

DUTIES OF GUARDIANS OF THE ESTATE

PROVIDED BY:

JUDGE LAURA A. WEISER
COUNTY COURT AT LAW NO. 1
115 N. BRIDGE ROOM 203
VICTORIA TEXAS 77901
(361) 575-4550

CAUSE NO _____

INTRODUCTION:

You have been appointed by this Court as guardian to represent the interests of the Ward. This is a fiduciary position which carries with it certain duties and a high degree of responsibility. Your activities are strictly regulated by the Texas Probate Code and you should familiarize yourself with the types of allowable actions you may take before engaging in any transactions. If you have any questions, you should consult with your attorney. This guide has been prepared as a supplement to the information given to you by your attorney and is not a substitute for legal advice.

YOUR QUALIFICATION:

Your authority to act on behalf of the Ward does not begin until you have met the statutory qualifications and receive letters of guardianship. You must first take the oath of office and execute a bond in the amount set by the Court. (Texas Probate Code Section 699) The bond and oath must be executed and approved by the Court within 20 days from the date of the order of your appointment as guardian. (Texas Probate Code Section 701) The Court can revoke the appointment of a guardian who fails to qualify within the time period prescribed by law. (Texas Probate Code Sections 701, 721, 725 and 761(a)(1)) Your attorney will be able to direct you to an appropriate bonding company.

LETTERS OF GUARDIANSHIP:

After the Court has approved your oath and bond, the clerk of the court is authorized to issue letters of guardianship to you. You may call the County Clerk at (361) 575-1478 to request issuance of letters. There is a charge of \$2.00 for each letter. These letters serve as evidence to third parties of your authority to act on the Ward's behalf. **Letters of guardianship expire one year and four (4) months after the date of issuance unless renewed. Letters may only be renewed and reissued by the clerk of the Court on the receipt and approval by the Court or the guardian's ANNUAL ACCOUNT.** (Texas Probate Code Section 659)

YOUR POWERS AND DUTIES:

Your powers and duties are set out in the order appointing you Guardian. If you are granted full powers, or the authority to manage assets, once you have qualified it is your

duty to take possession of all property belonging to the Ward. (Texas Probate Code Section 771) The Guardian of the estate is entitled to the possession and management of all property belonging to the Ward, to collect all debts, rentals, or claims that are due to the Ward, to enforce all obligations that are due to the Ward, and to bring and defend suits by or against the Ward. (Texas Probate Code Section 768). The Guardian of both the Person and Estate has all the rights and powers and duties of the Guardian of the Person and of the Guardian of the Estate.

All such property of the Ward should remain in the State of Texas unless prior Court approval is obtained. Any cash you receive for the Ward should be placed in a bank account in the name of the Guardianship (e.g. Jane Doe, as Guardian of the Estate of John Doe) separate from your personal funds. Do **not** mix the funds of the estate with your personal funds. You must have prior Court approval before selling any property belonging to the Ward. This is a complicated procedure and almost certainly will require the advice of an attorney. There are certain situations in which the Guardian may borrow money on behalf of the estate or rent property belonging to the estate, however, this also requires prior Court approval. The Probate Code is very restrictive as to the types of investments which may be made with the Ward's funds. If you wish to invest the money in anything other than a federally insured bank account, check with your attorney before making any such investment, as prior Court approval may be necessary.

INVESTMENTS:

The Texas Probate Code sets out the types of investments that a guardian is allowed to make with a Ward's monies without prior Court approval. It is a very limited list as the legislature had only one thing in mind with passage of the regulations - the security and safety of the estate of the Ward. Monies of the Ward can **only** be placed in savings and banking institutions that are insured by the federal government or invested in bonds and other obligations of the federal, state or local governments. Mutual funds, stocks, bonds of private companies, ready assets or any similar type of investment with brokerage firms are not authorized investments and placing estate funds in these is a violation of your oath and could cause your removal as guardian.

NOTICE TO CREDITORS IN A WARD'S ESTATE:

Within one (1) month after you have qualified (taken the oath and given the bond as explained above), you must publish a notice to creditors in a newspaper printed in the county advising any unsecured creditors of your appointment. (Texas Probate Code Section 783) Within four (4) months., you must send a registered letter, return receipt requested, to each secured creditor, and unsecured creditor, if known, of the estate. Proof of the above two notices must be filed among the papers of the estate. (Texas Probate Code Section 784) A secured creditor is one which holds a claim secured by a deed of trust, mortgage, or other lien upon property.

You may download a form for this notice from the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

INVENTORY:

Not later than the 30th day after the date the guardian of the estate qualifies as guardian, unless a longer time is granted by the court, the guardian of the estate shall file with the clerk of the court a verified, full, and detailed inventory, in one written instrument, of all the property of the ward that has come into the guardian's possession or knowledge. The inventory filed by the guardian under this section must include all real property of the ward that is located in this state; and all personal property of the ward wherever located. The court for good cause shown may require the filing of the inventory and appraisal at a time not later than the 30th day after the date of qualification of the guardian (Texas Probate Code Section 729).

There is a sample form at the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

SUPPORT AND MAINTENANCE OF MINOR WARDS:

If you are the natural parent of the Ward and can provide for the Ward's support, you will not be allowed to use any of the estate funds for the Ward's support and maintenance. But, if you, as parent and guardian, can satisfy the Court by clear and convincing evidence that you are unable to support your child or children without unreasonable hardship you may be allowed to expend funds of the estate for the Ward's benefit. This will require **prior** Court approval and a hearing on this matter may be necessary. (Texas Probate Code Section 777) If you are not a parent of the Ward, you will follow the procedures set out below for ADULT WARDS.

SUPPORT AND MAINTENANCE OF ADULT WARDS:

The income of the Ward may be used . for the support and maintenance of the Ward without prior Court approval. However, you must account for all such expenditures in the annual accounting, and you may be required to reimburse the estate for any improper expenditures. If the income of the estate is insufficient to provide for the Ward's support, you may apply to the Court for permission to expend the corpus of the estate. The application must state specifically the amount of money requested and the purposes for which the funds will be spent. It is also possible to get an order allowing you to spend a certain sum each month as an allowance for the Ward's support and maintenance. The size of the allowance will depend upon the needs of the Ward, the size of the estate, and the amount of other funds available for the Ward's support. Any funds expended by the guardian must be included in the annual accounting. (Texas Probate Code Section 776)

VETERAN'S BENEFITS:

If your Ward is a beneficiary of the Veteran's Administration, you must submit any applications to expend or invest funds, all claims, and accountings to their office prior to submission to the Court. If the Veteran's Administration wishes to approve your request or account, they will execute a "waiver of hearing" so that it can be processed by the Court. No instruments can be processed by this Court without this waiver where the Ward is a recipient of Veteran's Administration funds. (Texas Probate Code Section 636)

CLAIMS:

Claims of creditors against the estate may be presented to you at any time while the Estate remains open. You may allow any claim which you feel is a just debt of the estate and is properly presented to you and authenticated, provided such claim is not barred by the statute of limitations. (Texas Probate Code Section 786) (If you have any doubts or questions in this situation, contact your attorney.) It is important to know that once a claim is presented to you, you must either allow or disallow the claim, in whole or in part, within 30 days or it will be rejected by operation of law. If this occurs, the creditor will have to file suit to secure payment of the claim. If the claim is found to be a just one, then you will be **personally** liable for the cost of this suit and you may even be removed from office for your failure to properly act upon this claim. Once you have allowed a claim, it will then be presented to the Court for approval or disapproval. In order to pay debts owed by the estate, you must obtain Court permission by first submitting to the Court an application. (Texas Probate Code Sections 796 and 797)

ANNUAL ACCOUNT:

Not later than the sixtieth (60th) day after the expiration of twelve (12) months after the filing of your bond and oath, you must file with the Court an Annual Account, attaching a sworn affidavit stating that it is true and correct, that you have paid the bond premium for the next accounting period, filed all tax returns and paid all taxes due, with the date, amount paid, and name of the governmental entity to whom the taxes were paid. If you handle assets, the Annual Account must show all receipts and disbursements that have occurred in the estate during the year. You must show the status of all claims pending against the estate and the nature and extent of all property currently being administered by you. Any cash or securities in your possession or held by any bank or depository must be verified by an appropriate letter or certificate. The bank statement dated on the ending date of the accounting period will suffice for bank accounts. (Texas Probate Code Section 741) After the accounting has been on file for 10 days it will be reviewed and audited by the Court. If it is found to be in proper form, an order approving the account will be entered. You must file an Annual Account every twelve months thereafter while the Ward's estate remains open. (Texas Probate Code Section 742)

There is a sample form at the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

CLOSING THE WARD'S ESTATE-FINAL ACCOUNTING:

If you are the guardian of an incapacitated person whose incapacity is because of minority (under 18 years of age), you must institute the procedure to close the minor's estate as soon as the ward reaches 18 years of age, or becomes married. If you are the guardian of an incapacitated person (other than a minor), you may institute the procedure to close the Guardianship when the Ward's mental capacity has been restored by order of the Court. The Guardianship must be closed when the Ward dies. A Guardianship of the Estate may be closed when the Ward's funds become exhausted, when the income is negligible, or when the Court determines a Guardianship is no longer necessary. (Texas Probate Code Section 745)

The first step in closing a Guardianship is the filing of the Final Account. This account must show all property that has come into your hands since the last annual account, as well as the disposition that has been made of such property. You must show the debts that you have paid, any debts that remain outstanding, as well as the reason for their non-payment. If any property remains in your possession it should be fully reported and verified in the same manner as for Annual Accounts. After the Court has audited the Final Account and entered an order approving it, you may deliver the assets to the former Ward or whoever the Court has determined is legally entitled to them. Obtain receipts, because once this delivery has been completed, you must file with the Court a receipt signed by each person who received the property. (Texas Probate Code Section 749) After all the property has been accounted for and the receipts of delivery approved, the Court will enter an order closing the Guardianship and relieving you of any future responsibility in connection with the Guardianship. (Texas Probate Code Section 752) The closing process is very complicated and specifically detailed by the Texas Probate Code. You should seek the advice of your attorney to complete this process.

MISCELLANEOUS:

In addition to other statutory requirements that may be applicable to a guardianship, other general guidelines that are of importance to a Guardian of the Estate are as follows:

1. The Guardian of the Estate must always act in good faith and in the Ward's best interests.
2. Failure to follow any of the statutory procedures may lead to your removal as Guardian and you may be held **personally** liable.
3. You **must** notify the Court or your attorney of any change in mailing address.
4. If you spend funds **without** Court approval, you may be subject to removal and held **personally** liable for any deficiencies.
5. You must keep receipts and cancelled checks for all purchases and expenditures. Maintain a separate checking account for the Ward's funds.
6. You may not move to another state or be absent from this state for more than three months without this Court's permission.