and foreseeable needs of the beneficiary and must file reports. These arrangements are also available for other benefits, such as those for veterans and Railroad Retirement funds. The Pennsylvania Department of Welfare has a similar program of Protective Payees.

Self-Determination

The concept of allowing and encouraging a person to participate as much as possible in making decisions about his or her own welfare. It involves respecting the wishes and preferences of the incapacitated person to the greatest extent possible, encouraging participation in the development of a plan of services to meet the person's needs, and acting on his or her behalf to implement decisions and preferences whenever feasible.

Special (Supplemental) Needs Trust

Special needs trusts (also known as "supplemental needs" trusts) allow a disabled beneficiary to receive gifts, lawsuit settlements, or other funds and yet not lose his or her eligibility for certain government programs. Such trusts are drafted so that the funds will not be considered to belong to the beneficiary in determining eligibility for public benefits. They must be used for needs not covered by public benefits, that is, not for food, shelter, and other necessities.

Subpoena

An order compelling a witness to appear and testify before a court.

Substitute (or Surrogate) Decision Maker

A person acting, either informally as a family member or friend, or formally as a proxy, agent, or guardian, on behalf of an incapacitated person in making relevant decisions regarding personal and medical issues and/or financial issues.

Technological Assistance

Any device, machine, or arrangement that may be used to assist a person to communicate or function more independently, such as direct deposit/withdrawal; computer assisted communication; computer controlled wheelchairs; and guide dogs.

Testimony

Oral statements made under oath at a legal proceeding.

Witness

1. A person called to testify in a legal proceeding.
2. A person who witnesses the signing of a legal document.

Zealous Advocacy

A model requiring an attorney to argue for the best possible result for his or her client, generally regardless of how others are affected. Often applied in criminal law.

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PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT

Rule 1.14 Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment:

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being.

For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the

lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.
See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact

require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment:

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a

representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5.

See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer

reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Checklist for Gathering Information and Guardian To Do List (from Chapter IV, Responsibilities and Duties of the Guardian)

Gathering Information

- Obtain Certificates of Guardianship and Final Decree.
- Gather information: Complete Client Info Summary.
- Talk with members of the IP's support system: family, friends, church, etc.
- Talk with professionals such as doctors, social workers, etc.
- Forward the mail.
- Identify income streams: redirect payment.
- Identify and marshal assets: convert accounts.
- Identify household maintenance costs and status of payments.
- Create a budget.
- Decide whether a credit report is necessary.
- File Inventory within 90 days.
- File Annual Report within one year.
- File Petition for Allowance before using principal.

For the Guardian of an IP Living in the Community

- Review the existing care management plan. (Guardian of the Person)
- Identify appropriate services. (Guardian of the Person)
- Develop a guardianship plan to ensure safety, well-being, and health that incorporates the care management plan. (Guardian of the Person)
- Develop a plan for financial management. (Guardian of the Estate)

FORMS AND OTHER MATERIALS

The following priorities should be observed when using sample forms:

First: Court Sources. As with any Orphans' Court matter, practitioners should check the Pennsylvania Orphans' Court Rules and the applicable Local Rules for the Philadelphia Orphans' Court Division when preparing any document for filing with the Philadelphia Orphans' Court. The Pennsylvania Orphans' Court Rules provide formats for certain Forms, such as the Guardian's Inventory, the Annual Reports for Guardian of the Person or of the Estate and Petition for Adjudication - Guardianship of Incapacitated Person. These Forms are available online at the website for the Pennsylvania courts (<http://www.courts.state.pa.us/Forms/OrphansCourtForms>), are accepted by the Philadelphia Orphans' Court, and should be used first if available.

Second: Philadelphia Estate Practitioner Handbook ("PEPH"). Since December 2002 when it was first published, the PEPH has served as a valuable resource for practitioners before Philadelphia's Register of Wills and Orphans' Court Division. It is available online at its website (<http://www.peph.com/>) and can be searched for various Forms, which are downloadable. These are recommended for use next for filing with the Philadelphia Orphans' Court if the Form in question is not otherwise available under the Pennsylvania Orphans' Court Rules.

Third: Other Materials and Forms. While there are various sources for materials and forms, some experienced guardianship practitioners have kindly shared some of theirs as follows:

Materials

1. Initial meeting checklist (Pages 69-70)
2. Letter to postmaster requesting mail forwarding (Pages 71-72)
3. IP contact and ID Information Form – 5 Pages (Pages 73-79)

Forms

4. Inventory (Pages 80-82)
5. Annual Report of Guardian of Person (<http://courts.phila.gov/common-pleas/orphans/>) – Pages 83-85
6. Annual Report of Guardian of Estate (<http://courts.phila.gov/common-pleas/orphans/>) – Pages 86-89
7. Petition to Settle Small Estate under 20 Pa.C.S. §3102 (of estate of incapacitated person's parent, so as to receive assets for benefit of incapacitated person) – Pages 90-93

- See also* PEPH 5.7 Petition for Settlement of Small Estate in Accordance With 20 Pa.C.S.A. §3102
8. Petition to Settle Small Estate under 20 Pa.C.S. §3102 (of estate of incapacitated person, so as to distribute incapacitated person's assets) – Pages 94-98
See also PEPH 5.7 Petition for Settlement of Small Estate in Accordance With 20 Pa.C.S.A. §3102
 9. Petition to Enter into Fee Agreement (with PI attorney, to pursue claim on incapacitated person's behalf) – Pages 99-103
 10. Petition to Settle Litigation [authorize guardian of estate to enter into a settlement of litigation] – Pages 104-114
See also PEPH 11.11: Petition for Leave to Settle or Compromise Wrongful Death and Survival Action
 11. Petition for Allowance: ongoing maintenance, burial fund [reimbursement for guardian's expenditures *nunc pro tunc*, legal fees] – Pages 115-121
See also PEPH 8.5: Petition for Allowance from Incapacitated Person's Estate to Pay for the Maintenance of the Incapacitated Person in Accordance with 20 Pa.C.S.A. § 5536(a) and to Pay Counsel Fees
 12. Petition for Allowance to Pay Debts and Counsel Fees, Establish a Burial Fund and for Approval of a Special Needs Trust [pay current obligations, approval of expenditures of outstanding debts *nunc pro tunc*, SNT to accept balance of proceeds from sale of parent of incapacitated's real estate] – Pages 122-129
See also PEPH 8.7: Petition to Create Funeral Expense Trust In Accordance With 20 Pa.C.S.A. § 5537
See also PEPH 11.4 Petition for Leave to Settle or Compromise An Incapacitated Person's Action (with Special Needs Trust and Structured Settlement)
See also PEPH 11.6 (Petition for Approval to Special Needs Trust under 42 U.S.C. §1396p(d)(4)(A) for Disabled Minor/Incapacitated Person)
 13. Petition to Engage in Estate Planning and Transfers [purchase condo and pay all costs of it from SNT] – Pages 130-133
See also PEPH 8.8: Petition for Approval of Gifts on Behalf of Incapacitated Person Pursuant to 20 Pa.C.S.A. § 5536(b)
 14. Petition for Permission to Sell Real Estate at Private Sale and to Distribute Proceeds [for burial fund, personal needs account, legal fees and costs, extinguish claims of secured creditors, transfer balance to special needs trust] – Pages 134-141
See also PEPH 4.8 Petition to Fix the Amount of Additional Security upon Sale by an Administrator of Real Property in Accordance with 20 Pa.C.S.A. §3351

15. Petition to Sell Real Estate at Auction/Public Sale [in accordance with Rule 12.9.A(5) – Pages 142-147

See also PEPH 4.8 Petition to Fix the Amount of Additional Security upon Sale by an Administrator of Real Property in Accordance with 20 Pa.C.S.A. §3351

16. Petition to Abandon Worthless Real Estate – Pages 148-151

(The above reference materials are current as of the date of posting for this draft of the Guardianship Handbook.)

INITIAL MEETING CHECKLIST

INITIAL MEETING CHECKLIST

- Explain relationship of guardian to IP:
 - ___ Estate & Person
 - ___ Estate: property, debts and income
 - ___ Person: ensure that services are in place to ensure personal safety and well-being
 - ___ Court has determined that you need to have someone help you with your financial and personal affairs and has appointed me as the person who will ensure that you get that help.

- Explain what to expect next:
 - ___ Today: I will get some information from you.
 - ___ We will meet again within the next two weeks to follow up.
 - ___ You and I will identify services you need to continue staying in your own home.
 - ___ Unless a Care Plan has already been done, a PCA case manager will come to see you when I'm here and we'll talk with her about the services you need. If she agrees, then those services will be implemented.
 - ___ Together you and I will work out a budget
 - ___ I will make arrangements to have your bills paid according to this budget from the Guardianship Account.
 - ___ I will arrange to have your income paid directly to the guardian's account.
 - ___ I will have your mail forwarded to my office. I will deliver all personal mail to you unopened.
 - ___ My goal is to help you stay in your home as long as possible, safe.
 - I want your input.

- Explain IP's rights:
 - ___ You have the right to go back to court to persuade the judge that you don't need a guardian.

- ___ Review Court Order if necessary

- ___ Complete Client Info Summary

**LETTER TO POSTMASTER
REQUESTING MAIL FORWARDING**

City Operations – Philadelphia Division
United States Postal Service
3000 Chestnut Street
Philadelphia, PA 19104

RE: The Estate of G. I. Forgot to Plan, an Incapacitated
Person
Xyz Pretty Place
Philadelphia, PA 191xx

Dear Sir or Madam;

The Philadelphia Orphan’s Court has appointed me legal guardian of the above-named person. Enclosed is a Guardianship Certificate issued by that court. In order to effectively manage the affairs of my ward, I will need to receive my ward’s mail.

Please forward all mail of the above-named person from the above address to:

Gertrude Guardian, Esquire
Law office of Manny, Moe, and Jack
1234 Lawyer Lane
Philadelphia, PA 191xx

Thank you for your assistance.

Very Truly Yours,

Gertrude Guardian, Esquire

ENC.

IP CONTACT AND ID INFORMATION

IP Contact and ID information

Name: _____

What would you like to be called? _____

Address: _____

Phone numbers: _____

Date of Birth: _____ SSN: _____

Emergency Contact: _____

Birth Place: _____ Mother's Name: _____

Mother's Maiden Name: _____

Will? Yes No

Powers of Attorney: Yes No

Advance Directive (Living Will): Yes No

Where are documents?

Inventory needed? Yes No

Care Manager: _____

Care Manager Supervisor: _____

Appointment Date:

Inventory Due:

Inventory Filed:

SOCIAL SUPPORT NETWORK

Family Members and how to contact:

Other Helpful People:

Church:

Pastor: _____

Address: _____

Phone: _____

Other Community Organizations/ Institutions connected to:

Pet Information (Cat, Dog, Bird, etc.):

MEDICAL

Health Care Providers:

Primary Doctor:

Allergist:

Dentist:

Foot Doctor:

Eye Doctor:

Other/ Specialists:

Current Medical Condition:

Diagnosis/ Medical Problems:

Medications:

Recent Hospitalizations:

Upcoming Medical Procedures/ Appointments:

Planning Documents:

Will? Yes No

Powers of Attorney? Yes No

Advance Directive (Living Will)? Yes No

Where are documents?

Inventory needed? Yes No

FINANCIAL

- Income:**
1. Pension
 2. Social Security
 3. Other
 4. Auto Deposit

Bank Accounts:

Debts:

- | | |
|---------------------|------------------|
| 1. Credit Cards | 5. Car Note |
| 2. Mortgage | 6. Personal Loan |
| 3. Second Mortgage | 7. Business Loan |
| 4. Home Equity Loan | 8. Auto Deduct |

Investments:

- | | |
|-----------------|-------------------|
| 1. CD's | 3. Stocks, Bonds: |
| 2. Receivables: | 4. Other |

Real Estate:

Properties owned:

Should locks be changed?

How titled:

Is the property insured? Is insurance adequate?

Where are deeds:

Who has access?

Are real estate taxes current?

Insurance

Property Insurance:

Insurance Company:
Amount of Coverage:
Is coverage adequate?

Health Insurance:

Insurance Company:

Type of Insurance:
Co-pay amount?

Secondary Insurance Company:

Type of Insurance:
Co-pay amount?

Medicare A & B?
Medicare Prescription Coverage:
Is coverage cost effective?
Is there duplicate coverage?

Life Insurance:

Company:
Amount:
Beneficiary:

Company:
Amount:
Beneficiary:

Burial Account? Yes No

Location of policy documents:

PUBLIC BENEFITS

Benefit	Ineligible	Maybe Eligible	Eligible	Needs Enrollment	Enrolled
Medicaid					
Medicaid Waiver					
Medicaid Nursing Home Grant					
PACE					
Social Security					
SSDI					
Food Stamps					
Meals on Wheels					
Property Tax Low Income Rate					
LIHEAP					
Crisis					
USEF (heating utilities)					
Water Dept: WRAP					
PECO Budget					
PGW Budget					
Senior Housing (PHA)					
Section 8 Housing					

PCA Case Manager: _____

PCA Case Manager Supervisor: _____

Other Social Workers/ Benefit Liaisons: _____

INVENTORY

Estate of _____, } an Incapacitated Person
 a Minor

4. Anticipated Assets:

(Set forth property of any kind expected to be acquired hereafter, together with Anticipated date of acquisition.)

Estimated Value:

<i>Property</i>	<i>Anticipated Date of acquisition</i>	
_____	_____	_____
_____	_____	_____
_____	_____	_____
<i>Sub-Total for Personal Estate:</i>		_____

(Attach additional sheets if necessary)

TOTAL OF ITEMS 1, 2, 3, and 4: _____

Commonwealth of Pennsylvania :
: ss.
County of _____ :

_____, says that the foregoing is a full,
Guardian
true and complete Inventory of the Estate of _____,

the aforesaid Incapacitated Person or Minor; and that all of the information set forth herein is true and correct to the best of the Guardian's knowledge and belief.

I verify that the statements made in this)
Inventory are true and correct. I under-)
stand that false statements herein are)
made subject to the penalties of)
18 Pa.C.S. § 4904 relating to unsworn) _____
Falsification to authorities.) Guardian

Attorney for Guardian: _____

Supreme Court I.D. No.: _____

Address: _____

Telephone: _____

**ANNUAL REPORT OF
GUARDIAN OF THE PERSON**

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

O.C. NO. AI OF

**ESTATE OF _____
AN INCAPACITATED PERSON**

ANNUAL REPORT OF GUARDIAN OF THE PERSON

1. I, _____, was appointed plenary/limited guardian of the person by Decree of, _____ J., dated _____.

This is my annual report for the period from _____ to _____ (the "Report Period").

2. Age of incapacitated person: ___ years. Date of Birth: _____.

3. Living arrangements.

a. Current address of the incapacitated person:

b. The incapacitated person's residence is:

- ___ own home/apartment
- ___ nursing home
- ___ boarding home/personal care home
- ___ guardian's home/apartment
- ___ hospital or medical facility
- ___ relative's home (name, relationship and address)

Other: _____

c. The incapacitated person has been in the present resident since _____.

If the incapacitated person has moved within the past year, state change and reason(s) for change: _____

d. Name and address of the incapacitated person's primary caregiver:

4. The major medical or mental problems of the incapacitated person are as follows:

5. Specify what, if any, social, medical, psychological and support services the incapacitated person is receiving:

6. It is my opinion as guardian of the person that the guardianship should: (Check One) ___ continued ___ be modified ___ be terminated. (Briefly explain your response).

7. During the past year, I have visited the incapacitated person ___ time with the average visit lasting _____.
(Hrs. Min.)

The report of a social service organization employed by the guardian to oversee and coordinate the care of the incapacitated person for the period covered by this report may be attached to supplement this report.

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa. C.S.A. 4904 relative to unsworn falsification to authorities.

Date: _____, 2008

Signature

Name of Guardian (type or print)

Address

City, State, Zip

Telephone Number

**ANNUAL REPORT OF
GUARDIAN OF THE ESTATE**

II. ADDITIONAL INFORMATION
(If more space is needed, attach additional pages)

A. Principal:

- (1) Total amount remaining at the end of the Report Period? \$_____
- (2) How is principal currently invested? (Please specify, i.e., real estates, certificates of deposits, restricted bank accounts, etc.):

- (3) Have there been any expenditures from principal during the Report Period? (check one) YES or NO
- (4) Did you receive any principal assets during the Report Period which were not included in the Inventory or a prior report filed For the estate. (check one) YES or NO

If you answered YES:

- (a) Did you receive Court approval prior to receiving additional principal?
(check one) YES or NO
- (b) State the sources and amounts of the additional principal you received:

_____ \$ _____
_____ \$ _____
_____ \$ _____

B. INCOME:

- (1) State sources and amounts of income received during the Report Period (i.e., Social Security, Pension, Rents, etc.):

_____ \$ _____
_____ \$ _____
_____ \$ _____

Total income received during Report Period \$_____

(2) How is income currently invested? (Please specify, restricted bank accounts, client care account, etc.)

C. Specify what payments were made for the care and maintenance of the Incapacitated Person (i.e., clothing, nursing home, medicine, support, etc.)

D. Specify what other payments were made during the Report Period. (Do not include any items stated in response to question C above).

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa. C.S.A. 4904 relative to unsworn falsification to authorities.

Date: _____, 20 ____

Signature

Name of Guardian (type or print)

Address

City, State, Zip

Telephone Number

**PETITION TO SETTLE SMALL ESTATE OF PARENT OF
INCAPACITATED PERSON
(SO AS TO RECEIVE ASSETS
FOR THE BENEFIT OF THE INCAPACITATED PERSON)**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, the cash value of policy # _____ of Jefferson Pilot Financial Insurance Company which was owned by _____ upon the life of _____ is awarded to "Gerry Guardian, guardian, the Estate of _____, an Incapacitated Person."

[JUDGE]

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

**Petition Under § 3102
of the Probate, Estate and Fiduciaries Code
For Settlement of a Small Estate**

TO THE HONORABLE JUDGES OF SAID COURT:

Gerry Guardian, Esquire, files this Petition for Settlement of a Small Estate under the provisions of Section 3102 of the Probate, Estates and Fiduciaries Code and in support thereof avers that:

1. Petitioner is the guardian of the estate of _____, who is the sole surviving heir of decedent, _____.
2. _____ died on _____ at which time she was domiciled at _____, Philadelphia, PA _____.
3. _____ died without a will and no letters of administration were ever filed. A death certificate is marked as Exhibit "A".
4. _____ had no probatable estate but was the owner of a policy of insurance on the life of her daughter _____. A copy of the letter from the Jefferson Pilot Financial Insurance Company is marked as Exhibit "B".
5. That policy which has an approximate cash surrender value of \$_____ can neither be surrendered for the benefit of ____ nor the beneficiary designation changed because of the owner's demise and the failure of anyone taking Letters of Administration in her estate.
6. The sole heir and next of kin and her relationship to the decedent is as follows:
_____, an Incapacitated Person - - daughter/son
7. At the time of her death, _____, was survived by her husband _____, who died _____, 200_. A copy of the death certificate of _____ is marked as Exhibit "C".

8. Your petitioner avers that to the best of her information and belief there are no creditors of the decedent known nor any unpaid claims.

WHEREFORE, petitioner respectfully requests this Court to enter an order authorizing distribution of the cash value of insurance policy # _____ to Gerry Guardian, guardian of the estate of _____.

Gerry Guardian #12345

**PETITION TO SETTLE SMALL ESTATE
(OF ESTATE OF INCAPACITATED PERSON SO AS TO DISTRIBUTE
INCAPACITATED PERSON'S ASSETS)**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition and notice to all known creditors and pursuant to 20 Pa.C.S.A. § 3102, it is hereby DECREED that Gerry Guardian, former guardian of _____, deceased, is authorized to settle and distribute his estate of \$_____ as follows:

1. \$_____ to Gerry Guardian, Esquire for counsel fees and out-of-pocket expenses for services to the estate.
2. \$_____ to MRI Professionals, Inc. for MRI services. Balance to Commonwealth of Pennsylvania in reimbursement for nursing home grant.

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

**PETITION UNDER § 3102
OF THE PROBATE, ESTATE AND FIDUCIARIES CODE
FOR SETTLEMENT OF A SMALL ESTATE**

AND NOW, comes the Petitioner Gerry Guardian, Guardian of the Estate of _____, an Incapacitated Person, and respectfully states that:

1. Petitioner was the duly appointed guardian of the late _____ who died (DATE). A copy of that Decree is attached hereto as Exhibit "A".
2. Petitioner has offices at _____, Philadelphia, PA 191____. The incapacitated person died at the age of __ years on (DATE) as a resident of the _____ located at _____.
3. _____ died without a will and no estate has been raised.
4. Simultaneously herewith, petitioner filed a final status report showing assets at the incapacitated person's death in the amount of \$_____. A copy of the final status report is attached hereto as Exhibit "B".
5. The former guardian knows of no assets of the estate of the decedent other than the amount remaining in the Lawyer's Trust Account.
6. Petitioner knows of no creditors of the estate of _____, an Incapacitated Person, deceased except as follows:
 7. The Commonwealth of Pennsylvania, Department of Public Welfare, has a claim against assets remaining at the death of the incapacitated person by virtue of having approved a medical assistance nursing home grant. Copies of pertinent documents regarding this claim are attached hereto as Exhibit "C".
8. Petitioner's attorney Gerry Guardian, Esquire has expended time and incurred out-of-pocket expenses. An itemized statement is attached hereto as Exhibit "D".

9. MRI Professionals, Inc. for outstanding medical bill. A copy of the bill is attached hereto as Exhibit "E".

10. Decedent has no known living next-of-kin, therefore, notice has only been given to the Commonwealth of Pennsylvania and known creditors attached hereto as Exhibit "F".

WHEREFORE, Petitioner respectfully requests this Court to enter an order authorizing distribution of the estate as follows:

a. \$_____ to Gerry Guardian, Esquire for counsel fees and out-of-pocket expenses for services to the estate.

b. \$_____ to MRI Professionals, Inc. for MRI services.

Balance to Commonwealth of Pennsylvania in reimbursement for nursing home grant.

Gerry Guardian, Esquire, P.C.

Gerry Guardian #12345

Proof of Service

I, _____, hereby certify that notice of the filing of the within petition was given to the following parties in interest by first class mail, postage prepaid on the date below written:

_____, Esquire
Asst. Counsel, Office of Legal Affairs
Department of Public Welfare

MRI Professionals, Inc.
P.O. Box 8500-6550
Philadelphia, PA 19178

Gerry Guardian

Date:

Gerry Guardian

**PETITION TO ENTER INTO FEE AGREEMENT
(WITH PI ATTORNEY)**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed Petition it is hereby DECREED that Gerry Guardian, Esquire, guardian of the estate and person of _____ is permitted to enter into a contingent fee agreement as appended hereto in Exhibit "B" to pursue a personal injury claim on behalf of the incapacitated person.

[JUDGE]

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

**PETITION FOR ALLOWANCE
TO ENTER INTO A CONTINGENT FEE AGREEMENT
TO PURSUE A PERSONAL INJURY LITIGATION**

And now comes Gerry Guardian, Esquire and respectfully represents that:

1. Petitioner is the duly appointed and acting guardian of the estate of _____ having been appointed by Decree of [Judge] dated _____. A copy of that decree is appended as Exhibit "A".

2. _____, the incapacitated person, is an _____ () year old widow who was placed at the _____ in [date] upon her discharge from _____ Hospital.

3. Prior to being hospitalized in December of 200_, the incapacitated person resided at _____.

4. The cause for the incapacitated person's admission to the hospital was an injury sustained when struck by a car while a pedestrian.

5. Petitioner believes and therefore avers that a recovery can be made for her ward because of said injury in which she sustained a fracture of her right humerus.

2. The court-appointed counsel who represented _____ at the guardianship hearing suggested to your Petitioner an attorney who has expertise in personal injury matters.

3. After due investigation Petitioner believes that this attorney can represent the claim and has received a contingent fee agreement from him. The proffered agreement is appended hereto as Exhibit "B".

4. Petitioner believes that the terms of the agreement are consistent with what the Orphans' Court customarily allows in such matters and that it is reasonable and appropriate.

5. Notice has been given to the next of kin of the incapacitated person per Exhibit “C”.

WHEREFORE, Petitioner respectfully prays Your Honorable Court allow the guardian of the estate of _____ to enter into the contingent fee agreement appended hereto as Exhibit “B”.

Gerry Guardian #12345

VERIFICATION

I, _____, verify and affirm that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: _____

Gerry Guardian #12345

PETITION TO SETTLE LITIGATION

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.

**ESTATE OF _____,
AN INCAPACITATED PERSON**

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that _____, Esquire, guardian of the estate of _____, an Incapacitated Person, is authorized to enter into a settlement of the litigation in the _____ Court, as set forth in Exhibit "B".

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.

**ESTATE OF _____,
AN INCAPACITATED PERSON**

**Petition for Permission to Enter into a Settlement Agreement and Release of Litigation in
the _____ Court**

AND NOW, comes the Petitioner, _____, Esquire, and respectfully states
that:

1. Petitioner is the duly appointed and acting guardian of the estate of _____, an incapacitated person having been appointed by Decree of _____, J. dated _____, 200_. A copy of that Decree is attached hereto as Exhibit "A".
2. The incapacitated person has resided at _____, a nursing home, since _____ in 200_.
3. The incapacitated person receives social security of \$_____per month which is paid to his nursing home and to his mother in partial reimbursement of purchases made for _____. Currently, the estate's assets total \$_____.
4. In January, 2001 petitioner as guardian engaged counsel to pursue litigation against _____ on behalf of the estate because of an injury sustained by _____, the incapacitated person.
5. The case was tried in November of 2004, and on November 22, 2004, the defendant made a settlement offer and has tendered a release and counsel prepared a preliminary, proposed settlement order. Those documents are appended as Exhibit "B".

6. Petitioner is not authorized to enter into a settlement agreement without the approval of the Orphans' Court. The Department of Public Welfare has agreed to settle its claim for the sum of \$_____ which will be paid from the gross proceeds, and the Department is being noticed only as a courtesy. A copy of the letter of Agreement with the Department is appended as Exhibit "C".

7. Notice has been given to the next-of-kin who have also been requested to join in the prayer of the petition. See Exhibit "D".

WHEREFORE, petitioner respectfully requests that this Court authorize guardian of the estate to enter into a settlement of the litigation at _____ Court as set forth in Exhibit "B".

Attorney's firm information

Dated:

Attorney's Name & ID#

Verification

I, _____, Esquire, verify and affirm that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date:

, Esq.

Decree of

Exhibit "A"

Release and Proposed Settlement Order

Exhibit “B”

**Letter of Agreement With
The Department of Public Welfare**

Exhibit “C”

Proof of Service

I, _____, Esquire, hereby certify that notice of the filing of the within petition was given to the following parties in interest by first class mail, postage prepaid on the date below written:

Father

Mother

Department of Public Welfare
Asst. Counsel, Office of Legal Affairs
State Office Building – Room 3
1400 Spring Garden Street
Philadelphia, PA 19130

Attorney's firm information

Dated:

Attorney's Name & ID#

Exhibit "D"

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.
ESTATE OF _____,
AN INCAPACITATED PERSON

Joinder of Father

I, _____ father of _____, join in the prayer of the petition of
guardian _____, Esquire for permission to settle the litigation at _____ Court.

Father
Address

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.

**ESTATE OF _____,
AN INCAPACITATED PERSON**

Joinder of Mother

I, _____ mother of _____, join in the prayer of the petition of
guardian _____, Esquire for permission to settle the litigation at _____ Court.

Mother
Address

**PETITION FOR ALLOWANCE:
ONGOING MAINTENANCE & BURIAL FUND**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, it is hereby DECREED that _____ guardian of the estate of _____, an Incapacitated Person is authorized to:

2. Expend income and, to the extent that income is insufficient, principal not to exceed \$57,350.00, per annum for a period of three years beginning March 1, 200_.
3. Set aside the sum of \$7,000.00 in a restricted burial account.
4. Expenditures in the aggregate of \$4,979.39 as itemized in Exhibit "B" are approved nunc pro tunc.
5. Pay to Gerry Guardian, Esquire, P.C., counsel for the estate, the sum of \$_____ for legal services and out-of-pocket costs.

[JUDGE]

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

**Petition for Allowance
From the Incapacitated Person's Estate for Maintenance,
To Pay Certain Debts and Counsel Fees and to Establish a Burial Fund**

AND NOW, comes the Petitioner Gerry Guardian, and respectfully states that:
Petitioner is the duly appointed and acting guardian of the estate of _____, an
incapacitated person having been appointed by Decree of _____, J. dated _____,
200__.

6. The incapacitated person resides at the _____ Philadelphia,
PA 191__.

7. On March 10, 200__, Petitioner filed an Inventory of the said estate in accordance
with the provisions of 20 Pa.C.S.A. § 5521(2), which Inventory reflected principal assets in the
amount of \$_____.

a. Petitioner believes that the care and maintenance of her ward will require
expenditures of \$57,350.00, per annum based on the budget appended as Exhibit "A".

b. The incapacitated person receives social security in the amount of
\$1,277.00 per month and a pension from _____ in the amount of \$191.31 per month.

c. Income is insufficient to meet maintenance expenses and a principal
invasion is necessary.

d. Petitioner wishes to set aside \$7,000.00 in a restricted burial reserve
account for a proper burial for her ward.

8. Petitioner has paid expenditures totaling 4,979.39 for an assisted living
community fee, arrearage on her Blue Cross insurance premiums, an appraisal fee and an
outstanding balance on her phone bill and certain clothing and personal needs purchases have
been made, all without the approval of the Orphans' Court. Those expenditures, for which
petitioner seeks allowance, nunc pro tunc are itemized in Exhibit "B".

9. Petitioner further has expended her own out-of-pocket money and has rendered legal services to the estate of the incapacitated person as set forth in Exhibit "C".

10. The next of kin of incapacitated person has been notified per Exhibit "D".

WHEREFORE, petitioner respectfully requests that this Court authorize guardian of the estate to:

1. Expend income and, to the extent that income is insufficient, principal not to exceed \$57,350.00, per annum for a period of three years beginning March 1, 200_.

2. Set aside the sum of \$7,000.00 in a restricted burial account.

3. Expenditures in the aggregate of \$4,979.39 as itemized in Exhibit "B" are approved nunc pro tunc.

4. Pay to Gerry Guardian, Esquire, P.C., counsel for the estate, the sum of \$ _____ for legal services and out-of-pocket costs.

Gerry Guardian #12345

VERIFICATION

I, _____, Esquire, verify and affirm that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date _____

Gerry Guardian

ANNUAL PROJECTED BUDGET

New Seasons Assisting Living	48,000.00
Pharmacy	2,000.00
Clothing Allowance	1,000.00
Personal spending: hair care, activities, etc.	1,200.00
Non-covered medical and dental services	2,500.00
Independence Blue Cross	2,200.00
Verizon	<u>450.00</u>
Total	57,350.00

EXHIBIT A

EXPENDITURES

New Seasons, community fee	3,200.00
Gerry Guardian, Esquire, P.C., reimburse for clothing and personal needs	671.89
North Philadelphia Health System, reimburse for Blue Cross payment	807.50
_____, appraisal	<u>300.00</u>
Total	4,979.39

EXHIBIT B

**PETITION FOR ALLOWANCE:
PAY DEBTS, BURIAL &
ENTER INTO SPECIAL NEEDS TRUST**

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.

**ESTATE OF _____,
AN INCAPACITATED PERSON**

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed Petition, _____, guardian of the estate of _____, an incapacitated person, is authorized to enter into a special needs trust in the form appended to the petition as Exhibit "G" and to accept, as Schedule A receipts, the balance remaining from the proceeds of the sale of her father's real estate after the payment of:

1. The debts of _____ and _____.
2. \$_____ to _____, the current obligation of _____, an incapacitated person.
3. \$_____ to establish a burial fund for both the incapacitated person and _____ in the amount of \$_____ each.
4. Invoices totaling \$_____ to _____, Esquire, for legal services and out-of-pocket cost for the benefit of the incapacitated person and her father.

It is further ORDERED and DECREED that the expenditures totaling \$___ for outstanding debts of _____ and _____ are approved nunc pro tunc.

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O.C. NO.

**ESTATE OF _____,
AN INCAPACITATED PERSON**

**PETITION FOR ALLOWANCE TO PAY OUTSTANDING DEBTS AND COUNSEL
FEES, ESTABLISH A BURIAL FUND AND FOR APPROVAL OF A SPECIAL NEEDS
TRUST**

To the Honorable _____, Judge:

Petitioner, _____, Esquire, respectfully represents that:

1. Petitioner was appointed guardian of the estate of _____ by Decree of _____, Judge, dated _____.
2. _____, an incapacitated person, resides at _____, a personal care facility located at _____.
3. On _____, 200_, petitioner filed an inventory of the estate showing assets in the amount of \$ _____. A copy of that inventory is appended hereto as Exhibit "A".
4. As noted in a prior petition, Petitioner anticipated additional revenues subject to payment of debts of her parents from the sale of the incapacitated person's parental home as an adult dependent disabled child.
5. The real estate was sold by _____, as Agent under a power of attorney for _____ on _____, 200_. A copy of the settlement sheet and proceeds check are appended as Exhibit "B".
6. The known debts of the parents, the late _____ and _____ are as set forth in Exhibit "C".
7. The current debt of _____ is \$ _____ for _____ Hospital. A copy of the invoice is appended as Exhibit "D".
8. The incapacitated person and _____ have no burial fund and petitioner wishes to set aside funds in the amount of \$ _____ for both of them for a proper burial.

9. Petitioner has expended time and out of pocket costs for the benefit of the incapacitated person and for _____ and _____ and seeks payment totaling \$_____ as per the itemized time sheets in Exhibit "E".

10. Petitioner paid debts totaling \$_____ for the _____ and _____, expenditures for which she seeks allowance nunc pro tunc as set forth in Exhibit "F".

11. Petitioner believes that it is in the best interest of her ward to establish a trust consistent with Medicare regulations which will shelter the funds for the future special needs of _____ while allowing her to continue to receive public benefits for food, shelter, clothing and medical needs.

12. After payment of the aforesaid debts, and counsel fees and costs, the amount available to _____ as a dependent disabled child will be \$_____ which net amount petitioner wishes to set aside in a special needs trust for the benefit of _____.

13. Petitioner has prepared and appends hereto as Exhibit "G" a form of trust which she believes will accomplish those ends.

14. Notice has been given to _____, Agent under a Power of Attorney for _____, the father of the incapacitated person as well as to the Department of Public Welfare which is providing a nursing home grant for _____ and to the Social Security Administration per Exhibit "H".

WHEREFORE, Petitioner prays Your Honorable Court to authorize _____, Esquire, guardian of the estate of _____, an incapacitated person, to enter into a special needs trust in the form appended to the petition as Exhibit "G" and to accept, as Schedule A receipts, the balance remaining from the proceeds of the sale of her father's real estate after the payment of:

- a. The debts of _____.
- b. \$_____ to _____ Hospital, the current obligation of the incapacitated person.
- c. \$_____ to establish a burial fund for both the incapacitated person and _____ in the amount of \$_____ each.
- d. Invoices totaling \$_____ to _____, Esquire for legal services and out-of-pocket costs for the benefit of the incapacitated person and for _____ and _____.

e. Petitioner further prays that this Court approve expenditures totaling \$ ____ for outstanding debts of _____ and _____ nunc pro tunc.

Attorney's firm information

Dated:

Attorney's Name & ID#

OUTSTANDING DEBTS

Physicians

Hospitals

Diagnostic testing

Ambulance

Rehabilitation Services

Medications

TOTAL:

Exhibit "C"

PAID DEBTS

Physicians

Hospitals

Diagnostic testing

Ambulance

Rehabilitation Services

Medications

Home Repairs

Reimbursement of mileage and postage

TOTAL:

Exhibit "F"

Proof of Service

I, _____, Esquire, hereby certify that notice of the filing of the within petition was given to the following parties in interest by first class mail, postage prepaid on the date below written:

Agent under POA

Department of Public Welfare
Asst. Counsel, Office of Legal Affairs
State Office Building – Room 3
1400 Spring Garden Street
Philadelphia, PA 19130

The Special Needs Trust Depository (Medicaid)
Attention: Manager, TPL Section
P.O. Box. 8486
Harrisburg, PA 17105-8486

SSI Program Support Team
Attention: Team Leader
Mid Atlantic Program Service Center
300 Spring Garden Street
Philadelphia, PA 19123

Attorney’s firm information

Dated:

Attorney’s Name & ID#

Exhibit “H”

**PETITION TO ENGAGE IN ESTATE PLANNING
AND TRANSFERS**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, it is hereby ORDERED and DECREED that Gerry Guardian, guardian of the estate of _____ is authorized to create a special needs trust, in the form attached as Exhibit "D", for the benefit of _____, a disabled dependent adult child of her ward, and to transfer the sum of \$_____ to said trust to be used to purchase a condominium for said child, to pay all associated condo fees, maintenance expenses and taxes thereon as well as for such other uses as are consistent with the trust purposes and terms.

It is FURTHER ORDERED and DECREED that Petitioner may pay from principal of the estate such gift taxes as are occasioned by such transfer.

And it is FURTHER ORDERED and DECREED that Petitioner may expend the principal sum of \$6,000.00 to fund pre-need burial contract for _____.

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

**PETITION FOR ALLOWANCE
TO ENGAGE IN ESTATE PLANNING AND TRANSFERS
PURSUANT TO 20 Pa.C.S.A. § 5536 (a) and (b) (1)**

AND NOW, comes the Petitioner, _____, and respectfully states that:

1. By Decree of _____ J. dated _____ 200_, Petitioner was appointed guardian of the estate of _____.
2. _____, the incapacitated person was placed at _____ but maintains a home at _____, Philadelphia, PA.
3. On _____, Petitioner filed an Inventory in accordance with provisions of 20 Pa C.S.A. § 5142 which reflected principal assets of \$_____. A copy of which is attached as Exhibit "A".
4. By decree of _____ J. dated _____ 200_ petitioner was granted permission to expend the sum of \$_____ per annum, including social security income of approximately \$_____ per year, for maintenance of her ward. A copy of that Decree is attached as Exhibit "B".
5. The incapacitated person has two children, one of whom is a disabled dependent adult child, diagnosed with several neurological conditions.
6. The aforesaid child, _____, has lived with the incapacitated person for approximately 10 years and depended upon the incapacitated person's assets for a considerable portion of her health, welfare, comfort and support.
7. The incapacitated person has an estate plan which includes the establishment of a special needs trust for _____ upon her death and the transfer to _____ of the residence. A copy of pertinent pages of the estate planning instruments is attached as Exhibit "C".

8. Circumstances have changed: the incapacitated person and her disabled daughter moved to Pennsylvania, the family home in California was sold and the home purchased in Pennsylvania became unsuitable for _____ and a place to which the incapacitated person will never be able to return.

9. Your petitioner believes it is consistent with the estate plan of the incapacitated person and in the best interest of all parties concerned to establish and fund the special needs trust for _____ at the present time.

10. In exchange for (1) the present partial funding of such trust now instead of upon the death of the incapacitated person and (2) the payment of gift taxes thereon, _____ would renounce her claim to a portion of the _____ family trust, particularly that held separately in the _____ trust.

11. _____, Esquire, who presently serves as _____ Agent under a power of attorney, has agreed to serve as trustee of the special needs trust.

12. A draft of the special needs trust instrument is attached as Exhibit "D".

13. The Department of Welfare is being notified, although not a party in interest presently; the next-of-kin of the incapacitated person have been notified per Exhibit "E".

WHEREFORE, petitioner respectfully requests that this court authorize guardian of the estate to create a special needs trust, in the form attached as Exhibit "D", for the benefit of _____, a disabled dependent adult child of her ward, and to transfer the sum of \$ _____ to said trust to be used to purchase a condominium for said child, to pay all associated condo fees, maintenance expenses and taxes thereon as well as for such other uses as are consistent with the trust purposes and terms.

- a. Petitioner further seeks permission to pay from principal of the estate;
- b. Such gift taxes as are occasioned by such transfer, and
- c. To set aside under a pre-need burial contract for _____ the sum of \$6,000.00.

Gerry Guardian, Esquire, P.C.

Gerry Guardian #12345

**PETITION TO SELL REAL ESTATE AT PRIVATE SALE
AND TO MAKE DISTRIBUTION OF PROCEEDS**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, it is hereby ORDERED and DECREED that Gerry Guardian, guardian of the estate of _____ is authorized to sell the premises, the incapacitated person's former residence at, _____ at private sale to _____, residing at _____, Philadelphia, PA 191___ for the sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00).

It is further ORDERED and DECREED that guardian may make the following distribution of the new proceeds without further order of this court:

1. Set aside a restricted burial fund for the incapacitated person in the amount of \$7,000.00,
2. Set aside the sum of \$2,400.00 in a personal needs account,
3. Pay legal fees and costs to your petitioner per Exhibit "E".
4. Extinguish the claims of secured creditors.
5. Transfer the balance to a special needs trust for the benefit of _____, the disabled adult daughter as permitted by the Pennsylvania Code.

Within thirty days of closing on the real estate, Guardian shall file an affidavit showing disposition of the funds in conformity with this Decree and, conditioned thereupon, surety is waived.

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

**PETITION FOR PERMISSION TO SELL REAL ESTATE AT PRIVATE SALE
IN ACCORDANCE WITH 20 Pa.C.S.A. § 5521**

AND NOW, comes the Petitioner, _____, and respectfully states that:

1. Petitioner is duly appointed and acting guardian of the estate of _____
_____, an incapacitated person having been appointed by Decree of _____ J.
_____. A copy of that Decree is attached hereto as Exhibit "A"
2. The incapacitated person resides at _____, Philadelphia,
PA where she was placed prior to guardian's appointment.
3. Guardian originally filed no inventory of the incapacitated person's estate as there
were no principal assets and the income was sent to _____ for her care. An inventory has
been filed and a copy is attached as Exhibit "B".
4. To the extent known to your petitioner, the daughter of the incapacitated person,
_____, who is a disabled person, has resided in the home with the incapacitated
person for all of her life.
5. The daughter did not maintain the mortgage payments on the residence and
Mellon Bank initiated mortgage foreclosure proceedings.
6. Guardian was duly noticed on all appropriate actions by the mortgage holder
including the most recent notice that the Sheriff's Sale is scheduled to take place on November
_____, at 10:00 a.m. A copy of that notice is attached hereto as Exhibit "C".
7. A copy of the amount currently due the mortgage lender is attached hereto as
Exhibit "D".
8. The estate has no assets with which to prevent the mortgage foreclosure and sale.

9. Guardian, however, has been approached by several individuals who are interested in buying the property.

10. Guardian believes it would be in the best interest of the estate to sell the property privately rather than allow it to go to Sheriff's sale because Sheriff's sale is unlikely to realize enough funds to retire the claims of other creditors nor to benefit either the estate or the disabled adult daughter.

11. Private sale will enable the estate to:

- a. Set aside a restricted burial fund for the incapacitated person in the amount of \$7,000.00,
- b. Set aside the sum of \$2,400.00 in a personal needs account,
- c. Pay legal fees and costs to your petitioner per Exhibit "E".
- d. Extinguish the claims of secured creditors.
- e. Transfer the balance to a special needs trust for the benefit of _____, the disabled adult daughter as contemplated in 55 Pennsylvania Code § 178.62. See Exhibit "F".

12. Counsel for the lender has assured guardian that they would stay the Sheriff's Sale for sixty (60) to ninety (90) days if, prior to (DATE), an agreement with a buyer could be entered into with proceeds be sufficient to protect the lender's interest.

13. Petitioner has reviewed the title report of liens and judgments supplied by the mortgage lender. A copy of title report as annotated is attached hereto as Exhibit "G".

14. All unsecured creditor claims presented to your petitioner, which claims are not admitted, are set forth in Exhibit "H".

15. Guardian obtained appraisals from two qualified persons not associated with transaction. The appraisal reports are appended as Exhibit "I-1" and "I-2".

16. The incapacitated person acquired title to the premises by deed from herself and her husband, _____, as recorded in the Philadelphia Recorder's Office on October ____ at deed book _____ page 269.

17. It is necessary that the property be sold since it produces no income and the incapacitated person will never be able to return to independent living.

18. Petitioner is not authorized to sell real estate except by order of this Court.

19. The highest offer was made by _____ and _____ residing at _____, Philadelphia, PA.

20. The proposed offer of \$175,000.00 is set forth in the agreement of sale attached as Exhibit "J".

21. The computation of estimated net proceeds of \$130,910.00 is attached hereto as Exhibit "K".

22. Petitioner believes the purchase price represents fair value for the premises as the property is being sold without a broker's commission of 6% and is within the range of the appraised values.

23. The next-of-kin of the alleged incapacitated person, the Department of Welfare and the secured creditors have been given notice of this petition per Exhibit "L".

WHEREFORE, your petitioner prays that the court enter an order authorizing guardian of the estate to enter into an agreement to convey the incapacitated person's former residence at _____, Philadelphia, PA at private sale to _____ for the sum of \$175,000.00 and allow the following disposition of the proceeds:

- a. Set aside a restricted burial fund for the incapacitated person in the amount of \$7,000.00,
- b. Set aside the sum of \$2,400.00 in a personal needs account,
- c. Pay legal fees and costs to your petitioner per Exhibit "E".
- d. Extinguish the claims of secured creditors.
- e. Transfer the balance to a special needs trust for the benefit of _____, the disabled adult daughter of the incapacitated person, as contemplated in the Pennsylvania

Code. And further surety be waived.

Gerry Guardian, Esquire, P.C.

Gerry Guardian #12345

EXHIBIT “H”

POSSIBLE UNSECURED CREDITOR CLAIMS (NOT ADMITTED)

America Online	23.90
NCO Financial Systems Inc., Newspaper Service	39.50
Chestnut Hill Hospital	1,350.00
Delaware Valley Federal Credit Union	130.12
First Select	4,732.88
The Philadelphia Tribune	18.20
Alegis Group LP, CitiCard	8,030.34
RMS, NCO/Greatlakes formerly assignee of First Union	7,460.76
Asset Acceptance LLC, First USA Bank	13,196.67
Asset Acceptance LLC, Fleet	6,714.46
Exelon Energy	<u>31.34</u>
Total	41,728.18

EXHIBIT "K"

COMPUTATION OF NET PROCEEDS

Purchase price			\$175,000.00
Less deductions:			
Mellon mortgage	21,544.72*		
City of Philadelphia, real estate taxes	14,483.19*		
Philadelphia Dept. of Revenue	4,030.16*		
Water Revenue Bureau	764.09*		
City of Philadelphia CE0407720459	<u>567.80*</u>	41,389.96	
PGW, escrow	1,000.00		
Interest, penalties*	1,500.00		
Closing costs	200.00	<u>2,700.00</u>	<u>44,089.96</u>
Net proceeds for distribution per decree			130,910.04

* All subject to interest, costs and penalties.

**PETITION TO SELL REAL ESTATE AT AUCTION
(PUBLIC SALE)**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, it is hereby ORDERED and DECREED that Gerry Guardian, guardian of the estate of _____ is authorized to sell the premises, the incapacitated person's former residence at, _____ at public sale.

Guardian shall, upon receipt of high bid, file a petition for confirmation of sale in accord with Local Rule 12.9.A(5).

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

**PETITION FOR PERMISSION TO SELL REAL ESTATE AT PUBLIC SALE
IN ACCORDANCE WITH 20 Pa.C.S.A. § 5521**

AND NOW, comes the Petitioner, _____, and respectfully states that:

1. Petitioner is duly appointed and acting guardian of the estate of _____
_____, an incapacitated person having been appointed by Decree of _____
_____ J. dated _____. A copy of that Decree is attached hereto as Exhibit "A"
2. The incapacitated person has been placed at _____, but is being
transferred to _____, on Monday _____ 200_.
3. On _____, petitioner filed an inventory of the estate showing assets in the
amount of \$ _____ not including real estate. A copy of that inventory is attached as Exhibit
"B".
4. That inventory listed the real estate, the incapacitated person's former residence,
as valued by the Philadelphia Department of Revenue at \$ _____.
5. The incapacitated person is _____ () years of age, and suffers from
vascular dementia and major depression and is never expected to be able to return to independent
living.
6. It is necessary that the property be sold since it produces no income and is subject
to wasting.
7. Petitioner is not authorized to sell real estate except by order of this Court.

8. Petitioner believes that the real estate will sell at the least cost to the estate if offered at public sale because all closing costs and commissions as well as all transfer taxes will be paid by the successful bidder.

9. Petitioner further believes that an auction will produce a faster sale than a private sale.

10. The incapacitated person acquired title to the premises by deed dated _____.

11. The real estate to be sold is:

a. A two story brick row house at _____, Philadelphia, PA 191__;

b. Presently unoccupied;

c. Listed by the City of Philadelphia as having an assessed value of \$_____

and a fair market value of \$_____ on which the real estate taxes are unpaid for the current year.

12. Presently the incapacitated person has no unpaid debts aside from current utility bills and taxes for the current year.

13. Petitioner knows of no judgments or liens against the real estate and a recent internet search of the municipal and civil dockets show none.

14. The computation of estimated net proceeds of \$_____ is attached hereto as Exhibit "C".

15. Notice has been given to Interested Parties, however, no notice is being given to the Department of Public Welfare because no nursing home grant will be sought. The notice is attached hereto as Exhibit "D".

WHEREFORE, Petitioner respectfully requests that this court authorize Gerry Guardian, guardian, to offer the premises, the incapacitated person's former residence, _____ at public sale.

Gerry Guardian, Esquire, P.C.

Gerry Guardian #12345

ESTIMATED NET PROCEEDS AT SETTLEMENT

ESTIMATED GROSS SALES PRICE		20,100.00
LESS LIABILITIES:		
Utility bills to date of sale	500.00	
Real estate taxes for 2007	571.41	
Advertising costs	3,200.00	
Settlement costs	<u>50.00</u>	<u>4,015.00</u>
ESTIMATED NET PROCEEDS		15,778.59

EXHIBIT "C"

PETITION TO ABANDON WORTHLESS REAL ESTATE

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF _____

DECREE

AND NOW, this _____ day of _____, 200_, upon consideration of the annexed petition, the liens on the property exceed the fair market value of the property, and therefore it is hereby DECREED that _____, Guardian of the Estate of _____, an Incapacitated Person, is authorized to abandon the incapacitated person's interest in real estate located at _____, Philadelphia, PA.

J.

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION**

**ESTATE OF _____,
AN INCAPACITATED PERSON**

NO. _____ OF

**PETITION FOR ALLOWANCE
TO ABANDON WORTHLESS REAL ESTATE**

AND NOW, comes the Petitioner, _____, and respectfully states that:

1. By Decree of _____ J. dated _____ Petitioner was appointed as plenary guardian of the estate of _____. A copy of the said Decree is attached as Exhibit "A".

2. _____, the incapacitated person, resides at _____, a nursing home located at _____.

3. On _____, Petitioner filed an Inventory of the said estate in accordance with the provisions of 20 Pa.C.S.A. § 5521 (2), which reflected an interest in real estate located at _____. A copy of the Inventory is attached as Exhibit "B".

4. According to the Board of Revision of Taxes, the real estate is currently held in the names of the incapacitated person's late mother and father, _____ and _____, with a fair market value of \$_____.

5. Upon further investigation, the incapacitated person reported to Petitioner that those persons raised her, but were not her biological parents, but that they raised her as their own daughter.

6. The alleged incapacitated person is unable to recall the dates of death of her mother and father, _____ and _____.

7. Petitioner believes and therefore avers that the real estate is subject to real estate tax liens in the amount of at least: \$ _____ up to and including 200_ taxes which remain unpaid. A copy of a printout from the Bureau of Revision of Taxes is attached hereto as Exhibit “C”.

8. Petitioner believes and therefore avers that the property is subject to a debt from the Department of Water Revenue in the amount of at least: \$ _____, including \$ _____ in liens as of April __, 200_ and the water has been turned off since March of 199_. A copy of the most recent statement received is attached hereto as Exhibit “D”.

9. Petitioner believes and therefore avers that the property was last occupied by _____, a cousin of the alleged incapacitated person.

10. The incapacitated person is the recipient of a nursing home grant from the Commonwealth of Pennsylvania, Department of Public Welfare.

11. Notice has been given to parties in interest and the Department of Public Welfare attached as Exhibit “E”.

WHEREFORE, Petitioner respectfully requests that this court authorize guardian to abandon the incapacitated person’s interest in real estate located at _____, Philadelphia, PA.

Gerry Guardian, Esquire, P.C.

Gerry Guardian #12345

BIOGRAPHIES

KEELIN BARRY

Keelin S. Barry, Esquire, is a solo practitioner in Philadelphia, PA. Keelin's Elder Law practice includes guardianship, estate planning, Medicaid planning and application, Powers of Attorney, Living Wills, fiduciary and care management services, grandparent custody, and divorce. Keelin is chair of the Elder Law Committee of the Philadelphia Bar Association's Probate and Trust Section and a member of the Elder Section of the Pennsylvania Bar Association.

BARBARA FOXMAN

Barbara Foxman, L.C.S.W., is a mediator, trainer and practicing psychotherapist. She helped develop specialized training for Elder Mediation and health care. She helped organize and presented at *The First National Symposium on Ethical Standards for Elder Mediation* (Philadelphia 2007). She also has trained social workers on ethical issues in healthcare and working with the elderly. Ms. Foxman is Vice-President of the Pennsylvania Council of Mediators and she is a Board member, and facilitates for, The Jewish Dialogue Group.

KATHRYN MARIANI

Kathryn Mariani, M.A.R. is a mediator, trainer and consultant specializing in communication issues in the fields of health and aging. Ms. Mariani supports the development of elder mediation programs across the United States and works to establish best practice and ethical standards in the field of elder mediation. She served as chair of the *First National Symposium on Ethical Standards for Elder Mediation*, Philadelphia, 2007. Ms. Mariani completed her undergraduate degree in Communications from Eastern University and Master of Arts in Religion from Eastern Seminary. She is a Certified Transformative Mediator™ and a member of the Elder Mediation Training Standards Work Group, a national committee to ensure quality practice in elder mediation.

RISE P. NEWMAN

Rise P. Newman has been in solo practice since 2004. She concentrates her practice in estate planning, representation of elderly clients, guardianships, and the administration of trusts and estates. She is a 2000 graduate from Temple University School of Law. Her affiliations include membership in the American, Pennsylvania and Philadelphia Bar Associations and the Philadelphia Estate Planning Council. In 2006, she co-authored the article "How Ethical is Your Compensation" which appeared in the Philadelphia Estate Planning Council Newsletter. Ms. Newman is the co-founder of and continues to co-chair the Philadelphia Bar Association Elder Law Committee's Guardianship Handbook Committee, which has undertaken the drafting of a guardianship reference handbook for attorneys serving as guardian. She has been appointed by the court to represent alleged incapacitated individuals in Philadelphia County and also serves as

guardian for several incapacitated persons. Ms. Newman is on the Executive Committee of the Philadelphia Bar Association Probate and Trust Committee and is on the Board of Directors of the Philadelphia Estate Planning Council. She enjoys being a frequent lecturer for NBI and was named a 2010 Rising Star SuperLawyer by Philadelphia Magazine.

SUZANNE N. PRITCHARD

Suzanne Pritchard practices with the law firm of McCann & Geschke, P.C. where she focuses her practice on Orphans' Court litigation, primarily guardianships and emergency medical treatment issues, as well as the defense of medical malpractice cases. Ms. Pritchard has had an active Orphans' Court practice since 1992. Her practice includes litigating all aspects of guardianships in Orphans' court in Philadelphia, Delaware and Montgomery Counties. Ms. Pritchard received her B.M.Ed. *cum laude* from Temple University in 1976 and received her J.D., with honors, in 1989 from Rutgers School of Law – Camden. In 2009, Ms. Pritchard received the Pro Bono Publico Award in recognition of her pro bono work in the Orphans' Court Division of the First Judicial District of Pennsylvania. Ms. Pritchard also serves on the Community College of Philadelphia Paralegal Advisory Board and is a member of PASHRM (Philadelphia Area Society for Healthcare Risk Management) where she is a frequent lecturer on topics related to guardianship and medical decision making.

LAURA RITCHIE

Laura Ritchie is an attorney admitted to practice in the Commonwealth of Pennsylvania. Ms. Ritchie has experience in the areas of estate planning and trust and estate administration.

ANNA SAPPINGTON

Anna holds a J.D. from Lewis & Clark Law School in Portland, Oregon, and an Estate Planning Certificate from Temple University's Beasley School of Law. She lives and practices law in Philadelphia. Anna is a member of the Philadelphia, Pennsylvania, and American Bar Associations, and serves as the Web Liaison for the Pennsylvania Bar Association's Real Property, Probate, and Trust section. Her practice focuses on guardianship, estate planning, and estate administration.

CAROLE W. SOSKIS

Carole W. Soskis is a retired attorney and PhD social worker whose most recent position was as executive Director of The Arc Community Trust of Pennsylvania. She has spent most of her career working with the elderly and with persons with disabilities. Currently she is a member of the Philadelphia Bar Association, Co-Chair of RSVP's Volunteer Executive Corps, and involved in several other volunteer activities.

GORDON M. WASE

Gordon Wase is a partner in the Philadelphia firm of WASE & WASE, which concentrates its practice in the areas of estate planning with an emphasis on planning for the elderly and disabled, guardianships, estate administration, and Orphans' Court litigation. Prior to opening his law practice, Mr. Wase spent over 20 years as a management consultant for the international firm of Coopers & Lybrand resolving management disputes, facilitating client's decision-making processes, and developing solutions to complex management problems. Mr. Wase is a graduate of the University of Maryland School of Law and has earned the Estate Planning Certification of the Temple University School of Law. He serves on the Executive Committee and also the Rules and Practice Committee of the Probate and Trust Law Section of the Philadelphia Bar Association. Mr. Wase has lectured for the Pennsylvania Bar Institute, the Philadelphia Bar Association and community associations concerned with the legal problems related to incapacity and aging. Mr. Wase is Co-Chair of the Ethics Committee of the Philadelphia Estate Planning Council and past chair of the section's Elder Law Committee. He is also a board member and past Treasurer of the Alzheimer's Association, Delaware Valley Chapter.