

# Catoosa County Probate Court

# Guardianship

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## INTRODUCTION FROM COURT

You have been appointed by the Probate Court as a **GUARDIAN** of or for another person. The person over whom or over whose property you are guardian is referred to in the law and in this handbook as the **WARD**. The proceedings in the Court, as well as the property over which you serve as guardian, are referred to as the **ESTATE**.

This handbook has been designed as a helpful reference. It will briefly cover the general information about guardianships with which you are expected by the Court to become familiar. It will also provide certain information about the reporting requirements placed upon you by Georgia law, and it contains certain sample forms for you to review when considering these reporting requirements. It is prepared in what is hoped to be easily understood language, with as few "legal terms" as possible.

This handbook is **NOT** intended to be a complete or exhaustive restatement of the many laws governing guardianships in Georgia, nor is it intended to take the place of good legal advice from your attorney when appropriate. It is hoped that the information will give you the basic understanding necessary for you to comply with the legal requirements and limitations placed upon you, thereby avoiding problems or difficulties with the Court. However, the Court encourages you to confer with your **attorney** whenever you have questions or concerns about your obligations, **responsibilities**, duties, authority or liability, and, whenever possible, you should consult your attorney **BEFORE** taking any action about which you are concerned.

It is important for you to understand the relationship between you and the Court and its staff. The Judge of the Probate Court is an elected public official - a "public servant," but one with specific responsibilities. The Judge is **NOT** and must not become your legal advisor. The law requires the Judge to remain impartial, and there is a specific rule against the Judge discussing any aspect of any case which **is or may become** contested with any party to the case unless all interested parties are present. Therefore, you should not attempt to contact the Judge to "privately" discuss your case, and you should not be offended if you are informed that the Judge cannot discuss the matter with you outside a hearing.

The Judge's staff are employees of the Court who work for and at the direction of the Judge. It is their responsibility to process the volume of paperwork filed in the office and to attend to the administrative aspects of the operations of this office. They are here to serve you, and they will want to do so to the best of their abilities. However, they also may not serve as your legal advisors, and you should not expect them to perform legal or clerical services for you. It is **NOT** their responsibility or duty to complete any paperwork for you, and it is not their responsibility to make a legal determination and advise you on which proceeding may be the most appropriate or advisable for you or your circumstances.

You should understand that it is the responsibility of the Judge and staff of the Court to enforce all of the requirements of the guardianship laws and the rules of the Court upon **every** guardian. You have taken an oath as guardian to properly administer the estate and to comply with those laws and rules - in other words, to fulfill **your** responsibilities. The

Judge has also taken an oath to enforce the laws and to fulfill **his/her** responsibilities, and the Judge will seek to do so. The Judge did not **make** the laws but has the duty to **enforce** them. The Judge and staff all well understand that serving as a guardian for another person is not always an easy task. It is often really a **burden** upon the guardian, and it is not the intent or desire of the Court to make that burden any greater.

Finally, please understand that the Court monitors many guardianships, in addition to the many other Probate Court proceedings. The Judge and staff do try to maintain a certain familiarity with the Court files, and they often become very familiar with some files. However, everyone is best served when there is certainty about the subject of discussion. It will always be best for you to clearly identify yourself, the ward and the file (by Docket or Case No.) in any conversation or correspondence with the Court. It may become necessary for the Judge or staff member to pull the particular file for review to properly and fully discuss the file, and you might be asked to provide some information to "refresh the memory" when referring to earlier conversations with or correspondence from the Court.

It is suggested that, after having **read this handbook in its entirety**, you keep it with your guardianship records. A quick reference to this handbook may answer many questions which may arise from time to time during your service as guardian, and it will be important for you to be able to find it when needed.

The Court appreciates your willingness to serve in this capacity and looks forward to working with you for the benefit of the ward. Do call upon the staff of the Court if they may be of service to you.

Thank you.

## **GENERAL INFORMATION AND INSTRUCTIONS**

Guardianship is a **legal relationship** between the guardian and ward, much like that of an agent or attorney-in-fact, that is created by Order of a court with proper jurisdiction. In Georgia, the Probate Courts have exclusive jurisdiction over the appointment of guardians for minors and incapacitated adults. Guardianship may be created for the **person** of the ward, for the **property** of the ward, or for **both**. Guardianship of the person of a minor child does differ from **custody** of a minor child, which may be awarded only by Superior or Juvenile Courts, and a Probate Court is without authority to grant guardianship of the person of a minor child with a living parent to anyone other than the parent(s) without the consent of or notice to each living parent. The guardian of the person need not be the same person as the guardian of the property, although one person may certainly serve as both. There may be two or more guardians, who would be referred to as co-guardians.

When an Order has been issued appointing a guardian, **Letters of Guardianship** are issued by the Court to the person appointed. The Letters of Guardianship serve to evidence that the guardian has authority over the person or property (or both) of the ward. The guardian is first required to take and sign an **oath** that the guardian will comply with all of the requirements of Georgia law applicable to guardians.

In addition, every guardian of the property of another is required to post a surety **bond** with the Court, in such amount as may be set by the Court, to secure the faithful performance of the guardian's duties and responsibilities. The bond is, in effect, an insurance policy against any misappropriation or mismanagement of the ward's property by the guardian. Although

the bond may be personally endorsed by someone owning sufficient equity in real estate to cover the amount of the bond, most bonds are endorsed by commercial bonding companies. Non-commercial bonds are generally required in twice the amount of the bond, while corporate surety bonds may be in an amount equal to the bond amount. Probate Courts generally prefer, and often require, the use of corporate sureties on bonds. The premium for the bond is, as will also be shown under the section on "Commissions and Expenses," payable from the ward's estate as an expense of administration, and there is no requirement that the guardian bear this expense personally.

A guardian of the person or property of another owes a duty of undivided loyalty to the ward and must act in the **best interests** of the ward and the ward's property. Guardians should always avoid even the appearance of a conflict of interest in management of the ward's property and/or in decisions about the ward's person. Self-dealing (that is buying of property from or selling of property to the ward by the guardian) is inherently suspicious and must be closely scrutinized by the Court. It should, therefore, be avoided except in unusual circumstances. Additionally, any expenditure which appears to or does benefit another, especially the guardian, more than the ward will be subject to scrutiny by the Court.

## **GUARDIANS OF THE PERSON**

A guardian of the person of another has those rights and powers reasonably necessary to provide adequately for the support, care, education and well-being of the ward. A guardian of the person is much like the parent of a child who has both the authority and the responsibility of making decisions for the child. This may mean that a guardian must make a decision which is considered to be in the ward's best interest even if the ward voices an objection, much like a parent requiring a child to attend school or receive medical treatment. It is also the guardian's duty to assist the ward in improving and developing any talents, skills or abilities the ward may have and to help the ward gain and maintain self-confidence and as much independence as may be appropriate to each circumstance. It is also the guardian's responsibility to preserve and protect, to the extent possible under the circumstances, the dignity of the ward.

A guardian of the person is entitled to custody of the ward and may establish the ward's residence, consistent with the terms of any restrictions or directions from the Court. The guardian is required to make arrangements, from funds available from the ward's estate or other sources, to support the ward in the least restrictive environment, according to the needs and resources of the ward. The guardian may also participate in legal proceedings in the name of the ward and for the ward's benefit. A guardian must be reasonably accessible to and maintain regular contact with the ward, should be friendly, courteous and tactful toward the ward at all times, and must respect and protect the individual rights and dignity of the ward. The Court's order may limit or remove from the ward certain rights or may reserve to the ward certain rights, and the authority of the guardian will be governed by the Court's order. Unless otherwise directed by the Court, the guardian will succeed to the rights removed from the ward, except that a guardian may not exercise the right to vote if removed from the ward.

Guardians of the person are, unless otherwise directed by the Court, required to periodically file with the Court written reports on the ward's general condition, living circumstances, progress and development, and needs, and the guardian may also make recommendations to the Court concerning the ward or the ward's needs. These reports are called **Personal Status Reports** and are covered more fully under the section on "Reporting Requirements." It is also the guardian's responsibility to keep the Court fully informed on the whereabouts of

the guardian and ward, and **the guardian must report to the Court any change in the address and telephone number of the guardian and his ward.**

## **GUARDIANS OF THE PROPERTY**

A guardian of the property of another has the duty to exercise ordinary diligence in dealing with the ward's property and may be held liable for any loss resulting from a lack of such diligence. A guardian of the property has the duty to collect and preserve the assets of the ward. Except as limited by law or the Court's order, a guardian of the property has control and authority over all property (real, personal and intangible) of the ward and succeeds to all property and contract rights removed from and not reserved to the ward.

All funds and property of the ward must be maintained, preserved, expended and used for the benefit of the ward and those who may be legally dependent upon the ward. The ward's estate should be utilized to feed, clothe, house, educate and care for the ward and his lawful dependents in the standard to which the ward and his dependents are accustomed, to the extent of and as may be limited by the ward's resources. Utilization of the ward's estate for his dependents should be after taking into account all other income of or support for the dependents. Utilization of the ward's estate for his own benefit should take into account all income and support of the ward and the expected duration of the guardianship. While preservation of the ward's estate for his heirs at law should not be of primary concern for the guardian, preservation and utilization of the estate over the expected duration of the guardianship is important and should be given due consideration by the guardian. On the other hand, the guardian should **not** waste the assets of the estate or expend it exorbitantly or above the usual standard of the ward simply to avoid preservation for the heirs or those who may be beneficiaries of a will of the ward.

It is the duty and responsibility of the guardian of the property to properly manage and invest the ward's estate, and all funds of the estate must be properly invested so as to earn reasonable income for the ward. The guardian is required to invest funds of the estate in a manner approved by Georgia law as a "**legal investment**," unless otherwise authorized by law or court order; otherwise, the guardian may be held liable for any loss suffered by the ward or the ward's estate on account of any unauthorized investment. A guardian will not be held liable for any loss suffered in a legal investment, absent gross negligence or fraud. On the other hand, a guardian is given specific authority to maintain investments which were made by the ward prior to the appointment of the guardian.

Non-cash assets of the ward must also be properly managed and protected for the benefit of the ward. If an asset is reasonably capable of earning income, it must be dedicated to that purpose unless there is a compelling reason otherwise. Non-income-producing assets should be preserved and protected or liquidated (after proper authority is granted), as may be appropriate under the circumstances.

A guardian of the property does **NOT** have authority to sell, convey, transfer, mortgage, pledge or give away property of the ward **without an order** from the Court. The Court may, upon the application of the guardian and after appropriate notice is given as required by law, grant the guardian such authority if the proposed transaction is considered by the Court to be appropriate and proper. Generally, the assets of the ward are to be preserved for the ward's use and benefit, and sales of property of the ward are usually permitted only when necessary to provide for the care and support of the ward (and/or those dependent upon the ward) or when preservation of the asset is burdensome to the estate. The Court may, as appropriate, grant authority to the guardian to sell the asset at a public sale (a legal auction)

or at a private sale under a specific contract. Sales of perishable items or items which may rapidly decline in value may be authorized more quickly than other sales, and sales of listed or registered stocks may be authorized at published prices on a particular future date.

All property of the ward titled or registered in the name of the guardian must be titled or registered in the *fiduciary capacity* of the guardian (i.e., as a guardian) and not in the guardian's name alone. Typically, the title, account or deed will be registered as "John Doe, as Guardian of the property of Richard Roe," although any variation which clearly shows the fiduciary nature of the registration for the benefit of the named ward may be accepted and approved by the Court. Bank accounts should be especially so clearly designated, so as to avoid unintentional co-mingling of funds or attachment for debts of the guardian, and the ward's Social Security number should be provided to the Bank for the reporting of interest income and other matters to the Internal Revenue Service. Tangible items and personal property of the ward should be maintained and protected by the guardian and not be so co-mingled with personality of the guardian as to lose its identity as the ward's property. A guardian has no authority, absent the Court's approval, to use property of the ward in such a manner as to dissipate, depreciate, waste or consume it or otherwise use it for the guardian's own benefit.

A guardian of the property of another has the responsibility of filing, on behalf of the ward, all federal and state income tax returns which might be required from the ward. Ad valorem and intangibles tax returns in Georgia and any other states in which the ward has property also must be filed by the guardian of the property.

## **EMERGENCY GUARDIANS**

In situations or circumstances which pose an immediate danger to the ward or to the ward's estate, an emergency guardian may be appointed by the Court. Emergency guardians may do only those things which may be reasonably necessary to protect the ward or his estate from the described danger, and the powers and duties of the emergency guardian are generally specified in the Court's order. Unless an earlier termination date is set in the Court's order or unless the proceeding is converted to permanent guardianship proceedings, the emergency guardianship terminates in 45 days from the date of the order.

## **GUARDIANS OF INCAPACITATED ADULTS**

In Georgia, the Probate Courts may grant guardianship of the person and/or property of an adult resident of the state (or one located in this state) who, because of physical or mental illness or disability, detention by a foreign power, or other just cause, lacks sufficient understanding or capacity to make significant responsible decisions concerning his person (or is incapable of communicating those decisions) AND/OR is incapable of managing his estate or property which is likely to be wasted or dissipated unless proper management is provided.

The petition seeking guardianship of the person or property of an alleged incapacitated adult is filed either by two individuals having knowledge of the pertinent facts or by one such individual together with the affidavit of a physician or psychologist who has examined the proposed ward. Notice is to be given to the ward's spouse and all living adult children, if any. If there is no spouse or adult children, or the addresses are unknown, the notice is given to the two known next of kin or, if none, then to two known adult friends of the

proposed ward. Notice is, of course, also given to the proposed ward, who has a right to be represented by counsel. The Court will appoint an attorney for the ward if the ward does not employ counsel. An evaluation of the proposed ward is performed by a physician or psychologist, who must file a written report of the evaluation with the Court. Unless the petition is earlier dismissed by the Court, a final hearing is held and a decision made on the petition.

The Probate Court has the authority, if the petition is granted, to restrict or revoke certain rights or powers of the ward, including: the power to contract marriage; the power to make contracts; the power to consent to medical treatment; the power to establish a residence or place of abode; the power to bring or defend any action at law or equity (except an action related to guardianship) except through guardian ad litem; then power to buy, sell or otherwise dispose of real, personal or trust property; and the power to enter into any business or commercial transaction. Upon specific determination by the Court, the ward's right to vote and power to make a will may also be revoked, and the Court may, as appropriate to the circumstances of each case, revoke any other rights or privileges of the ward, including the privilege to operate a motor vehicle. Except for the right to vote, the power to contract marriage, and the power to make a will, and except to the extent otherwise limited by the Court's order, the guardian generally succeeds to the rights of the ward which have been revoked by the Court.

Guardianship may be granted for the **person** and/or over the **property** of the incapacitated adult, and the guardian of the person need not be the same person as the guardian of the property. The respective responsibilities of the guardian of the person and the guardian of the property were more fully explained under [General Information and Instructions](#).

While many, if not most, adult guardianships are permanent, they may be granted by the Court for a limited time. If the Court's order sets a time limit on the existence of the guardianship, it will terminate at the time set by the Court. The guardianship will also terminate, by operation of law, upon the death of the ward, EXCEPT that the guardian of the property is charged with the responsibility, as ex-officio administrator, to proceed to distribute the estate of an intestate (no will) deceased ward, and the proceedings will remain open for that purpose.

## **GUARDIANS OF PROPERTY OF MINORS**

In Georgia, the Probate Courts may grant guardianship of the property of minors. If a parent of the minor is in life, the parent(s) have a statutory priority of appointment. If both parents are living but are separated or divorced, the parent having legal custody has priority to be appointed guardian of the property of the minor. No third person may be named as guardian of the property of a minor with a living mother or father without the written consent of or notice to the living parent(s). A child 14 years of age or older may select his/her property guardian, and the Court must appoint the person so selected, unless the Court determines that the person selected is not an appropriate person to so serve.

A guardian of property of a minor has the same obligations with reference to management of the minor's estate as does a guardian of an adult. Guardians generally have authority to expend **income** in the estate for the benefit of the ward. However, if there is someone (a parent or parents) legally obligated to support the minor, the minor's estate may be used for the purpose of support and maintenance only after such obligation of support has been fully satisfied and to the extent of the inability of those so responsible to provide for all the necessities of the minor. In other words, a guardian may not use even the **income** from the

child's estate until the parental obligation of support has been satisfied. Some Courts will require an order granting authority to expend **income or principal** when there is someone legally obligated to support the minor. Any other income to or for the benefit of the minor (e.g. Social Security benefits payable to a representative payee other than the guardian; benefits from a trust for the benefit of the minor; etc.) should also be taken into account by the guardian before expenditure of the minor's funds.

Guardianship of the property of a minor terminates by law upon the minor's attaining the age of majority (presently age **18** in Georgia). As soon as reasonably practicable after the child's 18th birthday, the guardian is required to turn over to the ward all property of the minor then remaining in the hands of or under the control of the guardian. The guardian must file a final return and a Petition for Dismissal, to which will be attached the receipt from the former minor. NOTE: The guardian should reserve the funds to pay the costs of court and publication fees in connection with the final filings and publication of the notice.

Termination of the minor guardianship at the age of majority is required by law, even if the guardian believes the child is not sufficiently mature to properly manage the property to which he/she is entitled. Parents and other guardians are encouraged to use such guidance and influence as might be necessary or appropriate to aid the former minor in the proper investment and management of such property. If the former minor is incapacitated and considered by the guardian to be incapable of managing his/her estate after attaining the age of majority, the guardian may want to consider filing adult guardianship proceedings immediately after the child's 18th birthday and seek an order from the Court having jurisdiction over those proceedings to hold the minor-guardianship funds until the adult case may be heard.

## **REPORTING REQUIREMENTS**

Guardians are required to file certain periodic reports with the Court having jurisdiction over the proceedings. These reports are intended to provide the Court certain information for the Court to properly supervise the affairs of the ward and to supervise and monitor the guardian's performance of the lawful duties and responsibilities. Failure to comply with any of the reporting requirements can subject the guardian to citation to appear before the Court. The Court may assess costs against the guardian, may fine the guardian, may remove the guardian, or may take such other actions as may be appropriate to the circumstances of the case.

## **PERSONAL STATUS REPORTS**

Guardians of the person are required to file reports with the Court which disclose the status, condition, needs and circumstances of the ward. The reports (called "Personal Status Reports" - PSR) inform the Court where the ward is located, how the ward is doing generally, how the ward's needs are being met, and whether there has been any change in the condition or status of the ward which might warrant the Court's intervention or a change in the **guardianship order**. The first PSR is due from the guardian **within four months** of the date of appointment of the guardian. Thereafter, PSRs are filed **annually**, within two months of the anniversary of the date of appointment.

## **INVENTORIES**

Guardians of the property are required to file with the Court, **within four months** from the date of appointment, an inventory of **all** assets in the estate of the ward. The Inventory must sufficiently itemize the assets and set forth a reasonable value thereof to fully disclose of record the property of the ward over which the guardian has control or authority. The Inventory may include categories, such as "household furniture", as long as the listing is reasonably accurate as to description and value. Antiques, collectibles, and items of significant value should always be listed separately. If the interest of the ward in the property is less than full title, the limitation should be reflected in the description and value (e.g. a one-half interest in a residence worth a total of \$80,000 would be so reflected and the value of the ward's interest would be shown as \$40,000). Inventories are designed to disclose to the Court and anyone interested in the estate the full value of the estate, which is often not known or only estimated at the time the proceedings are filed, and the guardian is given four months to make the complete and more accurate determination. Inventories also allow the Court to determine the sufficiency of the bond posted by the guardian.

## **ANNUAL RETURNS (ACCOUNTINGS)**

Guardians of the property are also required **annually** to file returns with the Court within 60 days of the anniversary of the date of qualification. The annual returns render an **accounting** to the Court and anyone interested in the estate of the actions of the guardian by itemizing all receipts and expenditures in the guardianship estate. The Court is required by law to audit the returns of guardians, and guardians are required to maintain complete and accurate records of all of their actions as guardians. Guardians are required to maintain the records and vouchers in support of every return for not less than 30 days (60 days for guardians of Veterans) after each return is filed and may be required to provide same to the Court for its use in reviewing or auditing the return. Since guardians are also required to file income tax returns for their wards, guardians should maintain all records for not less than three years, and many attorneys recommend maintaining all records until after the guardianship has been terminated and the applicable statute of limitations on the guardian's liability has expired. Upon the termination of the guardianship or upon the appointment of a successor guardian, the first guardian will be required to file a final return, which will evidence final disposition of the remaining property as required by law.

## **TAX RETURNS**

Although not filed with the Probate Court, a guardian of the property has the legal responsibility of filing income, ad valorem and intangibles tax returns for the ward. The Internal Revenue Code contains provisions for the assessment of certain penalties against the guardian **personally** for failure to file returns under certain circumstances. In addition, there are usually penalties and/or interest payable for delinquent returns (including ad valorem and intangibles returns), and such penalties or interest may be assessed by a court against the guardian personally if same result from unexcused or inexcusable neglect of the guardian.



## **PETITIONS FOR DISMISSION**

Once a guardian has been appointed by a Court of proper jurisdiction, unless the guardianship was for a limited time and the limitation was set forth in the original order, the guardianship continues UNTIL terminated by the same court. When a minor ward attains the age of majority, or any ward (minor or incapacitated) dies, or an incapacitated ward regains the ability to manage his own affairs, the guardianship DOES **NOT** automatically terminate. The guardian must file a final return and petition the court to be dismissed as guardian. The final return and Petition for Dismission will show to the court that the guardian has completed his service in full compliance with the law and has turned over all remaining property to the now adult minor, to the personal representative (administrator or executor) of the estate of the deceased ward, or to the ward who has been declared by the court to no longer be incapacitated. As indicated earlier, the guardian of a ward who dies intestate (without a Will) becomes the ex-officio administrator of the estate and must conclude the affairs of the estate before being dismissed, unless a personal representative for the decedent's estate is appointed by the court.

## **APPLICATIONS FOR LEAVE TO SELL**

Except as explained below, guardians do **NOT** have authority to sell or mortgage any property of the ward without authority from the court. Such authority is sought by the filing of an application for leave to sell (or encumber), describing the property to be sold (or encumbered), the interest of the ward in the property and the type of sale (or encumbrance) proposed. Depending upon the property or the circumstances, a guardian may seek leave to sell at a public sale (a legal auction) or a private sale (pursuant to a proposed, actual contract). Guardians may be authorized by the court to sell perishable items, property which depreciates rapidly or property which is overly burdensome to maintain, more quickly than more durable assets. Guardians are authorized to sell certain types of stocks and bonds without court order as provided in the Georgia statutes.

## **APPLICATIONS FOR LEAVE TO ENCROACH**

Before expending all or any portion of the principal or corpus of a guardianship estate, the guardian must be granted specific authority by the court. An application for leave to do so is filed, setting forth the proposed encroachment and explaining the need or advisability of doing so. The court reviews the application and may require a hearing, at which evidence in support of the application will be presented, before determining whether same will be granted or denied. Additionally, if a guardian has been restricted from expending income in a particular case, leave to encroach must be granted before the guardian is authorized to exceed whatever limitation may be have been set by the court.

## **COMMISSIONS AND EXPENSES**

Guardians are allowed to recover and reimburse themselves for certain expenses incurred in connection with their services as guardians. Guardians are also entitled to receive from

the ward's guardianship estate certain commissions as compensation for the guardian's service.

Out-of-pocket expenses reasonably incurred by a guardian in the performance of the guardian's duties are reimbursable to the guardian from the ward's estate. To be reimbursable, the expenses must be reasonable in amount (i.e., not excessive) and must have been incurred by the guardian as a consequence of performance of some duty the guardian owes to the ward (i.e., related specifically to the guardian's duties and responsibilities to the ward *as guardian*, as opposed to some other relationship). Reimbursable expenses do NOT include expenses incurred by a guardian in carrying out other duties or matters related to natural affection (e.g., a son who is also his mother's guardian is not entitled to reimbursement of expenses incurred in a familial visit or for presents given his mother; i.e., those things for which there was no reimbursement before the guardianship do not become reimbursable under guardianship, unless done specifically in connection with the guardianship petition itself). Reimbursable expenses can include transportation costs, lodging and meals during out-of-town travel (when appropriate), and other costs, losses and expenses actually incurred by the guardian.

The commissions payable to guardians of the property are computed in accordance with allowances set by law. Property guardians are entitled to (though not required to take) commissions equal to 2.5% of all funds received and 2.5% of all funds paid out, plus 10% of all interest earned. The commission on interest earned is in lieu of, and **not in addition to**, the standard commission on receipts. In addition, property guardians are entitled to a commission equal to .5% of the market value, determined as of December 31st of each year, of the property held in the estate. Extra compensation and compensation for delivery of property in kind may also be allowed by the Court upon application by the guardian.

Guardians who fail or refuse, without just cause, to file returns with the Court within the time set by law forfeit the right to commissions for the year or period covered by the return. Guardians who are removed by the Court for waste or gross mismanagement are not entitled to receive commissions.

## **SAMPLE FORMS**

The following forms are provided as samples of the various reports and returns required of guardians. The forms have been completed as examples of the type of entries which might be made and to illustrate where certain information is properly provided. The entries on the sample forms are fictitious and for illustrative purposes only.

Personal Status Reports Pages 22 through 24. By completing the information requested on the form, a personal guardian will provide the Court adequate information about the ward for the Court to ascertain how the ward is doing, where the ward is living, how the ward's needs are being met, and whether there are unmet needs of the ward.

Inventory Pages 25 through 26. An inventory will list and itemize for the Court all property owned by the ward or in which the ward has an interest over which the property guardian now has actual control or the duty to control. The initial deposit into the guardianship

account(s) are verified by the banking institution(s) where the funds are deposited and can confirm the proper title of the account(s). Inventories also allow the Court to determine the sufficiency of the guardian's bond.

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Annual Returns Pages 27 through 31. An accounting, on an annual basis, discloses to the Court and all having a proper interest in the ward's affairs the receipts, disbursements and all other financial transactions of the guardian for the period covered by the return. The first return of a guardian will always have a zero beginning balance and will show the initial receipt of all funds and property of the ward coming under the control of the guardian. The final return of a guardian will always have a zero ending balance and will show the final payout of all funds and property last under the control of the guardian. Annual returns after the first return will show the ending balance of the last previous return as the beginning balance of the next return. Ending balances and interest earned during the period are verified by the banking institution(s).

Petition for Leave to Encroach Pages 32 through 33. A petition for leave to encroach explains the need of the guardian to expend any amount which exceeds the ward's current income, discloses the amount requested, discloses the amount of available funds, and seeks the Court's approval of the requested expenditure. A petition may request an on-going or continuing encroachment, when appropriate.

Application of Guardian for Letters of Dismission (Petition for Dismission) Pages 34 through 37. The petition for dismission shows to the Court that the guardian has completed the performance of all duties as guardian and that all remaining funds and property have been surrendered to the ward, to a successor guardian or to the personal representative of the estate of a deceased ward. If dismission is sought because all funds and property have been turned over to a successor guardian appointed by a court of proper jurisdiction, the Acknowledgment and receipt on page 3. would be modified accordingly.