

GUARDIANS: A GUIDE TO PERFORMING YOUR FIDUCIARY DUTIES

I. INTRODUCTION

You have just taken an oath to faithfully discharge your duties as a guardian. This oath was intended to impress upon you that you have been placed in a position of the utmost trust and responsibility.

Most guardians are given the power and duty to handle an incompetent person's financial affairs. Occasionally, however, the court appoints a guardian when the incapacitated adult or minor has no assets or the powers granted the guardian do not encompass the property of the incapacitated person. If your appointment does not include control of any financial affairs, then your duties are limited to the specific purpose for which the guardianship was established.

Most of the remainder of this guide pertains to guardians who are appointed for the purpose of managing the property of a protected person. The specifics of your duties to handle the protected person's property will be discussed shortly, but you will go a long way toward success by simply remembering that the property you will be handling is not your own. You must handle the property of the protected person as you would have the protected person handle your property.

II. SPECIFIC DUTIES

The person over whom you have been appointed guardian is under some disability, which prevents him from competently handling his financial affairs. Your job is to handle this aspect of life for him. There is nothing mysterious about what you will be doing. Just as you personally have an income, pay bills, buy clothing and pay taxes, the protected person will, in all likelihood, have an income, owe bills, need clothing and be required to pay taxes. The only difference between the two of you is that you can handle these tasks on your own, while the protected person requires your assistance to accomplish them.

Indiana Law specifically details the duties of the guardian. We now turn to an examination of that law.

A. BOND

In order to protect the protected person, every guardian must post a sufficient bond with the court before undertaking his duties. The amount of the bond is fixed at an amount equal to all of the protected person's personal property, plus the annual rental value of any real estate. While there is no exception to the bond requirement, there may be an alternative. If the protected person owns assets beyond those necessary to provide for his needs, you may petition the court for permission to place the excess funds in a restricted account. Typically, a restricted account is a Certificate of Deposit with the following words typed on the face of the document: "not to be cashed without Order of Bartholomew County Court. If the guardianship is over a minor, the following words may be added to the order of a Bartholomew County Court: "or upon protected person reaching the age of 18". Provided there exist no other reasons for requiring bond, the restricted funds will then be exempt from the bond requirement.

Finally, you may be wondering why the court may have required only a minimal bond upon your appointment. The reason is simple -- neither the court nor you are yet fully aware of the extent of the protected person's assets. Upon your filing of an inventory, the bond will be adjusted accordingly.

B. INVENTORY

Indiana Law requires that every guardian of another person's property file an inventory of that property within ninety (90) days of the date of his appointment. The inventory serves an important purpose: it appraises both you and the court of the extent of the protected person's property.

The inventory, which you file, must contain every item of the protected person's property, which shall come to your possession or knowledge. The property must be classified as to its type (e.g., stocks, bank accounts, real estate) and, if encumbered by a mortgage or other lien, this fact must also be noted.

The fair market value of each item of the protected person's property must be indicated in the inventory. Many items, such as bank accounts, will pose no valuation problems. However, where there is reasonable doubt as to the value of property, the law permits the employment of a disinterested appraiser to assist in the valuation process. If an appraiser is employed, his name and address must be indicated on the inventory.

C. TAKING POSSESSION OF THE PROTECTED PERSON'S PROPERTY

Your letters of guardianship represent your authority to act for the protected person. By representing these to persons or institutions who may be holding the protected person's property, you will be permitted to take that property into your possession.

The phrase "take possession" should not be construed literally. It is not intended that you run out and gather everything the protected person owns so that you can store it in your basement. Rather, you need to contact the persons or institutions holding your protected person's property, either show them or provide them with your copies of your letters, and arrange for the funds or property to be held in the protected person's name with your name listed as guardian. So that no one except you can certified draw on said funds, do not surrender the original copy of your letters of guardianship copies of your letters may be obtained from the Bartholomew County Clerk's Office.

D. PAYING THE PROTECTED PERSON'S BILLS AND EXPENSES

Your primary purpose as guardian of an adult incompetent's estate is to manage his financial affairs. As part of your management responsibility, you will be required to pay all valid bills, expenses and claims of the protected person while constantly bearing in mind your duty to preserve the assets of your ward.

In order to pay these bills, a checking account must be opened. This account will be in your name as guardian. The fact that it is a guardianship account must be clearly stated on the face of each check. In addition, it is important that the account be opened at an institution, which returns the canceled checks each month. The bills and expenses, which a particular protected person incurs, will vary according to the circumstances. If your protected person lives in his own

home, there will be utility and other bills associated with home ownership. On the other hand, if the protected person resides in a nursing home, these bills may be eliminated by and included in a single monthly payment.

In addition to the ordinary and necessary expenses of your protected person, extraordinary claims may have to be paid on occasion. For example, a hospital might present you with a bill for services, which it claims to have provided the protected person prior to your appointment as guardian, or an individual might approach you and claim that the protected person owes him money on a contract.

The question, which you should ask when, presented with any bill, expense or claim on your protected person's property is whether the obligation is valid. Your resolution of this inquiry is critical for, if you negligently honor an invalid claim, the court may hold you personally liable for the amount of the protected person's funds expended.

You may also find it necessary or desirable to provide your protected person with a periodic allowance. Once again, since you have a duty to preserve the assets of the protected person, you must take care that the purpose for which the allowance is desired is a valid one.

In either case, whether you are paying bills or are desirous of providing a periodic allowance, you should consult with your attorney. If there is any question as to the legitimacy or necessity of a bill or claim, authority should be obtained from the court before making payment.

These responsibilities as they relate to a minor are different from those of an adult. A minor's guardian has all the responsibility and authority of a parent and, therefore, is personally responsible for the financial support of the minor. As a rule, the guardian may not spend the minor's funds but, instead, must preserve them. Only upon a showing to the Court that the parents' income is insufficient to provide for the minor's support will the Court approve the expenditure of the minor's funds.

E. THE CURRENT REPORT

The law requires that you file a written report of your activities as guardian within thirty (30) days of the first anniversary of your appointment. Thereafter, such reports are due every two years (biannual report).

You fulfill this duty by filing a current report and accounting. If all of a minor's assets are in a restricted account, the court may waive this accounting requirement.

The current report should contain all information pertinent to the protected person's condition, including his or her present residence and general welfare. If the protected person is an adult, a report of the treating physician verifying the incapacitated state of the person and propriety of the living arrangements must be included with the current report.

Regarding the accounting, the current report must include three schedules. The first will show the total amount of the protected person's property included in the inventory and any additional assets received to the date of the accounting. The second schedule must list all expenditures, which were made on behalf of the protected person, and, if such amounts are approved by the court, they will be credited against the amount of property for which you are chargeable. Finally, the third schedule will be a recapitulation, and it will show the balance on hand after subtracting the credits you are claiming from the total amount of property, which has come into your hands. The balance on hand should list what assets you still hold. In order to verify your expenditures made on behalf of the protected person, you are required to attach canceled checks or vouchers to the current report.

By now, you should have realized that accurate record keeping is essential to the preparation of an acceptable current account. Remember that YOU are responsible for the protected person's property and that you are held personally liable for the expenditures of any amount, which cannot be substantiated, by canceled check or prior court approval.

F. THE FINAL REPORT

A written Final Report is required in all guardianships. Most guardianships are established because of the protected person's age: he is either too young (under eighteen) and, therefore, legally disqualified from handling his own financial affairs or old age has in some way deprived him of the ability to handle this aspect of his life. Therefore, most guardianships terminate either upon the protected person's reaching majority or upon death.

When it is time to terminate the guardianship, you will need to file a final report. The report must indicate the reason for terminating the guardianship and must detail the disposition, which you propose to make of the protected person's assets.

If the protected person is living, a hearing will be set to review the Final Report. A copy of the report must be furnished to the protected person and the protected person can file written objections before the hearing date. The court will examine the report to assure that your proposed disposition of the protected person's property is acceptable. The final account will be examined to assure that the expenditures, which you made since the last accounting, are permissible. Assuming the Court approves, you will then be discharged from your duties and the guardianship will be closed.

III. CONCLUSION

As guardian, you may be faced with difficult decisions as to how you should be handling the affairs of your protected person. You should realize that you do not need to make these decisions alone. If there is an expenditure, which you desire to make, or a sale of any of the protected person's personal or real property, you should **consult with your attorney** who will petition the court for its approval. If the court agrees with your proposal, it will enter an order to proceed. If the court disagrees, then an expenditure or sale for which you might have been held personally liable will have been avoided.

You are encouraged to contact your attorney to assist you with your duties. Since Indiana Law and Bartholomew County Court policy forbids employees (including judges and court personnel) from practicing law, an attorney will be your sole source for counseling on legal matters.

Finally, do not be overwhelmed by your duties. Remember that the property you will be handling is not yours, and if you handle the protected person's affairs, as you would have him handle yours, then you should not have any problems.