Guardian of the Estate: Court Instructions

Thank you for accepting appointment as the Guardian of the Estate of a minor or incapacitated individual (the Ward). The Probate Court has chosen to entrust you with the responsibility of managing the Ward's assets.

You are now 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 interests of the Ward, while also considering the interest of others who have a stake in or claim to the assets under your management. 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.

Your activities as Guardian are governed by Texas law and 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 the relevant law. Your attorney will help guide you with this task, and you should always consult with your attorney if you have any questions. These instructions have been prepared as a *supplement* to the information given to you by your attorney and are not a substitute for legal advice. In order to qualify as Guardian, you must:

1. File your Oath;
2. File your Bond. (By law, the bond must be given and approved within twenty (20) days of the date of the order granting letters of guardianship.)

Letters of Guardianship

Your authority to act on the Ward's behalf does not begin until you have taken your oath and 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 expire one (1) year and four (4) months after the date of issuance unless renewed. Letters can be renewed and reissued by the clerk of the Court *after* the Court approves the guardian's Annual Account. To order letters of guardianship, you can call the clerk's office at 409-882-7055 or pick of letters of guardianship from the clerk's office.

Time-sensitive requirements for you after you qualify as guardian of this 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.*

Many thanks to Judge Guy Hermann and the Travis County Probate Court, and Judge Claudia Laird, Montgomery County Court at Law No. 2, from both of whom this form is derived.

1. **Within thirty (30) days of the date you qualify,** your attorney, on your behalf, must file an Inventory, Appraisement, and List of Claims. Texas law requires that your attorney must review and sign this inventory. The inventory should reflect the fair market values of the assets *as of the date of your appointment* and must be verified by a sworn or affirmed affidavit executed by you. This inventory must contain a complete list of all the real estate located within the State of Texas and list all personal property, regardless of where it is located. If at any time during the administration of this estate you discover additional property, your attorney, on your behalf, must file a supplemental inventory reflecting the newly acquired assets. Texas Estates Code Section 1154.001.[1]

2. **Within thirty (30) days of the date you qualify,** your attorney, on your behalf, 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 still must account for all such expenditures in the Annual Account. (*See* "Spending guardianship funds" *on page 4 of this document*). Make sure to keep receipts for all purchases. Please be aware that you may be required to reimburse the estate for any improper expenditure. *See* Estates Code Section 1156.001-1156.004.

3. **Within 180 days of the date you qualify,** your attorney, on your behalf, 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 Section 1161.001-1161.005 of the Estates Code (see paragraph below).* Your attorney will 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, Sections 1161.002 & 1161.003 of the Estates Code allow a guardian to have estate assets invested according to Sections 1161.002 & 1161.003 of the Code without Court order. Sections 1161.002 & 1161.003 allow "safe harbor" investments such as obligations issued by the United States, tax-supported bonds of the State of Texas or certain bonds of political subdivision of the State of Texas, and federally insured bank accounts.

[11] These instructions at times refer to specific sections of the Texas Estates Code, which is the place where statutes governing Texas guardianship law are collected. We realize that most guardians will choose to rely on their attorneys' explanations of the statutes and the actions required by the statutes, rather than ever looking at the Estates Code—that is fine. However, we have included statutory references for those guardians who may sometimes want to look at the actual statutes. You can find a copy of the Texas Estates Code at the local law libraries, if any, or online at http://www.statutes.legis.state.tx.us/.

4. **<u>Each year</u> within sixty (60) days of the anniversary of the date you qualified as Guardian,** your attorney, on your behalf, must file a detailed Annual Account, attaching an affidavit in which you swear or affirm that the Annual Account is true and correct. Texas law requires that your attorney must review and sign this accounting. *Therefore, your attorney will need to get information from you for the Annual Account <u>before</u> the indicated deadline for filing that Annual Account. Consult with your attorney about what needs to be done for the Annual Account and when it needs to be done.* Failure to file an Annual Account may result in your removal as Guardian and may result in the assessment of fees against you individually and not the guardianship estate.

    - As part of 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 the Governmental entity to whom the taxes were paid.

    - 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 the status of the 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.)

5. **Claims procedures.** In Sections 1153.001-1157.108, the Estates Code outlines time-sensitive requirements for various notices and other actions that are part of the statutory process for Claims Procedures. These Court Instructions do not address any of these requirements. Your attorney will lead you through the statutory process for Claims Procedures.

Ongoing requirements for you as the guardian of this estate

1. **General powers and duties**. As Guardian of the Estate, 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 the authority to manage assets, it is your duty to take possession of all property belonging to the Ward *once you have qualified*. Estates Code Section 1151.152. 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 defend suits by or against the Ward. Estates Code Section 1151.101 & 1151.151.

2. **Accounts for guardianship funds**. Place all guardianship funds in one or more separate, insured 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 available, unless you have an approved Investment Plan that allows another investment. Make sure all accounts are fully insured and do not exceed the FDIC insurance limits.

3. **Spending guardianship funds**. 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. But 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.

    - Regardless of the purpose, *never spend any guardianship funds beyond your allowance* ***unless*** *you first obtain, through your attorney, a written order of this Court authorizing such expenditures*.

    - You may be subject to removal and held personally liable for any deficiencies if you spend an allowance for purposes not approved in the Court order setting up the allowance or if you spend other funds without Court approval.

    - Consult your attorney about the few instances when the law allows an expenditure without Court order. (You may pay your bond, pay *some* insurance, and pay *some* taxes without a Court order.)

4. **Non-cash assets (real or personal property).** Preserve, protect, and insure (if insurable) all non-cash assets of this guardianship.

    - *Your attorney, on your behalf, must obtain a written order of this Court before you attempt to sell, transfer, lease for more than one (1) 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.

5. **Recordkeeping.** Maintain an accurate record of all guardianship income and all expenditures of guardianship funds. Keep and organize all bank records and receipts for all purchases and expenditures. You will need all this information for your Annual Account.

6. **Parents who are guardians of the estate of their minor child.** Note that the 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 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. But no funds may be expended without *prior* Court approval, and a hearing usually will be necessary. *See* Estates Code Section 1156.051.

7. **Change of Address.** You must notify your attorney of any change in the mailing address of either you or the Ward, and your attorney should notify the Court. You may not move to another state or be absent from this state for more than three (3) months without Court permission.

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

When the guardianship is ready to be closed

A guardianship is ready to be closed when the Ward regains competency, dies, or reaches eighteen (18) years of age (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.

When the guardianship of an estate is ready to be closed, the first step is for your attorney, on your behalf, to file a Final Account. *See* Texas Estates Code Sections 1204.101 & 1204.102. Texas law requires that your attorney must review and sign this accounting. 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 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 entered 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 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 Estates Code Section 1204.106. The closing process for a guardianship of the estate is very complicated and specifically detailed by Texas law, and you should seek the advice of your attorney during all steps of the process.

Visits by Court Investigator or Court Visitor

The Court's goal is to have a Court Investigator or Court Visitor visit the Ward once a year to assess the Ward's physical condition & living conditions. At the present time, the Court's Visitor Program is being developed, therefore, it may take some time before this happens. Once the Court's Visitor Program is set up, the Court Investigator or court appointed visitor will call to schedule a visit with the Ward. He or she will make an informal visit, which will take about 30 minutes, and will then prepare a sworn report for the Court regarding the Ward's condition.

MANDY WHITE-ROGERS, Presiding Judge
Orange County Court at Law