

**MADISON COUNTY CIRCUIT AND SUPERIOR COURTS'**

**INTRODUCTION AND INSTRUCTIONS TO**

**GUARDIANS AND PERSONAL REPRESENTATIVES**

You have been legally selected and appointed by the Court to act as the Personal Representative in an Estate or as the Guardian of a Protected Person in a Guardianship.

In assuming this position of trust, you are legally bound to perform your duties according to the laws of the State of Indiana. If you fail to do this, you can be held personally liable for any money or property which has not been handled properly.

The following general instructions are provided to you as a guide for the conduct of the affairs of the Estate or Guardianship.

As personal representative of an estate or a guardian you may be faced with difficult decisions as to how you should be handling the affairs of the estate or of your protected person. You should realize that you cannot make these decisions without consulting your attorney. If there is an expenditure which you desire to make or a sale of any personal or real property, you must consult with your attorney who will petition the court for its approval. If you fail to get court approval, you may be held personally liable for an inappropriate transaction.

You must contact your attorney to assist you with your duties, and your attorney will inform you which duties you may perform without further consultation. Indiana Law and Madison County Court policy forbid employees (including judges and court personnel) from practicing law; an attorney will be your sole source for counseling on legal matters.

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

You should remember that all your actions are being scrutinized by the Court.

## 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'll go a long way toward success by simply remembering that the property you will be handling is not your own.

#### 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's really nothing mysterious about what you'll 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.

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 above and 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 Madison Circuit or Superior Court No \_\_\_\_". If the guardianship is over a minor, the following words may be added: "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 may 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) day of the date of his appointment. The inventory serves an important purpose: it informs 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 into 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 showing 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. 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 draw on said funds, do not surrender the original copy of your letters of guardianship – certified copies of your letters may be obtained from the Madison 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 his assets.

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. Also, it is important that the account be opened at an institution which returns the canceled checks or copies 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 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 want to make 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 general 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 year of your appointment. Thereafter, such reports are due every two years. 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 conditions, 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. Some of the specific things you are required to do are as follows:

- a. To pay bond premiums and court costs as they become due.
- b. To file federal and state tax returns and to pay taxes for the protected person.
- c. To open an account, in your name as guardian, in which all of the cash assets of the protected person are deposited. This account shall be used for all payments and disbursements on behalf of the guardianship and the protected person. Canceled checks and other written proof should be maintained.
- d. To obtain approval from the court to use guardianship assets.
- e. To file a final accounting upon termination of the guardianship. This should detail all property and income received and all expenses paid, with receipts to verify each expenditure.

If any questions arise during the guardianship, you should consult with your attorney.

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

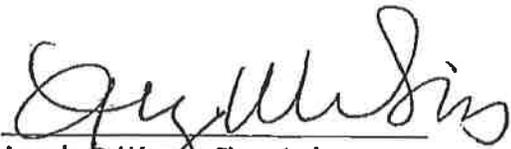
expenditures of any amount which cannot be substantiated by canceled check or prior court approval.

#### F. THE FINAL REPORT

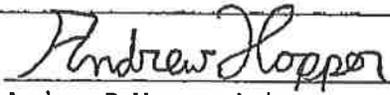
A written Final Report is required in all guardianships. Most guardianships are established because of the protected person's age: he is either too young (under eighteen) and, therefore, legally disqualified from handling his own financial affairs, or, old age has in some way deprived him of the ability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

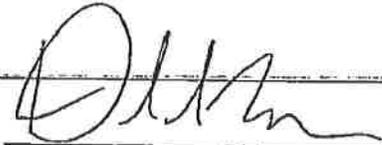
When it is time to terminate the guardianship, you will need to file a final report. The report must indicate the reason for terminating the guardianship and must detail the disposition which you propose to make of the protected person's assets.

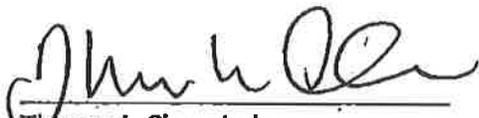
If the protected person is living, a hearing will be set to review the Final Report. A copy of the report must be furnished to the protected person and the protected person can file written objections before the hearing date. The court will examine the report to assure that your proposed disposition of the protected person's property is acceptable. If the Final Report is approved, the court will release your bond, approve all of your actions as Guardian and close out the Guardianship with a written Order.

  
Angela G. Warner Sims, Judge  
Madison County Circuit Court Division 1

  
G. George Pancol, Judge  
Madison County Circuit Court Division 2

  
Andrew R. Hopper, Judge  
Madison County Circuit Court Division 3

  
David A. Happe, Judge  
Madison County Circuit Court Division 4

  
Thomas L. Clem, Judge  
Madison County Circuit Court Division 5

  
Mark K. Dudley, Judge  
Madison County Circuit Court Division 6

I acknowledge receipt of a copy of the above instructions and have read and will follow these instructions carefully.

\_\_\_\_\_  
Cause Number

\_\_\_\_\_  
Protected Person (printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Guardian (printed)

\_\_\_\_\_  
Guardian (signature)