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IN THE GUARDIANSHIP OF

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IN THE COUNTY COURT AT LAW

OF

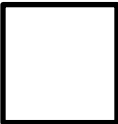
WALKER COUNTY, TEXAS

☐ MINOR ☐ INCAPACITATED PERSON

**GUARDIAN OF THE PERSON AND ESTATE**  
**COURT-ORDERED INSTRUCTIONS**

Thank you for agreeing to accept appointment as Guardian of the Person and the Estate of a minor or incapacitated individual (the ward).

As soon as you have qualified, you will be a fiduciary – someone who has a legal responsibility to act for the benefit of another. As a fiduciary, you are expected to act with the utmost care and in the best interest of the ward while also considering the interest of others who have a stake in or claim to the assets under your management. At times, this may mean acting in a manner contrary to your own interests. Because being a fiduciary gives rise to certain legal obligations and responsibilities that require legal expertise, Texas law requires that you continue to be represented by an attorney who will assist you in representing those for whom you are responsible.


 As Guardian, your activities are strictly regulated by Texas law and by the order appointing you guardian. *Before you engage in any transactions as guardian, you should become familiar with the types of allowable actions you may take under the order and relevant law.* These instructions will help you, but they are only a *supplement* to the information that has been or will be given to you by your attorney and are not a substitute for legal advice. Your attorney will help you understand what is required of you as guardian of the person and the estate. You should always consult with your attorney – not the court – if you have questions although you may contact the court coordinator if you have a question about your annual report. These instructions do not cover everything you may need to know.

**1. Before the hearing or before you leave the courthouse after the hearing:**

- you must read these court-ordered instructions and initial each of the boxes in the margins indicating that you understand the italicized points made in the text to the right of each of the boxes
- you must sign these court-ordered instructions before a notary or the clerk of the court (the original will be filed with the clerk and the court will make a copy for you to keep and refer to as you serve as guardian)

- you must complete your initial report on the condition and well-being of the ward (the form may be found on the court's website or in the clerk's office)
  - you must complete the personal representative information form for the court's internal files
2. **Before you leave the courthouse after the hearing:**
    - you must take and file your oath – your signed and sworn commitment to “discharge faithfully the duties of guardian”
    - you must file your initial report on the condition and well-being of the ward
  3. **You must file your bond within 20 days after the court signs the order granting letters of guardianship.**

### Letters of Guardianship



*Your authority to act on the Ward's behalf does not begin until you have qualified – which requires both that (1) you have taken your oath and (2) the court has approved your bond. At that time, the clerk of the court is authorized to issue letters of guardianship to you. These letters serve as evidence to third parties of your authority to act on the ward's behalf. Letters of Guardianship are not automatically sent when you have qualified; you need to request them from the clerk's office.*

Letters of guardianship expire one year and four months after the date of issuance unless renewed. Letters can be renewed by the clerk *after* the court approves both the guardian's annual report of the person and the annual account. New letters of guardianship are not automatically sent when your annual report and annual account are approved. Contact the clerk's office to order new letters of guardianship.

### Time-Sensitive Requirements after You Qualify as Guardian of the Person and Estate

*\*\*\*Texas law includes other key deadlines for guardians of the estate that are tied to the date you qualify to serve as guardian. The date you qualify is the date when the court approves your bond or when you take and file your oath, whichever is later.*

1. **Within 30 days of the date you qualify**, you must file an inventory, appraisal and list of claims. The inventory should reflect the fair market values of the assets *as of the date of your appointment* and must be verified by your sworn or affirmed affidavit. This inventory must contain a complete list of all the real estate located within the State of Texas and must list all personal property, regardless of where it is located. If at any time during the administration of this estate you discover additional property you must file a supplemental inventory reflecting the newly acquired assets.
2. **Within 30 days of the date you qualify**, you must file an application requesting a monthly or annual allowance to be expended from guardianship funds for the education and maintenance of the ward and the maintenance of the ward's property – unless an allowance was ordered at the time you were appointed guardian or such an allowance is inappropriate. Note that even though the court sets a monthly allowance, you must still account for all such expenditures in the annual account. Make sure you keep receipts

for all purchases. Please be aware that you may be required to reimburse the estate for any improper expenditure.

3. **Within 180 days of the date you qualify**, you must file a written application for approval of an investment plan for estate assets – unless you invest those funds according to the investment plan in Estates Code Section 1161.003 (see paragraph below). Your attorney can help you understand the options and take the appropriate steps.

As guardian, you have an obligation under Estates Code Section 1161.001 to invest the ward's assets that are not immediately necessary for the education, support and maintenance of the ward or others the ward supports. You must invest as a prudent person would. In general, you may not make any investment without prior court approval. However, Section 1161.051 of the Estates Code allows a guardian to have estate assets invested according to Section 1161.003 of the code without court order. Section 1161.003 allows "safe harbor" investments such as obligations issued by the United States, tax-supported bonds of the State of Texas or certain bonds of political subdivisions of the State of Texas, and federally insured bank accounts.

4. **Claims procedures.** In Chapters 1153 and 1157, the Estates Code outlines time-sensitive requirements for various notices and other actions that are part of the statutory process for Claims Procedures. These instructions do not address any of these requirements. Your attorney can help you through the statutory process for claims procedures.
5. **Each year within 60 days of the anniversary of the date you qualified as guardian**, you must file:

- (1) an Annual Report ("Report on the Condition and Well-Being of a Ward"), **and**
- (2) a detailed Annual Account.

*Failure to file an annual report or an annual account may result in your removal as guardian and may result in the assessment of fees against you individually and on your bond, and not against the guardianship estate. See below for more information.*

**Annual Report** ("Report on the Condition and Well-Being of a Ward") - Texas law requires you – as Guardian of the Person – file a report each year that covers a 12 month reporting period, with the reporting period beginning on the date you qualify to serve as guardian. The date you qualify is the date when the court approves your bond *or* when you take and file your oath, *whichever is later*. Texas law requires that you annual report be filed not later than 60 days after the reporting period ends.

- In your annual report, you must answer each of the questions on the form, including information regarding the ward's physical welfare, well-being, progress in education (if pertinent) and income. You will also note how many times you have visited the ward in person and when you sign the report, you will declare under penalty of perjury that the report is true and correct.
- In your annual report, you must swear or affirm that either you have paid your bond premium for the next reporting year or that you have filed an approved cash bond.
- You may complete and file your annual report without an attorney's assistance. Forms are available at the clerk's office or on the court's website at <http://www.co.walker.tx.us/departments/index.php?structureid=12>.
- Texas law requires a \$25 fee for processing each annual report to determine whether the guardianship continues to be appropriate, unless an affidavit of inability to pay costs is on file and has been approved.

**Annual Account** - Each year within 60 days of the anniversary of the date you qualified as guardian, you must file a detailed annual account, attaching an affidavit in which you swear or affirm that the annual account is true and correct. In your annual account, you must swear or affirm that you have paid your bond premium for the next accounting period.

- As part of your annual account, you must swear or affirm that you have filed all tax returns and paid all taxes due, with the date, amount paid and name of governmental entity to whom the taxes were paid.
- In your annual report, you must swear or affirm that either you have paid your bond premium for the next reporting year or that you have filed an approved cash bond.
- If you handle cash assets, the annual account must show all receipts and disbursements that have occurred in the estate during the year. You 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 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.
- If you receive Social Security benefits on the ward's behalf, you must attach to your annual account a copy of the most recent Representative Payee Report you filed with the Social Security Administration (SSA), accounting for your use of those funds (a report to SSA is required annually).
- The court provides sample forms for an annual account on the court's website at <http://www.co.walker.tx.us/departments/index.php?structureid=12>. It is highly

recommended that you have an attorney assist you in completing the annual account.

## **IN YOUR ROLE AS GUARDIAN OF THE ESTATE**

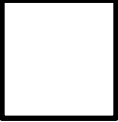
### **Powers and Duties**

You must always act in good faith and in the ward's best interests. Your powers and duties are set out in the order appointing you guardian. If you are granted full powers, or authority to manage assets, it is your duty to take possession of all property belonging to the ward *once you have qualified*. A guardian of the estate is entitled to possess and manage 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 defends suits by or against the ward.

### **Previously Existing Powers of Attorney**

Any durable powers of attorney previously executed by the ward terminate as soon as you have qualified as guardian of the estate. If the ward had executed powers of attorney, talk to your attorney about what is required of the attorney in fact or agent.

### **Accounts for Guardianship Funds**

 Place all guardianship funds in one or more separate accounts in the name of the guardianship – for example “Jane Doe, as guardian of the estate of John Doe” – separate from your personal funds. **Do not commingle the funds of the guardianship estate with your personal funds.** Retain in a checking account only such funds as are reasonably necessary for the current support and maintenance of the ward. Place all additional funds in interest-bearing accounts at the highest interest rate then available, unless you have an approved investment plan that allows another investment. Make sure all bank accounts are fully insured and do not exceed the FDIC insurance limits.

### **Spending Guardianship Funds**

1. **Spending guardianship funds under a court-ordered allowance.** If you have a court-ordered allowance, you do not need to get further court approval before spending those funds *for the purposes that were approved in the court order*. Note the following:

- Funds that are part of a court-approved allowance may be spent only for the purposes approved in the court order setting up the allowance.
- Although the court sets a monthly allowance, you still must account for all such expenditures in the annual account and you must keep receipts from all purchases. One exception: in the rare case when the court specifically orders a cash allowance for the ward you will not need to account for or keep receipts from the ward's purchases from the cash allowance.
- The court does not all case-management fees to be included as part of an allowance. These fees must always be approved separately.

2. **Spending other guardianship funds.** Consult your attorney about the very few instances when the law allows an expenditure without court order. For everything else:

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- *If a particular expense was not approved in the court order setting up an allowance, you cannot pay for that expense without first obtaining, through your attorney, a written order of this court authorizing the expenditure(s).*
- *Regardless of purpose, never spend any guardianship funds in excess of your allowance unless you first obtain, through your attorney, a written order of this court authorizing the expenditure(s).*

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3. **Spending ANY guardianship funds.** You may be subject to removal and held personally liable for any unapproved expenditures if you either (1) spend an allowance for purposes not approved in the court order setting up the allowance or (2) spend other funds without court approval. *If necessary, cases may be referred to the district attorney for prosecution.*

### Non-Cash Assets

Preserve, protect and insure (if insurable) all non-cash assets of this guardianship.

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- *Your attorney, on your behalf, must obtain a written order of this court before you attempt to sell, transfer, lease for more than one year, abandon, or otherwise dispose of any non-cash asset of this guardianship.*
- All personal property of the ward in the State of Texas should remain in Texas unless prior court approval is obtained.

### Recordkeeping

Maintain an accurate and detailed record of all guardianship income and all expenditures of guardianship funds. Keep organized all bank records and all receipts. You will need all of this information for your Annual Account. Some important specifics:

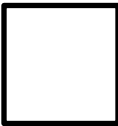
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- *Cash withdrawals of guardianship funds are prohibited, except in the rare cases when a court-ordered allowance specifically allows for the ward to have a cash allowance.*
- *Keep and maintain receipts for every purchase.*
- *Guardianship expenses should be paid for with guardianship funds.*
- *To be reimbursed for paying a guardianship expense, you must get the court's permission – but reimbursements are discouraged. Reimbursements will never be approved without receipts.*

### Parents Who Are Guardians of the Estate of Their Minor Child

*Note that natural parents of a minor are obligated to support that child with their own funds and they may not spend any guardianship funds – corpus or income – without a court order. If you, as parent an Guardian, can satisfy the court by clear and convincing evidence that you are unable to support your child without unreasonable hardship, you may be allowed to expend funds of the estate for the ward's benefit but **no** funds may be expended without *prior* court approval and a hearing is usually necessary.*

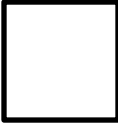
## IN YOUR ROLE AS GUARDIAN OF THE PERSON

 **General Powers and Duties** - *The order appointing you as guardian of the person specifies whether you have been appointed as guardian of the person with limited authority or guardian of the person with full authority. Guardians of the person with limited authority have only those powers specifically set forth in the order appointing them. Under Texas law, a guardian of the person with full authority has the rights and duties set out below:*

1. the right to have physical possession of the ward and to establish the ward's legal domicile;
2. the duty to provide care, supervision and protection for the ward;
3. the duty to provide the ward with clothing, food, medical care and shelter as completely as the ward's resources permit;
4. the power to consent to medical, psychiatric and surgical treatment other than the inpatient psychiatric commitment of the ward (but the guardian of the person *does* have the power to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code);
5. *if the ward is an adult, the duty to inform the ward's spouse, parents, children and siblings as soon as possible if:*
  - the ward dies;
  - the ward is admitted to a medical facility for acute care for three days or more;
  - the ward is moved; or
  - the ward is staying at a location other than his/her own residence for more than one week;
6. *the duty to provide notice to the ward in the ward's native language, or preferred mode of communication, each time you file your annual report that you are seeking to continue the guardianship.*

## GENERAL INFORMATION

### **Change of Address**

 You must notify the court, through the clerk, of any change in the mailing address of either you or the ward. You may not move to another state or be absent from this state for more than three months without court permission. If the ward moves from this county, consult with your attorney about whether the guardianship should be transferred.

### **Consult with Your Attorney**

*Consult with your attorney on any matter regarding this guardianship that you do not understand. Failure to follow any statutory procedures may lead to your removal as guardian and you may be held personally liable.*

## CLOSING THE GUARDIANSHIP

A guardianship is ready to be closed when the ward:

- regains competency (requires an application, hearing and court order)
- dies (attach a death certificate to final account)
- reaches the age of 18 for guardianships based solely on minority

A guardianship of the estate may also 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.

To close a guardianship of the person and the estate, you will need to file both a Final Report (with death certificate attached, if applicable) **and** a Final Account. If the Ward has regained competency, you will **also** need an application seeking to have the Ward declared competent, along with a hearing and court order regarding competency.

**Final Account** – The final 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 any such property. The final account must show the debts that you have paid since the last annual account and 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 signed an order approving it, the court will order that any remaining assets be delivered to whomever the court has determined is legally entitled to the assets. You will need to obtain receipts, because once this delivery has been completed, receipts signed by each person who received the property must be filed with the court. After all of the property has been accounted for and the receipts of delivery approved, the court will sign an order closing the guardianship and relieving you of any future responsibility in connection with the guardianship. The closing process is very complicated and specifically detailed by Texas law and you should seek the advice of your attorney during all steps of the process.



I swear, or affirm, that I have read this entire document and I understand its contents. *By my initials in the boxes in the margins, I specifically affirm that I understand the italicized points made in the text to the right of each of the boxes.*

\_\_\_\_\_  
Signature of Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Co-Guardian

\_\_\_\_\_  
Date

STATE OF TEXAS

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COUNTY OF WALKER

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This instrument was sworn or affirmed before me on  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of Court/Notary Public State of Texas

By my signature, I – the attorney for the person who has been or is seeking to be appointed guardian or co-guardian – certify that I have discussed with my client(s) the responsibilities of a guardian of the estate.

\_\_\_\_\_  
Signature of Attorney

SBN: \_\_\_\_\_