

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

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

## **GUIDE FOR GUARDIAN OF THE PERSON**

You have just been appointed by this Court to a position of great trust and confidence. Your duty is to protect and promote the well-being of the ward, and if possible, to encourage the ward's self-sufficiency.

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

While it is not mandatory that your attorney assist you in preparing the Annual Report, you may find an attorney's advice helpful in carrying out your duties and responsibilities.

### **1. YOUR QUALIFICATION**

You have been appointed to take charge of the physical well-being of the ward, but you must first "qualify" to do so. It is important that you qualify as quickly as possible after your appointment.

To qualify as a guardian of the person, you must satisfy the following requirements within twenty (20) days of the day the Judge signed the order establishing the guardianship:

- a. take an Oath of Office, which may be taken before the Court Clerk, a notary public or anyone else authorized to administer oaths in Texas, and
- b. secure a bond in the amount specified by the Court Order.

If you do not give both your Oath and your bond within twenty (20) days, the court may set aside your appointment.

Once you have taken the Oath and executed the bond and the Court has approved the bond, you will have qualified as the guardian of the person. Your qualification date is important, since many of your duties must be performed within a certain number of days from your qualification as guardian of the person.

### **2. LETTERS OF GUARDIANSHIP**

You may now request your Letters of Guardianship. These Letters are evidence of your appointment as guardian of the person when dealing with third persons concerning

the ward's affairs. **Please note that the Letters expire and must be renewed each year in conjunction with the filing of your Guardian of the Person Report.** The Letters of Guardianship are your "badge of authority" to act on behalf of the Ward.

### 3. MONTHLY ALLOWANCE

If a separate guardian of the estate has been appointed for the ward, the Court may set a monthly allowance for expenditures by the guardian of the estate. The guardian of the estate may disburse a set amount each month to you, as the guardian of the person, for the education and maintenance of the ward. **Do not, under any circumstances, expend guardianship funds on yourself! If you spend funds without the Court's approval, you may be subject to removal as Guardian and may be held liable for any deficiencies.**

### 4. YEARLY REQUIREMENTS

Renew your bond, if necessary. Under Section 743 of the Texas Probate Code, you must also file a sworn report setting forth the condition of the ward within sixty (60) days of the anniversary of your qualification date. This report should include the following:

- a. your current name, address, and telephone number;
- b. the ward's current name, address, telephone number, age, and his or her date of birth;
- c. the type of home in which the ward resides;
- d. the length of time the ward had resided at his or her current residence and, if there has been a change in the ward's residence in the past year, the reason for that change;
- e. the date that you most recently saw the ward and the frequency with which you have seen the ward in the past year;
- f. a statement indicating whether or not you also have possession or control of the ward's estate;
- g. a statement regarding the ward's physical and mental condition;
- h. a statement regarding the ward's medical care;
- i. the names and addresses of the ward's present physician, dentist, and other care providers;
- j. a description of the ward's activities during the past year, including recreational, educational, social and occupational activities;
- k. your evaluation of the ward's living arrangements;
- l. your evaluation of whether the ward is content or unhappy with his or her living arrangements;
- m. your evaluation of unmet needs of the ward;

- n. your evaluation of whether or not your guardianship powers should be increased, decreased, or unaltered; and
- o. any additional information you wish to share with the Court.

The Court has an Annual Report of the Guardian of the Person form. Make sure you obtain a copy and keep it for your records to make copies and complete each year.

If you fail to file this report, the Court or any person interested in the ward may file a written complaint with the Clerk of the court, causing you to be cited to appear and show cause why the report was not filed. If the report is not filed and good cause is not shown, the Court may fine you up to \$1,000 and revoke the Letters of Guardianship.

## **5. CLOSING THE GUARDIANSHIP**

The guardianship will be closed by the Court if a minor ward turns 18, the ward dies, the ward is declared by law to be restored to full legal capacity, or the Court determines that a guardianship of the person is no longer necessary and discharges the guardian.

## **6. RESIGNATION OF THE GUARDIAN OF THE PERSON**

In order to resign as guardian of the person, you must file a written application with the Court. The Court may immediately accept your resignation and appoint a successor guardian. Please note, however, that your duty and liability are not discharged until the Court approves your application to resign and discharges you.

## **7. MISCELLANEOUS NOTES**

- Your ward has a right to send a letter to the Court asking for restoration or modification of the guardianship.
- If you or your attorney fails to satisfy the requirements of the law, you may be removed as guardian of the person, and you and your bond company or the sureties on your bond will be held personally liable for all costs incurred in getting the guardianship back on track. **It is no excuse that your attorney has misadvised you or has mishandled the case.** You are personally liable for any mistakes, and the Court may appoint an Attorney ad Litem to sue you and the surety on your bond, if necessary. You may have the right to sue your attorney, but you will not avoid personal liability.

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

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## **CHECKLIST FOR GUARDIAN OF THE PERSON**

This checklist is designed to provide you with guidance in carrying out your duties and responsibilities as guardian of the person. This checklist summarizes the matters that are more fully set forth in the Guide for the Guardian of the Person. **This is only a supplement and not a substitute for legal advice.**

1. **Within 20 days of Order appointing you as guardian of the person:**

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

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

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

\_\_\_\_\_ Write the date that your bond was approved by the Court at the top of this checklist as a reminder. This is your "Qualification Date."

\_\_\_\_\_ Have your Letters of Guardianship issued by the Clerk.

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

\_\_\_\_\_ File an Annual Guardian of the Person Report.

\_\_\_\_\_ Obtain your renewed Letters of Guardianship from the Clerk.

## 1. WHAT POWERS DOES THE GUARDIAN OF THE PERSON HAVE?

The guardian of the person has the authority to arrange and provide for the physical well-being of the ward, subject to the powers set out in the Order of Appointment. As Guardian, you must promote and protect the best interests of the ward in the following areas:

**Residential decisions** – The guardian of the person decides where the ward should live and what level of care the ward needs. The right to determine domicile may include the right to change counties within Texas and to move to another state.

To the extent possible, the guardian of the person should consult with the ward to make residential decisions that preserve the ward's freedom and independence. Placement of the ward in a nursing home or skilled care facility should be at the suggestion of the ward's physician, may require confirmation by an independent physician, and should take into account the ward's financial situation. If abuse or neglect by caretakers is suspected, the guardian of the person should intervene to stop the abuse.

**Medical decisions** – The guardian of the person makes arrangements and decisions for the ward's medical, surgical, dental and psychological treatment, and communicates with the ward's doctors, nurses and caretakers. When possible, the guardian of the person should discuss and take into account the ward's preferences in choosing the ward's medical caregivers, such as a primary physician, dentist or ophthalmologist. The guardian of the person may also execute an out-of-hospital Do Not Resuscitate Order on the ward's behalf.

The guardian of the person **may not** authorize abortion or sterilization, nor may the guardian of the person commit the ward to a mental hospital unless the ward is less than 16 years-old. Such decisions require Court authorization. The guardian of the person may transport the ward to the hospital with or without the assistance of a peace officer in order to apply for emergency detention if mental illness creates a substantial risk of serious harm to the ward or others. The guardian of the person can also authorize forced medications after psychiatric hospitalization.

Finally, the guardian of the person may apply for the ward to be eligible for medical assistance, and may request and release the ward's medical records as needed.

**Employment decisions** – The guardian of the person has the authority to make employment decisions in the ward's best interest, including assisting the ward in finding appropriate employment.

**Applying for the benefits from governmental or social agencies** – The guardian of the person may apply for and receive government benefits and social services as a

representative for the ward, such as Social Security or Veterans benefits. The guardian of the person may also work with school district officials and attend ARD meetings, if applicable.

**Activities and interaction with others** – The guardian of the person should try to keep the ward as active as possible. He or she may arrange educational, vocational and recreational activities for the ward.

The guardian of the person has the authority to prevent abusive or dangerous visitation with others. Denial of reasonable visitation by family and friends because of the guardian's personal animosity harms the ward and is a violation of the guardian of the person's duties.

### **Sale of Real Property**

*If the ward does not have enough assets for the Court to appoint a guardian of the estate, the guardian of the person may apply to the Court for an Order to sell the ward's real property.*

## **2. WHAT RIGHTS DOES THE WARD RETAIN AFTER A GUARDIAN OF THE PERSON HAS BEEN APPOINTED?**

The ward retains all legal and civil rights and powers except those specifically granted by the Court Order to the guardian of the person. The Court determines the scope of the guardian of the person's authority based on the degree of the proposed ward's ability to feed, clothe, and shelter him/herself, and to manage his/her medical and financial affairs. The ward's rights may include, but are not limited to, the following:

- the right to live in an environment free from abuse;
- the right to receive reasonable visitation from family and friends;
- the right to execute a will, although the adjudication of incapacity is prima facie evidence that the ward was not competent to execute a will;
- the right to drive, unless the Court's Order specifically finds the ward is not capable of driving;
- the right to determine a residence, unless the Court finds the ward **totally** incapacitated or the Court's Order specifically finds the ward not capable of determining a residence;
- the right to vote, unless the Court's Order specifically addresses the issue;
- the right to marry, unless the Court finds the ward **totally** incapacitated or the Court's Order specifically finds the ward is not permitted to marry;
- the right to participate without interference in educational, vocational or recreational programs when possible under the conditions of the ward's estate; and
- the right to personally seek employment, unless restricted.

If the ward gains capacity, the guardian of the person has a duty to report the change to the Court, which may restore any rights the ward can handle. A ward also has the right to submit an informal letter asking the Court to restore his or her capacity and rights.

**3. CAN THE GUARDIAN OF THE PERSON MAKE AN END-OF-LIFE DECISION?**

Yes. The guardian of the person can make end-of-life decisions to withdraw or withhold the ward's medical treatment.

The guardian of the person may also execute an out of hospital Do Not Resuscitate Order (DNR) on behalf of the ward, or may revoke an out of hospital DNR at any time without regard to the ward's capacity by orally stating an intent to revoke it, destroying the order form, or removing a DNR identification device, such as a bracelet or necklace, from the ward.

Similarly, the guardian of the person may revoke a ward's directive to physicians at any time without regard to the ward's capacity by orally stating the intention to revoke it, by signing a written revocation, or by destroying the directive or instructing someone else in the ward's presence to destroy it.

**4. DOES THE GUARDIAN OF THE PERSON HAVE TO TELL THE REST OF THE FAMILY HOW THE WARD IS DOING MEDICALLY?**

The guardian of the person may keep the ward's immediate family members and friends advised of all medical issues relating to the ward when doing so would benefit the ward. The guardian of the person may also request and consider family input when making medical decisions for the ward. The guardian of the person is the sole and final decision-maker with respect to the ward's medical care unless the decision requires the Court's approval or the order of appointment allowed the ward to make those decisions.

**5. CAN THE GUARDIAN OF THE PERSON HAVE THE WARD COMMITTED TO THE HOSPITAL?**

The guardian of the person must generally obtain a Court Order to commit the ward to a mental hospital. However, temporary detention without a Court Order is possible in the case of an immediate threat to the ward or others due to mental illness. In such a situation, the guardian of the person may apply for emergency or respite care under Sections 573.0003 of the Texas health and Safety Code.

**6. CAN A GUARDIAN OF THE PERSON SIGN A DO-NOT-RESUSCITATE ORDER (DNR)?**

Yes. If a ward is incapacitated, the guardian of the person may execute an out of hospital DNR on behalf of the ward. The guardian of the person also has the right to make other end-of-life decisions, such as withholding or withdrawing medical treatment.

**7. CAN THE GUARDIAN OF THE PERSON LET THE WARD GET MARRIED?**

Yes, unless the Court has removed the ward's right to marry.

**8. WHO DECIDES WHO VISITS THE WARD?**

Unless otherwise authorized by Court Order, the guardian of the person has the authority to prevent only those visits that might be harmful or dangerous to the ward. The ward is entitled to reasonable visitation with family and friends as long as there is no danger to the ward. A guardian of the person who wrongfully interferes with the ward's right to see family and friends violates the duties of the guardian of the person.

**9. CAN THE GUARDIAN OF THE PERSON MOVE THE WARD OUT OF THE COUNTY? OUT OF STATE?**

Unless the guardian of the person's authority is limited by Court Order, the guardian of the persons' right to determine domicile includes the right to move the ward out of the county or even out of state. However, the guardian of the person should notify the Court immediately of a change of address out of the county or state.

**10. DOES THE GUARDIAN OF THE PERSON HAVE TO NOTIFY THE COURT IF HE OR SHE MOVES OR HAS A CHANGE OF TELEPHONE NUMBER?**

The guardian of the person must inform the Court of any change of address and telephone number. The guardian of the person must submit an annual report to the Court that includes the guardian's current name, address and telephone number. The Court may remove a person as guardian upon finding that the guardian of the person has been eluding service or the guardian of the person's whereabouts have become unknown.

**11. DOES A GUARDIAN OF THE PERSON HAVE TO CONSIDER THE WARD'S PREFERENCES WHEN MAKING DECISIONS?**

The guardian of the person should consider the ward's preferences when making decisions, but the guardian of the person is the final decision maker for the ward, even if

the ward disagrees with the decision. The guardian of the person must **always** consider the best interest of the ward.

**12. WHAT DOES THE GUARDIAN OF THE PERSON DO IF THE GUARDIAN SUSPECTS THE WARD HAS BEEN ABUSED?**

The guardian of the person is responsible for visiting the ward and addressing any problems with the ward's treatment to the Court. If the guardian of the person suspects abuse, he or she should do the following:

1. Visit the ward to assess the situation; determine what happened and when.
2. Assess the physical condition of the ward, look for injuries, and see if the ward is visibly upset.
3. Arrange medical treatment for the ward if needed, and move the ward to a safe place, such as a respite facility or nursing home.
4. Call Adult Protective Services (if the ward is in a group home) or the Department of Health and Human Services (if the ward is in a nursing home or assisted living facility). *The guardian of the person should call to report the incident, even if told someone else has already made a report.*
5. Contact the police and meet with them at the site of the incident to file a police report.
6. Notify the Court of the incident.
7. Contact the police department to track progress and advocate for the investigation.
8. Update the Court on the progress of the investigation of the incident, where the ward will be living, etc.

**13. DO I NEED AN ATTORNEY TO COMPLETE THE ANNUAL REPORT OF THE GUARDIAN OF THE PERSON?**

The guardian of the person may prepare the annual report for the Court without the assistance of an attorney. However, since the Court examines the report as part of its annual determination of whether the guardianship should continue or be modified, many guardians like the help of an attorney to ensure that the report satisfies the Court's requirements.

**14. ARE THERE ANY FEES ASSOCIATED WITH FILING THE ANNUAL REPORT OF THE GUARDIAN OF THE PERSON?**

The filing fee for the annual report is \$12.00. When appropriate, the guardian of the person may file an affidavit of inability to pay costs, whereupon the filing is free.

**15. IF THE WARD IS GAINING SOME CAPACITY, WHAT SHOULD I DO?**

If the ward gains capacity, the guardian of the person has an affirmative duty to report this change to the Court through pleadings, a doctor's letter, and potentially the doctor's testimony at a hearing.

A ward also has the right to submit an informal letter asking the court to restore his or her capacity and rights. The guardian of the person must not interfere with the ward's submission of such a letter to the Court.

**16. IF THE GUARDIAN OF THE PERSON WANTS TO RESIGN, CAN THE GUARDIAN OF THE PERSON JUST SEND A LETTER TO THE COURT AND QUIT?**

No. The guardian of the person must file an application to resign, and the Court must accept the application. Often, the Court will appoint a successor before accepting the resignation and discharging the previous guardian of the person. This procedure gives the Court an opportunity to appoint a successor guardian of the person before discharging the current one, so the ward always has someone to protect his or her interests.

**17. WHAT HAPPENS WHEN THE WARD DIES?**

Although the guardianship will be ended because of the ward's death, the guardian of the person is not immediately discharged.

First, the guardian of the person should immediately **notify the Court by telephone**. Next, the guardian of the person should **file a sworn Final Guardian of the Person's Report with the Court within sixty (60) days of the ward's death** explaining when and where the ward died, and to whom the ward's personal effects were given. This report must be submitted in place of the Annual Guardian of the Person's Report.

If the ward did not have a separate guardian of the estate, and the guardian of the person is unsure who should receive the ward's personal effects, the guardian of the person may wait until the Court appoints a personal representative of the ward's estate or until the Court approves a small estate affidavit. (If the ward also has a guardian of the estate, however, the guardian of the estate should handle the ward's personal effects).

**18. WHAT HAPPENS TO THE WARD IF THE GUARDIAN OF THE PERSON DIES FIRST?**

If the guardian of the person dies before the ward, the guardian's executor or administrator may file the final report of the condition of the ward on behalf of the

deceased guardian. This representative should also deliver to the person legally entitled to receive the property all of the property belonging to the guardianship.

If necessary, the Court may immediately appoint a successor guardian of the person without citation or notice.

**19. DO WE HAVE TO GO BACK TO COURT TO CHANGE GUARDIANS?**

Yes. Unless otherwise specified by a Court Order, the guardian of the person remains in office until the ward dies or regains capacity or until the guardian of the person is discharged by the Court. A successor guardian of the person may be appointed by the Court in the following situations:

1. when the Court accepts the resignation of the guardian of the person and the ward still needs a guardian;
2. any interested person may file a petition for the guardian of the person's removal based on the guardian's incapacity, misconduct or failure to comply with the Court's requirements; or
3. the Court may modify the guardianship, institute removal action if necessary and appoint a successor guardian of the person on its own motion.

**20. WHERE DO I GET MY LETTERS OF GUARDIANSHIP IF I NEED MORE COPIES?**

Duplicate letters of guardianship can be obtained at the guardian's request from the Dallas County Probate Clerk's Office, located at 509 Main Street, 2<sup>nd</sup> Floor, Dallas, Texas 75202. You can call (214) 653-7242 to request copies of the Letters of Guardianship. The present cost for letters is \$4.00 per letter.

**21. DOES THE GUARDIAN OF THE PERSON NEED LETTERS EVERY YEAR? DO THE LETTERS EXPIRE?**

Letters of Guardianship are dated and expire within sixteen (16) months of issuance. They must be reissued by the Clerk upon approval of the annual Guardian of the Person Report. The guardian of the person must file the first report no later than sixty (60) days after the one-year "anniversary date" on which he or she qualified to serve.

**22. WHAT IS A BOND AND WHY DOES THE GUARDIAN OF THE PERSON HAVE ONE?**

A bond is a written obligation with monetary penalty, which insures the proper performance of the guardian of the person's duties to the ward. A guardian of the person

must be bonded unless the guardian is a corporate fiduciary or county guardianship program.

The Court may require a corporate surety bond, a personal surety bond, or a cash bond from the guardian of the person.

**23. WHAT IS A CORPORATE SURETY BOND?**

A corporate surety bond is similar to an insurance policy for the ward. It is a promise by a professional insurer, conditioned on the guardian of the person carrying out his or her guardianship duties as required by law. Corporate surety bonds may be obtained from bonding companies.

**24. WHAT IS A CASH BOND?**

When posting a cash bond, the guardian of the person must personally pay the full amount of the bond set by the Court.

**25. DOES THE GUARDIAN OF THE PERSON HAVE TO FILE A PLAN OF CARE WITH THE COURT?**

No. The guardian of the person does not have to file a plan of care with the Court. Instead, the guardian of the person must submit annual Reports of the Guardian of the Person. The Court reviews this report, along with the Court Visitor's Report, to determine if the guardianship should be continued, modified or terminated. In appropriate circumstances, the Court will require a hearing before making those determinations.

**26. DOES THE WARD HAVE TO LIVE WITH THE GUARDIAN OF THE PERSON?**

No. The guardian of the person determines the ward's place of residence and monitors the ward's living conditions to ensure the ward's health and safety.

**27. CAN THE GUARDIAN OF THE PERSON CONSENT TO PSYCHIATRIC TESTING AND INPATIENT TREATMENT FOR MENTAL ILLNESS ON BEHALF OF THE WARD?**

The guardian of the person is not authorized to consent to inpatient psychiatric commitment for a ward. A Court Order is required to commit the ward to inpatient psychiatric treatment. **In an emergency**, the guardian of the person may apply for temporary emergency detention if he or she perceives an immediate threat to the ward's safety or the safety of others.

## **28. HOW DO I KEEP BAD ACTORS AWAY FROM THE WARD?**

The guardian of the person is charged with protecting and promoting the well-being of the ward. If a person is exploiting or abusing the ward, the guardian of the person should protect the ward by notifying the Court and following the steps outlined above for incidents of suspected abuse. If necessary, hire an attorney and have a restraining order taken out against the bad actors. If the ward is not being abused, the guardian of the person should not selfishly interfere with the ward's visits from family or friends.

## **29. WHAT DO I DO IF THE WARD NEEDS MONEY FOR NECESSITIES?**

If a monthly allowance for the education and maintenance of the ward was not set by the Court Order establishing the guardianship, the guardian of the estate may file an application for a monthly allowance to be expended from the ward's estate for education and maintenance of the ward, and for maintenance of ward's property. A Court Order will set the amount to be paid by the guardian of the estate for care, maintenance and support of the ward.

Make sure you communicate with the guardian of the estate regarding the ward's needs so that the guardian of the estate can have the necessary information to meet those needs.

## **30. WHAT HAPPENS IF THE WARD HAS A MEDICAL POWER OF ATTORNEY?**

A medical power of attorney does not automatically terminate with the appointment of a temporary or permanent guardian of the person. However, the Court **may** issue an Order to suspend or revoke the ward's medical power of attorney.

## **31. WHAT HAPPENS IF THE WARD HAS AN ADVANCED DIRECTIVE?**

The ward's Advanced Directive may be revoked at any time by the ward without regard to the ward's capacity. The ward may revoke it orally by stating the intention to revoke it, by signing a written revocation, or by destroying the directive or ordering someone else in the ward's presence to destroy it.

If a physician does not wish to comply with the directive, the physician's decision will be reviewed in a hearing by an ethics committee at the ward's health care facility. The guardian of the person may attend this hearing. After the committee's decision, the hospital may continue the status quo for ten (10) days during which the guardian of the person may try to transfer the patient to a facility that will comply with the directive.

# **PRACTICAL GUARDIANSHIP INFORMATION**

## **GUARDIANSHIP OF THE PERSON**

### **1. A. What are the rights that I can exercise as a guardian of the person?**

Rights that a full guardian of the person can exercise, include, but are not limited to:

- a. Placement/Residential decisions;
- b. Employment decisions;
- c. Dental, medical, psychological tests and treatment;
- d. Release of records (medical/psychological/etc.);
- e. Dealing with school district and ARD meetings;
- f. Forced medications after psychiatric hospitalization;
- g. Psychological treatments and psychological medications;
- h. Application for and receipt of government benefits;
- i. Execution of a Do-Not-Resuscitate Order; and
- j. The right to decide domicile, which includes the right to change counties within Texas and the right to move to another state. If you plan to move to another state, you should notify the Court in writing.

### **B. What rights can I NOT exercise as a guardian of the person without a specific Court Order of Authorization?**

- a. Involuntary placement in a mental hospital;
- b. Abortion; and
- c. Sterilization

### **2. In what areas can the ward's right be restricted?**

A ward's right may be restricted in the following areas:

- a. voting;
- b. driving;
- c. writing a will/signing a power of attorney;
- d. marriage consent;
- e. associations with third persons; and
- f. entering a contract.

### **3. If the ward will not cooperate, can the guardian of the person call the police?**

While you may have a legal right to make a decision, there can be mechanical difficulties in making a non-cooperative ward comply with what you decide. You cannot

call the police to force the ward to take medicine or otherwise do what you have told the ward to do.

**4. What happens if the guardian of the person dies?**

If the guardian of the person dies before resigning and the Court has not appointed a successor guardian of the person, any interested person may contact the Court with that information, file pleadings communicating the death of the guardian of the person, or apply to be appointed as guardian of the person.

If no one wishes to serve as successor guardian of the person, someone still needs to write a letter to the Court or to the Court Visitor's Office and communicate the guardian of the person's death.

**5. How long are letters of guardianship valid?**

Letters of guardianship are issued for sixteen (16) months beginning as of the anniversary date that the bond was approved. They expire and are invalid after the sixteen (16) months is up. If the annual report is filed and approved, new letters can be issued by the Probate Clerk's Office.

**6. If the ward has no estate and received Social Security, do I handle the funds as a guardian?**

If you are the guardian of the person and receive social security benefits for the ward, you are probably receiving the funds as a **Representative Payee**, not as a guardian. If the social security check is sent to the ward or deposited directly into a bank account, you should contact social security and apply to be appointed Representative Payee.

**7. Can I consent to abortion or sterilization?**

Whether or not you are a guardian, you cannot consent to an abortion or sterilization of the ward except under very narrow circumstances and must have Court approval before consenting.

**8. Do I have to report to the Court?**

You are responsible for filing the annual reports in a timely fashion, **no matter what**, until you cease to be the guardian. The filing fee is \$12.00 unless you have filed an affidavit of inability to pay costs. It is not mandatory that your attorney assist you in preparing the report.

**9. What do I do if the ward is being abused?**

A guardian of the person has a duty to protect the ward. If you suspect abuse, you should immediately report it to Adult Protective Services or Child Protective Services, 1-800-252-5400. You should take all steps necessary to remove the ward from the source of the abuse.

**10. What if I do not want to be the guardian of the person anymore?**

A guardian cannot just quit. You must file an application to resign and give the Court the opportunity to approve the resignation and to appoint a successor so that the ward always has someone to protect him or her.

**11. What do I do if the ward regains capacity?**

If the ward regains capacity, you have an affirmative duty to restore the rights that the ward can handle. This requires pleadings, a doctor's letter, probably the testimony of the doctor, an ad litem, and a Court hearing.

**12. A. Can I appoint my successor?**

If you are the parent of a minor child or an adult incapacitated person, you can designate a series of people to serve as successor guardians in the event of your death or capacity.

**B. If the parent of a minor child or incapacitated person dies and I am named as a successor guardian, am I automatically a guardian?**

The fact that you are named as guardian in parent's will does not give you any authority. You still have to go to court to be appointed as the successor guardian.

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

If your ward dies, you need to notify the Court and file a final report. You may be required to provide a death certificate to the Court.

**14. What if the ward moves?**

If the ward moves, you should promptly write the Court and provide the new address.

**15. Are there other times I should send the Court a written notice?**

Yes, you should notify the Court if the ward marries, becomes pregnant or if the ward's health and safety may be at risk.

**16. Do I still need an attorney after I get the guardianship?**

Yes. While you may prepare the annual report without your attorney's assistance, you should have an attorney you can contact when legal advice is needed. It is much cheaper to ask your attorney a question before you make a mistake than to pay the attorney to fix your mistake.

**17. Why won't the Court Clerks tell me what to do?**

The clerks are not lawyers, so they cannot give legal advice.

**18. Do I have to pay court fees if the ward has no significant assets?**

If the ward has no assets, you should compete and file an affidavit of inability to pay court costs so that you will not be charged filing fees.

**19. Can I just put the ward's Social Security check in my checking account?**

No. If you receive social security as a representative payee, open a separate bank account and place your name for the benefit of the ward on the account. Never put the ward's social security check in your own account. If you do not receive the check as representative payee, you should go apply to the Social Security Administration to be to be appointed as representative payee. It is inappropriate to sign the ward's name to the check made payable to the ward.

**20. Can I spend the ward's monthly SSI?**

Yes, as representative payee, you may use the ward's SSI or Social Security funds for the benefit of the ward. You will be required to account to the Social Security Administration for those funds.

**21. Should I apply for Social Security or any other governmental programs that the ward might be entitled to receive?**

Yes. Social Security, Medicaid or any other program for which the ward might qualify should be considered.

**22. Am I automatically liable for a ward's debts if I am the guardian of the person?**

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

**23. Can I sign the mentally ill ward into a mental hospital against his or her will?**

A guardian of the person cannot sign the ward into a mental hospital. Only a Court can order a person into a mental hospital. However, you do have the right to transport the ward to a mental hospital and the mental hospital can begin the commitment proceedings.

**24. If I have a problem, will the Court fix it for me?**

The Court appointed you as the guardian. It is your job to be sure the ward's needs are met. It is not up to the Judge to fix problems. For instance, if your ward is being abused in a placement, and you wait for the Judge to fix the problem, the Court will view you as failing to do your job by leaving the ward in an abusive situation.

**25. If I am guardian of the person, can I keep other family members whom I do not like away from the ward?**

The ward is entitled to reasonable visitation from family and friends as long as there is no danger to the ward. If you deny access and visitation because of personal animosity towards the visitors, you are harming the ward and violating your duties as a guardian.

**26. Why must I have a bond?**

The law states that a bond is necessary and cannot be waived by the Court. The bond is to provide a source of funds to cure problems in the event you do something wrong. The Court may accept a cash bond or a personal surety bond for a guardian of the person.

**27. Does the ward have to live with me?**

A ward does not have to live with the guardian of the person. You must find a suitable place for the ward to live.