

DUTIES,
RESPONSIBILITIES, AND
ETHICS OF THE
GUARDIAN;
PREPARATION OF
REPORTS

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TIPS ON MARSHALING THE INCAPACITATED PERSON'S BANK ACCOUNTS AND ESTABLISHING AND MAINTAINING THE GUARDIANSHIP BANK ACCOUNTS

After the Order and Judgment appointing the Guardian has been signed and the Guardian of the Property has qualified (i.e., the Guardian of the Property has filed with the County Clerk the oath and designation of clerk and the Guardian of the Property's bond, if a bond is required, and the County Clerk has issued the Commission to Guardian of the Property), the Guardian of the Property must turn his/her attention to managing the assets of the Incapacitated Person (the "IP"). The Guardian of the Property must review carefully the Order and Judgment appointing the Guardian so that the Guardian of the Property will know the extent of the Guardian of the Property's authority with respect to the IP's assets.¹

Preliminary Steps for Locating the IP's Bank Accounts.

The Guardian of the Property may consult several sources in order to locate the IP's bank accounts.

- Review the Petition filed with the Court in the Article 81 guardianship proceeding and other documents filed in support of the Petition.
- Review the Court Evaluator's Report(s).
- Review the IP's mail, including, but not limited to, the IP's bank statements and

¹ The Guardian of the Property will need to review the Order and Judgment from time to time to re-familiarize himself or herself with the powers granted to the Guardian of the Property.

other financial documents.

- Review tax returns filed by the IP for previous tax years.
- Review 1099s for previous tax years.

After the Guardian of the Property learns where bank accounts of the IP are maintained, the Guardian of the Property then can contact the banking institutions in which the Guardian of the Property believes that assets of the IP are maintained.

What Does Marshaling Assets Maintained in Bank Accounts Held in the IP's Name Involve?

One of the duties that the Guardian of the Property is charged with is marshaling the assets of the IP, including bank accounts of the IP. Marshaling the assets of the IP means collecting the assets of the IP and depositing those assets in accounts established and maintained for the guardianship.

The Guardian of the Property must contact the bank(s) in which assets of the IP are known to be maintained or believed to be maintained. The Guardian of the Property should write a letter addressed to the bank(s) inquiring about the assets maintained in the bank account(s). At a minimum, the Guardian of the Property's letter to the bank(s) should:

- Enclose a certified copy of the Commission to Guardian of the Property.²

Note: The Order appointing the Guardian states that all persons are directed and commanded to deliver to the Guardian of the Property, upon demand and presentation of a certified copy of the Commission, all property of the IP, of every kind and nature

² The Guardian of the Property may obtain certified copies of the Commission to Guardian of the Property from the Office of the County Clerk of the County in which the Order and Judgment appointing the guardian was entered. Certified copies cost eight dollars (\$8.00) each.

which may be in their possession, custody or under their control.

- Request the account titles and account numbers of all accounts maintained in the name of the IP or for the IP's benefit, including, but not limited to, joint accounts and trust accounts.

Note: Even if you believe that you know all of the accounts that the IP maintained at the bank, you may discover that there were some accounts about which you did not know.

- Request the balances remaining in all accounts maintained in the name of the IP or for the IP's benefit, including, but not limited to, joint accounts and trust accounts.
- Ask whether there is a safe deposit box maintained in the name of the IP or for the IP's benefit.

Note: Many times the Guardian of the Property discovers the existence of previously unknown safe deposit boxes.

- Request transcripts of bank transactions that occurred from at least six (6) to twelve (12) months preceding the commencement of the guardianship proceeding to the present for all accounts maintained in the name of the IP or for the IP's benefit.

Note: By obtaining this information the Guardian of the Property can trace what has happened to the IP's assets during the time that the IP is believed to have been incapacitated. Large withdrawals that occurred while the IP is believed to have been incapacitated may lead the Guardian of the Property to discover thefts of the IP's funds.

- Inquire whether there are any inactive accounts, and request the bank to furnish the Guardian of the Property with information regarding the inactive accounts.

including the date on which the bank turned over the assets to the New York State Office of Unclaimed Funds..

- Inquire about accounts that were closed six (6) to twelve (12) months preceding the commencement of the guardianship proceeding, and request the bank to furnish the Guardian of the Property with a transcript of any transactions that occurred during the twelve (12) months preceding the date of the closing of any such accounts.
- Ask what documents the bank requires of the Guardian of the Property to permit the Guardian of the Property to close the IP's accounts.

Note: Banks generally require the Guardian of the Property to sign withdrawal slips. Banks sometimes request signature guarantees. However, it will be difficult to obtain a signature guarantee since banks provide signature guarantees only with respect to stocks and bonds. The Guardian of the Property can obtain a letter from a bank with which the Guardian transacts the Guardian's personal business, stating that although the bank guarantees signatures only with respect to stocks and bonds, the bank knows that the signature at the bottom of the letter is the Guardian's signature. (The Guardian's bank's letter would include a space at the bottom for the Guardian's signature; the Guardian, of course, would sign the Guardian's bank's letter in the designated space in the presence of a bank representative.) Banks requesting signature guarantees from Guardians have accepted such a letter from the Guardian's bank.

After the bank provides the Guardian of the Property with the information regarding the

IP's accounts and the Guardian of the Property has provided the bank with the documents that the bank requires from the Guardian of the Property to close the IP's accounts, the Guardian of the Property either should instruct the bank to deliver to the Guardian of the Property a bank check made payable to "_____, as Guardian of the Property of _____" in the sum(s) of the balance(s) remaining in the IP's account(s) or instruct the bank to transfer the balance(s) remaining in the IP's account(s) to a new account established for the guardianship.

Note: *Do not maintain the guardianship funds in the same account as the one previously held by the IP. Close the IP's account, and open a new account for the guardianship.*

Caveat: The Guardian of the Property must consult the Order appointing Guardian with respect to the Guardian of the Property's authority to marshal joint accounts and totten trust accounts (in trust for or I/T/F accounts). Banks will not release to the Guardian of the Property the funds that are in joint accounts and I/T/F accounts without a court order stating that the Guardian of the Property may marshal such accounts.³ Even when there is a Court Order authorizing the Guardian of the Property to marshal joint accounts, banks may not release all of the funds in the joint accounts to the Guardian of the Property. Under New York law, it is presumed that each joint account holder owns one-half of the funds in the joint account. Assets held in an account that is a joint account or an I/T/F account should be used last and in proportion to assets held in other such accounts. When

³ If the Order appointing Guardian does not grant to the Guardian of the Property authority to marshal joint accounts and I/T/F accounts, the Guardian of the Property will have to make an application to the Court for authority to marshal such accounts.

marshaling I/T/F accounts, deposit the funds into a bank account maintained in the name of "_____, as Guardian of the Property of _____, I/T/F _____".

Establishing Bank Accounts for the Guardianship of the Property.

All guardianship bank accounts should be opened in the name of "_____, as Guardian of the Property of _____", or as the Order appointing the Guardian of the Property otherwise directs.

The Guardian of the Property must open a bank account for the guardianship and must deposit the IP's funds into the guardianship account. If the IP has substantial assets, the Guardian of the Property should deposit a portion of the IP's assets into at least one savings account. All bank accounts opened for the guardianship must be opened in the name of the Guardian of the Property as the Guardian of the Property for the IP.

Some banks have difficulty opening guardianship accounts. Some bank employees will tell the Guardian of the Property that an incapacitated person is the same as an incompetent person and that the title of the account must include the word "incompetent". That information is erroneous.

The IP's social security number is the social security number that is to be used in opening a guardianship bank account. It is the IP's funds, not the Guardian of the Property's funds, and the Guardian of the Property's social security number should not be used in connection with the IP's funds.

Note: Banks will ask the Guardian of the Property to provide the Guardian of the Property's social security number and other personal information. Banks require this information in order to comply with the United States Patriot Act of 2001. Confirm that

the bank is requiring this information only for informational purposes, that the bank will not identify the Guardian of the Property as the owner of the funds in the guardianship account, and that the bank will not report interest earned on the guardianship account under the Guardian of the Property's social security number.

The Guardian of the Property must not commingle his or her assets with the IP's assets.

Note: Do not deposit your funds into the guardianship account. Do not deposit the IP's funds into your personal accounts. Deposit the IP's funds into guardianship accounts.

The Guardian of the Property *must not* maintain for the guardianship in any one bank more than the maximum amount that the Federal Deposit Insurance Corporation (FDIC) insures.

Note: Prior to the financial crisis in 2008, the Federal Deposit Insurance Corporation (FDIC) insured only up to one hundred thousand dollars (\$100,000.00) of funds deposited into a bank by a depositor. In 2008, the FDIC-insured amount was increased to two hundred fifty thousand dollars (\$250,000.00) per depositor; this increased FDIC-insured amount has been extended until December 31, 2013 for most bank deposit accounts; after December 31, 2013, it is anticipated that the FDIC-insured sum will be decreased to the original sum of one hundred thousand dollars (\$100,000.00).

Maintaining Guardianship Bank Accounts and Retaining Records.

The Guardian of the Property must be vigilant with respect to the IP's assets and must maintain good records. The Guardian of the Property, therefore, should:

- Review bank statements promptly. The Guardian of the Property must make sure that the bank has credited the guardianship account with all deposits made, that the checks that the Guardian of the Property wrote have been cashed for the amounts for which the checks were written, and that there have been no unauthorized debits from the account. If there is any discrepancy, immediately contact the bank to rectify the discrepancy.

Note: The Guardian of the Property must review bank statements for the guardianship accounts immediately to insure that the bank statements do not contain errors. Do not wait for months to review bank statements for the guardianship accounts. Such delay could adversely affect the IP's property.

- Retain records of all transactions with respect to the guardianship accounts. The Guardian of the Property should make copies of all checks deposited into the guardianship accounts and all checks written on the guardianship accounts, and retain those copies. When depositing items into the guardianship accounts, it is a good practice for the Guardian of the Property to write on the deposit slip the source of the deposit. For example, if you are making a deposit in October, 2005 of the IP's social security benefit check for September, 2005, write on the deposit slip "Sept., 2005 social security".
- Use checks to transact business on behalf of the IP. If it is necessary to obtain cash for certain transactions, write a check payable to "_____, as Guardian

of the Property of _____", write in the memo section of the check what the money is for (e.g. "petty cash for laundry"), and cash the check at the bank.

- **DO NOT USE AUTOMATIC TELLER MACHINES (ATMs).**
- **YOU ARE NOT TO USE THE IP'S FUNDS FOR YOUR OWN PERSONAL TRANSACTIONS.**
- **Keep financial registers of the checks written on the guardianship accounts, and deposits into, and withdrawals from, the guardianship accounts. You may use the registers provided by the bank. You also may use computer software to record transactions on the account, e.g. Quicken, Quickbooks, or other accounting computer software.**
 - **If you use computer software, the preparation of your annual accounting will take less time and will be easier to prepare. If you use an accountant to prepare your annual accounting, the fee charged by the accountant likely will be less than it would be if you merely provided to the accountant handwritten records and deposit slips and withdrawal slips.**

Note: With respect to preparation of the Guardian of the Property's annual accounting, note that not every deposit into the guardianship account is income, and not every withdrawal from the guardianship account is a disbursement.

Example - On October 2, 2005, the Guardian of the Property withdrew \$5,000 from the guardianship account maintained at Bank A and deposited that sum into a guardianship account maintained at Bank B. The withdrawal from Bank A is not a disbursement, and the deposit into Bank B is not income. The Guardian of the Property merely has changed the form/location of the

asset.

- Review the mail received on behalf of the IP, including, but not limited to, mail relating to the IP's assets.

Note: Do not leave the IP's mail unopened for long periods of time.

Immediately open and review the mail.

- Review mail sent to the IP before the Guardian of the Property was appointed so that the Guardian will know what has transpired with respect to the IP's financial affairs.
- Maintain the guardianship records in an organized fashion. Keep records in folders or expanding file organizers that are appropriately labeled.

Keep all documents relating to the IP's finances, including, but not limited to, bank and other financial statements, canceled checks, deposit and withdrawal slips, and bills. Do not throw away documents relating to the IP's finances. After all, not only is it not your property, but the Court and/or the Court Examiner may require you to produce the documents for their review.

GUARDIAN OF THE PERSON

I. ESSENTIAL CONCEPTS THAT WILL ASSIST YOU IN CARRYING OUT YOUR DUTIES AS GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON.

1. Know and understand the contents of the Order appointing you as guardian of the person.
2. Read the reports of the Court Evaluator submitted in the guardianship proceeding. Pay particular attention to the recommendations that the Court Evaluator makes. Read and understand the discharge plan.
3. Know what the law states are the duties of a guardian of the person.
4. Know what the law states are the powers of a guardian of the person.
5. Always keep in mind that as the guardian of the person, you are to exercise your duties in a manner that is the least restrictive form of intervention possible in order to give the incapacitated person as much say-so, freedom, and independence as possible. Always keep in mind when carrying out your duties that you are to:
 - (1) Take into account the wishes, preferences, and desires of the incapacitated person.
 - (2) Afford the incapacitated person the greatest degree of independence, freedom, self determination and participation in making decisions that will affect the incapacitated person's life. Ment. Hyg. L. § 81.01.
 - (3) Obtain professional assistance (geriatric manager,

psychologist, therapists, and geriatric physician).

II. Duties of Guardian of the Person, Ment. Hyg. L. § 81.20

1. Exercise only those powers set forth in the order of appointment or such order, as amended.
2. Exercise the utmost care and diligence when performing your duties and tasks as guardian of the person.
3. Exhibit the utmost degree of trust, loyalty, and fidelity to the incapacitated person and in connection with performing your duties as guardian of the person.
4. File initial and annual reports.
5. Afford the incapacitated person the greatest amount of independence and self-determination with respect to personal needs in light of that person's functional level, understanding and appreciation of that person's functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living.
6. Visit the incapacitated person at least four (4) times per year. Make detailed notes of what you observe, what you should follow-up on, and any discussions that you have with the home health care attendants.

III. Powers of Guardian of the Person, Ment. Hyg. L. § 81.22

1. Determine who should provide care and assistance to the incapacitated person.
2. Make decisions regarding the social environment and other social aspects of the incapacitated person's life.
3. Determine whether the incapacitated person will travel and determine the travel plans of the incapacitated person.
4. Determine whether the incapacitated person should continue to drive and possess a driver's license.
5. Authorize access to, and release of, confidential, medical and

health information.

6. Make decisions regarding education.
7. Apply for government and other benefits.
8. Consent to and refuse generally accepted, routine or major medical and dental treatment in accordance with the wishes of the incapacitated person, the order appointing the guardian of the person, the best interests of the incapacitated person, the dignity and uniqueness of the incapacitated person, the preservation of the person's life, restoration of health, relief of suffering, and subject to Mental Hyg. Law § 81.29 (e).
 - a. If the incapacitated person has a living will, the guardian of the person must adhere to the provisions of the living will, provided that the Court has not ruled that the living will was executed by the incapacitated person when the incapacitated person did not have capacity or the Court has not otherwise vacated the living will. The living will is an expression of the wishes of the incapacitated person.
 - b. If the incapacitated has a health care proxy that remains in effect, health care decisions must be made by the health care agent.
9. Choose the place of abode.
 - a. If the guardian of the person wishes to remove the incapacitated person to another state, the guardian of the person must make an application to the Court and obtain an order from the Court authorizing the guardian of the person to remove the incapacitated person to another state.
 - b. Choosing the place of abode does not include placing the incapacitated person in a nursing home.
 - c. If there is no order permitting the guardian of the person to place the incapacitated person in a nursing home, the guardian of the person must make an application to the Court, requesting the Court to authorize the guardian of the person to place the incapacitated person in a nursing home.
 - d. The guardian of the person does not have the authority to place an incapacitated person in a mental facility or a

chemical dependence facility (detox) for examination or treatment. (See Article 9 of the Mental Hygiene Law.)

- e. In order to place an incapacitated person in a mental facility or a chemical dependence facility (detox), the guardian of the person must make an application to the Court. The Court must conduct a *Rivers v. Katz* hearing to arrive at its determination.
10. A guardian of the person does not have the authority to consent to withholding or withdrawal of life sustaining treatment, including artificial nutrition and hydration.
- a. If the wishes of the incapacitated person are not expressed in a living will or health care proxy, the guardian of person must make an application to the Court to determine whether the guardian of the person has the authority to make decisions to consent to withholding or withdrawal of life sustaining treatment. The guardian of the person does not have the authority to consent to a do not resuscitate order unless such authority is specifically granted in an order of the Court.
 - b. The statute specifically states that the Court has the power to grant authority to make decisions regarding life sustaining treatment for the incapacitated person.
 - c. The guardian of the person also does not have the authority to consent to providing life sustaining treatment without an order of the Court. Therefore, the guardian of the person does not have the authority to consent to the administration of a tube for hydration or feeding.
11. A guardian of the person does not have the authority to vacate, void, or otherwise disregard a health care proxy, living will, or power of attorney. Only the Court has the authority to vacate a health care proxy, living will, or power of attorney.

IV. Provide the Best Quality of Life:

- A. Have the appropriate medical person to evaluate the incapacitated person.

- B. Develop a plan with the assistance of a geriatric manager, medical professionals, or psychiatric professionals.
- C. Supervise the health care professionals that you have hired. Request and obtain written reports from the geriatric manager. Request oral reports on a weekly or bi-weekly basis from home health care attendants.
- D. Develop a plan whereby the home health care attendants are providing standardized written reports daily. A visiting nurse or geriatric manager will assist you in creating the appropriate document to be completed daily by each shift of home health care attendants.
- E. If the incapacitated person is in the hospital or nursing home facility, talk to physicians to ascertain the prognosis in addition to the diagnosis.
- F. Talk to social workers to ascertain what types of therapy the incapacitated person should be receiving in the nursing home or at home.
- G. Do not be afraid to get a second opinion – an opinion outside of the institutional setting. For example, bring in your own geriatric physician, your geriatric nurse or geriatric manager for a consultation to advise you.
- H. Attend planned care meetings and ask plenty of questions. Understand the therapy. Many nursing homes cease to give therapy after a while. Be alert to this occurrence and question it. Insist upon continuation of therapy.
- I. Consider carefully the type of assistance the person will need. For example, what type of visiting nurse, how frequently the visiting nurse should visit.
 - (1) Geriatric nurse
 - (2) Therapists
 - (3) Type of home health care attendants, use an agency.
- J. If the incapacitated person refuses therapy, you cannot force it upon her. However, there may be other beneficial things that you can do.
 - 1. Consider retaining occupational therapists, physical therapists, music therapists and other types of therapists.
 - 2. Consider asking church members or members of the synagogue to visit the incapacitated person on a regular basis.
 - 3. Hire high school students to read to the incapacitated person or to

serve as a companion to the incapacitated person.

4. Hire companions to spend time with the incapacitated person, take the incapacitated person to museums, the theater, the opera, nightclubs, and other entertainment events.

K. Be very alert to the medication that is prescribed and administered. Ask the physician to explain the reason for each medication that not only is prescribed but that is administered.

1. In some institutions, it appears that drugs such as Haldol and Activan are prescribed without thought. These drugs make the person lethargic and the person will appear to be out of it or depressed after taking these drugs. These drugs are sometimes administered to keep the patient quiet, so that the patient will not be any trouble to the staff. The buzz words are it was prescribed because the patient was "agitated", "not "compliant". Not all agitation requires medication. If you hear these buzz words, diligently question the physician. If the physician persists that these drugs are needed, this is another instance when you may want a second opinion.
2. Make sure that you understand the explanations that are being given to you. The law requires you to file a ninety-day report and an annual report. The annual report is to set forth, among other things, (1) the nature and type of care the incapacitated person is receiving, including medications; (2) how long it is expected that the person will receive the type of care and medication; (3) the activities of daily living that the person is performing; (4) type and nature of therapy that the person is receiving, how long it is expected the person will receive it and why the person is receiving the particular therapy; the entertainment activities that the person participates in.
3. Physicians, psychologists, nurse clinicians, social workers, and others that have evaluated or examined the incapacitated person are required to give a written statement that is to be included in the annual report. Ment. Hyg. L. § 81.31.
4. Statements by physicians, psychologists, nurse clinicians, social workers, and others that have evaluated or examined the incapacitated person are to be dated within three (3) months prior to filing the annual report.
5. If there are any circumstances that you have encountered that

cause you to believe that the order should be modified to grant to you, as guardian of the person, additional powers, include in the annual report, what modification to the order you will seek and why. Mental Hyg. Law § 81.31 (e). If you include in the annual report modifications that you believe should be made to the order, Mental Hyg. Law § 81.31 (e) requires within ten (10) days of the filing of the annual report, on notice to those entitled to notice, that the guardian make an application to the Court requesting the Court to modify the order to include those additional and/or expanded powers set forth in the annual report.

V. The Annual Report

1. **Ment. Hyg. L. § 81.31 requires you to set forth:**
 - a. **major changes in physical and mental condition of the incapacitated person;**
 - b. **date on which the incapacitated person was last examined by physician;**
 - c. **statement regarding your required 4 visits a year;**
 - d. **whether the current residential setting continues to be suitable and appropriate to address the needs of the incapacitated person;**
 - e. **resumé of medical treatment being administered to incapacitated person;**
 - f. **future plans for medical and dental treatment;**
 - g. **statement concerning social environment and condition of incapacitated person; and**
 - h. **statement by physicians, psychologist, nurse clinician, or social worker, or other person that has evaluated or examined the incapacitated person within the three months prior to the filing of the report regarding an evaluation of the incapacitated person's condition and the current functional level of the incapacitated person.**

VI. Confidential Records.

- A. You have the right to disclose medical and confidential records. However, you do not have the right to disclose HIV records. Be careful of why people are asking you to disclose.**

VII. Major Medical Treatment. Ment. Hyg. L. § 81.03(l)

- A. Authority to consent to or refuse Major Medical Treatment in accordance with the patient's wishes. This means that if the incapacitated person does not consent, you cannot violate the civil rights of the incapacitated person by forcing treatment upon that person against his/her consent. Ment. Hyg. L. § 81.22(a).**

- 1. Major medical treatment includes medical, surgical or diagnostic intervention or procedure where a general anesthetic is used, or which involves any significant risk or any significant invasion of bodily integrity or treatment which involves the administration of psychotropic medication or electroconvulsive therapy. Mental Hyg. Law § 81.03 (l).**
- 2. Even if the order gives to the guardian of the person the authority to make major medical decisions for the person, if those decisions are against the wishes of the incapacitated person or if the incapacitated person refuses treatment, the guardian of the person cannot force the incapacitated to receive treatment against her/his will unless a Court order is obtained authorizing such treatment against that person's will.**
- 3. Mental Hygiene Law specifically states that no guardian has the right to involuntary admit an incapacitated person to a mental hygiene facility or to an alcoholic facility. Ment. Hyg. L. § 81.22(b)(1).**
- 4. A guardian of the person does not have the legal authority to involuntary confine or hospitalize a mentally incapacitated person in a psychiatric facility or drug or alcohol abuse treatment facility unless there is an order that specifically authorizes involuntary confinement or hospitalization of the incapacitated person. Most orders appointing a guardian of the person will not grant such authority. More than likely, the guardian of the person will have to seek another court order. That process will involve explaining the circumstances to the Court, why involuntary confinement or**

hospitalization in a psychiatric facility or drug or alcohol abuse treatment facility is necessary. In addition, the Court must be governed by Article 9 of the Mental Hygiene Law for such requests, not Article 81 of the Mental Hygiene Law.

B. Life Sustaining Treatment

1. Unless the order appointing the guardian of the person specifically states that the guardian of the person has the power to make decisions regarding life sustaining treatment, the guardian of the person does not have any such authority. An individual, however, may have such authority under the Public Health Law, as a parent, spouse, or health care agent. (Remember unless the Court has voided a health care proxy, the health care proxy remains in effect even after the appointment of a guardian of the person.)
2. Prior to the Court including in an order any such authority to make life-sustaining treatment decisions, the Court must make a finding, based upon clear and convincing evidence, that the incapacitated person would want the withholding of life sustaining treatment. Therefore, documentary evidence in which the incapacitated person has expressed his/her wishes (Living Will, Health Care Proxy), must be presented to the Court or testimony from others that the incapacitated person specifically told that person that he/she did want to be resuscitated, have heroic measures taken to keep/him or her alive, or tube feeding.
3. This finding, based upon clear and convincing evidence, must be made on the record.

C. If you have been designated as the health care agent in a Health Care Proxy, you may have the authority to consent to the giving or withholding of life sustaining treatment. Remember, you have this authority as a Health Care Agent, not as the guardian of the person. See, Pub. Health L. § 2965 and § 2977.

D. If you are a family member, you may have the authority as a family member, not as the guardian of the person, to consent to giving or withholding life sustaining treatment.

E. Non-Hospital Do Not Resuscitate Orders.

1. May be issued during hospitalization for use after discharge.
2. May be issued while at home, by treating physician.

- a. Non-hospital DNR order continues even after hospitalization until attending physician in emergency treatment room cancels order or continues order.
- F. Hospital Do Not Resuscitate Orders. The guardian of the person does not have the authority to sign a do not resuscitate order:

VIII. Community Resources:

- A. Use Community Resources.
- B. If you don't know, call upon a specialist in the area to learn what is available. For example, universities, medical schools, AARP, senior citizen centers, agencies for the disabled (City and State), and the Alzheimer's Foundation.
- C. Consult with geriatric nurses, geriatric physicians.
- D. Don't try to do everything yourself, seek help.
 - 1. If the person is elderly, have that person assessed by a geriatric specialist to ascertain what that the incapacitated person needs medically and what type of therapy would improve the quality of that person's life.
 - a. For example, occupational therapy, physical therapy.
 - b. Take the person out as frequently as possible to entertainment events. Senile dementia does not mean that the person does not continue to enjoy entertainment.
 - c. If the incapacitated person is an elderly person, play music at home that that person likes, e.g. music from the era when the person was 18-30 years old; gospel music or whatever type of music the person likes.
 - d. Stimulation is key, for senile dementia and Alzheimer's.

IX. Cases of Interests.

- 1. *In Matter of Farbsteln*, 163 Misc.2d 26, 619 N.Y.S.2d 239 (NY Co.,

1994), an 88-year old woman, who suffered from senile dementia refused the assistance of home health care attendants (pushed them aside, bit them, and was highly agitated). The guardian of the person had a psychiatrist at Beth Israel to examine Ms. Farbstein, and the psychiatrist concluded that the guardian of the person must bring Ms. Farbstein to the emergency room to be admitted for evaluation. Ms. Farbstein refused to go. The guardian of the person called the police. The police would not assist because, as they stated, Ms. Farbstein had the right to refuse evaluation and treatment without a court order specifically authorizing the guardian of the person to involuntarily hospitalize the incapacitated person. The guardian of the person had no right to force treatment upon Ms. Farbstein. Judge Saxe refused the guardian of the person's request for an order to direct the police department to assist in transporting Ms. Farbstein to the hospital.

2. *Matter of Barsky (Kyle)*, N.Y. L.J., June 6, 1995 at 35 col. 2, (Sup. Ct. Suffolk County, Luciano, J.). Judge Luciano denied the guardian's request to withhold life sustaining treatment of incapacitated person. There was no clear and convincing evidence that the incapacitated person had ever expressed her wishes to anyone regarding whether she wanted or did not want life sustaining treatment. Ms. Kyle had a heart attack and stroke. She could not swallow or ingest food. It was necessary to feed her by insertion of a nutrition and hydration tube. When the guardian of the person met Ms. Kyle, she could not talk. However, the guardian argued to the Court that based upon all that he had learned about Ms. Kyle after his appointment, he was certain that she would not want to live with a feeding tube or hydration tube.
3. *In Matter of Joan Gordon*, N.Y. L.J., Nov. 22, 1994, at 25, col. 5, (Sup. Ct. Rockland Co.), the husband who sought to be appointed guardian of the person requested that he be given the authority to compel the AIP to receive psychiatric treatment and the administration of antipsychotic drugs without the AIP's consent. The Court denied his petition because the only reason he sought to become wife's guardian was so that he would have the authority to compel his wife to receive psychiatric treatment. The Court quite correctly recognized that Article 81 of the Mental Hygiene Law does not permit or allow a guardian to force treatment upon any individual whether or not the individual has capacity, if that treatment is against the wishes of the incapacitated person.
4. *In re Rhodanna C.B.*, 36 A.d.3d 106, 823 N.Y.S.2d 497 (2nd Dept.

2006). The Second Department held that the lower Court erred when it held that the guardian of the person had continuing authority to consent to administering psychotropic drugs or electroconvulsive therapy. The lower Court violated the due process rights of the incapacitated person. The Second Department held that due process requires that the question of capacity be evaluated each time the administration of psychotropic medication or electroconvulsive therapy is proposed over the patient's objection.

5. *Matter of Julia C.*, NY. L.J., March 15, 2004 at 20, col. 3 (Sup. Ct. Nassau County 2004, Asarch, J.). A guardian of the person can choose the residence of the incapacitated person, provided that such residence is consistent with the needs and wishes of the incapacitated person. Judge Asarch stated that it is preferable to maintain an incapacitated person in his home.

IN ADDITION TO COMPLYING WITH THE COURT ORDER, IT IS MOST IMPORTANT THAT THE GUARDIAN OF THE PERSON PROVIDE THE BEST QUALITY OF LIFE POSSIBLE TO THE INCAPACITATED PERSON .

_____, 2025

Via First Class Mail

Administrator
The Eleanor Nursing Care Center
419 North Quaker Lane
Hyde Park, New York 12538

Son

Daughter

Re: In the Matter of
Index No.#

Dear Sirs/Madames:

Enclosed please find a Statement of Death of Ward in connection with
, who died on

Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

STENGER, GLASS, HAGSTROM, LINDARS & IUELE LLP

KYLE A. STELLER, ESQ.
ksteller@stengerglass.com
KAS/

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Guardian of the person and property of

a Person in Need of a Guardian

Index No.

STATEMENT OF DEATH
OF WARD

_____, residing at _____, hereby makes the
following Statement of Death of _____:

1. On July 19, 2023 by Order of this Court, I was duly appointed Guardian of the Property and Person of, _____ and I have continued to act as such fiduciary since that date.
2. The last residence of the deceased incapacitated person, _____, was located at The Lutheran Care Center, 965 Dutchess Turnpike, Poughkeepsie, NY 12603.
3. The incapacitated person, _____, died at Lutheran Care Center, Poughkeepsie, NY, Dutchess County on _____.
4. The names and last known addresses of all persons entitled to notice of further guardianship proceedings are:

Mental Hygiene Legal Service
One Civic Center Plaza
Poughkeepsie, NY 12601

Heidi Seelbach, Public Administrator
Dutchess County Commissioner of Finance
22 Market Street
Poughkeepsie, NY 12601

5. The name and address of the nominated personal representative, of the decedent's estate is:

Date: June _____, 2025

STATE OF NEW YORK)
)SS:
COUNTY OF DUTCHESS)

On the _____ day of _____ before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

At the _____ of the Supreme Court of the
State of New York, held in and for the
County of _____, at the Courthouse,
_____, _____, New York, on the
____ day of _____.

P R E S E N T:

HON. _____
Justice

-----X

In the Matter of the Final Account
of _____ as Guardian
for _____, deceased person

Index No. _____

ORDER DISCHARGING
GUARDIAN AND SURETY¹

-----X

_____, Guardian of the property of _____, having submitted due
proof of compliance with the provisions of the Order Settling the Final Account of this Court of
the Honorable _____, dated _____,

NOW, on reading and filing the Order Settling the Final Account dated _____, the
Affidavit of _____, Esq., sworn to on the _____ day of _____, _____, along
with the Updated Verified Statement of _____ sworn to on [date], along with the
copies of the cancelled checks payable to the _____ Hospital annexed thereto,

NOW, on Motion of _____, Esq., it is

ORDERED, that _____, the Guardian, and his/her surety, _____, be
and the same hereby are discharged from any and all further liability, accountability and
responsibility with respect to all matters embraced in the Final Account, and it is further

ORDERED, that the bond filed herein is cancelled, and it is further

ORDERED, that a copy of this Order shall be served upon the County Clerk, _____
County and the surety within _____ days from the date hereof.

E N T E R,

J.S.C.

¹ Pursuant to 22 N.Y.C.R.R. § 130-1.1a(a), an attorney signature is required. An attorney can comply by signing one of the following as long as it accompanies the papers: a cover page, a litigation back or a separate certification.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

-----X
In the Matter of the Application of
for the Appointment of Guardian for

INDEX NO:

NOTICE OF

PROCEEDING

An Alleged Incapacitated Person,
-----X

1. The alleged incapacitated person (AIP) is _____. Her
home address is _____
_____ ; she is temporarily at _____
_____.

2. The Petitioners (names and addresses) are:

[1] _____;

and

[2] _____.

3. The following persons will be given Notice of this proceeding: (Include names and addresses
of all persons)

[1] _____, AIP;

[2] _____, Administrator of _____ Nursing Home;

[3] _____, Court Evaluator to be appointed by the Court;

[4] _____, Legal Counsel for the AIP to be appointed by the Court;

[5] _____;

[6] _____; (Mental Hygiene Legal
Services), 26 Broadway, New York NY 10004

[7] _____;

[8] _____, brother of AIP;

[9] _____, long time close friend of AIP.

4. The Order to Show Cause is returnable at the Supreme Court Building, 60 Centre Street, New York, N.Y., 10007, on the _____ day of _____, 20____, Part XXX, Room _____ at _____.

5. The proceeding is for Appointment of a Guardian for (Name of AIP) pursuant to Mental Hygiene Law Article 81, plus the following relief requested:

Dated: _____

Name

Address

Telephone No:

Attorney for Petitioner

TO:

At IAS Part ____ of the Supreme Court of
the State of New York, held in and for the
County of _____, New York, at the
Courthouse located at _____,
_____, New York, on the ____
day of _____, 20__.

PRESENT:

Hon. _____
Justice

-----X

In the Matter of the Final Account

Index No.

of _____ and _____

as Co-Guardians for

ORDER TO SHOW CAUSE

_____, deceased person

-----X

On reading and filing the annexed Final Report and Account of _____ and
_____, verified on _____, 20__, and _____, 20__, and the Petition
verified on the ____ day of _____, 20__, and on the ____ day of _____, 20__, from
which it appears that _____ is deceased, having died on _____, 20__, and that
_____ and _____, the Co-Guardians, are seeking to settle the Final
Account of their proceedings as Co-Guardians so as to be discharged herein, and upon the
affidavit of legal services of _____, sworn to the ____ day of _____, 20__,
attached hereto,

LET _____ Company, the surety; _____, the son of the
deceased and the legal representative of the Estate of _____, deceased, appointed by
the Probate Court; and anyone else entitled to notice herein, show cause before the Justice
presiding at IAS Part ___, Room ___, of this Court to be held in the County of
_____, at the Courthouse thereof, _____,
New York, on the ____ day of _____, 20__, at ____ a.m./p.m., or as soon thereafter as
counsel can be heard,

WHY an Order should not be entered herein (1) settling the Final Account of
_____ and _____, as Co-Guardians (as annexed hereto); (2) upon
settlement of the account of _____ and _____ as Co-Guardians,
approving payment of commissions due pursuant to statute to each of the Co-Guardians; (3)
approving reimbursement of the Co-Guardians' reasonable and necessary disbursements; (4)
approving a reasonable amount of legal fees for the legal services rendered by
_____ and for his additional and extraordinary services rendered; (5) determining
the rights and interests, if any, of _____, as relating to the joint stocks and joint
dividends; (6) determining that any jointly held stock (at the time of _____'s death) in the
names of _____ and _____ revert to _____ by operation of law;
(7) approving and authorizing the Co-Guardians to hold sufficient funds on hand to pay the

their own local forms. You should consult with the clerks of the court in which you are commencing this proceeding before using this form.

accountant to file the final tax return of _____ and also to cover and pay any tax liability on the final tax return; (8) determining the rights and interests of any of the interested parties herein; (9) authorizing transmittal of the funds and assets on hand (after payment of all approved payments) to _____, the legal representative of the Estate of _____, deceased, appointed by the _____ Court; (10) discharging _____ and _____, the Co-Guardians and the _____ from any and all further liability and accountability for all matters contained within the Final Account; (11) that the bond be cancelled; (12) together with such other and further relief as may be deemed proper and just;

Sufficient reason herein therefor,

LET service of a copy of this Order and the Petition and the Final Report and Account and all other papers attached hereto, by Certified Mail, Return Receipt Requested, to _____; N.Y.C. Department of Social Services, Office of Legal Affairs, 150 Greenwich Street, New York, N.Y., 10007; and to all other interested parties, including the surety and all creditors, all on or before the ____ day of _____, 20__, be deemed good and sufficient service hereof.

ENTER,

Hon. _____

J.S.C.

At IAS Part ___ of the Supreme Court of the State of New York, held in and for the County of _____, New York, at the Courthouse located at _____, New York, on the ___ day of _____.

PRESENT:

Hon. _____
Justice

-----X

In the Matter of the Final
Account of _____ and
_____ as Co-Guardians
for

Index No. _____

**ORDER SETTLING AND
APPROVING FINAL
ACCOUNT¹**

_____, deceased person

-----X

_____ and _____, having been appointed as Co-Guardians for _____ pursuant to an Order of this Court dated _____; and whereas _____ died on [date]; and _____ and _____ have submitted their Final Report and Account of Co-Guardians verified on [date], and their Petition verified on [date], and an Order to Show Cause was signed on [date], directing that the Final Report and Account be served on all interested parties; and same has been served and filed with proof of service on all interested parties, and

Upon the Affidavit of Services of _____, sworn to on the ___ day of _____, and the affidavit of _____ sworn to on the ___ day of _____, and upon the Stipulation of Settlement Concerning Final Account dated _____; and upon the Affidavit of _____ of _____, sworn to on the ___ day of _____;

AND, upon the written decision of the Court dated _____, it is

ORDERED, that the Final Account is hereby approved with the following Summary Schedule:

Schedule A Amounts Received and Deposited

\$ 267,732.88

Schedule A-1 Income Received and Deposited

\$7,828.01

¹ Pursuant to 22 N.Y.C.R.R. § 130-1.1a(a), an attorney signature is required. An attorney can comply by signing one of the following as long as it accompanies the papers: a cover page, a litigation back or a separate certification.

Schedule B	Securities Received	<u>\$44,292.83</u>
Schedule C	Total Assets and Income Received	\$319,853.72
<u>LESS</u>		
Schedule D	Amounts Disbursed	<u>\$53,913.89</u>
Schedule E	Assets and Funds on Hand	\$265,939.83

and it is further

ORDERED, that _____ is allowed the sum of \$ _____ as his/her commissions in serving as Co-Guardian, and the Co-Guardians are authorized to pay same; and it is further

ORDERED, that _____ is allowed the sum of \$ _____ as his/her commissions in serving as Co-Guardian, and the Co-Guardians are authorized to pay same; and it is further

ORDERED, that _____, Esq., is awarded legal fees for services rendered in the sum of \$ _____ plus \$ _____ of disbursements, and the Co-Guardians are authorized to pay same; and it is further

ORDERED, that _____ is allowed the sum of \$ _____ for his/her unpaid disbursements, and the Co-Guardians are authorized to pay same, and it is further

ORDERED, that the Co-Guardians make no claim to any of the joint stocks and joint dividends in the joint names of _____ and _____, and it is further

ORDERED, that the Co-Guardians are authorized to pay the funds remaining in their hands, after paying the amounts approved by this Order, to _____ as Executor of the Estate of _____, deceased, and it is further

ORDERED, that any outstanding medical bills, if any, be referred to the Executor of the Estate of _____ for payment, and it is further

ORDERED, upon the Co-Guardians submitting proof of compliance with all provisions of this Order, an Ex Parte Order shall be entered, discharging _____ and _____ as Co-Guardians and the surety from any and all further liability, accountability and responsibility with respect to all matters embraced in the Final Account and cancelling the bond.

ENTER,

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Final Account
of _____ and _____
as Co-Guardians of

Index No. _____

PETITION FOR
SETTLEMENT OF
FINAL ACCOUNT

_____, deceased person

-----X

The Petition of _____ and _____ states:

1. We were appointed as the Co-Guardians for _____ pursuant to an Order of the Supreme Court of the Honorable _____ signed on [date], which was later entered; the Commission to Co-Guardians was issued by the Court on [date].

2. We continued to serve performing our duties as Co-Guardians. _____ died on [date].

3. Attached is the Final Account of all the proceedings of the Co-Guardians.

4. _____ has been appointed as the Representative of the Estate of _____, deceased in the State of _____.

5. We are requesting that the Final Account of the Co-Guardians be Judicially Settled and Approved by the Court, and that our commissions due pursuant to statute be approved by the Court for payment; neither of us has received any compensation at all for our services rendered. We are requesting that our outstanding disbursements be approved for payment so that we may be reimbursed for disbursements incurred.

6. _____ is also making application that he be awarded fees for legal services rendered for _____. This is detailed in the attached Affidavit of Legal Services submitted to the Court with the Order to Show Cause and Petition herein.

7. Petitioners request that the attached Order to Show Cause be signed, permitting service of the Order to Show Cause, Petition and Final Account and all other papers on all necessary and interested parties by Certified Mail, Return Receipt Requested.

8. No prior application for the same or similar relief herein has been made.

WHEREFORE, it is respectfully requested that

1. The Final Account of the Co-Guardians be approved and judicially settled by the Court;

2. That the commissions due pursuant to statute be awarded to each of the Co-Guardians as indicated in Schedules F and G;

3. That the outstanding expenses due to _____ and _____ be approved for payment along with any additional expenses incurred;

4. That the Court set and approve reasonable legal fees for the legal services rendered by _____;

5. That the Court determine the rights and interest, if any, of _____ as relating to the joint stock and joint dividends;

6. That the Court determine any jointly held stock (at the time of _____'s death) in the names of _____ and _____, revert to _____ by operation of law;

7. That the Court approve and authorize the Co-Guardians to hold sufficient funds on hand to pay the accountant to file the final tax return of _____ and to pay any tax liability on the final tax return;

8. That the Court determine the rights and interests of any of the interested parties herein;

9. That the Court authorize transmittal of the funds and assets on hand (after payment of all approved payments) to _____, the legal representative of the Estate of _____, deceased, appointed by the Surrogate's Court;

10. That the Court discharge _____ and _____ as Co-Guardians and the surety, _____, from any and all further liability and accountability for all matters contained within the Final Account of the Co-Guardians;

11. That the Bond be cancelled;

12. That together with such other and further relief as may be deemed just.

Dated: _____, New York
_____, _____

[Co-Guardian]

Dated: _____, New York
_____, _____

[Co-Guardian]

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

_____, being duly sworn, deposes and states that he/she is one of the Petitioners in the above proceeding, that he/she has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of the deponent except as to those matters stated to be on information and belief; and that as to those matters he/she believes it to be true.

Sworn to before me this
____ day of _____, _____

[Co-Guardian]

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

_____, being duly sworn, deposes and states that he/she is one of the Petitioners in the above proceeding, that he/she has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of the deponent except as to those matters stated to be on information and belief; and that as to those matters he/she believes it to be true.

Sworn to before me this
____ day of _____, _____

[Co-Guardian]

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Final Account of _____ and
_____, as Co-Guardians
of the Property of

_____, deceased person

-----X

Index No. _____

FINAL REPORT
AND ACCOUNT OF
CO-GUARDIANS

TO THE SUPREME COURT OF THE COUNTY OF _____:

The undersigned hereby renders the Final Report and Account of the proceedings of
_____ and _____ as the Co-Guardians of the Property of _____:

The addresses of both Co-Guardians is as follows: _____ and
_____.

1. The period of the Report and Account is from [date] to [date]. _____ died on
[date]. The Final Account also includes payments made after _____'s death for expenses
incurred prior to his death, such as rent, taxes and medical bills. This is the Final Account.

2. Pursuant to an Order of this Court signed by the Honorable _____ on [date],
_____ and _____ were appointed Co-Guardians for _____.
(Copy attached as Exhibit A.) The Commission to Co-Guardians was issued by the Clerk of the
Court on [date].

3. A bond was furnished in the sum of \$ _____, which is still in full force and effect
with _____ Company, Bond # _____.

4. _____ executed a Last Will and Testament in [year]; pursuant to that
instrument, _____ was named as executor. _____ has been
appointed as the personal representative of the Estate of _____ in _____
(Exhibit B).

5. The Co-Guardians have paid the funeral bill of \$ _____.

6. At the time the Co-Guardians were appointed, _____ was residing at [Address].
The Co-Guardians arranged for home care services and additional home care services, as
originally home care was provided for _____ by Medicaid. Amounts may be due to
Medicaid, and they are listed as a possible unpaid creditor. His spouse, _____, was
in a nursing home, and she is still in a nursing home.

7. _____ became ill on [date], and was then taken to _____ Hospital, as he had [describe conditions precipitating illness]. He was later placed at the _____ Home in _____ but was there for merely a few days; he died on [date].

8. _____ owned stocks in many different companies. The Co-Guardians were not able to locate any of the stock certificates. Therefore, correspondence was had with the various companies where any dividends or other correspondence was obtained to inquire about the stock ownership of _____. The Co-Guardians thereafter filed many affidavits of lost certificates with the various companies and had to obtain numerous surety bonds from bonding companies for the various companies to issue new share certificates.

9. The Order appointing the Co-Guardians for _____, provided on pg. ____ as follows:

... that any bank or trust company, or any corporation or their transfer agents where there are joint assets in the names of _____ and his spouse, _____ (or _____), including but not limited to accounts in the name of _____ and _____, that said institution forthwith pay over to the co-guardians for _____, one-half of the assets or value of said assets.

Thus, where stocks and bank accounts were owned in the joint names of _____ and _____, the various banks and companies and their transfer agents were directed to divide the assets as equally as possible, and issue the shares and funds for one-half in the name of _____, and one-half in the name of _____.

10. _____'s Social Security checks were originally automatically deposited into his account at _____. After the Co-Guardians became recognized as Representative Payees for _____ with the Social Security Administration, his Social Security checks were deposited into the Co-Guardians' account.

11. The Co-Guardians have attempted to pay all of the outstanding medical bills for _____. However, there may be additional medical bills incurred during _____'s last illness when he was in the hospital from [date] until [date]. There may possibly be additional medical bills, as some of the medical bills had been received very recently. We are requesting that the Court direct any additional medical bills be transmitted to and be paid by the Estate of _____, deceased.

12. The Co-Guardians arranged with the _____ to vacate the _____ residence, and some of the furniture items were sold to them for the amount of \$ _____; that amount was deposited into the account. Some of the clothing items were donated to charity.

13. The Co-Guardians, _____ and _____, have claims for outstanding commissions due as indicated in Schedule F. They have not received any commissions on account. They also have amounts due for unpaid disbursements.

14. The Co-Guardians paid the renewal premium on the Bond to the surety. After the Bond is cancelled by a Court Order, it is expected the surety will return any unearned premium. This will be transmitted to the Estate of _____, deceased.

15. The Schedules are hereto attached:

- Schedule A — All Funds Received and Deposited — This includes bank funds received plus all other amounts deposited.
- Schedule A-1 — Income Received — Dividends, Interest, Social Security
- Schedule B — Statement of Securities in the name of the Co-Guardians for _____
- Schedule C — Total Assets and Income Received — (Total of Schedules A and A-1 and B)
- Schedule D — Statement of Amounts Disbursed
- Schedule E — Total Assets on Hand
- Schedule F — Calculation of Commissions Due
- Schedule G — Unpaid Administration Expenses
- Schedule H — Joint Assets and Other Assets
- Schedule I — List of Interested Parties and Claims Outstanding

SCHEDULE A
BANK ACCOUNT FUNDS RECEIVED

4/21/___	G1 (originally in joint names of _____ and _____ one half of amount	\$ 18,490.65 <u>7,603.02</u> 26,093.67
5/23/___	Cro (joint with _____) one half of amount (individually)	\$ 34,389.49 <u>25,505.38</u> \$ 59,894.87
7/7/___	Savings Group Bank (joint with _____) (individually)	\$ 2,420.04 53,881.09 \$ 2,538.32 100,135.00 <u>91.31</u> \$159,065.76
8/12/___	Ch (prev. _____) (joint with _____) one half of amount	\$ 22,678.58
	Total Funds Received	\$267,732.88

SCHEDULE A-1 — SCHEDULE OF ALL INCOME RECEIVED

Social Security: (provide details of amounts received)	\$6,000.00
Interest: (provide details)	\$1,250.
Dividends: (provide details)	\$578.01
Total	\$7,828.01

SCHEDULE B
STATEMENT OF SECURITIES IN THE NAME OF _____
THE GUARDIAN FOR _____

<u>Number of Shares</u>	<u>Name of Company</u>	<u>Value Per Share as of Date of Death</u>	<u>Value</u>
-----------------------------	----------------------------	------------------------------------------------	--------------

(PROVIDE DETAILS)

TOTAL

\$44,292.83

SCHEDULE C
TOTAL ASSETS AND INCOME RECEIVED

_____ and _____, as Co-Guardians for _____

Schedule A —

Total of all Funds Received and Deposited	\$267,732.88
-------------------------------------------	--------------

Schedule A-1 —

Total Income Received and Deposited	\$7,828.01
-------------------------------------	------------

Schedule B —

Securities in the name of the name of	<u>\$44,292.83</u>
---------------------------------------	--------------------

Total	\$319,853.72
-------	---------------------

**SCHEDULE D
STATEMENT OF AMOUNTS DISBURSED**

_____ and _____, as Co-Guardians for _____

List all Checks Issued in Check Number/Date Order. Include Payee and Amount.

TOTAL \$53,913.89

SCHEDULE E**ASSETS AND FUNDS ON HAND**

Schedule C — Total Assets and Income Received (Schedules A, A-1, and B)	\$319,853.72
----------------------------------------------------------------------------	--------------

LESS:

Schedule D — Amounts Disbursed	<u>\$53,913.89</u>
--------------------------------	--------------------

Assets and Funds on Hand (Schedule E)	\$265,939.83
------------------------------------------	--------------

The assets and funds on hand are as follows:

Accounts in the name of _____ and _____
as Co-Guardians for _____

(1) _____	# _____	\$110,934.80
-----------	---------	--------------

(2) _____	# _____	\$110,712.20
-----------	---------	--------------

\$221,647.00

PLUS

Securities on Hand (as per Schedule B)	<u>\$44,292.83</u>
-------------------------------------------	--------------------

TOTAL ASSETS ON HAND	\$265,939.83
-----------------------------	---------------------

**SCHEDULE F
CALCULATION OF COMMISSIONS DUE**

_____ and _____, as Co-Guardians for _____

Show all amounts received and calculate commissions

Show all amounts disbursed and calculate commissions

Show total amount due

Less: any amounts received on account

Balance due

SCHEDULE G
UNPAID ADMINISTRATION EXPENSES

The following unpaid expenses and claims for administration are as follows:

_____, Co-Guardian	Commissions Due Pursuant to Statute	\$ _____
	Unpaid Expenses Incurred (as per list attached)	
	Legal Services to be Awarded by Court—Affidavit of Attorney to be Submitted	
_____, Co-Guardian	Commissions Due Pursuant to Statute	\$ _____
_____, P.C.	Accountant expenses to prepare the Final Income Tax Return for _____ and any expenses for amendment of the [year] and/or prior tax returns	\$ _____

There will be additional unpaid expenses incurred by both Co-Guardians, including the expenses to be incurred for:

Both Co-Guardians reserve the right to submit an additional application before the Court listing their additional unpaid disbursements from this date forward.

There may be additional amounts owed to the Internal Revenue Service upon the filing of _____'s final tax return.

SCHEDULE H
JOINT ASSETS AND OTHER ASSETS

_____ and _____, as Co-Guardians for _____

List any and all assets held jointly but not transferred to the Guardian's name for the benefit of the IP, and other information re: other assets.

SCHEDULE I
LIST OF INTERESTED PARTIES AND CLAIMS OUTSTANDING

[Name]	Co-Guardian	Commissions Due Unpaid Expenses Legal Services (to be Awarded by Court)
--------	-------------	----------------------------------------------------------------------------------

[Name]	Co-Guardian	Commissions Due
--------	-------------	-----------------

[Name]	Son and Fiduciary appointed on [date] for the Estate of _____, deceased
--------	----------------------------------------------------------------------------

[Name]	Wife Home for _____ _____ Avenue Director, _____ Nursing Home
--------	----------------------------------------------------------------------------

Fidelity & Deposit Co. of Maryland	Surety Bond
---------------------------------------	-------------

[Name]	Sister
--------	--------

There may be amounts
due to Medicaid
for home care services

N.Y.C. Dep't of Social Services
Office of Legal Affairs (Medicaid)
150 Greenwich Street
New York, NY 10007

Note: Also include all unpaid creditors

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

_____, being duly sworn, deposes and says I am the Co-Guardian of _____, the foregoing Final Report and Account and inventory contain, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements of the Final Accounting, which have come to my hands, and the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same and of all property remaining in my hands as of the date of the accounting. I do not know of any error or omission in the Final Report and Account and inventory to the prejudice of said _____, or his estate, or of any interested party.

s/ _____
[Name of Guardian]

s/ _____
[Signing Attorney's Name]
[Certification pursuant to
22 N.Y.C.R.R. § 130-1.1a(a).]

Sworn to before me this
____ day of _____, ____.

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Annual Report of _____,

Index No. _____

Guardian of the Person and Property of _____,

ANNUAL REPORT FOR
[YEAR]

An Incapacitated Person.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____:

I, _____, residing at [Address], telephone (____) _____, am Guardian of the person and property of _____, the incapacitated person herein, and I am one of her sons, and I do hereby make, render, and file my annual report as follows:

FIRST: On [date], I was duly appointed Guardian of _____, by Order of this Court granted by Mr. Justice _____, and I qualified to act as such Guardian by giving a bond with the _____ Bond Company, Bond # _____, as surety thereon on [date], pursuant to the aforesaid Order in the penal sum of \$ _____. The surety is in as good financial standing as when the bond was given.

SECOND: I have acted as Guardian since the aforesaid date of my qualification, to wit, [date], and continue to so act.

THIRD: _____ is currently residing at [Address], telephone (____) _____.

FOURTH: Since the date of the evaluation of the incapacitated person performed by _____ in connection with my Initial Report, heretofore filed with the Court, _____ has had no change in her physical or mental condition. However, in addition to medication she has been taking, to wit, desipromine, primivil, thiothixene and benztropine, she is also taking vasotec, and navane.

FIFTH: _____ had a routine physical exam by her physician, _____, M.D., on [date]. Dr. _____ has diagnosed my mother as suffering from hypertension, schizophrenia, mental retardation, and constipation, and he has stated that her condition is satisfactory and that she is doing well on her prescribed medications. Annexed hereto and made a part hereof, marked Exhibit A, is a photocopy of the statement of Dr. _____ setting forth the same, which statement is dated _____, _____.

SIXTH: In the opinion of the undersigned, I believe it would be in my mother's best interests for her to continue to remain in her present home where she continues to receive 24-hour supervision and where she will be in surroundings which are familiar to her. Mr. _____, a friend and neighbor of my mother's, continues to provide services to her on Mondays and Wednesdays from 1:00 PM to 8:00 PM, Tuesdays and Thursdays from 8:00 AM to 8:00 PM, and Sundays from 5:00 PM to 8:00 PM. Mr. _____ is also available if my mother ever needs assistance overnight during the hours of 8:00 PM to 8:00 AM since he resides in the apartment upstairs from my mother. I have also hired a home care aide from _____ Home Care Services, Inc. to assist in the personal needs of my mother which cannot be performed by Mr. _____. The said home care aide is currently providing services to my mother on Mondays, Wednesdays, and Fridays from 9:00 AM to 1:00 PM. I or my sister _____ take care of my mother on the weekends from Fridays at 1:00 PM to Sundays at 5:00 PM.

SEVENTH: Since the filing of the Initial Report, all necessary dental work and treatment has now been completed by _____, D.D.S., and my mother now has a full set of dentures.

EIGHTH: _____'s social condition has remained substantially the same since the filing of the Initial Report of the Guardian. Mr. _____, a friend and neighbor, cares for her and sees her virtually on a daily basis and I or my sister _____ visit my mother daily and see to it that her apartment is clean and her laundry is done. My mother has expressed her desire to visit my sisters in _____ and I plan to arrange for the same once my mother's physician believes she is stable enough to travel.

NINTH: No alteration in the powers of the guardian is required at this time.

TENTH: The following is a true and full account of all said Guardian's receipts and disbursements for a period commencing [date] through [date].

ELEVENTH: SCHEDULE A hereto annexed is a statement that sets forth the principal account which came into my hands on or after [date].

TWELFTH: SCHEDULE A-1 hereto annexed is a statement of all income which came into my hands on or after [date].

THIRTEENTH: SCHEDULE A-2 hereto annexed is a statement of all capital gains (realized increases) which occurred during the accounting period.

FOURTEENTH: SCHEDULE B hereto annexed is a statement of all disbursements made by me during the accounting period, including administration expenses and expenses for the care and maintenance of the incapacitated person.

FIFTEENTH: SCHEDULE B-1 hereto annexed is a statement of all capital losses (realized decreases) which occurred during the accounting period.

SIXTEENTH: SCHEDULE C hereto annexed is a statement of all assets remaining in my hands as of [date].

SEVENTEENTH: SCHEDULE D hereto annexed is a statement of claims against the estate which are limited to unpaid administration expenses.

EIGHTEENTH: SCHEDULE E hereto annexed is a statement of changes to the principal account.

SUMMARY STATEMENT

SCHEDULE A - PRINCIPAL ACCOUNT	\$ 59,924.72
SCHEDULE A-1 - INCOME RECEIVED	\$ 852.20
SCHEDULE A-2 - REALIZED INCREASES	\$ 0.00
TOTAL SCHEDULES A, A-1, and A-2	\$ 60,776.92
SCHEDULE B - DISBURSEMENTS	\$ 6,900.86
SCHEDULE B-1 - REALIZED LOSSES	\$ 0.00
TOTAL SCHEDULES B and B-1	\$ 6,900.86
SCHEDULE C - BALANCE ON HAND	\$ 53,876.06
SCHEDULE D - CLAIMS AGAINST THE ESTATE	

Dated: _____, New York

s/_____
[Name of Guardian]

s/_____
[Signing Attorney's Name]
[Certification pursuant to
22 N.Y.C.R.R. § 130-1.1a(a).]

**SCHEDULE A
(CAPITAL ASSETS COLLECTED)**

DATE [year]	ITEM	AMOUNT	TOTAL
	I. Bank Accounts		
3/15	XYZ Savings Bank - Account #78-787878	\$50,060.72	
3/15	ABC Savings Bank - Account #78-898989	<u>3,000.00</u>	
	Total Bank Accounts		\$53,060.72
	II. New York City Housing Authority General Fund		
3/15	_____, Beneficiary of _____	\$6,864.00	
	Total NYC Housing Authority		<u>6,864.00</u>
	TOTAL SCHEDULE A		<u>\$59,924.72</u>

**SCHEDULE A-1
(RECEIVED INCOME)**

DATE [year]	ITEM	AMOUNT	SUBTOTAL	TOTAL
I. Interest from Bank Accounts				
City Bank - Savings				
Acct. # _____				
3/7	Interest	\$10.00		
4/7	"	10.00		
5/7	"	10.00		
6/7	"	10.00		
7/7	"	10.00		
8/7	"	10.00		
9/7	"	10.00		
10/7	"	10.00		
11/7	"	10.00		
12/7	"	<u>17.84</u>		
	Total Interest Savings			\$107.84
City Bank - Checking				
Acct. # _____				
3/7	Interest	\$.55		
4/7	"	.55		
5/7	"	.55		
6/7	"	.75		
7/7	"	.75		
8/7	"	.75		
9/7	"	.75		
10/7	"	.60		
11/7	"	.60		
12/7	"	<u>6.59</u>		
	Total Interest Checking		<u>12.44</u>	
	Total Interest Bank Accounts			\$120.28

II. Social Security Benefits

6/4	For May,	\$ 100.00
7/6	For June,	100.00
8/6	For July,	100.00
9/6	For August,	100.00
10/6	For September,	100.00
11/6	For October,	100.00
12/10	For November,	<u>116.00</u>

Total Social Security Income

\$716.00

III. ABC Securities; Acct. # _____

12/10	ABC Fund	\$14.86
12/31	ABC Fund	<u>1.06</u>

Total ABC Securities Account

15.92

TOTAL SCHEDULE A-1

\$852.20

**SCHEDULE A-2
(REALIZED INCREASES)**

DATE [year]	ASSET	INVENTORY VALUE	PROCEEDS ON SALE	INCREASE
------------------------	--------------	----------------------------	-----------------------------	-----------------

N O N E

TOTAL SCHEDULE A-2

\$ - 0 -

**SCHEDULE B
(DISBURSEMENTS)**

DATE [year]	ITEM	AMOUNT	TOTAL
2/23	_____, Esq. - Fee per Court Order granted [date]	\$1,500.00	
2/23	_____, Esq. - Disbursements per Court Order granted [date]	528.45	
2/23	_____, Esq. - Fee per Court Order granted [date]	1,000.00	
2/23	_____, M.D. - Fee per Court Order granted [date]	500.00	
2/23	_____ Hospital - pursuant to Court Order dated [date]	245.00	
2/23	Bond Company - Statement dated [date] Bond premium 10/14/93-94 - ABC Bond #12345678	611.00	
4/26	_____ Life Insurance Company - Policy #44-44444-44 - premium	239.90	
5/26	New York Telephone - Acct. #718-888-8888	77.04	
5/26	New York Telephone Company - Acct. #718-888-8888	17.41	
6/26	Cash for postage	29.00	
7/26	Cash for medication for IP	190.25	
8/8	Mr. _____ - Companion services - [date]	300.00	
8/8	Cash for food [date]	200.00	
9/6	Utility Company - Acct. #22-2222	38.51	
11/15	_____ Gas - Acct. #10000	223.98	
12/7	Cash for IP for Christmas	50.00	
12/15	Mr. _____ - Companion services. [date]	300.00	
12/16	_____ Water Supply Company - Acct. #123123123	28.75	
12/20	Cash for medication for IP	121.44	
12/20	Cash for food [date]	200.00	
12/15	New York Telephone Company - Acct. #718-888-8888	13.62	
12/15	New York Telephone - Acct. #718-888-8888	86.56	
12/22	Eye Vision Center - Eye Exam	20.00	
12/22	_____, D.D.S. - on account for dental services	250.00	
12/28	Eye Vision Center - Eyeglasses	129.95	
	TOTAL SCHEDULE B		<u>\$6,900.86</u>

**SCHEDULE B-1
(REALIZED LOSSES)**

DATE [year]	ASSET	INVENTORY VALUE	PROCEEDS ON SALE	DECREASE
------------------------	--------------	----------------------------	-----------------------------	-----------------

N O N E

TOTAL SCHEDULE B-1

\$0.00

**SCHEDULE C
(BALANCE ON HAND)**

DATE	ITEM	AMOUNT	TOTAL
December 31, _____			
	I. Cash		
	City Bank		
	Account #555-0000-55		
	Checking Account	\$ 8,478.70	
	SuperSavings Account	<u>20,681.44</u>	
	Total City Bank		29,160.14
	II. ABC Securities		
	Account #111-1111-11		
	\$25,000.00 U.S. Treasury Bill		
	Purchased [date] - on maturity [date]	\$ 24,574.00	
	Money Funds	<u>141.92</u>	
	Total ABC Securities		<u>24,715.92</u>
	TOTAL SCHEDULE C		<u>\$53,876.06</u>

SCHEDULE D
(CLAIMS AGAINST THE ESTATE)

Commissions to Guardian, _____, have been waived pursuant to Court Order granted [date]

Legal Fees _____, Esq., to be fixed by the Court; see Affidavit of Legal Services Rendered to be filed.

Disbursements _____, Esq., to be fixed by the Court; see Affidavit of Legal Services Rendered to be filed.

SCHEDULE E
(CHANGES TO PRINCIPAL ACCOUNT)

DATE [year]	ITEM
3/15	XYZ Savings Bank - Account #78-787878 - Closed - Proceeds collected and deposited to Guardian's Account at _____ Bank, [Address], Account #555-0000-55
3/15	ABC Savings Bank - Account #78-898989 - Closed - Proceeds collected and deposited to Guardian's Account at _____ Bank, <i>supra</i>
3/15	New York City Housing Authority - General Fund - _____, Beneficiary of _____ - Proceeds collected and deposited to Guardian's Account at _____ Bank, <i>supra</i>
12/6	ABC Securities - Guardian's Account #111-1111-11
12/9	\$25,000.00 US Treasury Bill - purchased [date]- on maturity [date]

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

I am the Guardian of the above-named incapacitated person; the foregoing Report contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said incapacitated person for the period [date] through [date]; and of all money and other personal property of said incapacitated person which has come into my hands or has been received by any other person by my order or authority or for my use since [date], the commencement date of the within report, and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same and of all property remaining in my hands at the time of filing this Report. In addition thereto, the said Report contains a full and true description of the amount and nature of each investment made by me during the said period.

I do not know of any error or omission in the Report to the prejudice of said incapacitated person or any other interested person.

s/ _____
[Name of Guardian]

s/ _____
[Signing Attorney's Name]
[Certification pursuant to
22 N.Y.C.R.R. § 130-1.1a(a).]

Sworn to before me this
_____ day of _____, _____

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Proceedings of _____,

Index No. _____

Guardian of the Person and Property of _____,

INITIAL REPORT

(For IP in Nursing Home)

An Incapacitated Person.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____:

I, _____, an attorney at law duly admitted to practice before the Courts of the state of New York, maintain offices for the said practice at [Address], telephone (____) _____. I am Guardian of the person and property of _____, the incapacitated person herein, and do hereby respectfully report as follows:

FIRST: That I was duly appointed Guardian of the person and property of _____ by an Order granted the ____ day of _____, _____, by Mr. Justice _____. Annexed hereto and made part hereof is a copy of said Order, marked Exhibit A.

SECOND: That I thereafter duly qualified as such Guardian by filing in the Clerk's office of the County of _____ a bond in the sum of \$ _____ pursuant to the aforesaid Order of this Court, and the commission to Guardian was issued on [date]. A copy of the said commission is annexed hereto and made part hereof, marked Exhibit B.

THIRD: That to the best of my ability I have acquainted myself with the incapacitated person, her needs and her stated desires; and, pursuant to section 81.30 of Mental Hygiene Law, I make this Initial Report to the Court.

FOURTH: That I have fully complied with the education requirements for Guardians set forth at section 81.39 of the Mental Hygiene Law by my attendance at the _____ program in respect of Article 81 of Mental Hygiene Law held at [location] on [date]. A copy of the certificate I received upon completion of the training is annexed hereto and made part hereof, marked Exhibit C.

FIFTH: Regarding my duties as Guardian of the person of _____, I respectfully submit to the Court that I have taken the following actions with regard to the discharge of my said duties and responsibilities. The history of the incapacitated person's medical condition is as follows: _____ was a patient at _____ Hospital in _____, New York

from [date] until [date], whereupon she was admitted to the _____ Nursing Home located at [Address], with a diagnosis of dementia and a history of delusional disorder. Before her admission to _____ Hospital, _____ resided at [Address]. Medically, _____ is sound and stable; she is independently ambulatory and is able to communicate her basic needs. She is, however, severely impaired in decision making and has an extremely impaired memory.

SIXTH: On [date], a petition for the appointment of a guardian of _____ pursuant to Article 81 of the Mental Hygiene Law was brought by the Vice President and Executive director of _____ Nursing Home. The said application was returnable before the Court on [date]. The aforesaid Order of [date] provided, *inter alia*, that the Guardian "shall maintain the incapacitated person at _____ Nursing Home or some other suitable residential health care facility."

SEVENTH: On [date], I visited with _____ at the _____ Nursing Home, [Address], telephone (____)_____. She is a completely delightful, attractive, tiny woman with white hair and a cheerful demeanor. She is maintained in a semi-private room. I introduced myself to her and explained the nature of my relationship to her and she exhibited pleasure and comfort that "a lawyer" was taking care of her money. I engaged her in a conversation regarding her entire situation. She is confused and is not aware of where she is or the circumstances surrounding her admission to the nursing facility. She did not remember anything about her apartment and was unable to give me any information regarding her assets or income. She exhibited frustration at the care she was receiving at the facility and stated that the people there "treat me like they treat everyone else." When I inquired if she was unhappy or if anyone was treating her poorly, she said no. She also stated that she was of the observant orthodox Jewish faith. It is respectfully submitted to the Court that since _____ is not happy at the said facility, I plan to make inquiry to other nursing facilities, and specifically facilities which provide a more orthodox observance and transfer her to such a facility. In addition thereto, _____ expressed distress at being unable to go outside since her coat was missing. I am of the opinion that a facility with grounds would be more suitable to her since she is independently ambulatory and I believe she would enjoy being outdoors during good weather.

EIGHTH: According to the interdisciplinary comprehensive care plan, prepared by _____'s attending physician, _____, M.D., _____ is suffering from Alzheimer's dementia resulting in a severely impaired memory and decision-making capabilities. As a result, _____ has great difficulty with the activities of daily living without assistance and is generally confused with regard to time and place. The doctor recommends that she be maintained in a safe and structured environment where her activities of daily living can be assisted; however, she also recommends that she be slowly trained to be somewhat more independent in accordance with her limited abilities. This relative degree of independence can be achieved, according to the doctor, through daily reminders to _____ of the time and date and encouragement by the staff for _____'s participation in her grooming and dressing. A photocopy of _____, M.D.'s interdisciplinary comprehensive care plan is annexed hereto and made a part hereof as Exhibit D.

NINTH: According to the progress notes recorded by the nurses of _____, she has an extremely impaired short-term memory which manifests itself with her ambulating to the

nurses' station and asking the nurses the same questions repeatedly during the course of an average day. Examples of _____'s repeated questions are "What time is it?" "When are they picking me up for therapy?" and "When is it meal time?" The nurses have also reported that on occasion _____ often becomes quite agitated and acts in an aggressive manner. She has also recently refused to take her paraffin baths that were prescribed to alleviate the arthritis pain in her hands. A photocopy of the nurses' progress notes for the period [date] through [date] is annexed hereto and made a part here as Exhibit E.

TENTH: According to the progress notes and summary sheet of _____, M.D., _____'s physician at _____ Nursing Home, _____ was admitted to the nursing home on [date] with the diagnosis of delusional disorder, post-left eye surgery in [year], decreased vision in left eye, status post ulcer in the left tibia and fibula and status post left leg cellulitis. She currently suffers from bilateral hearing loss, decreased vision in the left eye and arthritis in both hands. The doctor also noted _____'s extremely poor short- and long-term memory. _____ was referred to an audiology specialist to evaluate her for a hearing aid; however, according to Dr. _____'s notes for [date], _____ would not benefit from the same. _____ was also examined by an ophthalmologist to treat her vision difficulties. The said physician prescribed Lacril Sol, which is an artificial tear solution that is administered to _____ four times daily in both eyes. Photocopies of Dr. _____'s summary and progress notes, the findings and recommendations from the audiology department and the findings and recommendations from the ophthalmologist are annexed hereto and made a part hereof as Exhibit F.

ELEVENTH: _____ is presently taking the following medications: Haldol .5mg once daily, Hxavitamin once daily, Lacril Sol one drop in each eye four times daily and Ensure 240cc three times daily for supplement. These medications do not have any unnecessary side effects.

TWELFTH: _____ started receiving dental treatment by _____, D.D.S., on [date], and her treatment continues to date. The said dentist will continue to provide dental services to the incapacitated person at the nursing home. Annexed hereto and made a part hereof are the dental forms and dentist's progress notes marked Exhibit G.

THIRTEENTH: _____ is receiving occupational therapy at the nursing home from occupational therapist _____, P.T.A. According to his report, _____ receives therapy five times per week for arthritis in both hands. To supplement the therapy, paraffin baths have been prescribed for _____; however, as previously noted, the nurses have stated in their notes that she often refuses to take said baths. Mr. _____ states in his progress notes that _____ has recently improved her upper extremity strength through the use of one pound weights, and will continue the restorative, occupational therapy using paraffin baths in conjunction with the free weight exercises. Copies of the physical therapist's progress notes are annexed hereto and made part hereof marked Exhibit H.

FOURTEENTH: During the last few months, _____ has attended art workshops, birthday parties and holiday parties. She receives kosher meals, is involved with the institution's Jewish programs and observes her religious holidays. She also enjoys participating in group games with the other residents. However, as noted in the Psycho-Social Evaluation and

Assessment report prepared by _____, C.P.W., _____ has demonstrated difficulty socializing with her peers and frequently experiences periods of agitation in social settings. Mr. _____'s progress notes are annexed hereto and made a part hereof as Exhibit I.

FIFTEENTH: The name of the nursing care coordinator assigned to provide services to _____ at the _____ Nursing Home is _____, telephone (____) _____. The name of her attending physician is _____, M.D., telephone (____) _____.

SIXTEENTH: Upon information and belief, _____ has not granted any power of attorney to any person or entity, nor has she executed a health care proxy, a Do-Not-Resuscitate order, living will, organ donation document, or any other advance directive. The said information was gleaned from a search of _____'s belongings, a conversation with _____ and the staff at the nursing home.

SEVENTEENTH: Pursuant to the aforesaid Order Appointing Guardian, I plan to maintain _____ in a suitable residential health care facility; however, in the opinion of the undersigned, _____'s needs would be better served in a facility other than the _____ Nursing Home. As aforesaid, during the undersigned's visit with _____, she indicated that she was not happy at the said facility; in my opinion, her spiritual needs would be better met in a Jewish nursing facility. _____'s need of 24-hour care is best met in an extended care facility.

EIGHTEENTH: On [date], the undersigned was telephoned by one _____, Esq., of the law firm of _____, who claimed to represent the management company for _____'s apartment located at _____. I was informed by Mr. _____ that _____ had not been lawfully evicted from her apartment as set forth in the Report of _____, Esq., the Court Evaluator during the guardianship proceeding, but rather her apartment was left unoccupied from the time she was admitted to _____ Hospital on [date] to the present.

NINETEENTH: On [date], I went to _____'s apartment in the company of a security guard employed by the management of the building who was in possession of the keys to _____'s apartment. The inside of _____'s apartment was a complete shambles; live and dead vermin were everywhere and papers and clothing were strewn about. I found no usable clothes for _____ in her apartment, nor did I locate any bankbooks or stock certificates belonging to _____. The furnishings in the apartment were extremely dilapidated and none of _____'s personal belongings had any apparent value. In order to preserve the extremely limited assets of this estate and, given the obvious worthlessness of _____'s personal property, I dispensed with the obtaining of an appraisal of _____'s personal property and negotiated with the building's superintendent to remove and dispose of the contents of _____'s apartment as he saw fit, provided he waive any applicable fee for said removal.

TWENTIETH: By correspondence dated _____, _____, this office informed the attorneys for _____'s cooperative apartment, _____, that as of [date], the undersigned as guardian of _____ was surrendering her apartment. _____, Esq., an attorney with _____, acknowledged receipt of the above-referenced letter by phone on [date], and faxed to this office

on the same day a copy of the letter he forwarded to the building manager, instructing the same to take possession of _____'s apartment and issue to this office a statement regarding _____'s equity in her apartment. Annexed hereto and made a part hereof as Exhibit J are copies of the correspondence from my office to _____, Esq., the letter Mr. _____ forwarded to _____'s building manager and a letter from the building management company stating _____'s equity in her apartment.

TWENTY-FIRST: Upon the foregoing, it is respectfully submitted to the Court that the plan of the undersigned with respect to the care and maintenance of _____ is to continue her confinement at the _____ Nursing Home until such time as she can be transferred to a Jewish facility that would provide _____ with the care she requires. She is currently receiving adequate therapy and assistance to aid her with the activities of daily living. She is presently improving strength due to the occupational therapy she receives at the nursing home. Although she is alert and responsive, she still requires assistance with all activities of daily living. It is the opinion of the undersigned that it is in _____'s best interests that she remain in an extended care facility which offers her supervision and encouragement from the staff and provides for her religious needs as well. Presently, there are no services that are necessary that have not been conducted. Any future services that are deemed currently necessary will be provided for by the _____ Nursing Home since her reevaluation there is continual and the same will be supplemented by visits by the undersigned and her office staff. In addition, Medicare is _____'s primary medical insurance. It is anticipated by the undersigned that once the assets of _____ are marshaled, and her administrative expenses and outstanding debts are paid, she will be eligible for Medicaid since she is, at the present, *de facto* indigent. _____ currently owes the _____ Nursing Home in excess of \$ _____ and there are insufficient assets in her estate to pay the accrued debt. By letter dated _____, _____, the undersigned informed the _____ Nursing Home of the anticipated insufficiency of _____'s assets to cover her outstanding debt and advised the same to commence a Medicaid application on behalf of _____. Annexed hereto and made a part hereof, as Exhibit K, is a photocopy of the letter to the _____ Nursing Home.

TWENTY-SECOND: Included in the cost of the _____ Nursing Home, as is typical with most nursing facilities in the _____ area, are room, board including all meals and laundry services, medical equipment and supplies, medications, 24-hour nursing care, assistance and supervision with the activities of daily living, materials for personal hygiene, use of supportive equipment, leisure time activities, social services and all therapy sessions. Moreover, a physician will visit and examine _____ at least once every 30 days. The nursing home does not provide clothing, hairdresser services, newspapers, or other physician's services.

TWENTY-THIRD: Consistent with the aforesaid Order of the Court, I have marshaled the incapacitated person's assets, and have deposited the cash in Guardian accounts at _____ Bank and the securities in a Guardian account at _____. The value and description of such known financial resources of _____ are as follows:

ASSET	VALUE
1. _____ Bank Account Nos. _____ and _____	\$ _____

2.	_____ Savings Bank Account No. _____	\$ _____
3.	_____ Stock - Office of State Comptroller - Unclaimed Funds	\$ _____
4.	_____ Stock - _____ Common Shares	\$ _____
5.	_____ Company - _____ Common Shares	\$ _____
6.	_____, Inc. - _____ Common Shares	u/k
7.	_____ Limited - _____ Depository Units	\$ _____
TOTAL ASSETS		\$ _____

MONTHLY INCOME	AMOUNT
Social Security Benefits	\$ _____
TOTAL MONTHLY INCOME	\$ _____

TWENTY-FOURTH: Initial disbursements made on behalf of _____ to date are as follows:

DESCRIPTION	AMOUNT
1. _____, Esq. - Fee per Court Order granted [date]	\$ _____
2. The _____ Nursing Home - Fee per Court Order granted [date]	\$ _____
3. _____ Bond Company, Inc. - Statement _____ Bond premium [date]	\$ _____
4. _____, Bond Company, Inc. - Statement _____ Bond premium [date] - _____ - lost stock certificates	\$ _____
TOTAL PRIMARY DISBURSEMENTS	\$ _____

TWENTY-FIFTH: The undersigned is currently receiving Social Security pension benefits as _____'s representative payee after having interposed an application to the said payor.

TWENTY-SIXTH: Upon information and belief, _____ does not have a Last Will and Testament. In the opinion of the undersigned, _____ does not possess testamentary capacity at this time and I have had no discussion with her regarding the making of a Will.

TWENTY-SEVENTH: It is respectfully submitted to the Court that no changes in the powers authorized by the Court in its aforesaid [date] Order are required at this time.

Dated: _____, New York

Respectfully submitted,

s/ _____
[Name of Petitioner]

s/ _____
[Signing Attorney's Name]
[Certification pursuant to
22 N.Y.C.R.R. § 130-1.1a(a).]

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

That I am the Petitioner in the within proceeding; that I have read the foregoing INITIAL REPORT and the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

s/ _____
[Signature of Petitioner]

Sworn to before me this
____ day of _____, _____.

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Application of _____
for the Appointment of a Guardian
of the Person and Property of _____

Index No. _____

INITIAL REPORT
OF GUARDIAN

An Alleged Incapacitated Person

-----X

TO THE SUPREME COURT, STATE OF NEW YORK:

_____, Guardian of the Property of _____, hereby
submits the Initial Report pursuant to MHL § 81.30:

1. _____ has completed the guardian education requirements pursuant to § 81.39 of the MHL at [Name of Sponsoring Organization]'s certified program on [date(s)] _____ and _____. A copy of the certificate is attached.

2. Property: The Guardian is still arranging to have all of the assets of _____ marshaled. The Guardian has contacted all of the financial institutions to have the name of the accounts changed to that of _____, as Guardian for _____.

(a) An inventory of the safe deposit box at _____ Bank was made; enclosed is a copy of the safe deposit box inventory listing the stock certificates and bonds. Subsequently, the safe deposit box was vacated while the Guardian and _____ were at _____; the key was returned to _____.

(b) Stocks and Bonds: Many of the bond coupons for the past few months or years had not been collected. The Guardian had the bonds placed with a broker for security purposes, to check on the status of the bonds and the status of the unpaid interest coupons. The interest coupons for the prior months and years have now been collected. In addition, several of the bonds had previously been called by the company. The broker has collected the redemption on all of the previously called bonds. The stock certificates were also placed in the hands of a broker; one of the stock certificates had been previously called by the company in [year], and that certificate was redeemed by the broker. Additional funds from the _____ have been deposited with the broker for purchase of additional tax-free municipal bonds. Copies of the current brokerage statements for the bonds and stocks are attached to this report.

(c) Accounts: _____ maintained several accounts at _____ Bank totaling \$ _____.

3. The bank funds that have been collected in the name of the Guardian to date are:

Account at _____ Bank	\$ 18,490.65	
	<u>7,603.02</u>	\$ 26,093.67
Account at _____	\$ 2,420.04	
Joint account with _____	<u>53,881.09</u>	\$ 56,301.13
All Deposited at _____ Bank, _____, NY		
Acct. _____		
_____ Bank		\$ 51,051.31
_____, NY _____		
Acct. _____		
	Total	\$ 133,446.11

4. The Guardian is still constantly searching for additional assets, and is communicating with all of the different companies, which is a very extensive task. Many of the companies communicate via their standard computer letters, which are nonresponsive. The Guardian is still searching for additional assets, to be sure all assets are properly marshaled in Guardian accounts and sent to the Guardian's address. Most of the companies have been sending correspondence to the Guardian's address; however, some still persist in sending correspondence and checks directly to _____. Sometimes _____ saves the checks and correspondence for the Guardian; sometimes she cashes the checks; sometimes she deposits some of the checks into the account currently at _____ Bank. The manager of the _____ Bank branch saves receipts for the Guardian whenever they obtain receipts and other papers from _____.

5. _____'s Social Security check is in the sum of approximately \$ _____. The Guardian has contacted the Social Security Administration to be named as the Representative Payee.

6. (a) _____'s income tax return had not been filed; in addition, there was no application for an extension.

(b) The Guardian contacted an accountant and had provided the accountant with 1099 forms located and obtained for the years _____ and _____ and any other documents the Guardian was able to locate. Copies of the prior tax returns were obtained from _____.

The accountant is currently working to attempt to complete the [year] tax return. The Guardian will make application to the IRS and NYS Tax Department, requesting that any penalties for late filing be waived.

7. The Guardian has not located the original will for _____; however, the Guardian did locate a copy of a will signed on [date]. The will leaves all assets, after a few specific legacies, to her children. The Guardian has spoken to _____ of _____.

New York, the firm that drew the will. The original will is in their possession; he told me that _____ has been a client of the firm since about [date], and they have no record of any later will after [date].

8. The Guardian has visited with _____ on a regular basis, and has generally visited approximately _____ and sometimes more frequently. The Guardian has also arranged for _____ to sometimes visit with _____. In addition, the Guardian has engaged the services of a geriatric care manager, _____, who has visited with _____ on a regular basis (approximately 2 times a week). The geriatric care manager arranged for a birthday party for _____'s _____ birthday on [date].

9. The Guardian arranged for _____ to visit an eye doctor at the beginning of July, as she was complaining about pain in her eye. _____ had conjunctivitis; drops had to be placed in _____'s eyes four times each day; arrangements were made with a nurse from _____ and health aides to assist in administering the medication. _____ indicated she could not insert the drops on her own. The Guardian has made contact with Dr. _____, _____'s regular physician for many years.

10. _____ is very independent, and refuses to have anyone in the house for a period of time; she refuses to have a cleaning woman and refused to permit a health care attendant to stay in the apartment for four hours to insert the eye drops properly. She refused to permit the Guardian to purchase an air conditioner to combat the stifling heat, insisting she doesn't need it.

11. The Guardian has attempted to have _____ visit Senior Citizen Centers, but _____ refuses to attend. She still receives Meals-on-Wheels, which she looks forward to receiving. She refuses to permit the Guardian to purchase a large food order from the supermarket. The Guardian will continue to make attempts to involve _____ in activities and with other people.

12. At this time, there is no need for a change in the powers authorized by the Court. However, the Guardian believes that in the not-too-distant future, it may be necessary to apply to the Court for further powers and authority over the personal needs of _____.

13. The Court may also wish to authorize the granting of tax-free \$14,000 gifts per year to each of _____'s children. This would be in conformity with _____'s estate plan, as per her Last Will and Testament, and would save the estate any taxes on those amounts.

Dated: _____, New York
_____, _____

Respectfully submitted,

[Name]
Guardian
[Street Address]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Appointment of
Guardian of the Person and Property of

Index No. _____

COMMISSION TO
GUARDIAN¹

An Alleged Incapacitated Person

-----X

THE PEOPLE OF THE STATE OF NEW YORK, TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

WHEREAS, by an Order duly made on [date], which was thereafter on the ____ day of _____, in a proceeding in the Supreme Court entitled "In the Matter of the Application of the Appointment of Guardian for _____," it was found that _____, residing at [Address], telephone number _____, is determined to be incapacitated to take care of herself or her property, and that a Guardian be appointed pursuant to Article 81 of the Mental Hygiene Law,

AND WHEREAS, by said Order, _____ of [Address], telephone number _____, was appointed Guardian of the Person and Property of the said _____, and is directed to file in the Clerk's office of the said county a bond for the security required by law in the sum of \$ _____; that said Guardian will faithfully discharge the powers given by the Court, and obey all lawful directions of the Court in regard to the powers, and render a just and true account of all properties received and disbursed whenever required to do so by a Court of competent jurisdiction.

AND, WHEREAS, the Designation of the Clerk and Oath have been duly executed and filed in the Clerk's Office;

AND, WHEREAS, the bond required by said Order has been executed and filed in the said Clerk's Office;

NOW, THEREFORE, know ye, that we have granted, given and committed, and by these presents do give, grant and commit unto the said Guardian the possession, care and management of the person and property (real as well as personal), of the said incapacitated person, with the following powers:

[LIST ALL POWERS FROM COURT ORDER]

All persons are hereby directed and commanded to deliver to the Guardian, upon demand and presentation of a Certified Copy of the Commission, all property of _____, of every kind and nature which may be in their possession or under their control.

And the said Guardian is hereby required to file in the office of the Clerk of said county of _____ during the month of May, in each and every year, an Annual Report in accordance with Mental Hygiene Law section 81.31; and the Guardian is required to file an initial report in accordance with Mental Hygiene Law section 81.30.

And the said Guardian is required to file with the recording officer of the county wherein the incapacitated person is possessed of real property, an acknowledged statement, to be recorded and indexed under the incapacitated person's name, that identifies the real property possessed, and the tax map numbers, and the block and lot number, the location of such property, the date of the adjudication of incapacity, the date of the appointment of the Guardian and the name and addresses of the Guardian and surety.

The Guardian's appointment shall be for a _____ period, subject to extension upon application to the Court prior to the expiration of such period [or for indefinite duration].

WITNESS, the Honorable _____, one of the Justices of the Supreme Court of the state of New York, at the County Courthouse in the county of _____, this ____ day of _____, ____.

By the Court

[Name of Court Clerk]
Clerk of the County of _____

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4. *Journal of Management Studies*, 1997, 34, 1, 1-14.

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1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

	2000	2001	2002	2003	2004
1. Total	100	100	100	100	100
2. Government	100	100	100	100	100
3. Non-government	0	0	0	0	0
4. Total	100	100	100	100	100
5. Government	100	100	100	100	100
6. Non-government	0	0	0	0	0
7. Total	100	100	100	100	100
8. Government	100	100	100	100	100
9. Non-government	0	0	0	0	0
10. Total	100	100	100	100	100
11. Government	100	100	100	100	100
12. Non-government	0	0	0	0	0
13. Total	100	100	100	100	100
14. Government	100	100	100	100	100
15. Non-government	0	0	0	0	0
16. Total	100	100	100	100	100
17. Government	100	100	100	100	100
18. Non-government	0	0	0	0	0
19. Total	100	100	100	100	100
20. Government	100	100	100	100	100
21. Non-government	0	0	0	0	0
22. Total	100	100	100	100	100
23. Government	100	100	100	100	100
24. Non-government	0	0	0	0	0
25. Total	100	100	100	100	100
26. Government	100	100	100	100	100
27. Non-government	0	0	0	0	0
28. Total	100	100	100	100	100
29. Government	100	100	100	100	100
30. Non-government	0	0	0	0	0
31. Total	100	100	100	100	100
32. Government	100	100	100	100	100
33. Non-government	0	0	0	0	0
34. Total	100	100	100	100	100
35. Government	100	100	100	100	100
36. Non-government	0	0	0	0	0
37. Total	100	100	100	100	100
38. Government	100	100	100	100	100
39. Non-government	0	0	0	0	0
40. Total	100	100	100	100	100
41. Government	100	100	100	100	100
42. Non-government	0	0	0	0	0
43. Total	100	100	100	100	100
44. Government	100	100	100	100	100
45. Non-government	0	0	0	0	0
46. Total	100	100	100	100	100
47. Government	100	100	100	100	100
48. Non-government	0	0	0	0	0
49. Total	100	100	100	100	100
50. Government	100	100	100	100	100
51. Non-government	0	0	0	0	0
52. Total	100	100	100	100	100
53. Government	100	100	100	100	100
54. Non-government	0	0	0	0	0
55. Total	100	100	100	100	100
56. Government	100	100	100	100	100
57. Non-government	0	0	0	0	0
58. Total	100	100	100	100	100
59. Government	100	100	100	100	100
60. Non-government	0	0	0	0	0
61. Total	100	100	100	100	100
62. Government	100	100	100	100	100
63. Non-government	0	0	0	0	0
64. Total	100	100	100	100	100
65. Government	100	100	100	100	100
66. Non-government	0	0	0	0	0
67. Total	100	100	100	100	100
68. Government	100	100	100	100	100
69. Non					

1. **What is the purpose of this document?**

100% 90% 80% 70% 60% 50% 40% 30% 20% 10% 0%

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[illegible]

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.