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DUTIES AND
RESPONSIBILITIES
OF GUARDIANS

DUTIES, RESPONSIBILITIES & REPORTING REQUIREMENTS OF A GUARDIAN

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I. THE CHOICE OF A GUARDIAN: Before discussing the duties of a guardian, it is helpful to understand who is eligible to serve as guardian and what the Court considers before choosing the guardian.

A. WHO MAY SERVE AS GUARDIAN? (New York Mental Hygiene Law (hereinafter "M.H.L.") §81.19):

1. Any individual over the age of eighteen (M.H.L. §81.19(a)(1))
2. A parent, even if under 18, if suitable (M.H.L. §81.19(a)(1))
3. A Not-For-Profit Corporation organized to act in such a capacity (M.H.L. §81.19(a)(2));
4. A Social Services Official (M.H.L. §81.18(a)(2))
5. A Public Agency authorized to act in such a capacity (M.H.L. §81.19(a)(2))
6. A Community Guardian Program (M.H.L. §81.19(a)(2))
7. A Corporation, but only for property management (M.H.L. §81.19(A)(3))

B. WHAT MUST THE COURT CONSIDER IN DETERMINING WHO WILL SERVE AS A GUARDIAN?

1. The alleged incapacitated person (hereinafter "AIP") is entitled to nominate a guardian in the petition pursuant to M.H.L. §81.18, and the Court shall appoint this nominee unless the AIP has changed his or her mind, or the Court finds the person proposed to be unfit (M.H.L. §81.19(b)). If the AIP has not nominated a guardian in the petition, they are able to do so orally and the Court will take this oral nomination into consideration (M.H.L. §81.19(c)).
2. The Court must consider a variety of factors:

- a. Any prior appointment of the AIP including appointments as attorney-in-fact, health care proxy, or surrogate for the purposes of a D.N.R. (M.H.L. §81.19(d)(1)); and
 - b. The social relationship between the AIP and the proposed guardian or between the AIP and others concerned with the AIP's welfare (M.H.L. §81.19(d)(2)); and
 - c. "the care and services being provided" (M.H.L. §81.19(d)(3)); and
 - d. "the powers which the guardian will exercise" (M.H.L. §81.19(d)(4)); and
 - e. "the educational, professional, and business experience relevant to the nature of the services sought to be provide" (M.H.L. §81.19(d)(5)); and
 - f. "the nature of the financial resources involved" (M.H.L. §81.19(d)(6)); and
 - g. "the unique requirements of the incapacitated person" (M.H.L. §81.19(d)(7)); and
 - h. "any conflicts of interest" (M.H.L. §81.19(d)(8). Note, however, the Court is will to weight potential conflicts of interest against the desire to have a family member act as guardian and may be willing to appoint a family member despite a conflict. (In re Pace, 182 Misc. 2d 618, 199 N.Y.S. 2d 257 (Sup. Ct., Suffolk Cty., 1999). However, a conflict of interest may be sufficient to bar a non-family member from serving as guardian (Matter of Kern, 165 Misc. 2d 618, 627 N.Y.S. 2d 257 (Sup. Ct., Suffolk Cty., 1995)).
3. Note that the Courts have exhibited a strong preference to have family members serve as guardian, as was evidenced in In re Robinson (272 A.D. 2d176, 709 N.Y.S. 2d 170(1st Dept., 2000) where the First Department overturned the appointment of a court evaluator as guardian over the two children of the AIP and in In re Chase (264 A.D. 2d 300, 694 N.Y.S. 2d 363 (1st Dept., 1999)) where the Court found the appointment of a family member preferable even if powers must be tailored based upon certain concerns about the family member.
 4. Note that the Court can appoint more than one guardian or can appoint separate guardians of the property management and personal needs.
 5. Note also that a Standby Guardian may be appointed at the time that a guardian is appointed (M.H.L. §81.38). This standby guardian can immediately take over, but his or her appointment must be confirmed by the Court within sixty days of the assumption of duties.

II. THE QUALIFICATION OF THE GUARDIAN: After the hearing, the attorney for the petitioner prepares a proposed Findings of Fact, Conclusions of Law and Judgment and submits it to the court, on notice to the proper parties. If a transcript of the judge's decision needs to be attached, there will be some delay in the submission of this document to the court. The signing of the Findings of Fact, Conclusions of Law and Judgment does not, in and of itself, authorize the Guardian to act. Instead, the Guardian must qualify by filing a bond if required, filing an Oath and Designation, and receiving a Commission. *A Sample Findings of Fact, Conclusions of Law and Judgment is attached.*

A. FILING OF A BOND:

1. A Bond May Be Required: Before beginning to serve, the Court *may* require that the guardian file a bond (M.H.L. §81.25(a)) the amount of which has been set by the Court (M.H.L. §81.25(d)).

a. Note: If you are counseling a client who is seeking to be appointed a Guardian, you may wish to determine at the outset whether this client is likely to be able to obtain a bond. If it is unlikely that your client will be able to obtain a bond, you may wish to consider petitioning for co-guardians or for a different guardian.

b. Note: Even if you have not yet received the Order and Judgment, you should assist your client in obtaining an application for a fiduciary bond and should assist them with the preparation of the application. Generally, a detailed list of assets and liabilities must be provided to the insurance company.

2. File Bond With County Clerk: If a bond is required, it should be filed with the Clerk of the Court by which the guardian was appointed (M.H.L. §81.25(d)).

3. Amount of the Bond: Note that the amount of the bond is determined by looking to the assets of the incapacitated person (hereinafter "IP"), so if the guardian later discovers assets, or the IP becomes entitled to assets, the guardian should advise the Court of such an acquisition as the Court may want to increase the bond (M.H.L. §81.25(d)).

B. CONSENT AND DESIGNATION OF THE CLERK TO RECEIVE PROCESS:

It is not enough that you have testified in Court to your willingness to act as a guardian. The guardian must file a signed, acknowledged statement which confirms the guardian's agreement to serve. Such statement must be filed with the Clerk of the Court and must also designate the Clerk of the Court as a person on whom service of process may be made when the guardian cannot be located in the state (M.H.L. §81.26).

C. COMMISSION OF THE GUARDIAN (M.H.L. §81.27) (See Form Commission):

1. Issuance Of A Commission: Once the bond and the designation are filed, a commission will issue from the Clerk of the Court stating that you have qualified to act as a guardian.
2. Preparation of the Commission: You must prepare and submit the proposed commission in accordance with the terms of your order, but be sure that your commission includes:
 - a. Caption of the proceeding (M.H.L. §81.27(1)); and
 - b. Name, address, telephone number of the IP (M.H.L. §81.27(1)); and
 - c. Name, address, and telephone number of the guardian (M.H.L. §81.27(2)); and
 - d. Specific powers of the guardian (M.H.L. §81.27(2)); and
 - e. Date of Court Order appointing guardian (M.H.L. §81.27(3)); and
 - f. Date of termination of guardian's powers, if applicable, (M.H.L. §81.27(4)).

3. Sample Commission: A sample commission is attached hereto, but note that you must be guided by the terms of your order in drafting the commission.

- a. Note: Be sure to prepare and obtain enough commissions so that the guardian can begin to promptly marshal assets and/or obtain records.
- b. Note: Be very careful in drafting commissions as financial institutions often have legal departments reviewing them and if you have not incorporated your powers properly into the commission, you may have to resubmit the commission which will result in added expense and delay.
- c. Note: Be sure to send a copy of the guardian's commission to the Court Examiner once it has issued.

- D. GUARDIAN EDUCATION REQUIREMENTS (M.H.L. §81.39): A guardian will often be required to attend a Guardianship Training Course within ninety (90) days of a commission issuing from the Clerk of the Court.

1. A Capable Guardian: The relevant statute provides that "[e]ach incapacitated person is entitled to a guardian whom the court finds to be sufficiently capable of performing the duties and exercising the powers of a guardian necessary to protect the incapacitated person" (M.H.L. §81.39(a)). One way of furthering this goal is requiring the attendance of the guardian at a training program.
2. Content of Training Course: The content of the program must include discussion of the legal duties and responsibilities of the guardian, the rights of the incapacitated person, the available resources to aid the incapacitated

person, an orientation to medical terminology, and the preparation of required reports (M.H.L. §81.39(b)).

3. Waiver: The Court may waive some requirements or supplement the requirements. The Court must assess the particular guardian and the particular situation in coming to a conclusion in this regard (M.H.L. §81.39(c)).
4. Proof Filed With Initial Report: Proof of compliance with the guardian education requirement must be filed with your initial report (M.H.L. §81.30(a)).

III. DUTIES: While the guardian will certainly be granted specific powers in the Order and Judgment appointing the guardian and can also be guided by the Mental Hygiene Law, the guardian is still often left with a tremendous amount of discretion which must always be exercised so as to provide for the least restrictive form of intervention for the IP. The duties of the guardian are enumerated in M.H.L. §81.20. They are as follows:

A. TO ACT WITHIN THE LIMITS OF THE POWERS GRANTED (M.H.L. §81.20(a)(1)): The guardian must know when the guardian needs leave of the court to act. As a result, the guardian needs to be intimately familiar with the Order and Judgment appointing the guardian and must either be familiar with the Mental Hygiene Law or have someone to advise them in this regard.

1. When Is Leave Of The Court Required?: There are a number of situations in which leave of the Court is required:

a. When an action the guardian must take is beyond the scope of the powers given: The Mental Hygiene Law leaves as much discretion and autonomy as possible with the IP. As a result, it is critical that a guardian only exercise the powers granted to them in the Order and Judgment appointing the guardian and confirmed in the Commission issued by the Clerk of the Court.

i. Note that the initial and annual reports must set forth any need for a change in powers (M.H.L. §81.30(b)&(c)). Once the report has been filed, the guardian must follow up within ten days by filing an application pursuant to M.H.L. §81.36 for a modification of powers.

ii. Note that Guardians should not wait, however, until reporting time, but should, instead, petition pursuant to M.H.L. §81.36 for a modification of powers when the need arises.

b. When real property in which the IP has an interest must be sold (see R.P.A.P.L. §1711):

- i. Although a guardian may have full authority over the assets of his or her ward, this does not include the power to transfer real estate without Court Order.
 - ii. As a result, if a set of circumstances presents itself whereby the property of an incapacitated person must be sold, the guardian must petition the Court for approval of the sale and such petition must set forth why such sale is in the best interests of the IP.
 - iii. Before marketing the property the guardian should confirm whether or not an appraisal will be required by the Court and should obtain one if necessary.
 - iv. When the guardian goes to contract, the contract should be made subject to this approval and the closing date should provide flexibility for Court approval.
 - v. Once contracts have been fully executed, the guardian should promptly apply for approval.
 - vi. Once approval is obtained, an order has been submitted and signed, and the property sold, the guardian must report back to the Court.
- c. When the safe deposit box of the IP must be entered:
- i. Hopefully, before a petition is filed, the petitioner has knowledge that a safe deposit box is held by the IP and can request authority to inventory such.
 - ii. However, if a safe deposit box is later identified, the guardian should apply to the Court for leave to inventory the safe deposit box.
 - iii. The guardian should comply with the requirements of Surrogate's Court Procedure Act §2003 in preparing the petition.
- d. When the IP does not consent to placement in a nursing home or a residential care facility (M.H.L. §81.22(a)).
- i. The IP must be maintained in the community, preferably his or her home, until it is no longer feasible to do so.

- ii. If the IP consents to admission to a residential care facility, the guardian may place the IP there without Court approval.
 - iii. However, if the IP does not consent, or is incapable of consenting, Court approval must be sought.
 - iv. Note further that a guardian cannot consent to the voluntary formal or informal admission of the IP to a mental hygiene facility such as a psychiatric hospital or an alcoholism facility.
- e. When you need to pay legal or expert fees.
- i. A guardian cannot pay the fees of an attorney or an accountant without a court order approving such fees.
 - 1. Note: If the IP has been using an accountant, or similar professional for whom fees are routinely paid, the petitioner should seek power for the guardian to pay such professional fees, otherwise, the guardian must seek a Court order.
 - 2. Note: In making such an application, the guardian should consider obtaining authority to pay an accountant up to a certain amount each year for the preparation of state and federal income tax returns.
 - ii. The guardian must petition the Court for payment of attorney's fees and the attorney who rendered legal services must submit an affirmation of legal services in the form required by the Court.
- f. When you would like to make gifts or relinquish an interest in property on behalf of the IP:
- i. Unless the guardian has been given the specific power to gift, the guardian should petition the Court for permission to do so. The need may arise in connection with estate planning on behalf of an IP, or the guardian may want to continue a discovered pattern of giving. Gifts of any amount cannot be made without Court Order.
 - ii. The IP may become the beneficiary of an interest in, for example, the estate of a relative. It may be in the interest of the IP to disclaim this interest. However, such a disclaimer cannot be executed on behalf of the IP without leave from the Court.

g. To revoke a Health Care Proxy, Living Will or Power of Attorney:

- i. Often a guardian will be given power to consent to or refuse generally accepted routine or major medical or dental treatment. In making these decisions, the guardian is required to take into consideration the wishes of the IP if known, the religious and/or moral beliefs of the IP if known, and if neither of these is known, the best interests of the IP.
- ii. However, even if a Guardian is given power over medical decisions, a Guardian is not permitted to execute a Do Not Resuscitate Order with respect to the IP.
- iii. Further, a guardian cannot revoke advance directives executed by the IP. An Order of the Court is required to revoke a Health Care Proxy, Living Will or Power of Attorney.

h. To terminate the guardianship or decrease powers (M.H.L. §81.30):
Just as an increase in powers must be authorized by the Court, the guardian may realize that certain powers are no longer necessary and can apply to the Court for a reduction, or termination of powers.

B. TO ACT AS A FIDUCIARY: The statute provides that the guardian must exercise the utmost care and diligence when acting on behalf of the incapacitated person (M.H.L. §81.20(a)(2)) and exhibit the utmost degree of trust, loyalty, and fidelity in relation to the incapacitated person (M.H.L. §81.20(a)(3)).

1. By agreeing to serve, the guardian has agreed to act in a fiduciary capacity for the benefit of the IP. This fiduciary duty is the highest form of duty which requires that:
 - a. The guardian must put the IP's needs before his or her personal needs (Estate of Griffin, 160 Misc. 2d 871, 611 N.Y.S. 2d 743, (Surr. Ct., Bronx Cty.)).
 - b. The fiduciary is prohibited from:
 - i. Self-dealing; or
 - ii. Commingling; or
 - iii. Acting beyond the scope of the enumerated powers. Note, however, that should a modification of powers be in order, the guardian can always apply, pursuant to M.H.L. §81.36 for a modification of powers.

- c. The guardian must comply with the Prudent Investor Act (E.P.T.L. 11-2.3). This law, which became effective in 1995, requires that the prudence of a guardian's investments will be judged by looking at the guardian's conduct rather than the performance of the investment. The guardian must exercise reasonable care, skill, and caution which a prudent investor would in regard to the overall portfolio. So while there is a duty to maximize returns for the IP, it does not come at the risk of an overall investment. Consider:
 - i. The need to diversify investments; and
 - ii. The propriety of delegating investment decisions because it is the Guardian with the fiduciary duty to the IP; and
 - iii. The needs of the IP in relation to the size of the portfolio (for instance, you will need to consider the IP's age, health and needs) ; and
 - iv. The tax consequences of a particular decision.
 - d. In addition to the obligation to preserve and protect assets, the guardian has an affirmative obligation to seek out all entitlements that the IP may be due.
2. If this fiduciary obligation is not complied with, the guardian can be sanctioned as follows:
- a. Removal for misconduct (M.H.L. §81.35).
 - b. Removal for failure to comply with a Court Order (M.H.L. §81.35).
 - c. Denied commissions (M.H.L. §81.28).
 - d. Compelled to pay for the costs of removal (M.H.L. §81.35).

IV. RESPONSIBILITIES OF THE GUARDIAN: We have discussed the duties of the guardian to act as a fiduciary and not to act outside of the granted powers, but what is the guardian to do once appointed?

A. Marshall the assets of the IP: Once a commission has issued, the guardian must promptly collect the assets of the IP and place them in guardianship name. The guardian should look to the petition and to the Court Evaluator's report if one

exists in order to identify the assets of the IP. Once the assets are identified, they must then be “marshaled” or put into guardianship name. How is this done?

1. Provide a copy of your commission: You will need to contact the relevant financial institution to determine their particular requirements, but they will likely wish to obtain a copy of your commission and have you fill out an account application.
2. Be sure the account is property titled: As some financial institutions may not be as familiar with guardianship accounts, you should advise that the account should be titled “YOUR NAME as Guardian for IP’S NAME”.
3. Be sure the IP’s social security number is used: You must open the account with the IP’s social security number and not your own. This is the IP’s money which you are holding in a fiduciary capacity and not in your own name.
4. Never use these funds as your own: Although your name is on the account, this is not your money and you must never use it for your benefit or commingle your own personal funds with the guardianship funds.
5. Note on Supplemental Needs Trusts: The order appointing you may have authorized you to set up a Supplemental Needs Trust. If that is the case, and you are the trustee of such a trust, open the Supplemental Needs Trust accounts in “YOUR NAME as Trustee of the Supplemental Needs Trust for IP’S NAME”.
6. Note on Joint Accounts: Be careful with joint assets. Hopefully in the course of the guardianship proceeding, assets held jointly by the IP and another party were identified and the court has ordered the percentage division of joint assets. If so, remove the percentage belonging to the IP from the joint account and place that amount in a guardianship account.

B. Setting Up New Guardianship Accounts: At a minimum, you will be opening a checking account so you can make the expenditures provided in the order and judgment or which are reasonable and necessary for the IP. However, if the assets of the IP are more extensive, you may be opening or transferring certificates of deposit, securities, bonds, mutual funds, annuities and insurance policies, among other things.

1. Where should accounts be opened? Unless the court has indicated otherwise, you are free to open the accounts wherever you would like. Determining where to open accounts often involves a number of considerations. While not required by statute, the guardian should consider the relationship of the IP with the existing financial institutions.

a. For example, you may have an IP who is capable of handling limited sums of money. If you are sending the IP \$50.00 a week which the IP uses to purchase groceries, you may wish to maintain a relationship with the IP's "local" bank so that the IP can cash a check there without difficulty.

b. As another example, you may have an IP who enjoys knowing what is in his or her securities account. While it may be important for you to retain total control over the account, you may wish to facilitate the IP calling his or her investment advisor to inquire as to certain stocks so you may wish to maintain a relationship with the IP's stock broker so that the IP can still make these inquiries.

C. Filing a Statement with the County Clerk: If the IP owns real property, the guardian must promptly file a form with the County Clerk which confirms that the property cannot be conveyed without court approval.

1. Is an appraisal of property necessary? Not always. If a formal appraisal will assist you in determining whether to retain or sell real property, it may be prudent to get one. However, often an informal appraisal from a local broker will suffice for the purposes of valuing the property on your reports.
2. You must keep the property adequately insured: Do not simply keep paying the insurance bill that the IP had been paying prior to your appointment. You have an obligation to be sure that the insurance on the real property is adequate even though you do not have the authority to sell it without court order.

D. Investigate Discrepancies: If as you collect the assets of the IP you determine assets have been inexplicitly depleted since the inception of the guardianship proceeding, or it appears that assets were inexplicitly depleted prior to the guardianship proceeding, the guardian is authorized to bring a proceeding to discover property withheld as provided in MHL §81.43.

E. Account to the Court for your Actions: The guardian is required to file three types of reports over the course of the guardianship. They are as follows:

1. An Initial Report pursuant to M.H.L. §81.30. This Initial Report is due no more than 90 days after receiving a commission. At this point the guardian is required to report about what assets have been identified, the guardian's plan for restructuring the assets, the guardian's personal visits with the IP, steps taken by the guardian to provide for personal needs of the IP, and the guardian's plan for personal needs.

2. An Annual Report pursuant to M.H.L. §81.31: This Annual Report must be filed on May 15th in the year following the reporting year. In addition to the requirements of the initial report, the guardian must report any major changes in the condition of the incapacitated person, the medical treatment received by the incapacitated person during the period, the sufficiency of the residential setting, and any changes to the assets during the reporting period.
3. Intermediate or Final Report pursuant to M.H.L. §81.33: The guardian can request permission from the Court to file an intermediate report, or will be required to file a final when the guardian's powers terminate (whether a result of removal or death of the IP). It should contain the same information required by the annual and can be presented in summary form as long as prior annuals have been approved by the Court. This report should request the discharge of the guardian as well as the discharge of the guardian's bond.
4. Good Record keeping is key to the Guardian's Accurate Reporting: The key to preparing clear and accurate reports is good record keeping. Therefore, the guardian must set up a system for record keeping (financial, personal, and medical information). This system must be separate from personal records of the guardian. In determining what should be recorded, the guardian should err on the side of caution.

V. REPORTING REQUIREMENTS:

- A. Initial Report (M.H.L. §81.30): *Sample Initial Report is attached.* The initial report should contain:
 1. Background information; and
 2. Proof of compliance with guardian education requirements (M.H.L. §81.30(a)); in the form of a Certificate of Attendance; and
 3. Inventory of Assets (M.H.L. §81.30(b)): In addition to collecting the assets as set forth above, the guardian must record and report the value of each asset collected. The guardian should attach proof that the asset has been placed in guardianship name and if it has not been, must advise as to why; and
 4. The guardian's plan for the management of the incapacitated person's assets: The plan should be specific and detailed and should not encompass actions outside of the power of the guardian (M.H.L. §81.30(b)); and
 5. The existence and location of relevant documents (will, living will, health care proxy, D.N.R.) (M.H.L. §81.30(b)&(c)). If a will has been located and filed in the Surrogate's Court, a receipt should be attached; and

6. Report of the guardian's visits with the incapacitated person (M.H.L. §81.3(c)); and
7. The guardian's plan for the personal needs of the incapacitated person (medical, social, and personal services should be discussed) (M.H.L. §81.30(c)).
8. Any need for a change in the powers of the guardian (M.H.L. §81.30(b)&(c)); and
9. Proof of filing a Statement regarding Real Property of the incapacitated person (M.H.L. §81.30).

B. Annual Report: The annual report is due for every calendar year that the guardianship is in effect and is due on or before May 15th of the following year. *Sample Annual Report is attached.*

1. Background information (M.H.L. §81.31(b)(1)&(2)); and
2. Medical information including:
 - a. Any major changes in the physical or mental condition of the incapacitated person (M.H.L. §81.31(b)(3)).
 - b. Any substantial change in medication (M.H.L. §81.31(b)(3)).
 - c. The date IP last examined (M.H.L. §81.31(b)(4)).
 - d. Plan for medical treatment (M.H.L. §81.31(b)(6)).
 - e. Medical professional's statements as to the current functional level of the IP (M. H.L. §81.31(b)(5)).
3. Social information (M.H.L. §81.31(b)(6)(iv)).
4. Financial information (M.H.L. §81.31(b)(7)).
 - a. Surety Bond information.
 - b. Schedule of Assets on Hand at the Beginning of the Reporting Period:
 - (1) Sufficient detail and accuracy should be provided.
 - (2) Location of assets should be indicated.
 - (3) Value as of a date certain (indicate date)

- c. **Schedule of Realized Increases:** If there is an increase that is realized as the result of a sale, liquidation, or distribution of an asset of the IP, it should be reported here. *Unrealized decreases* should not be reported here, but instead will be reflected on the final schedule in the form of market value of the assets.
- d. **Schedule of Realized Decreases:** If there is a decrease that is realized as the result of a sale, liquidation, or distribution of an asset of the IP, it should be reported here. *Unrealized decreases* should not be reported here, but instead will be reflected on the final schedule in the form of market value of the assets.
- e. **Schedule of Income Received:**
 - (1) *Note:* Organize entries by categories for a clearer presentation and to assist at tax time.
 - (2) *Note:* Specify relevant information such as dates and reasons for irregular receipts so as to avoid the Court examiner raising questions.
- f. **Schedule of Paid Disbursements:**
 - (1) Accuracy and detail are crucial.
 - (2) If enough information is initially given, it will save the Court examiner time and aggravation.
- g. **Schedule of Changes in Holdings:**
 - (1) Memorialize splits, spinoffs, mergers.
 - (2) Memorialize the details of acquisitions.
- h. **Schedule of Assets on Hand at End of the Reporting period.**
 - (1) Assets should be reported with sufficient detail and accuracy.
 - (2) Location of assets should be indicated.
 - (3) Value as of December 31st.

- i. Schedule of Real Property.
 - j. Schedule of Commissions: Note that commissions are awarded by the Court and should not be taken without Court Order. Calculate the commission you are requesting and await a Court Order awarding it.
 - k. Summary of Accounting: The accounting must balance. Your report should contain a summary statement in which you show that assets on hand plus income plus gains less expenses and losses equals what is left on hand.
5. Information as to services provided by the IP, if applicable, (M.H.L. §81.31(b)(8)).
 6. Any need for a modification of powers (either increase or decrease) (M.H.L. §81.31(b)(10)).
 7. Any other information including anything required in the order of appointment (M. H. L. §81.31(b)(9)).

C. Final Report (M.H.L. §81.33): Notice of Final Accounting is attached.

1. Permission to File: Petition the Court for permission to file an intermediate and check with the Court of appointment to determine whether petitioning is required for permission to file a final. Westchester no longer requires the guardian to obtain permission.
2. Circumstances under which final Filing is required:
 - a. Death of guardian.
 - b. Removal, suspension, resignation, or discharge of guardian.
 - c. Death of IP.

D. Filing Your Reports: The report must be sent to:

1. The incapacitated person only if the Court orders such (M.H.L. §81.15 was recently changed to provide that the Court makes this determination); and
2. The executive director of the facility in which the IP resides, if applicable; and
3. Clerk of the Court; and
4. Court Examiner; and

5. If a final report issuing as the result of the death of the IP, the executor or administrator of the estate of the IP is also entitled to notice (M.H.L. §81.33(c)).

E. Examination (M.H.L. §81.32):

1. The Court Examiner may request examination of the documents or examination of the guardian (M.H.L. §81.32(e)).
2. The Court Examiner will file a report with the Court and a proposed order (M.H.L. §81.32(e)).

**GUARDIANSHIP REPORTING REQUIREMENTS:
A STEP-BY-STEP ANALYSIS OF THE INITIAL
AND ANNUAL REPORTING REQUIREMENTS
OF ARTICLE 81 OF THE MENTAL HYGIENE LAW**

by: Eileen Songer McCarthy*

I. Introduction

One of the responsibilities of a Guardian¹ of the person and/or property of an incapacitated person (hereinafter "Guardian") appointed pursuant to Article 81 of the Mental Hygiene Law (hereinafter "Article 81") is to periodically report to the Court.² While preparing the required reports can often be a time-consuming task, accurate and detailed record-keeping during the reporting period, combined with an understanding of the reporting requirements of Article 81, can greatly reduce the time spent and increase the quality of the report produced.

II. An Overview

Initially, the Guardian is required to report no more than 90 days after having

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Ms. Songer McCarthy would like to express her appreciation to Westchester County Court Examiner Michael Mayer for his comments with respect to this article.

¹ On April 1, 1993, Article 81 of the Mental Hygiene Law, which provides for guardians of incapacitated persons, replaced Article 77 of the Mental Hygiene Law, which provided for conservators of conservatees, and Article 78 of the Mental Hygiene Law, which provided for committees of incompetent persons. L. 1992, c. 698, §3. While Article 81 governed all new and then pending proceedings, it did not convert the status of conservators and committees to guardians. However, the initial and annual reporting requirements of Article 81 replaced the reporting requirements for conservators and committees which had been contained in Article 77 and Article 78, effective May 1, 1994.

² Mental Hygiene L. §§ 81.30, 81.31, and 81.33.

received a commission.³ Assuming that the Guardian is both a Guardian of the person and a Guardian of the property⁴, this initial report offers, among other things, an inventory of the assets under the control of the Guardian⁵, the Guardian's plan for restructuring these assets⁶, a report of the Guardian's personal visits with the incapacitated person⁷, the steps taken by the Guardian to provide for the personal needs of the incapacitated person⁸, and the Guardian's plan for the personal needs of the incapacitated person.⁹

In addition to the initial report, the Guardian is required to file with the Court an annual report¹⁰ detailing, in addition to much of the information required by the initial report, any major changes in the condition of the incapacitated person¹¹, the medical treatment

³ Mental Hygiene L. §81.30(a).

⁴ The Court has the power to appoint a Guardian with powers tailored to fit the needs of the incapacitated person in order to "accomplish the least restrictive form of intervention". Mental Hygiene L. §81.16(c)(1). Therefore, while the Court may appoint one Guardian of the person and the property of the incapacitated person, the Court may choose instead to appoint one Guardian of the person and a separate Guardian of the property, e.g. Matter of Parsoff, N.Y.L.J. 6/6/95, p. 35, col. 2 (Sup. Ct., Rockland 1995) or only a Guardian of either the person or the property, depending on the particular needs of the incapacitated person. However, for the purposes of this article, any reference to a "Guardian" assumes a Guardian of the both the person and the property of an incapacitated person, as Westchester County generally requires one report even if the duties of the Guardian are divided between two people.

⁵ Mental Hygiene L. §81.30(b).

⁶ *Id.*

⁷ Mental Hygiene L. §81.30(c).

⁸ *Id.*

⁹ *Id.*

¹⁰ Mental Hygiene L. §81.31.

¹¹ Mental Hygiene L. §81.31(b)(3).

received by the incapacitated person during the reporting period¹², the sufficiency of the incapacitated person's residential setting¹³, and the changes to the assets of the incapacitated person which are under the control of the Guardian.¹⁴ In most cases, the annual report will report for the calendar year¹⁵ and must be filed in the month of May.¹⁶

In Westchester County, if a Guardian is appointed after October 1st, that Guardian is not required to file an annual report for the calendar year in which the Guardian is appointed. However, the Guardian's initial report should contain, in addition to the requirements for an initial report set forth above, an accounting for the changes to the assets of the incapacitated person which are under the control of the Guardian in the same manner as required in the annual report. This report should be filed in accordance with the time period for filing the initial report.

In appropriate circumstances, the Guardian may obtain permission from the Court which appointed the Guardian to render an intermediate report or a final report.¹⁷ Such a

¹² Mental Hygiene L. §§81.31 (b)(4),(5), and (6)(ii).

¹³ Mental Hygiene L. §81.31(b)(6)(i).

¹⁴ Mental Hygiene L. §81.31(b)(7).

¹⁵ While there had initially been some confusion following the enactment of Article 81 as to whether or not the reporting period was May 1 through April 30, or January 1 through December 31, this confusion no longer exists and it is clear that the annual report should cover the period from January 1 through December 31 of the relevant year.

¹⁶ Mental Hygiene L. §81.31. Note that reports of guardians or committees for veterans and infant wards of the United States Veteran's Administration are due on the anniversary date of the fiduciary's appointment and should cover the period of one year preceding, but not including, the anniversary date of the fiduciary's appointment. Mental Hygiene L. §79.17(a).

¹⁷ Mental Hygiene L. §81.33(a).

report is generally necessitated if the Guardian "dies or is removed, suspended, discharged pursuant to the provisions of [Article 81], or allowed to resign"¹⁸ or if the incapacitated person dies or the Guardianship is otherwise terminated. If the Court grants permission for the filing of such a report, the report should contain the information required to be contained in the annual report.¹⁹

III. Record-keeping by the Guardian

The key to preparing not only sufficient, but also clear and accurate reports is good record-keeping. Upon the issuance of the commission, the Guardian should begin to prepare for reporting, either initially or annually, by setting up a system to clearly and accurately assemble the details necessary to satisfy the reporting requirements of Article 81. The system should clearly and accurately assemble not only financial information, but also personal and medical information pertaining to the incapacitated person.

First, each Guardian must designate a place to record relevant Guardianship information and keep relevant Guardianship papers, separate from the personal records of the Guardian. Next, the Guardian must choose a system which he or she is comfortable with whether it be setting up notebooks, file folders, computer files supplemented with a method of filing documents, or a file box with divided sections. The method by which the information is kept is not as important as the fact that it is being kept in a timely and organized manner.

¹⁸ Mental Hygiene L. §81.33(b).

¹⁹ *Id.*

The continuing task is to determine what type of information needs to be recorded. As a general rule, the Guardian should record any and all acts done on behalf or in connection with the incapacitated person.²⁰ These acts can range from the receipt of a phone call from a neighbor to the investment of \$1 million dollars. Both need to be recorded with sufficient detail to allow them to be adequately reported.

Record-keeping with sufficient detail and organization is crucial if the Guardian expects to be able to prepare the financial portion of any report with ease and clarity. In order to better appreciate the necessity for keeping various types of records, record-keeping suggestions will be made throughout this article when a reporting requirement for which back-up documentation is required is discussed.

IV. The Initial Report

As was previously indicated, the initial report must be filed with the Court within ninety days of the Guardian having received a commission²¹ and must discuss the steps which the Guardian has taken to comply with the order of appointment.²² Specifically, the report must contain:

²⁰ The Guardian is required to initially report "the guardian's personal visits with the incapacitated person, and the steps the guardian has taken . . . to provide for the personal needs of that person", Mental Hygiene L. §81.30(c) in addition to providing a detailed inventory of assets, Mental Hygiene L. §81.30(b). The annual report requires that the Guardian offer, among other things "a resume of any professional medical treatment given to the ward in the preceding year", Mental Hygiene L. §81.31(b)(6)(ii), an accounting of all sums under the control of the Guardian, Mental Hygiene L. §81.31(b)(7) and "a resume of any other activities performed by the guardian on behalf of the incapacitated person" Mental Hygiene L. §81.31(b)(9).

²¹ Mental Hygiene L. §81.30(a).

²² *Id.*

1. **Background Information**²³: The report should indicate the name and current address of the Guardian. It should indicate the date and Court of appointment and should have a copy of the Order of appointment attached. It should identify the amount of the bond, the surety company, and the date that the bond was filed.

2. **Proof that the Guardian has completed an adequate training program:**²⁴ An incapacitated person is entitled to have a Guardian appointed who is "sufficiently capable of performing the duties and exercising the powers of a guardian necessary to protect the incapacitated person."²⁵ As such, most Guardians²⁶ are required to complete a training program and attach proof of such completion to their initial report.²⁷

3. **An inventory of the assets of the incapacitated person under the control of the Guardian:**²⁸ This list should be prepared and verified in the same manner as the Guardian

²³ Mental Hygiene L. §81.30(a) provides that the initial report should be rendered "in a form prescribed by the court". While §81.30 does not specifically require the background information indicated in this paragraph, the Court will and thus this information should be included.

²⁴ Mental Hygiene L. §81.30(a) requires that "[p]roof of completion of the guardian education requirements under section 81.39 of this article must be filed with the initial report." Mental Hygiene L. §81.39 requires, in part, that "[e]ach person appointed by the court to be a guardian must complete a training program approved by the chief administrator".Mental Hygiene L. §81.39(b).

²⁵ Mental Hygiene L. §81.39(a).

²⁶ Pursuant to Mental Hygiene L. §81.39(c), "[t]he court may, in its discretion, waive some or all of the requirements . . . or impose additional requirements. In doing so, the court shall consider the experience and education of the guardian with respect to the training requirements of this section, the duties and powers assigned to the guardian, and the needs of the incapacitated person."

²⁷ Mental Hygiene L. §81.30(a).

²⁸ Mental Hygiene L. §81.30(b).

prepares the annual report's schedule of assets on hand at the beginning of the reporting period, the preparation of which is discussed later in this article.

4. The Guardian's plan for the management of the incapacitated person's assets:

The plan offered should be specific, detailed and should not encompass actions that are not within the powers of the Guardian unless additional powers are being sought to perform such actions. Each and every asset should be discussed with specificity.²⁹

5. The location of any will of the incapacitated person³⁰ and a copy of any living will, health care proxy, or do not resuscitate order of the incapacitated person:³¹ If the Guardian cannot locate an original or copy of a will, living will, health care proxy, or do not resuscitate order among the belongings of the incapacitated person, and the incapacitated person is not able to indicate whether he or she has executed one, or the possible whereabouts of such a document, the Guardian should take appropriate additional steps to try

²⁹ For example, if the home of the incapacitated person is under the management and control of the Guardian, it should be discussed in the planning section. If the incapacitated person is no longer residing in the home and will not return to the home the Guardian may state, "123 First Street will be sold". While this statement may be deemed to be sufficient in some circumstances, I would recommend providing a more detailed and comprehensive plan to the Court, especially in light of the fact that the Guardian will have to seek a court order approving the sale of the property. For example, "the real property located at 123 First Street is currently vacant. As Dr. Smith has indicated that the incapacitated person will never be able to return to the home under any set of circumstances, I plan to engage Broker A to market the property at a negotiated commission. Until sold, I intend to continue to pay all taxes, utilities and maintenance charges associated with the property." The latter statement better indicates how the Guardian plans to manage the real property of the incapacitated person and shows that the Guardian has begun to take specific steps to do so. For further discussion in regard to the sale of the real property of an incapacitated person, see Edward D. Loughman, III, "Court Approval of Sale of Realty Belonging to an Infant or Incapacitated Person: RPAPL Article 17", 24 Westchester Bar J. 25 (1998).

³⁰ Mental Hygiene L. §81.30(b).

³¹ Mental Hygiene L. §81.30(c).

to locate such documents. The Guardian could contact the family attorney and inquire as to the existence of any of these documents. In addition, the Guardian could contact the family doctor or clergyman to inquire whether he or she has a copy of a living will, health care proxy or do not resuscitate order. Relatives or neighbors may also be able to help in locating these documents and should be contacted in appropriate circumstances. If the will, living will, health care proxy, or do not resuscitate order is not found, the report should indicate this fact and highlight the steps the Guardian has taken in an attempt to locate the document.

6. A report of the Guardian's visits with the incapacitated person:³² The initial report should offer all of the basic details surrounding any visit the Guardian may have had with the incapacitated person including the date, time, length and place of the meeting. In addition, the report should offer a basic discussion of who was present during the visit, the demeanor of the incapacitated person during the visit, and any information which may have been elicited or task that may have been accomplished during the visit. The detail required may of course depend upon the level at which the incapacitated person is able to interact with the Guardian.

7. The steps the Guardian has taken to attend to the personal needs of the incapacitated person:³³ The Guardian should refer to the records kept of the actions taken on behalf of the incapacitated person to be able to accurately and completely comply with this requirement. Of course, certain actions which can appropriately be categorized and

³² Mental Hygiene L. §81.30(c).

³³ *Id.*

summarized should be.³⁴ If the Guardian has kept adequate records of the actions taken, this reporting requirement should be quite easily complied with.

8. The plan of the Guardian to attend to the needs of the incapacitated person:³⁵

This plan must address the medical³⁶, social, and personal services³⁷ which will be provided to the incapacitated person, indicate any examinations which may be necessary to determine the treatment needs of the incapacitated person³⁸, and indicate the existence of or application for any insurance or benefit which will help to defray the cost of any such services.³⁹ Just as

³⁴ For instance, the Guardian may want to state that "on two occasions I took the incapacitated person shopping and purchased various necessary clothing items including housecoats and shoes for her" or "on three occasions I arranged for a cleaning woman to come to the residence of the incapacitated person and perform some general housekeeping for the incapacitated person."

³⁵ Mental Hygiene L. §81.30(c).

³⁶ Mental Hygiene L. §81.30(c)(1) provides that the plan must include "the medical, dental, mental health, or related services that are to be provided for the welfare of the incapacitated person".

³⁷ Mental Hygiene L. §81.31(c)(2) provides that the plan must include "the social and personal services that are to be provided for the welfare of the incapacitated person".

³⁸ Mental Hygiene L. §81.30(c)(3) provides that the plan must include "any physical, dental, and mental health examinations necessary to determine the medical, dental, and mental health treatment needs" of the incapacitated person.

³⁹ Mental Hygiene L. §81.30(c)(4) provides that the plan should include information as to "the application of health and accident insurance and any other private or government benefits to which the incapacitated person may be entitled to meet any part of the costs of medical, dental, mental health, or related services provided to the incapacitated person". Note that the Guardian is required to research any insurance or benefits to which the incapacitated person is or may be entitled to prior to the filing of the initial report. The Guardian may have to obtain and review any relevant retirement documents pertaining to the incapacitated person's entitlement to benefits, meet with any social workers who may be involved with the incapacitated person to seek their guidance as to benefits to which the incapacitated person may be entitled, or contact appropriate government offices directly to determine whether or not there are benefits such as Medicaid, Medicare, Supplemental

with the Guardian's plan for the management of the incapacitated person's assets, the plan offered should be specific, detailed, and should not encompass actions that are not within the powers of the Guardian unless additional powers are being sought to perform such actions. The Guardian should rely, where appropriate, on the recommendations of professionals who have been consulted on behalf of the incapacitated person. However, if the Guardian is relying on a particular recommendation, this fact should be clearly indicated in the plan being offered.

9. Any need for a change in powers of the Guardian with respect to either the person or the property of the incapacitated person:⁴⁰ If the Guardian requests additional powers, the Guardian should set forth in the initial report the reasons that such powers appear to be necessary and then should follow up on this request pursuant to the requirements of Mental Hygiene Law.⁴¹

Security Income, Social Security Disability Income, or Food Stamps that the incapacitated person is entitled to receive. Even if no additional insurance is obtained or benefits are located, the efforts of the Guardian should be indicated in the initial report.

⁴⁰ Mental Hygiene L. §§81.30(b) & (c).

⁴¹ Mental Hygiene L. §81.30(d) provides that "[i]f the initial report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make an application within ten days of the filing of the report on notice to the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief. If the initial report sets forth any reasons for a change in the powers authorized by the court and the guardian fails to act under this subdivision, any person entitled to commence a proceeding under this article may petition the court for a change in such powers on notice to the guardian and the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief."

10. If required, proof of filing of a Statement regarding Real Property of the Incapacitated Person: ⁴² If the Guardian is charged with the management of the real property of the incapacitated person, the Guardian must file a statement in the County in which the real property is located, indicating, among other things, the existence of a Guardian.⁴³

V. Annual Report

As was previously indicated, the annual report must be filed with the Court during the month of May⁴⁴ and must include the following:

1. Background Information: The Guardian's address and telephone number⁴⁵, and the incapacitated person's address and telephone number⁴⁶ should be included. However, if the incapacitated person does not reside in a personal residence, the Guardian must include "the name, address, and telephone number of the facility or place at which the person resides

⁴² Mental Hygiene L. §81.20(a)(6)(vi).

⁴³ Mental Hygiene L. §81.20(a)(6)(vi) requires that the Guardian "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 name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety".

⁴⁴ While the Mental Hygiene Law calls for the annual report to be filed in May, the Court and court examiners generally welcome receiving the annual report as soon after the 1st of the year as is practicable. Early filing benefits not only the Court and the court examiner, but also the Guardian as my experience has been that reports filed in January or February are often reviewed by the court examiner and submitted to the Court for determination before May.

⁴⁵ Mental Hygiene L. §81.31(b)(1).

⁴⁶ Mental Hygiene L. §81.31(b)(2).

"the name, address, and telephone number of the facility or place at which the person resides and the name of the Chief Executive Officer of the Facility or person otherwise responsible for the person's care".⁴⁷

2. Medical Information: The following medical information must be included in the annual report:

a. "[A]ny major changes in the physical or mental condition of the incapacitated person"⁴⁸: The Guardian will be attaching a medical professional's⁴⁹ statement to the annual report, so the Guardian does not have to provide a detailed medical assessment of the incapacitated person's condition, but instead a layman's assessment based upon the Guardian's personal interaction with the incapacitated person.⁵⁰

b. "[A]ny substantial change in medication"⁵¹: While the Guardian should have been made aware of and consented to any recommended change in medication, the Guardian is not expected to report the precise names and doses of medications if the medical professional rendering a statement is willing to include this information in the statement.⁵²

⁴⁷ Mental Hygiene L. §81.31(b)(2).

⁴⁸ Mental Hygiene L. §81.31(b)(3).

⁴⁹ Mental Hygiene L. §81.31(b)(5) requires that the statement be prepared by a physician, psychologist, nurse clinician, or social worker.

⁵⁰ For example, one Guardian may report that "my ward no longer remembers who I am or why I am visiting her. In addition, she is no longer able to walk without the assistance of a walker, at a minimum, and sometimes also requires the assistance of a person."

⁵¹ Mental Hygiene L. §81.31(b)(3).

⁵² For example, the Guardian may state, "as it was discovered that the incapacitated person's blood pressure had increased tremendously, her physician recommended that she be

c. "[T]he date that the incapacitated person was last examined or otherwise seen by a physician and the purpose of that visit"⁵³: If the Guardian does not take the incapacitated person to physician's appointments, the Guardian must obtain this information from the physician. Even if the incapacitated person is in a nursing facility, the Guardian should check with the facility's Administrator to determine when, by whom, and for what purpose the incapacitated person was last seen by a physician.

d. "[A] resume of any professional medical treatment given to the [incapacitated person]" during the reporting period⁵⁴: As with the prior requirement, if the Guardian has not kept track of this information throughout the reporting period, it must be obtained from the appropriate source and included in the report.

e. "[T]he plan for medical, dental, and mental health treatment, and related services in the coming year"⁵⁵: This plan should be prepared in the same fashion as the plan offered by the Guardian in the initial report, the preparation of which is discussed previously in this article.

f. A medical professional's statement offering "an evaluation of the incapacitated person's condition and the current functional level of the incapacitated person"⁵⁶: This

put on medication to control this condition."

⁵³ Mental Hygiene L. §81.31(b)(4).

⁵⁴ Mental Hygiene L. §81.31(b)(6)(ii).

⁵⁵ Mental Hygiene L. §81.31(b)(iii).

⁵⁶ Mental Hygiene L. §81.31(b)(5) provides that the annual report should include "a statement by a physician, 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

statement should be prepared by the incapacitated person's physician, psychologist, nurse clinician, or social worker⁵⁷ assuming that one of these persons has seen the incapacitated person within three months of filing the report. If the Guardian is unsure of any substantial change in the medications the incapacitated person is taking, this should be addressed in the report. The Guardian should determine which of the permissible medical professionals could most adequately assess the incapacitated person's current functional level and when asking that person to prepare a statement should quote the exact requirements of Mental Hygiene Law 81.31(b)(5) so that the Guardian gets what is needed to satisfy the reporting requirements of Article 81.

3. Social Information: The Guardian should set forth "a statement of whether the current residential setting is best suited to the current needs of the incapacitated person"⁵⁸. In addition, the report should indicate the social skills, needs, and services utilized by the incapacitated person.⁵⁹

4. Financial Information: The Guardian, if the Guardian is charged with property management, must report on this management. Article 81 does not set forth its own guidelines for reporting this information, but instead directs the Guardian to the guidelines for an accounting by the Guardian of an infant's property required by the Surrogate's

functional level of the incapacitated person".

⁵⁷ Mental Hygiene L. §81.31(b)(5).

⁵⁸ Mental Hygiene L. §81.31(b)(6)(i).

⁵⁹ Mental Hygiene L. §81.31(b)(6)(iv) provides that the Guardian must provide "information concerning the social condition of the incapacitated person, including: the social and personal services currently utilized by the incapacitated person; the social skills of the incapacitated person; and the social needs of the incapacitated person".

Court.⁶⁰ While these guidelines do not set forth a specific form for reporting the financial information,⁶¹ they do specify the precise information which must appear in the annual report and it is imperative that the Guardian include such information. In addition, it provides that the Guardian may have to provide evidence of items contained in the accounting.⁶² To satisfy the reporting requirements with respect to financial information, the Guardian must include the following:

a. Surety Information: While Section 1719 of the Surrogate's Court Procedure Act calls for inclusion of information which is primarily of an accounting nature, it also calls for inclusion of the name of the surety of the Guardian and an indication that they surety is in good standing.⁶³

b. Schedule of Assets on Hand at the Beginning of the Reporting Period: The Guardian is required to set forth "a true statement and description of each item of personal

⁶⁰ Surr. Ct. Proc. Act §1719.

⁶¹ In addition to Surr. Ct. Proc. Act §1719 offering flexibility as to the form of accounting, the clerk of the Court or court examiner who is reviewing the accounting will often not require a specific form; however, the Guardian should call the office of the clerk of the Court or court examiner and inquire as to whether a specific form is required and should be guided by the response received.

⁶² Surr. Ct. Proc. Act §1719(4) provides that "[t]he guardian of an infant's property may be required by the court to produce for examination by it all which he has relating to the estate of the [incapacitated person]." While the statute says that the guardian "may be" required to produce proof of the information contained in the accounting portion of the initial report, in practice, the Guardian will almost always be required to produce all bank statements, cancelled checks, certificates of deposit, brokerage statements or other documents that confirm the information set forth in the accounting.

⁶³ Surr. Ct. Proc. Act §1719(3) provides that the Guardian must include in his report, "[t]he names and addresses of the sureties on his bond; if natural persons whether they are living and whether the security of the bond has become impaired."

property... received by him since his appointment or since the filing of his last account".⁶⁴

This requirement is generally satisfied by the preparation of a schedule of assets on hand which lists assets under the control of the Guardian at the beginning of the reporting period, whether that period be the initial reporting period or the annual reporting period.

Upon the issuance of a commission, the Guardian should begin marshalling assets and simultaneously begin preparing a list with sufficient detail to accurately report the identity and extent of the incapacitated person's assets, as the Guardian will be called upon to present a list of assets in the initial report.⁶⁵

First, the Guardian must locate enough information about the incapacitated person's assets to be able to marshal them. Sometimes the recently appointed Guardian had been handling the finances of the incapacitated person prior to the initiation of the Article 81 proceeding and, therefore, has a good sense of the location and extent of the incapacitated person's assets. However, some Guardians have had no prior relationship to the incapacitated person and must, upon receipt of commission, begin assembling a list of assets with very limited knowledge about the assets of the incapacitated person. In either case, the Guardian's first points of reference should be the petition and the court evaluator's report in the Article 81 proceeding as both should detail the location and extent of the incapacitated person's assets. However, the Guardian should not rely solely on those lists and should

⁶⁴ Surr. Ct. Proc. Act §1719(1).

⁶⁵ Mental Hygiene L. §80.30(b), sets forth that "the initial report shall contain a verified and complete inventory of the property and financial resources over which the guardian has control."

inquire at all financial institutions at which the incapacitated person did business⁶⁶, review all available bank and brokerage account statements to determine the source of money, if any, deposited into these accounts, look at the incapacitated person's tax returns and 1099s for prior years to identify assets, and, in addition, contact the Abandoned Property Division to inquire as to whether there are any accounts of the incapacitated person which have escheated to the State Comptroller. Items of personal property of mentionable value should be located, inventoried, and included in the list of assets.⁶⁷ Note, however, that real property is not appropriately included in the list of assets, or the schedule of assets on hand.

Once the assets have been located and marshalled⁶⁸ by the Guardian, they must be valued.⁶⁹ Assets of different natures are valued differently. Generally, bank accounts should be listed at their value as of the date of the issuance of the commission to the Guardian.

⁶⁶ If the incapacitated person has bank accounts, the Guardian should inquire at each bank as to whether there are additional accounts in the name of the incapacitated person. Additionally, if there are brokerage accounts, the Guardian should contact the broker to see if the incapacitated person ever made purchases for which the proof of ownership, for example a stock certificate, was returned to the incapacitated person and possibly not listed in the brokerage account.

⁶⁷ If the Guardian is not familiar enough with the incapacitated person to know whether or not he or she has expensive items of personal property the Guardian should review any policy of homeowners' or tenants' insurance held by the incapacitated person to see if an items are specifically identified therein. Note that safe deposit boxes should be located and inventoried in an effort to identify all assets of the incapacitated person.

⁶⁸ Once the Guardian has received a particular asset of the incapacitated person, that asset should be transferred into Guardianship name (e.g. "John Smith as the Guardian of the Person and Property of Mary Jones"). If the Guardian cannot secure the turnover of a particular asset, whether it be personal or real property, the Guardian can bring a proceeding to discover property withheld pursuant to Mental Hygiene L. §81.44 to facilitate turnover.

⁶⁹ Surr. Ct. Proc. Act §1719(1) requires that the accounting contain not only "a true statement and description of each item of personal property", but also "the value of each item".

However, it is often more appropriate, and usually acceptable, to value a bank account as of the date of acquisition of control of the account by the Guardian.⁷⁰ Securities, stocks or bonds, should be listed at inventory value, the value on the date the guardian was appointed.⁷¹ For personal property, if a fairly recent appraisal can be located, the value from such appraisal can be used, but the entry should identify the fact that the value is based upon an appraisal of a certain date. If a recent appraisal cannot be located, the Guardian should obtain an appraisal and list the asset at the appraised value.

A ledger sheet⁷² should be kept by the Guardian for each asset under the Guardian's control. This sheet should contain not only the name and current value of the asset, but also the identifying information necessary to prepare adequately a schedule of assets on hand entry. Each entry on the schedule of assets on hand should contain the name of the financial

⁷⁰ If the latter approach is taken, the Guardian should make an effort to explain any changes in the value of a bank account between the Court evaluator's report and the Guardian's initial report.

⁷¹ If an accountant or a brokerage firm is involved they should be able to supply you with this information if you request it. You may also want to ascertain the cost basis of any securities, stocks or bonds at this time. You will need cost basis, the value used to determine gain or loss upon disposition, to comply with tax reporting requirements. The accountant or brokerage firm may be able to supply you with this information. If an accountant or a brokerage firm is not involved, you must examine stock certificates, tax forms and contact transfer agents to identify a date of acquisition, a value on this date, and to confirm any relevant stock splits, stock dividends, spin-offs, or mergers which may alter cost basis.

⁷² This ledger sheet may be kept by hand or may be kept on the computer. There are various accounting programs available to the Guardian. The programs vary in complexity, compatibility, and price. Guardians who are computer literate should invest in an accounting program which is sufficient to record the type of assets managed by the Guardian. A good program can be found for a very reasonable amount and if the financial information is input and categorized correctly, this program should be able to generate reports which categorize and total income, expenses, gains and losses, and in addition, generate lists of the assets on hand at the beginning and end of the accounting period.

institution, or issuer and CUSIP number of the security or bond, the quantity of the holding, if relevant, an indication of what type of holding the asset is (checking account, coupon bond, common stock etc.), an indication of the caption of the account if other than sole ownership by the incapacitated person (for instance joint, or in trust for), and the inventory value at the beginning of the reporting period. While the entries may be listed under sub-headings such as cash, stocks, bonds, personal property or miscellaneous, each asset must be independently described and listed.

The list of assets in the initial report will serve as the schedule of assets on hand in the first annual report and likely as the schedule of assets on hand in the final report, unless an intermediate report has been permitted and approved. From year to year, the schedule of assets on hand will consist of the schedule of assets remaining in the hands of the Guardian from the prior year's report.

c. **Schedule of Realized⁷³ Increases in Assets:** The Guardian is also required to set forth "a statement of the manner in which he has disposed of each item not remaining in his hands".⁷⁴ This requirement can be satisfied by the preparation of a schedule of realized increases in assets and a schedule of realized decreases in assets, the former of which will be

⁷³ Note that both the caption to the schedule reporting gains and the caption to the schedule reporting losses contain the word "realized". These schedules are concerned only with realized, and not unrealized, gains and losses. For instance, if a particular security's value plummets, this is not reflected on either schedule unless the security is sold, liquidated or abandoned by the Guardian. If the security is held, it continues to be held at inventory value and the drop in value is not accounted for, but is conveyed by the market value listing on the schedule of assets remaining in the hands of the Guardian.

⁷⁴ Surr. Ct. Proc. Act §1719(1).

discussed in this section.⁷⁵ The schedule of realized increases in assets should accurately and chronologically detail the gain on the sale, liquidation, or distribution of assets, most commonly stocks, bonds⁷⁶, or realty.⁷⁷ The entry on this schedule should identify the asset with the detail required in the schedule of assets on hand. The entry should also include the date of realization of the gain (the date of sale, liquidation or distribution) and the quantity, if relevant, which has been sold, liquidated or distributed. The gain calculation should be shown by listing the proceeds received⁷⁸ less the inventory value of the asset sold, liquidated or distributed resulting in the gain.

Any distribution of assets, which would likely have to be approved by Court order, also results in the declaration of a gain or loss. If an asset is distributed, it must be valued as of the date of distribution. The gain calculation would be shown by listing the value on the date of distribution less the inventory value of the asset distributed resulting in the gain.

⁷⁵ While I would suggest that you account on separate schedules for assets disposed of at a gain and assets disposed of at a loss, this is not always required by the Court or the court examiner.

⁷⁶ Be careful to distinguish interest from gain when a bond is liquidated or matures. Interest should be listed on the schedule of income, not the schedule of realized increases in assets, even if paid at maturity.

⁷⁷ As the Guardian does not have the power to transfer the real property of the incapacitated person, the sale of the real property of an incapacitated person must be approved by the Court pursuant to the requirements of Article 17 of the Real Property Actions and Proceedings Law. Following any approved sale, an accounting of proceeds and expenses resulting in net proceeds is submitted for court approval. This net proceeds figure should be used to determine gain or loss in the report.

⁷⁸ Proceeds listed should be net proceeds. For example, if your gross proceeds from the sale of stock are \$1,000.00, but there is a \$50.00 brokerage fee resulting in the receipt of \$950.00, proceeds for your schedule of realized increases or schedule of realized decreases calculation should be \$950.00.

The amount of time necessary to prepare this schedule accurately can be greatly reduced by performing accurate, detailed bookkeeping during the reporting period. For instance, if the Guardian holds even a modest portfolio of securities, the Guardian must keep careful track of all transactions surrounding these securities, especially spin-offs or takeovers⁷⁹ which may result in the liquidation of fractional shares without the Guardian's approval or involvement. These liquidations must be accurately accounted for. Therefore, it is important to record accurately, and file for reference, any information received relating to the sale, liquidation, or distribution of the incapacitated person's assets.

d. Schedule of Realized Decreases to Assets: This schedule should accurately and chronologically detail the sale, liquidation, distribution, or abandonment⁸⁰ of assets which results in a loss or in no gain or loss.⁸¹ The entry should contain the same information as a

⁷⁹ When one company for which securities are issued is taken over by another for which securities are issued, the new company will often issue shares based upon a conversion equation. For instance you may own 50 shares of company B which has been taken over by company A. Company A is offering 1.65 shares of company A for every one share of company B which will result in the receipt of 82.5 shares of company A. Company A may automatically sell the .5 share and send the proceeds to the address of record. The Guardian now has a transaction which must be accounted for on either the schedule of realized increases or the schedule of realized decreases.

⁸⁰ If the Guardian chooses to abandon a security, the abandonment should be accounted for in the schedule of realized decreases. This may occur if the Guardian is given, or locates, stock certificates in the name of the incapacitated person which have little or no value. If a choice is made to abandon the security, the reasons for such abandonment should be indicated in brief in the entry on this schedule. If a complex explanation is necessary, it should be contained in an explanatory schedule.

⁸¹ If a sale, liquidation, distribution or abandonment takes place with no gain or loss, that is if proceeds or distribution value equal inventory value, the realization must still be accounted for and the correct place for such an accounting entry is on the schedule of realized decreases to assets.

schedule of realized increases entry. However, the calculation of loss, or of no gain or loss should be shown by listing the inventory value of the asset sold, liquidated, distributed, or abandoned, less the proceeds, if any, received.

e. Schedule of Income Received: The Guardian is required to set forth "a true account . . . of all his receipts . . . of money during the preceding year."⁸² This is done on a schedule of income received which should accurately detail each receipt of income⁸³, in whatever form, by the Guardian. Most commonly this schedule will be used to detail receipts such as social security income, pension income, interest income, and dividend income, but may also include rental income, business income, or trust income.

While accepted formats for this schedule vary, I would suggest listing income received not entirely chronologically, but instead chronologically within a sub-heading for each payor. A total amount of income received from a particular payor during the year is insufficient as the Guardian is required to detail each receipt.⁸⁴ Each entry should include the

⁸² Surr. Ct. Proc. Act §1719(2).

⁸³ Please note that this schedule should contain only income, and not proceeds from the sale of an asset. For example, quite frequently when security companies spin-off, merge, or take over, they will issue new shares to a shareholder of record. The number of new shares received is based upon an equation and often results in the receipt of fractional shares which the company never issues, but instead liquidates and issues a proceeds check for. The Guardian will receive this check. Despite the fact that this is a receipt, it should not be listed on the schedule of income received, but instead must be correctly reported on either the schedule of realized increases or the schedule of realized decreases.

⁸⁴ Surr. Ct. Proc. Act §1719(2).

date of receipt of the income⁸⁵ and the amount received. In addition, if the particular period for which the income was received is not obvious, it should be identified in the entry.⁸⁶ Finally, identify irregular receipts so that any questions someone reviewing the report may have are easily and adequately answered.⁸⁷ Note that the report will be reviewed by the court examiner to determine, not only whether each receipt listed was actually received, but also to determine whether the Guardian made sure that the incapacitated person received all receipts to which he or she was entitled during the year.⁸⁸

Accurate and detailed record-keeping during the reporting period should result in the Guardian being able to prepare this schedule with ease and clarity. Each receipt, prior to deposit, should be recorded on a manual or computer ledger. In addition, it is good practice to keep back-up information to rely upon in the event that the Guardian realizes at reporting

⁸⁵ Note that, for instance, dividend interest may become payable to the incapacitated person on the 15th of the month, the Guardian may not receive it until the 19th and may not deposit it until the 20th. If this is the case, I would suggest that the date of receipt for reporting purposes is the 20th so that the court examiner, when examining the records of the Guardian, can more easily confirm receipt of the particular income payment.

⁸⁶ If dividend income is listed as received on 3/15, 6/17, 9/15, and 12/16 for a particular reporting period, there is no need to further identify the payments as the dates alone identify them as quarterly payments. However, should a fifth payment have been received on 1/3 which represented the December dividend from the prior year or a reissued September dividend, it should be so identified.

⁸⁷ For instance, if when preparing this schedule it is discovered that a particular income payment due has not been received, it should not be listed as received as the Guardian is not yet in receipt of it. Instead, the absence of a particular income payment should be explained in the explanatory schedule. If received in the following year, the following year's report should identify the period for which the income was received.

⁸⁸ In fact, each Guardian, upon appointment, should contact any appropriate payor, such a social security or the transfer agent for a particular stock, to inquire as to whether there are checks which have been issued to the incapacitated person which remain outstanding or unnegotiated.

time that the ledger sheet entry does not adequately identify the receipt.⁸⁹

f. Schedule of Paid Disbursements: The Guardian is required to set forth "a true account . . . of all his . . . disbursements of money during the preceding year."⁹⁰ This is done on a schedule of paid disbursements which should accurately detail the payment of disbursements, in whatever form, by the Guardian. This schedule may detail the payment of court costs, taxes, utility bills, rent, nursing home bills or medical expenses, among other things, depending upon the situation and living arrangements of the particular incapacitated person.

Just as with the schedule of income received, accepted formats for this schedule may vary. However, I would suggest listing expenses not entirely chronologically, but chronologically within a sub-heading for each payee. The Guardian should not list only the total amount paid to each payee, but instead must detail each payment made to the payee by listing the date and the amount paid on that date. The entry on this schedule should identify the payee with the detail required to inform the court examiner of the reason for the payment.⁹¹ As with the schedule of income received, take the time to include information in

⁸⁹ Suggested ways to keep back up information include keeping a photocopy of each check received, labelling each deposit slip with a breakdown of the particular receipt or receipts being deposited, and indicating on any stub or paperwork that may have accompanied a receipt, the date of deposit and account into which such receipt was deposited.

⁹⁰ Surr. Ct. Proc. Act §1719(2).

⁹¹ If the report lists a \$50.00 disbursement to "Michael Smith", the court examiner may have no way of knowing what this disbursement is for. The entry should contain the least amount of information necessary to fully and accurately identify the reason for the disbursement. An adequate entry would be "Michael Smith-podiatrist", or "Michael Smith -

irregular entries so that the court examiner does not unnecessarily question the report.⁹² In addition, if a payment is being made pursuant to a Court Order, it should be labelled as such with the date of the Order indicated and a copy of the Order attached. Finally, recall the court examiner will be reviewing this schedule to determine not only if disbursements were actually paid, but also whether or not disbursements were proper.⁹³

Once again, accurate and detailed record-keeping during the reporting period is the key to being able to prepare this schedule with ease and clarity. This schedule generally contains the information which should be most readily available to the Guardian as the Guardian should have taken an active role in issuing a disbursement, most frequently by writing a check. Ideally, the Guardian has kept a ledger identifying each disbursement. However, even if the Guardian has not adequately kept records, he or she should have at least kept the cancelled checks received back from the bank and could use these to begin assembling this schedule.

g. Schedule of Changes in Holdings/Explanation Schedule: The Guardian is required to set forth "a statement of the manner in which he has disposed of each item not remaining in his hands and a description of the amount and nature of each investment of

for lawn care".

⁹² For instance, if you generally show one payment to surety company per year, but this year you had to be additionally bonded because you sold real property, do not assume that the court examiner will recall that you needed an additional bond and therefore understand the second payment to the surety. Instead, clearly identify each payment with the minimum amount of information necessary to convey why the payment was made.

⁹³ Note that the order appointing the Guardian usually makes the payment of professionals, such as accountants or attorneys, subject to prior approval by the court.

money made by him."⁹⁴ This is generally done on a schedule of changes in holdings or an explanation schedule. While Article 81, by reference to the Surrogate's Court Procedure Act, does require the Guardian to set forth information as to changes in holdings⁹⁵, the inclusion of this information in the report of the Guardian does not seem to be enforced consistently.⁹⁶ Despite the fact that the inclusion of this schedule is not always enforced, I would recommend its inclusion as this schedule can be helpful in memorializing information that the Guardian may later need when disposing of an asset, and in offering the court evaluator a clear trail of the assets of the incapacitated person.

Acceptable formats again vary, but include an accounting type entry⁹⁷ showing the date of the transaction, the amount/quantity of the asset purchased or disposed of, the type of transaction, and the dollar value of the transaction. Also generally acceptable is a narrative description of the transaction which took place.⁹⁸

While it may be duplicative to report the details surrounding disposal of an asset as such details should be contained in the schedule of realized increases or the schedule of

⁹⁴ Surr. Ct. Proc. Act §1719(1).

⁹⁵ *Id.*

⁹⁶ The annual report form sent out by Queens County does not call for this information and this "Queens form" is also sent to Guardians by some court examiners and court clerks outside of Queens County when a format for an annual report is requested.

⁹⁷ An accounting type entry may appear as follows:

<u>Company A, common stock</u>			
10/10/98	2.89 shs.	Purchased	\$97.38

⁹⁸ For example, "On October 10, 1998, Company A issued a dividend in the amount of \$97.38 which was used to purchase 2.89 shares of the common stock of Company A pursuant to a dividend reinvestment program."

realized decreases, this is not the case with the acquisition of an asset. Therefore, I would suggest that, at a minimum, all acquisitions⁹⁹ of assets be detailed on this schedule. In addition, this schedule can be used to show the path of assets. For instance, the Guardian may want to explain why a checking account at Bank A is listed on the initial schedule, but only a checking account at Bank B appears on the final schedule. A simple statement that Bank A was taken over, or the account was moved due to change in Bank A's fee schedule with an indication that the amount withdrawn from Bank A was deposited into Bank B can quickly put to rest any speculation on the part of the court examiner.

Once again the important role of record-keeping must be stressed. Any change to a holding, whether it be disposal or acquisition of an asset, should be noted with sufficient detail on the ledger sheet for the asset so that preparation of this schedule should involve only a review of the ledger sheets. However, if the ledger sheets have not been kept with sufficient detail, the Guardian may have to fall back on, among other things, sale confirmations or receipts, mailings as to stock splits, or statements received with reference to dividend reinvestment accounts to adequately complete this schedule.

h. Schedule of Assets on Hand at the End of the Reporting Period: The Guardian is required to set forth "a list of items remaining in his hands"¹⁰⁰ at the end of the reporting period. This is done by the preparation of a schedule of assets on hand at the end of the reporting period. While the schedule of assets on hand at the beginning of the reporting

⁹⁹ Acquisitions include, for example, the reinvestment of dividends, the exchange of shares of one security company for another, or the receipt of shares of stock as the result of a stock split.

¹⁰⁰ Surr. Ct. Proc. Act §1719(1).

period offers a snapshot of the incapacitated person's assets under the control of the Guardian at the beginning of the reporting period, this schedule offers a snapshot of the incapacitated person's assets under the control of the Guardian at the end of the reporting period. All assets appropriately listed in the former, should be listed in the latter at their inventory value. In addition, while not required by the schedule of assets on hand at the beginning of the reporting period, this schedule should offer a year-end market value for each asset so that the court examiner has the information necessary to aid in the determination as to whether or not the amount of the Guardian's bond needs to be increased or decreased.¹⁰¹

Market value is more easily obtained for some assets than others. Of course, for cash accounts inventory value and market value are the same. If the Guardian holds securities through a brokerage firm, the brokerage firm will usually supply year-end market values for securities for which they are the custodian, and possibly even for securities for which they are not the custodian. Otherwise, the Guardian should obtain year-end market values by consulting the newspaper or contacting the transfer agent of the security. For items of personal property, the appraised value appearing in the initial report is probably sufficient unless the Guardian has reason to believe a particular item has significantly increased or decreased in value. Should this occur, the Guardian should have the item of personal property reappraised. However, it would be best for the Guardian to confirm the adequacy of a prior appraised value with the clerk of the court or the court examiner.

i. Schedule of Real Property: The annual report of the Guardian should include a

¹⁰¹ While the Guardian is permitted to request that the amount of the bond be increased or decreased, such a request is not required as the court examiner should routinely make a recommendation to the Court if such a change appears to be in order.

schedule of real property which contains the location and identifying information for any piece of real property owned in whole, or in part, by the incapacitated person. If the real property is not owned in whole by the incapacitated person, the name, relationship, and nature of ownership (e.g. joint tenant, tenant in common) of any co-owner should be included. The Guardian should attempt to include information on the basis of the incapacitated person's interest in such property in the annual report.¹⁰² In addition, the incapacitated person's interest in the real property should be appraised and the appraised value should be listed along with the date of the appraisal. If there is an outstanding mortgage on the property, the report should indicate this fact along with an amount remaining on the mortgage. If the property is generating rental income, the report should indicate this fact along with the amount of rental income being received.

j. **Schedule of Commissions**¹⁰³: The Guardian may be awarded¹⁰⁴ compensation for the services rendered to the incapacitated person. While Article 81 suggests that this

¹⁰² While it is not critical that this information be included in the annual report, the Guardian may be well advised to begin inquiries for this information as it will become necessary to locate such information should the Guardian have to apply to the Court for permission to sell or transfer the incapacitated person's real property.

¹⁰³ While the Article 81 reporting requirements do not specifically call for the preparation and submission of a commission schedule, the reporting requirements do call for the annual report to be "in a form prescribed by the court", Mental Hygiene L. §81.31, and while in some counties, such as Queens County, the schedule of commissions is neither required nor desired, in Westchester County such a schedule should be included. The Guardian should check with the clerk of the court or the court examiner in counties other than Westchester and Queens to determine whether the preparation of this schedule is necessary.

¹⁰⁴ *Matter of McCormick*, 220 A.D.2d 506, 632 N.Y.S.2d 215 (2d Dep't, 1995) (Guardian not permitted to pay commissions before court award).

compensation is generally based upon the formula used to determine trustee's commissions¹⁰⁵, Article 81 has given the Court some flexibility in awarding compensation to the Guardian.¹⁰⁶ Despite the fact that the Court does have the authority to award an amount to the Guardian that deviates from the amount that would be awarded to a trustee, the Guardian should complete a schedule of commissions which sets forth the calculation used to determine the commissions due a trustee of a trust of the same size as the incapacitated person's assets.

The commission due should be calculated pursuant to Section 2309 of Surrogate's Court Procedure Act as follows:

Total from Schedule of Assets on Hand at the Beginning of the Reporting Period or from Schedule of Assets on Hand at the End of the Reporting Period ¹⁰⁷ :	\$ _____
less Unsold Real Property ¹⁰⁸ :	(\$ _____)
= Adjusted principal on which	

¹⁰⁵ Surr. Ct. Proc. Act §2309.

¹⁰⁶ Mental Hygiene L. §81.28(a) provides "[t]he court shall establish, and may from time to time modify, a plan for the reasonable compensation of the guardian. The plan for compensation of the guardian may be similar to the compensation of a trustee pursuant to section two thousand three hundred nine of the surrogate's court procedure act; however, the plan must take into account the specific authority of the guardian to provide for the personal needs and/or property management for the incapacitated person."

¹⁰⁷ The Guardian must choose on the first annual report whether commissions will be calculated on the balance at the beginning of the reporting period or the balance at the end of the reporting period. This choice will likely bind successor Guardians as the Surrogate's Court Procedure Act §2309 provides that "the option elected by the trustee for the first period for which such commissions are payable shall be used during the continuance of the trust and shall be binding on any successor or substitute trustee or trustees."

¹⁰⁸ If the real property has been sold during the accounting period, its value should not be excluded as the Guardian will be entitled to commissions on its value for selling the real property.

commissions are based: \$ _____

Once the figure on which commissions are based is determined, the Guardian would be entitled to the following as commissions: \$10.50 per thousand on the first \$400,000.00, \$4.50 per thousand on the next \$600,000.00, \$3.00 per thousand on any additional principal.

In addition, if the disbursements paid by the Guardian, excluding commissions paid to the Guardian, exceed income received, the Guardian is entitled receive commissions in the amount of one percent (1%) of the sum paid out in excess of income.¹⁰⁹ The commission due should be calculated as follows:

Total disbursements:	\$ _____
less Commissions paid to the Guardian:	(\$ _____)
less Income received	(\$ _____)
= Sum paid out in excess of income on which commissions are due:	\$ _____ x .01 (1%)

Once the sum paid out in excess of income on which commissions are due is determined, this figure should be multiplied by one percent (1%) with the resulting figure being the additional commissions due the Guardian.

In preparing the schedule of commissions, the Guardian should not simply set forth

¹⁰⁹ Trustees are entitled to "a commission from principal for paying out all sums of money constituting principal at the rate of 1 per cent", however, this sum is due when the final account for the trust has been settled. Surr. Ct. Proc. Act §2309(1). In contrast, Westchester County allows Guardians to receive this one percent on sums paid out in excess of income on an annual basis, as opposed to on a final accounting.

the amount of commissions due, but instead must show the calculation used to determine that commission. Note that if the Guardian is submitting a report and asking for commissions for a period less than one year, the calculated commission must be apportioned.¹¹⁰

k. Summary of Accounting: The Guardian is required to "charg[e] himself with any balance remaining in his hands when the last account was rendered and stat[e] the balance remaining in his hands at the conclusion of the year to be charged to him in the new year's account".¹¹¹ This is generally done using the format of a Summary Schedule. The following format is suggested:

CHARGES:

Schedule of Assets on Hand:	\$ _____	
Schedule of Realized Increases:	\$ _____	
Schedule of Income Received:	\$ _____	
TOTAL CHARGES:		\$ _____

CREDITS:

Schedule of Realized Decreases:	(\$ _____)	
Schedule of Paid Disbursements:	(\$ _____)	
TOTAL CREDITS:		(\$ _____)

LEAVING A BALANCE AS SHOWN BY THE SCHEDULE OF ASSETS REMAINING ON HAND:		\$ _____
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5. Information as to services provided by the Incapacitated Person: In any case where the Guardian "has used or employed the services of the incapacitated person or where _____

¹¹⁰ Once the annual commission is determined, it should be divided by 365 and then multiplied by the number of days that the Guardian served. As with the calculation of an annual commission, the calculation used should be shown in detail on the schedule of commissions.

¹¹¹ Surr. Ct. Proc. Act §1719(2).

moneys have been earned by or received on behalf of such incapacitated person"¹¹², the Guardian is required to offer an accounting of "any moneys earned or derived from such services".¹¹³

6. Any Other Information: Once the Guardian has provided the required background, medical, social and financial information, the Court requires that the Guardian report upon anything else that the Guardian may have done which does not fit into one of the previously indicated categories¹¹⁴, including any information which the Court may have required the Guardian to report in the order of appointment.¹¹⁵

7. An indication of the necessity for any alteration in the powers of the Guardian: If the Guardian determines that there is a need for additional powers, determines that a particular power is no longer needed, or determines that the Guardianship should be terminated, such a determination should be reported to the Court in the annual report.¹¹⁶ If alteration of the Guardian's powers is sought in the report, the Guardian is required to

¹¹² Mental Hygiene L. §81.31(b)(8).

¹¹³ *Id.*

¹¹⁴ Mental Hygiene L. §81.31(b)(9) which provides that the Guardian offer "a resume of any other activities performed by the guardian on behalf of the incapacitated person."

¹¹⁵ Mental Hygiene L. §81.31(b)(11) which indicates that the Guardian should report "any other information which the guardian may be required to file by the order of appointment".

¹¹⁶ Mental Hygiene L. §81.31(b)(10) requires that the Guardian report "facts indicating the need to terminate the appointment of the guardian, or for any alteration in the powers of the guardian and what specific authority is requested or what specific authority of the guardian will be affected".

proceed pursuant to the requirements of Mental Hygiene Law §81.31(e).¹¹⁷

VI. Filing

Once completed, a report must be filed properly. The report must be sent by regular mail to the incapacitated person if such person resides at home, must be sent by regular mail to both the incapacitated person and the executive of a facility if the incapacitated person resides in a facility¹¹⁸, and must be sent by regular mail to both the incapacitated person and Mental Hygiene Legal Service if the incapacitated person resides in a Mental Hygiene Legal Service facility.¹¹⁹ In addition, the report must be filed with the clerk of the Court which appointed the Guardian¹²⁰, or, if the incapacitated person is a resident of New York City, to the office of the clerk of the County where the incapacitated person last lived prior to the

¹¹⁷ Mental Hygiene L. §81.31(e) provides that "[i]f the annual report sets forth any reasons for change in the powers authorized by the court, the guardian shall make an application within ten days of the filing of the report on notice to the persons entitled to such notice in accordance with paragraph three of subdivision (c) of section 81.16 of this article for such relief. If the annual report sets forth any reasons for a change in the powers authorized by the court, and the guardian fails to act in accordance with this subdivision, any person entitled to commence a proceeding under this article may petition the court for a change in such powers on notice to the guardian and the persons entitled to such notice in accordance with paragraph three of subdivision (c) of section 81.16 of this article for such relief".

¹¹⁸ Mental Hygiene Law §81.31(c) provides, in part, that "[i]f the incapacitated person resides in a facility, hospital, school, or an alcoholism facility in this state as those terms are defined in section 1.02 of this chapter, a substance abuse program as that term is defined in section 19.03 of this chapter, an adult care facility as that term is defined in section two thousand eight hundred one of the public health law, the guardian shall send a duplicate of such report to the chief executive officer of that facility and the mental hygiene legal service of the judicial department in which the residence is located."

¹¹⁹ Mental Hygiene L. §81.31(c).

¹²⁰ Mental Hygiene L. §81.31(d).

appointment of a Guardian.¹²¹ Finally, while not required by the relevant statute¹²², the report should be sent to the office of the particular court examiner appointed in connection with the particular incapacitated person.¹²³

VII. Examination of Initial and Annual Reports

Once an initial or annual report is filed, it will be given to a court examiner, for review.¹²⁴ The examiner may request examination of documents¹²⁵ and the examination of the Guardian.¹²⁶ Upon completion of the examination, the court examiner will file a report and proposed order incorporating the court examiner's findings with the Court, and send a copy of each to the Guardian. The proposed order will provide for the approval of the court examiner's report and the award of a fee to the court examiner for services rendered. The proposed order may also provide for the increase or the decrease of the amount of the Guardian's bond, if appropriate, and the award of any other fees or powers which may have been requested, among other things.

¹²¹ *Id.*

¹²² Mental Hygiene L. §81.31.

¹²³ The court examiner will likely contact you following appointment and may even forward guidelines for reporting to you. However, if you do not know the identity of the court examiner appointed in connection with your Guardianship, you should request this information from the relevant Court so that you can forward your report to the court examiner in a timely manner.

¹²⁴ Mental Hygiene L. §81.32(b).

¹²⁵ Pursuant to Mental Hygiene L. §81.32(d)(1) the court examiner is entitled to demand that the Guardian file "proof of any item in the report".

¹²⁶ Mental Hygiene L. §81.32(e) provides that the court examiner "may examine the guardian and other witnesses under oath and reduce their testimony to writing".

While the statute calls for examination of Guardianship reports within thirty days of filing,¹²⁷ in my experience, examination in fact has been completed anywhere from two months to two years from filing. The Guardian can increase the chances of the Guardian's report being reviewed in a timely manner by filing a clear report which provides sufficient detail in a timely manner.

Note that the Court Examiner not only reviews reports submitted, but also monitors whether reports are received in a timely manner, or received at all.¹²⁸ It is important to file both initial and annual reports in a timely manner as failure to report completely¹²⁹ or file a report at all may result in a reduction of commissions awarded or, ultimately in removal.

VIII. Conclusion

Equipped with an appreciation of the reporting requirements of Article 81 and a

¹²⁷ Mental Hygiene L. §81.32(a)(1)&(2).

¹²⁸ Mental Hygiene L. §81.32(c)(1) provides "[i]f a guardian fails to file his or her initial or annual report, the person authorized to examine the report shall demand that the guardian file the report within fifteen days after the service of the demand upon him or her. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail". In addition, Mental Hygiene L. §81.32(c)(2) provides "[u]pon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith."

¹²⁹ Mental Hygiene L. §81.32(d)(1) provides, in part, "[i]f the person authorized to examine the report is of the opinion that a more complete or satisfactory report should be filed, the person authorized to examine the report shall demand that the guardian file a revised report or proof of any item in the report." In addition, Mental Hygiene L. §81.32(d)(2) provides, in part, "[u]pon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith".

system which will allow the Guardian to clearly and accurately record relevant information, a Guardian should be able to render a report which not only adequately, but also clearly and comprehensively meets the reporting requirements contained in Article 81 of the Mental Hygiene Law.

GUARDIAN'S INITIAL REPORT

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

In the Matter of the Initial Report of

Index Number _____

Guardian for

Date: _____

an Incapacitated Person

I, _____, residing at _____

_____, as Guardian for the above named person, do hereby make,

and render and file the Initial Report of Guardian as follows:

1. I have successfully completed all educational requirements under section 81.39 of the Mental Hygiene Law. A copy of the certificate issued is attached. [] Check if waived by the Court.

2. I have visited the ward and have taken the following steps, consistent with the Court Order and have provided for his / her personal needs as follows:

A. Provisions for medical, dental, mental health or related services: _____

B. Provisions for social and personal services: _____

C. Application for health and accident insurance as well as government benefits: _____

D. Date, time and place of visits made with the incapacitated person since the order of appointment:

INITIAL REPORT

Date: _____ Time: _____ Place: _____

Date: _____ Time: _____ Place: _____

Date: _____ Time: _____ Place: _____

3. The following is a true and full account of all assets of the incapacitated person that have been marshalled by the

Guardian (attach additional sheets if necessary):

BANK ACCOUNTS

<u>Institution</u>	<u>Address</u>	<u>Acct #s</u>	<u>Amount (prior to liquidation)</u>
--------------------	----------------	----------------	--------------------------------------

STOCKS AND SECURITIES

<u>Company</u>	<u>Address</u>	<u># Shares</u>	<u>Market Value at appointment</u>
----------------	----------------	-----------------	------------------------------------

REAL ESTATE

<u>Property Address</u>	<u>Description</u>	<u>Tenant's names</u>	<u>Rental Income Collected</u>
-------------------------	--------------------	-----------------------	--------------------------------

(Set forth date fo filing of Statement Identifying Real Property with the County Clerk)

PERSONAL PROPERTY

(Set forth any jewelry, collectibles, automobiles and cash with approximate value.)

INCOME

(Set forth and identify all sources of income the incapacitated person is entitled to receive.)

INITIAL REPORT

VERIFICATION

STATE OF NEW YORK

ss.:

COUNTY OF _____

I, _____ (*name of guardian*), being duly sworn, say that I am the Guardian of the Person and/or Property for the above named Incapacitated Person; the foregoing account and inventory contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said person; and of all money and other personal property of said person which have come to my hands or have been received by any other persons by my order or authority or for my use since my appointment, and of the value of all property. I do not know of any error of omission in the report to the prejudice of the above named Incapacitated Person.

Guardian of the Person and/or Property

Sworn to before me this

_____ day of _____, 20____

Notary Public

GUARDIAN'S ANNUAL ACCOUNTING

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

 In the Matter of the Inventory and Account of

 Guardian for

 An Incapacitated Person

Annual Account for Calendar Year 20_____

Index Number _____

Date: _____

I, _____, residing at _____
 _____, as Guardian of the Person and/or Property for the
 above named person, do hereby make, render, and file the following annual account and inventory.

On the _____ day of _____, _____, I was duly appointed Guardian of the Person and/or Property
 of the above named person by Order of the Supreme Court of _____ County and have continued
 to act as such fiduciary since that date, giving a bond in the original sum of \$ _____, [now in the sum of
 \$ _____, pursuant to subsequent orders,] which is still in full force and effect with _____
 _____, as Surety. There has been no change in the Surety thereon, and the Surety is in
 as good financial standing as when the bond was given (or: There has been no change in the Surety thereon, other
 than as explained in Schedule F).

The following is a true and full account of all receipts and disbursements for the calendar year 20_____.

SUMMARY

Schedule A -	Principal on hand at date of appointment or last accounting:	\$ _____
Schedule B -	Changes to principal:	\$ _____
Schedule C -	Income Received:	\$ _____
	Sub Total:	\$ _____
Schedule D -	Paid Disbursements:	\$ _____
Schedule E-1 -	Balance of cash and securities to be charged to next year's account:	\$ _____
Schedule E-2 -	Real Estate:	\$ _____
Schedule E-3 -	All other personal property:	\$ _____
	Total Estate:	\$ _____

SCHEDULE A: Principal on Hand

<u>SOURCE:</u> (name and address of financial institution)	<u>AMOUNT:</u> (cash or market value of securities)
_____	_____
_____	_____

TOTAL OF SCHEDULE A: \$ _____

SCHEDULE B: Increases or Decreases in Principal

List additional property received, gain or loss on sale or liquidation of stocks or bonds, any net receipts from sale of realty, (attach copy of closing statement), etc.

TOTAL OF SCHEDULE B: \$ _____

SCHEDULE C: Received Income and Cash Increases

If any property listed in the last accounting has been converted to cash, list here the amount received from the sale and attach an explanation.

<u>SOURCE</u>	<u>AMOUNT</u>
_____	_____
_____	_____

List income or monies received or earned on behalf of the IP.

<u>SOURCE</u>	<u>AMOUNT</u>
_____	_____
_____	_____

TOTAL OF SCHEDULE C: \$ _____

SCHEDULE D: Paid Disbursements

<u>PAID TO</u>	<u>AMOUNT</u>
_____	_____
_____	_____

TOTAL OF SCHEDULE D: \$ _____

SCHEDULE E-1: Balance on Hand and other Personal and Real Property

BANK ACCOUNTS, BROKERAGE ACCOUNTS,
SECURITIES, PERSONAL PROPERTY
(list name of joint owners, if any, and their relationship to IP)

<u>INVENTORY VALUE</u>	<u>MARKET VALUE</u>
(list values as of end of accounting period, for securities list both inventory and market values)	

_____	_____	_____
_____	_____	_____
TOTAL OF SCHEDULE E-1:	\$ _____	\$ _____

SCHEDULE E-2: Real Estate

(List all real estate owned by the IP, either in whole or in part. State location, assessed value, current market value, amount of mortgage (if any), and the weekly or monthly rental. If property is owned jointly, give names of joint owners and their relationship to the IP.

SCHEDULE E-3: All Other Personal Property

DESCRIPTION

INVENTORY / MARKET VALUE

SCHEDULE F: Name and Address of Surety

(Attach a copy of the latest bond. Also, state and explain any changes in the bond, of the Surety thereon, or in the financial standing of the Surety.)

NAME AND ADDRESS

AMOUNT OF BOND

BOND NUMBER

AS TO THE INCAPACITATED PERSON:

1. State the age, date of birth, Social Security Number and marital status of the Incapacitated Person:

2. List the name and present address of the living spouse, children and siblings, of the Incapacitated Person:

3. State the present residence address and telephone number of the Guardian:

4. State the present address and telephone number of the Incapacitated Person. If the IP is in a facility state the facility's name, address and telephone number and the name of the chief executive officer of the facility or the person otherwise responsible for the care of the IP:

5. State whether there have been any changes in the physical or mental condition of the IP, and any substantial change in medication:

6. State the date and place the IP was last seen by a physician and the purpose of the visit:

ANNUAL ACCOUNT

7. Attach a statement by a physician, psychologist, nurse clinician or social worker, or other person who has evaluated or examined the IP within the three months prior to the filing of this report, regarding an evaluation of the IP's condition and the current functional level of the IP.

8. If the Guardian has been charged with providing for the personal needs of the IP:

(A) Attach a statement whether the current residential setting is suitable to the current needs of the IP.

(B) Attach a resume of any professional medical treatment given to the IP during the preceding year.

(C) Attach a plan for medical, dental and mental health treatment and related services for the coming year.

(D) Attach a resume of any other information concerning the social condition of the IP, including the social and personal services currently utilized by the IP, the social skills of the IP, and the social needs of the IP.

9. State whether the Guardian has used or employed the services of the IP, or whether moneys have been earned by or received on behalf of such IP. Provide details in Schedule C:

10. Attach a resume of any other pertinent facts relative to the care and maintenance of the IP, including the frequency of your visits; whether the IP has made a Will or executed a Power of Attorney; and any other information necessary for the proper administration of this matter.

STATE OF NEW YORK

ss.:

COUNTY OF _____

(Guardian), being duly sworn says:

I am the Guardian of the Person and / or Property for the above named Incapacitated Person. The foregoing account and inventory 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; and of all money and other personal property of said person which have come to my hands or have been received by any other persons by my order or authority since my appointment or since filing my last annual account and inventory, 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 account and inventory; also a full and true description of the amount and nature of each investment made by me since my appointment or since the filing of my last account and inventory. I do not know of any error or omission in the account and inventory to the prejudice of said person.

Guardian

Sworn to before me this

_____ day of _____, 20____

Notary Public

PLEASE CHECK APPROPRIATE BOX [] WHERE INDICATED
AND FILL IN BLANKS WHERE INSTRUCTED

In the Matter of

- Dutchess County
- Orange County
- Putnam County
- Rockland County
- Westchester County

Name of Incapacitated Person

Index No.

NOTICE OF FINAL ACCOUNTING

The incapacitated person listed above passed away on _____. The Final Accounting of the Guardian for the Incapacitated Person, a copy of which is attached hereto, will be filed within the next 5 days with the Court Examiner and in the County Clerk's office in:

- | | | |
|--|--|--|
| <input type="checkbox"/> Dutchess County Clerk
22 Market Street
Poughkeepsie, NY 12601
(845)486-2131 | <input type="checkbox"/> Putnam County Clerk
40 Gleneida Avenue
Carmel, NY 10512
(845)225-3641 | <input type="checkbox"/> Orange County Clerk
255 Main Street
Goshen, NY 10924
(845)291-2690 |
| <input type="checkbox"/> Rockland County Clerk
27 New Hempstead Road
New City, NY 10956
(845)638-5070 | <input type="checkbox"/> Westchester County Clerk
110 Dr. Martin Luther King, Jr., Blvd.
White Plains, NY 10601
(914)995-3070 | |

As an interested person, you are entitled to file written objections to the Final Accounting within 45 days of service on you of the Final Accounting. Objections must be in the form of a sworn affidavit, in which any item in the final account to which objection is made is specifically identified and detailed reasons for the objection given. Copies of all documentary evidence supporting the objection must be attached, as exhibits, to the affidavit. Your name, address and telephone number, or that of any attorney representing you, must appear at the conclusion of the objections.

1. A copy of the objections must be mailed (certified mail, return receipt requested) to the Court Examiner and the Guardian at the address listed in the Final Accounting and to all other interested persons, whose names and addresses are listed in the Final Accounting.
2. The original of the objections, plus an affidavit of mailing of the copy of the objections to the guardian and all other interested person, must be filed in the county clerk's office designated above.
3. A copy of this Notice of Final Accounting and the objections filed in the county clerk's office, plus a copy of the affidavit of mailing to the guardian and all other interested persons, MUST be mailed (certified mail,

return receipt requested) to the following Court Examiner at the address below:

DUTCHESS COUNTY

Eugene Parlin, Esq.
2354 Route 9
Fishkill, NY 12524
(845) 896-8860

ORANGE COUNTY

Angelo J. Ingrassia, Esq.
626 East Main Street
Middletown, NY 10940
(845) 342-3366

PUTNAM COUNTY

Stephen Abels, Esq.
154 East Main Street
Brewster, NY 10509
(845) 628-4000

Christopher Canfield, Esq.
1 Mahopac Plaza
Mahopac, NY 10541
(914) 234-6313

Carolyn E. Harting, Esq.
P.O. Box 218, Route 22
Bedford, NY 10506
(845) 279-5555

ROCKLAND COUNTY

Richard H. Sarajian, Esq.
67 North Main Street
P.O. Box 1070
New City, NY 10956-8070
(845) 634-7010

Stuart M. Mitchell, Esq.
81 First Avenue
P.O. Box 779
Nyack, New York 10960
(845) 358-4300

WESTCHESTER COUNTY

Thomas J. Altieri, Esq.
56 Harrison Street
New Rochelle, NY 10801
(914) 632-0900

Bruce Bozeman, Esq.
6 Gramatan Ave. 5th Flr.
Mt. Vernon, NY 10550
(914) 668-4600

Anthony S. Colavita, Esq.
575 White Plains Road
Eastchester, NY 10709
(914) 793-1222

John Perone, Esq.
2180 Boston Post Road
Larchmont, NY 10538
(914) 834-3500

Guy Parisi, Esq.
222 Bloomingdale Road
White Plains, New York 10605
(914) 287-7374

Marianne Sussman, Esq.
222 Bloomingdale Road
White Plains, NY 10605
(914) 683-0900

Vincent Rippa, Esq.
2975 Westchester Avenue (Suite 207)
Purchase, NY 696-1800
(914) 696-1800

OTHER:

4. An affidavit of mailing to the Court Examiner must be filed in the county clerk's office designated above.

THE ABOVE FOUR (4) STEPS MUST BE COMPLETED WITHIN 45 DAYS OF YOUR RECEIPT OF THE COPY OF THE FINAL ACCOUNT.

The Court Examiner will audit the Final Accounting and report to the 9th Judicial District Guardianship Accounting Part.

NO ASSETS OF THE INCAPACITATED PERSON MAY BE DISTRIBUTED OR TURNED OVER TO SURROGATE'S COURT UNTIL THE FINAL ACCOUNTING SUBMITTED BY THE GUARDIAN HAS BEEN APPROVED BY THE GUARDIANSHIP ACCOUNTING PART.

M

LEGAL FORMS

SUPREME COURT WESTCHESTER COUNTY
GUARDIANSHIP PART
111 Dr. Martin Luther King Jr. Blvd.
White Plains, NY 10601
(914)824-5372
FAX: (914)995-4396

The Court has requested that counsel use this Part's forms. When commencing a new Article 81 proceeding, please submit the Notice/Order to Show Cause forms developed by the Guardianship Part. You can e-mail Mary Haran and she will send you via e-mail the necessary forms (Notice, Order to Show Cause, Petition, Judgment, Commission/Designation).

Her e-mail address is as follows:

mharan@courts.state.ny.us

Following the hearing, counsel for Petitioner is asked to submit to the court, by Notice of Settlement to all counsel, a transcript of the FINDINGS by the court together with Guardianship Part Judgment that follows the form developed by the Guardianship Part. File this Part's form Commission/Designation with the County Clerk. Counsel seeking payment from the estate of the incapacitated person for legal services shall submit a detailed affidavit of services with the Judgment, on notice to counsel for the incapacitated person.

Order the transcript of the Court Findings from the Court Reporter handling the hearing.

Please note the Part's telephone numbers:

Senior Court Clerk:	Mary Haran (914)824-5372
Court Attorney Referee:	Lisa Citarella (914)824-5237
Court Attorney Referee:	Anne Minihan (914)824-5732
Court Attorney Referee:	Edward Borelli (914)824-5329
	Fax: (914)995-2194

PRESENT: HON. ROBERT M. DI BELLA, A. J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

(5/09)

IN THE MATTER OF THE APPLICATION FOR THE
APPOINTMENT OF A GUARDIAN BY:

NOTICE OF ARTICLE 81
PROCEEDING AND
ORDER TO SHOW CAUSE

Petitioner

INDEX # _____

FOR:

A PERSON ALLEGED TO BE INCAPACITATED

NOTICE OF ARTICLE 81 PROCEEDING

1. ALLEGED INCAPACITATED PERSON'S NAME and ADDRESS/PHONE:

2. PETITIONER'S NAME and ADDRESS:

3. NAMES OF ALL PERSONS TO BE GIVEN NOTICE OF PROCEEDING (include all possible legatees)

4. PETITIONER'S ATTORNEY NAME,
ADDRESS AND **PHONE AND FAX** NUMBER:

Muldoon, Horgan & Loughman

By: _____

Edward D. Loughman, III
271 North Avenue
New Rochelle, NY 10801
Tel: (914)636-5051
Fax: (914)636-5082

ORDER TO SHOW CAUSE

IMPORTANT

**AN APPLICATION HAS BEEN FILED IN THIS COURT BY _____,
WHO BELIEVES YOU MAY BE UNABLE TO CARE FOR YOUR PERSONAL NEEDS
OR FINANCIAL AFFAIRS. _____ IS ASKING THAT
SOMEONE BE APPOINTED TO MAKE DECISIONS FOR YOU. WITH THIS PAPER
IS A COPY OF THE APPLICATION TO THE COURT SHOWING WHY
_____ BELIEVES YOU MAY BE UNABLE TO TAKE CARE
OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS. BEFORE THE COURT
MAKES THE APPOINTMENT OF SOMEONE TO MAKE DECISIONS FOR YOU THE
COURT HOLDS A HEARING AT WHICH YOU ARE ENTITLED TO BE PRESENT
AND TO TELL THE JUDGE IF YOU DO NOT WANT ANYONE APPOINTED. THIS
PAPER TELLS YOU WHEN THE COURT HEARING WILL TAKE PLACE. IF YOU
DO NOT APPEAR IN COURT, YOUR RIGHTS MAY BE SERIOUSLY AFFECTED.**

**YOU HAVE THE RIGHT TO DEMAND A TRIAL BY JURY. YOU MUST TELL THE
COURT IF YOU WISH TO HAVE A TRIAL BY JURY. IF YOU DO NOT TELL THE
COURT, THE HEARING WILL BE CONDUCTED WITHOUT A JURY.**

THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE CLERK OF THE COURT IS:

**Terence Flanagan
111 Dr. Martin Luther King Jr. Blvd., 14th Floor
WHITE PLAINS, NEW YORK 10601
(914) 824-5372**

THE COURT HAS APPOINTED AN ATTORNEY TO REPRESENT YOU AND/OR COURT EVALUATOR TO EXPLAIN THIS PROCEEDING TO YOU AND TO INVESTIGATE THE CLAIMS MADE IN THE APPLICATION. YOU ARE ENTITLED TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT USE THE LAWYER THE COURT APPOINTED FOR YOU, YOU WILL BE REQUIRED TO PAY THAT LAWYER, UNLESS YOU DO NOT HAVE THE MONEY TO DO SO. THE COURT MAY GIVE THE ATTORNEY/COURT EVALUATOR PERMISSION TO INSPECT YOUR MEDICAL, PSYCHOLOGICAL OR PSYCHIATRIC RECORDS. YOU HAVE THE RIGHT TO TELL THE JUDGE IF YOU DO NOT WANT THE ATTORNEY/COURT EVALUATOR TO BE GIVEN THAT PERMISSION. THE ATTORNEY/COURT EVALUATOR'S NAME, ADDRESS AND TELEPHONE NUMBER IS:

The Court Evaluator is directed to submit his/her Report of Court Evaluator to the Guardianship Part at least 48 hours PRIOR to the time of the hearing. The Report of the Court Evaluator shall have an attached separate addendum as to highly sensitive material, including medical information, if any. In order to protect the privacy of the alleged incapacitated person , the Court does not allow the Report outside of the Guardianship Part. The Report shall

be available to all counsel solely at the Guardianship Part upon receipt by the Court to review and to use during the hearing.

1. A HEARING ON THIS APPLICATION SHALL BE HELD AT THE SUPREME COURT, GUARDIANSHIP PART, Courtroom 1400, 111 Dr. Martin Luther King Jr. Blvd., 14th Floor, White Plains, NY on the _____ DAY of _____, 20__ AT _____ AM/PM.

2. AT THAT HEARING AND IN THIS PROCEEDING YOU HAVE THE FOLLOWING RIGHTS

[A] YOU HAVE THE RIGHT TO PRESENT EVIDENCE.

[B] YOU HAVE THE RIGHT TO CALL WITNESSES, INCLUDING EXPERT WITNESSES.

[C] YOU HAVE THE RIGHT TO CROSS EXAMINE WITNESSES, INCLUDING ANY WITNESSES CALLED BY THE COURT.

[D] YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOICE. IF YOU WANT THE COURT TO APPOINT A LAWYER TO HELP YOU AND REPRESENT YOU, THE COURT WILL APPOINT A LAWYER FOR YOU. YOU WILL BE REQUESTED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO.

3. IF A GUARDIAN IS APPOINTED FOR YOU, HE OR SHE MAY BE GIVEN THE AUTHORITY TO EXERCISE THE FOLLOWING POWERS ON YOUR BEHALF:

[A] DETERMINING WHO SHALL PROVIDE PERSONAL CARE OR ASSISTANCE TO YOU;

[B] MAKING DECISIONS REGARDING THE SOCIAL ENVIRONMENT AND OTHER SOCIAL ASPECTS OF YOUR LIFE;

[C] DETERMINING WHETHER YOU SHOULD TRAVEL;

[D] AUTHORIZE ACCESS TO OR RELEASE OF YOUR CONFIDENTIAL RECORDS;

[E] APPLYING FOR GOVERNMENT AND PRIVATE BENEFITS ON YOUR BEHALF;

[F] CONSENTING TO OR REFUSING GENERALLY ACCEPTED ROUTINE OR MAJOR MEDICAL OR DENTAL TREATMENT;

[G] FACILITATE YOUR PLACEMENT IN AN APPROPRIATE LONG TERM CARE FACILITY;

[H] CHOOSING THE PLACE OF YOUR ABODE;

[I] ANY OTHER POWER WHICH THE COURT IN ITS DISCRETION SHALL DEEM APPROPRIATE TO MEET YOUR PERSONAL NEEDS;

[J] TO COLLECT ASSETS AND INCOME AND TO INVEST AND REINVEST THE SAME AS A PRUDENT PERSON OF DISCRETION AND INTELLIGENCE IN SUCH MATTERS SEEKING REASONABLE INCOME, AND TO APPLY SO MUCH OF THE INCOME AND PRINCIPAL AS NECESSARY FOR YOUR COMFORT, SUPPORT, MAINTENANCE AND WELL-BEING;

[K] COLLECTING ALL YOUR INCOME, INCLUDING BUT NOT LIMITED TO SOCIAL SECURITY, DIVIDENDS, INTEREST AND PENSION;

[L] PAYING ALL BILLS NECESSARY TO MAINTAIN YOU IN A LONG TERM CARE FACILITY;

[M] PROVIDING FOR YOUR MAINTENANCE AND SUPPORT;

[N] DETERMINING WHO SHALL PROVIDE PERSONAL CARE TO YOU, AND HAVING THE ABILITY TO PAY FOR SAID SERVICES;

[O] ANY OTHER POWER WHICH THE COURT IN ITS DISCRETION SHALL DEEM APPROPRIATE TO MEET YOUR PROPERTY MANAGEMENT NEEDS.

4. THIS ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ANY SUPPORTING PAPERS UPON WHICH IT IS BASED SHALL BE SERVED UPON _____, THE PERSON ALLEGED TO BE INCAPACITATED, BY PERSONALLY DELIVERING THEM TO HIM / HER ON OR BEFORE _____. IF THE PERSON ALLEGED TO BE INCAPACITATED IS NOT SERVED AT HIS / HER RESIDENCE, A COPY OF THIS ORDER TO SHOW CAUSE, THE PETITION AND ANY SUPPORTING PAPERS SHALL BE LEFT AT HIS / HER RESIDENCE.

5. THIS ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ANY SUPPORTING PAPERS SHALL BE SERVED BY CERTIFIED / OVERNIGHT MAIL OR PERSONALLY DELIVERED TO THE OFFICE OF THE COURT EVALUATOR / COURT APPOINTED ATTORNEY ON OR BEFORE _____.

6. THIS ORDER TO SHOW CAUSE, AND NOTICE ONLY (**NOT PETITION AND SUPPORTING PAPERS**) SHALL BE PERSONALLY SERVED OR SERVED BY CERTIFIED MAIL UPON ANY NEXT OF KIN OR DISTRIBUTEES AND UPON THE CHIEF EXECUTIVE OFFICER OF THE FACILITY WHERE THE ALLEGED INCAPACITATED PERSON RESIDES, IF ANY, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE OF THIS ORDER TO SHOW CAUSE.

IT IS FURTHER ORDERED AND DIRECTED THAT THE PETITIONER MAKE A DILIGENT EFFORT TO CONTACT FAMILY MEMBERS, OR OTHER PERSONS WHO HAVE A RELATIONSHIP WITH THE ALLEGED INCAPACITATED PERSON AND WHO WOULD BE WILLING TO SERVE AS GUARDIAN.

IT IS FURTHER ORDERED AND DIRECTED THAT THE PETITIONER BRING OR CAUSE TO HAVE THE ALLEGED INCAPACITATED PERSON PRESENT IN COURT ON THE RETURN DATE HEREOF. ANY REQUEST FOR A WAIVER OF ANY PROVISIONS OF THIS ORDER MUST BE MADE DIRECTLY TO THE COURT.

PROOF OF SERVICE MUST BE SUBMITTED TO THE COURT ON OR BEFORE THE RETURN DATE.

SERVICE MUST BE COMPLETED AS SPECIFICALLY ORDERED IN THIS ORDER TO SHOW CAUSE OR THE ORDER TO SHOW CAUSE SHALL BE RENDERED A NULLITY.

DATED: _____
WHITE PLAINS, NEW YORK

HON. ROBERT M. DI BELLA, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

IN THE MATTER OF THE APPLICATION FOR THE
APPOINTMENT OF A GUARDIAN BY:

PETITION

INDEX # _____

Petitioner

FOR:

A PERSON ALLEGED TO BE INCAPACITATED

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

The petition of _____ respectfully alleges:

PETITIONER

1. I Reside at _____.

My telephone number is _____.

2. Relationship to AIP: _____

ALLEGED INCAPACITATED PERSON

3. Upon information and belief, _____ (AIP), whose date of birth
is _____ and Social Security # is _____. He / she resides at

_____, telephone number _____.

4. The name, address and telephone number of the spouse of the AIP is: _____

The name(s), address(es) and telephone number(s) of all children of the AIP are:

5. **Functional Incapacity:** _____

6. **Available Resources:** (copies of all documents **must** be attached to the Petition)

- Last Will and Testament dated _____.
- Power of Attorney dated _____ naming _____ as Attorney-In-Fact.
- Health Care Proxy dated _____ naming _____ as health care agent.
- Living Will dated _____.

BACKGROUND

7. **Assets and Property:** _____

8. **Monthly Income:** _____

9. **Cost of Care:** _____

10. **List any and all *current and past* court matters in which the alleged incapacitated person was a party or had a substantial interest (state all known information)**

CAPTION OF MATTER	COURT	DOCKET/INDEX #	DISPOSITION
-------------------	-------	----------------	-------------

NEED FOR PROPERTY MANAGEMENT POWERS

11. **Inability to Manage Affairs:** Owing to _____ (AIP) _____ inadequacies,
(state alleged incapacitated person's purported incapacity as to property management)

he / she is incapable of managing his / her affairs and cannot adequately understand the nature and consequences of such inability.

12. **Likely to Suffer Harm:** He / She is also likely to suffer harm because he / she cannot adequately understand and appreciate the nature of his / her inability to provide for his / her finances as a result of his / her functional limitations.

13. **Request of the Court:** I am asking the Court to appoint me, as the property guardian for _____ (AIP) _____, and to authorize me, among other things to take steps to protect and preserve her income and assets.

14. **Plan for Property Management:** _____

NEED FOR PERSONAL NEEDS POWERS

15. **Need for Personal Powers:** Owing to _____ (AIP) _____ medical condition,
(state alleged incapacitated person 's purported incapacity as to personal needs)

he / she needs my assistance and support in analyzing the various medical and dental decisions (and other personal needs decisions, including her place of residence). Without my assistance, he / she would be unable to provide properly for his / her care and safety. Thus, I am asking that the Court appoint me as _____ (AIP) _____ personal needs guardian as well as her property guardian.

16. **Medications:** _____ (AIP) _____ is taking the following medications:

<u>Name of Medication</u>	<u>Dosage</u>	<u>Frequency</u>
---------------------------	---------------	------------------

POWERS BEING SOUGHT AND DURATION OF POWERS

17. **Specific Property Management Powers Sought:** Based on _____ (AIP) _____ medical condition and his / her inability to handle his / her property affairs, I request that the following property management powers be granted to me by the Court for an indefinite period. They are to:

- a. Marshal his / her income and assets and establish bank, brokerage and other similar accounts in the name of the Guardian for him / her and endorse, collect, negotiate and deposit all negotiable instruments drawn to his / her order, including, but not limited to government entitlement checks; invest funds with the same authority as a trustee, pursuant to New York EPTL section 11-2.2; transfer or gift his / her assets in keeping with his / her will; inventory personal belongings, and store or dispose, as appropriate;
- b. Pay such bills as may be reasonably necessary for his / her maintenance and care;
- c. Pay her obligations;
- d. Establish -

an irrevocable prepaid funeral trust;

a luxury account in accordance with Medicaid regulations;

a separate interest bearing, savings account in the guardian's name, as guardian, in the amount of \$ _____, and denominated in the "Comments" on the bank records "as and for administrative costs of the guardianship proceeding", and such separate account shall not be deemed an available Medicaid asset, unless and until all administrative costs are paid;

e. Obtain and retain government and private benefits;

f. Prosecute and defend civil proceedings, including administrative proceedings, and settle and compromise all matters related to such proceedings;

g. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;

h. Authorize access to or release of confidential records;

i. Retain an attorney or an accountant, or other professional (e.g. a geriatric care manager, financial adviser), subject to **PRIOR** court approval of fees, upon an affidavit of services submitted with the initial, annual or final reports (Mental Hygiene Law sections 81.30, 81.31 and 81.33).

j. Pay the funeral expenses out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same;

k. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

18. **Specific Personal Needs Powers Sought:** Based on _____ (AIP) _____ medical condition and his / her inability to handle his / her personal affairs, I request that the following personal needs powers be granted to the guardian by the Court for an indefinite period;

a. Determine who shall provide personal care or assistance for him / her;

- b. Make decisions regarding social environment and other social aspects of his / her life;
- c. Determine whether he /she should travel;
- d. Authorize access to or release of confidential records;
- e. Apply for government and private benefits;
- f. Choose the place of abode;
- g. Consent to or refuse generally accepted routine or major medical or dental treatment, and to authorize, refuse, withhold, or withdraw life support and devices towards such ends, provided that treatment decisions are made consistent with the findings of Mental Hygiene Law section 81.15 and in accordance with the standards in Mental Hygiene Law section 81.22 (a) (8), all in keeping with the existing Living Will annexed as Exhibit C.

- 19. **Safe Deposit Box:** _____.
- 20. **No Known Debts:** Except _____.

WILL AND PRESUMPTIVE DISTRIBUTEES

- 21. **Presumptive Distributees:** The presumptive distributees are:

<u>NAME</u>	<u>ADDRESS</u>	<u>RELATIONSHIP</u>

AVAILABLE RESOURCES

- 22. **Other Available Resources:** _____.

INTERESTED PARTIES

- 23. **Interested Parties:** The names, addresses, and telephone numbers, and relationships of the interested parties are as follows:

PROPOSED GUARDIAN AND STANDBY GUARDIAN

24. **Proposed Guardian(s):** The name, address and telephone number, and relationship of the of the proposed property management and personal needs guardian(s) is / are:

25. **Proposed Standby Guardian (if any):** The name, address, telephone number, and relationship of the proposed standby guardian is:

26. **Qualifications of Guardians:** The reasons why the proposed guardian and standby guardian (if any) are suitable to exercise the powers necessary to assist _____ (AIP) are: _____

27. **Dispensing with Presence:** (Give reasons if requested).

OTHER INFORMATION

28. **Other Information:** (List any other information that would assist a Court Evaluator or Court Appointed Attorney in completing his or her investigation and report. If no other information so state).

29. **No Previous Application:** Except as described earlier in this petition, no previous application has ever been made to this Court or any other court of competent jurisdiction for the relief sought herein.

WHEREFORE, your petitioner requests:

1. That the annexed Order to Show Cause be signed by the Court;
2. That at the discretion of the Court, some proper person(s) be appointed as Court Evaluator and / or counsel for _____ (AIP) _____, an alleged incapacitated person, to protect his / her interests in this proceeding;
3. That the Court fix the payment of legal and other professional fees including the fee of any Court Evaluator or Court Appointed Attorney;
4. That the petitioner have the relief requested in this petition and such other, further or different relief in the premises as may be just.

Dated: White Plains, New York

20____

(Petitioner)

[Petition must be verified under oath]

415

DUE TO PRIVACY ISSUES IN THIS MATTER, THIS ENTIRE COURT FILE UNDER THIS INDEX NUMBER IS SEALED, UNLESS AND UNTIL FURTHER ORDER OF THE COURT. HOWEVER, APPOINTED GUARDIAN(S), CASE COUNSEL AND THE COURT EXAMINER ARE PERMITTED ACCESS TO SAID FILE.

The Westchester County Clerk is ordered to permanently seal and so mark the file in this matter.

(3/12)

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----X
In the Matter of

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

INDEX # _____

(Name of Person in Need of Guardian).
-----X

<p>{ } = choice must be made of <u>either</u> selection. [] = choice may be made of <u>either, both, any, all</u> selections. Mark choice with X.</p>
--

Murphy, J.:

In a guardianship proceeding, pursuant to article 81 of the Mental Hygiene Law, the Court, having been satisfied that at the commencement of this proceeding the (Name of Person in Need of Guardian (PING)) was a

- resident of this State,
- present in the State,
- not present in the State,
- nonresident of this State, present in the State,

and whose date of birth is : _____,

and having been satisfied that (Name of PING) was served with the order to show cause and petition by personal delivery at least 14 days prior to the return date, and that all other persons required to be served under Mental Hygiene Law section 81.07 were timely served with the order to show cause and petition,

and having appointed a/an

[] Court Evaluator: (Specify name.)

[] Attorney for (Name of PING): (Specify name.),

and having scheduled a return date for this proceeding, at which time:

A. [] (Name of PING) appeared personally and consented to the petition and the appointment of a guardian.

B. [] (Name of PING) did not appear personally, but appeared by counsel, who waived his/her appearance and entered a consent to the petition and the appointment of a guardian.

C. [] (Name of PING) appeared personally and a trial was conducted.

(If A, B, or C. is chosen, check 1(a) and skip to 2 of the Findings of Fact.)

D. [] (Name of PING) did not appear personally and a trial was conducted.

(Proceed to 1. of the Findings of Fact.)

FINDINGS OF FACT

1. a. [] Does not apply.

b. [] This proceeding was not tried in the presence of (Name of PING), because

i. [] (Name of PING) was not present in the State.

ii. [] (Name of PING) was completely unable to participate in the trial or no meaningful participation would result from his/her presence at the trial, because (Specify, e.g., the PING was in a coma, had such cognitive impairments that he/she could not understand the proceeding, was so disoriented that he/she could not communicate any meaningfully relevant information, etc.).

IT IS DETERMINED that the finding of fact contained in paragraph 1 (b) was established by clear and convincing proof upon the documentary evidence submitted and the testimony adduced.

2. It has been established that (Name of PING) is in need of a guardian, because he/she needs a person other than himself/herself to provide for

a. personal needs, including (Specify relevant items, e.g., food, clothing, shelter, health care or safety).

b. financial and property management, including (Specify relevant items, e.g., collection of income, payment of bills, protection and investment of assets).

3. It has been established

a. that no other available resources exist.

b. that other available resources appear to exist, viz., (Specify, e.g., a Power of Attorney, Health Care Proxy, Volunteer Service from Community Organization), but are found to be insufficient or unreliable, because (Specify, e.g., the Power of Attorney or Health Care Proxy were invalidly given, the Attorney in Fact or Health Care Agent have violated their fiduciary duties, the volunteers are not sufficiently skilled).

4. It has been established that the powers granted in the within judgment are necessary to provide for the needs of (Name of PING) and without the grant of these powers such needs would not be met.

5. It has been established that the:

a. the guardianship of person is required for

an indefinite duration.

a period of (Specify time).

b. the guardianship of property is required for

an indefinite duration.

a period of (Specify time)

IT IS DETERMINED that the findings of fact contained in paragraphs 2, 3, 4, and 5 are established

upon the consent of (Name of PING).

by a preponderance of proof upon the documentary evidence submitted and the testimony

adduced.

6. It has been established that (Name of PING) has the following functional limitations:

(Specify, from the record, functional limitations, both physical and mental, cognitive impairments, impairments to judgment, insight, memory, etc.).

IT IS DETERMINED that the findings of fact contained in paragraph 6 are established

[] upon the consent of (Name of PING).

[] by clear and convincing proof upon the documentary evidence submitted and the testimony

adduced.

(If upon consent, check 7(a) and skip to 8 of the Findings of Fact.)

7. a. [] Does not apply.

b. [] It is established

i. that (Name of PING) lacks understanding and a appreciation of the nature and consequences of these functional limitations;

ii. that it is likely that (Name of PING) will suffer harm because of these functional limitations and inability to understand adequately and appreciate the nature and consequences of such limitations, because: (Specify, from the record, e.g., PING will suffer physical harm because of the inability to provide for any or all of the activities of daily living and does not understand or appreciate the necessity of same; likewise the inability to provide for medical care and treatment, including self-administration of medication, and to understand and appreciate its necessity; likewise financial and property management, viz., collection and deposit of income, the payment of bills, protection and investment of assets, Medicaid and estate planning, filing of tax returns and payment of taxes; etc.);

IT IS DETERMINED that the findings of fact contained in paragraph 7 (b) are established by clear and convincing proof upon the documentary evidence submitted and the testimony adduced.

8. It is established that (Name[s] of Guardian[s]) is / are eligible for appointment as a guardian under Mental Hygiene Law section 81.19 and is / are best suited to exercise the powers necessary to assist (Name of PING), because (Specify, from record, e.g., relationship with PING, nomination by

PING, education and experience, best choice among others proposed, no one proposed and the Court had to choose from the Fiduciary List or a non-profit organization not on the list but expert in this field.).

9. It has been established that the approximate value of (Name of PING)'s liquid assets is (Specify, from record, dollar amount of cash, stocks, bonds, mutuals, etc. Do not include real estate.), and monthly income is in the approximate amount of (Specify, from record, dollar amount.)

IT IS DETERMINED that the findings of fact contained in paragraphs 8 and 9 are established by a preponderance of proof upon the documentary evidence submitted and the testimony adduced.

CONCLUSIONS OF LAW

10. The Court has jurisdiction in this proceeding as to subject matter and person.
11. (Name of PING) is a person in need of the appointment of a guardian.
12. (Name of PING) is
 - a. consenting to the appointment of a Guardian.
 - b. an incapacitated person.
13. The powers granted in the within judgment are the least restrictive means of intervention consistent with (Name of PING)'s functional limitations.

JUDGMENT

ORDERED AND ADJUDGED that the report of the Referee dated _____ is confirmed;

ORDERED AND ADJUDGED that the following is / are appointed:

- Guardian of the Property: (Name, address, phone number must be stated).
- Guardian of the Person: (Name, address, phone number must be stated).
- Co-Guardian of the Property: (Name, address, phone number).
- Co-Guardian of the Person: (Name, address, phone number).

The co-Guardians are authorized to act individually jointly

The Guardian(s) were nominated by petitioner or ward ; family members ;

independent Guardian(s) appointed by the Court.

The Guardian is is not subject to Part 36 of the Rules of the Chief Judge.

THE GUARDIAN(S) ARE TO NOTIFY THE COURT & COURT EXAMINER WITHIN 30 DAYS OF ANY CHANGE OF ADDRESS.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Person and/or Property shall file with the County Clerk a designation of the Clerk for service of process, in the form attached hereto;

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Property shall

not be required to file a bond.

file a bond for the duration of the Guardianship in the amount of \$ _____

(Specify the amount directed by the Court at the trial or leave blank for the Court to complete. The amount of the bond may be adjusted by the Court throughout the term of the Guardianship);

ORDERED AND ADJUDGED that upon filing the designation

and bond,

by the Guardian / Co-Guardians of the Person and/or Property, the County Clerk shall execute and issue a commission, in the form attached hereto.;

ORDERED AND ADJUDGED that within 30 days of the signing of the Judgment, the Guardian shall file the Designation of the Clerk to receive Process and obtain the Commission from the County Clerk. **The Guardian shall serve a copy of the Commission signed by the County Clerk upon this court and the Court Examiner** within 5 days of its issuance and that the Commission issued in accordance herewith shall constitute the Guardian's / Co-Guardian's sole warrant to act;

If 3 (b) of the Findings of Fact was checked, the following should be added:

ORDERED AND ADJUDGED that the following is revoked:

- any and all previously executed Powers of Attorney and/or Health Care Proxies.
- the Power of Attorney, executed on (Date), appointing (Name) as Attorney-in-Fact.
- the Health Care Proxy, executed on (Date), appointing (Name) as Health Care Agent.

Otherwise, it

- does not apply.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians shall act faithfully in accordance with the general duties imposed upon guardians by Mental Hygiene Law section 81.20;

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of Property shall have the following powers with regard to the property of (Name of PING):

1. Marshal his/her income and assets and establish bank, brokerage and other similar accounts as 'GUARDIANSHIP' accounts titled as follows: "***Guardianship Account for [name of incapacitated person] by Guardian of the Property, [Guardian's name]***", utilizing the incapacitated person's Social Security number, in a bank that shall provide either banking statements, canceled checks, or copies of canceled checks to the Guardian and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of (Name of Ping), including, but not limited to government entitlement checks; invest funds with the same authority as a trustee, pursuant to New York EPTL section 11-2.2; inventory personal belongings, and store or dispose, as appropriate. ***All guardianship accounts shall be solely for the benefit of the incapacitated person and no 'joint' accounts shall be allowed.***

2. Open the safety deposit box, if any, in the presence of a bank representative and there shall be a certification of the contents by the Guardian and bank representative. The contents of the safety deposit box cannot be removed without prior Court Order.

3. Pay such bills as may be reasonably necessary for his/her maintenance and care;

4. Make gifts, subject to **prior** court approval, pursuant to Mental Hygiene Law section

81.21.(b), except that no **prior** court approval shall be required for any gift or gifts to an individual, if the total of all gifts to that individual in the same year does not exceed \$500, **AND** the total of **all** gifts to **all** individuals in the same year does not exceed the lesser of 5% of all liquid assets in the guardianship estate or \$10,000;

5. Provide support for persons dependent upon him/her *(Specify name and address of dependent, relationship to PING, whether legally obligated to support dependent and amount of support.)*

6. Enter into contracts (including contracts for the sale of real property, provided that **prior to the closing of title** the Court approves the terms of sale, upon submission of a copy of the fully executed contract and a written appraisal of the value of the property ; however, a prior court order is required to mortgage real property **(other contracts for the sale or purchase of assets [e.g., real estate, cars, boats, etc.], including construction contracts, shall require prior court approval, if the contract price is in excess of \$10,000 or 10% of the guardianship estate, whichever is less, provided that no prior court approval shall be required when the contract price is less than \$500)**;

7. Establish from resources only and not from income:

an irrevocable prepaid funeral trust and submit proof of such trust to the Court

Examiner with the Initial Report.

a luxury account in the amount permitted by statute..

a separate interest bearing, savings account in the guardian's name, as guardian, entitled 'Guardianship Administrative Account' in the amount of *(Specify amount)*, and denominated in the "Comments" on the bank records **"as and for administrative costs of the guardianship proceeding"**, and such separate account shall not be deemed an available Medicaid asset, unless and until all administrative costs are paid. The Guardian shall only use the 'Administrative Account' for Guardianship administrative costs such as court costs, fees, including court examiner fees, and attorneys fees, ordered by the court. (Such bank account must provide either banking statements, canceled checks, or copies of canceled checks);

8. Engage in Medicaid and estate planning, subject to **prior** court approval of all proposed

transfers, pursuant to Mental Hygiene Law section 81.21(b);

9. Apply for government and private benefits;

10. Legal capacity to sue on behalf of the incapacitated person which includes the authority to hire counsel, to prosecute and to defend civil proceedings, including administrative proceedings, and to settle and compromise all matters related to such proceedings. All such legal actions are subject to prior court approval. ***The Guardian is put on notice that NO attorneys fees are to be paid from the assets of the incapacitated person without a prior written court order. Guardian(s) are NOT required to be personally responsible for legal fees for the benefit of the incapacitated person nor is the Guardian required to sign any retainer agreements that would require them to be personally responsible for legal fees for services to the Guardianship;***

11. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;

12. Authorize access to or release of confidential records;

13. Retain an attorney solely for necessary **legal** work, or an accountant, if the Guardian determines that such professional assistance is necessary, subject to court approval of fees upon a **detailed** affidavit of services submitted to the court. **Legal fees may NOT be paid by the Guardian prior to court approval (see page 8, paragraph 10). Pursuant to Part 36 of the Rules of the Chief Judge, the Guardian, unless exempt under § 36.1 (b), shall prior to retaining an attorney, accountant or other professional, apply to the court for such appointment**

14. Pay the funeral expenses of out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same; and pay estimated estate and income tax charges, as well as other charges of an emergent nature, if there is no duly appointed personal representative of the estate;

15. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

16. Upon the death of the incapacitated person, the Guardian shall comply with all of

the terms of Mental Hygiene Law §81.44, including the specific directions as to turn over of guardianship property;] 17. Lease a primary residence for up to 3 years.

] 18. Exercise or release powers held by the incapacitated person as trustee, personal representative, including Executor, beneficiary, guardian for a minor, guardian, or donee of a power of appointment.

] 19. Collect and open all of the incapacitated person's mail; to have full authority to direct, forward or stop the delivery of mail and to take all lawful actions with regard to the incapacitated person's mail, including the establishment of a post office box in the Guardian's name for the incapacitated person for the delivery of all mail, if necessary.

] 20. Pursuant to Mental Hygiene Law §81.20 (6)(vi), if the incapacitated person owns real property, the Guardian of the Property, within 30 days of Judgment, is to file and have recorded and indexed under the name of the incapacitated person, a notarized statement with the County Clerk where the property is located (send a copy to the Court Examiner), **identifying**, including the tax map numbers, the real property owned by the incapacitated person and also stating the date of the Guardianship Judgment finding that the person now has a Guardian of the Property; and **listing** the Guardian of the Property's and Surety's (if any) name, address and telephone number on this statement.

ORDERED AND ADJUDGED that the guardianship of the property shall be for

] an indefinite duration.

] a period of _____ (**Specify time**). Upon expiration of this time period, the Guardian(s) shall immediately file a final accounting.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Person shall have the following powers with regard to the personal needs of (**Name of PING**):

] 1. Determine who shall provide personal care or assistance for him/her;

] 2. Make decisions regarding social environment and other social aspects of his/her life;

] 3. Determine whether he/she should travel;

] 4. Determine whether he/she should possess a license to drive;

] 5. Authorize access to or release of confidential records, including any and all

medical/dental/mental health providers' records governed by the Federal Health Insurance Portability and Accountability Act (HIPAA);and which shall include the authority to discuss and consult with all medical/dental/mental health providers for the incapacitated person regarding condition, treatment and care.

- 6. Make decisions regarding education;
- 7. Apply for government and private benefits and for any re-certification of such benefits;
- 8. Choose the place of abode within the State of New York only,

provided that (Name of PING) shall not be placed in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801, without his / her consent or further order of the court.

including placement or continued placement in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801 and including the authority to effectuate all necessary documentation for such placement; provided that no consent shall be given to the voluntary formal or informal admission of (Name of PING) to a mental hygiene facility under article 9 or 15 of the Mental Hygiene Law or to an alcoholism facility under article 21 of the Mental Hygiene Law.

9. Consent to or refuse generally accepted routine or major medical or dental treatment, provided that treatment decisions are made consistent with the findings of Mental Hygiene Law section 81.15 and in accordance with the standards in Mental Hygiene Law section 81.22 (a)(8), and provided

further that no consent shall be given to the administration of psychotropic medication or electroconvulsive

therapy without further order of this court or a court of competent jurisdiction.

10. Execute a Do Not Resuscitate Order in accordance with the provisions of Article 29-B of

the Public Health Law.

- 11. (Other).

ORDERED AND ADJUDGED that the guardianship of the person shall be for

an indefinite duration.

a period of _____ (Specify time).

ORDERED AND ADJUDGED that the Guardian / Co-Guardians of the Property shall be compensated pursuant to

Surrogate's Court Procedure Act section 2307, or

Surrogate's Court Procedure Act section 2309, or

a plan to be submitted to the court within 30 days and approved by court order.

that the Guardian / Co-Guardian of the Person shall be compensated pursuant to a plan to be submitted to the Court within 30 days and approved by court order.

the Guardian is waiving commissions.

ORDERED AND ADJUDGED that the **Guardian/Co-Guardians shall file all accountings [Initial Report within 90 days of receiving commission, Annual Accountings every year before May 15 and Final Report within 150 days of death]** with the County Clerk's Office and a copy to the Court Examiner appointed as required by Mental Hygiene Law sections 81.30, 81.31 , 81.33 and 81.44. The Court Examiner shall examine all accountings, including Initial Report, Annual Accounting and Final Accounting within 30 days of receipt. The Guardians are put on notice that upon any breach of fiduciary duty, including the failure to include all assets in the accountings, the failure to immediately notify the Court Examiner of any settlements or personal injury awards and the failure to properly file reports and accountings, the Guardian may be ordered to appear before the court which may result in the Guardian being removed, surcharged and or commissions due the Guardian being reduced. **The Guardian shall not take any annual commissions / compensation for any year until that year's annual account is filed, reviewed by the Court Examiner, and approved by the Court;** and it is further

ORDERED AND ADJUDGED that in addition to filing the Initial Report with the County Clerk's office, the Guardian shall send a copy of the Initial Report to the following: the incapacitated person, the counsel for the incapacitated person, the Mental Hygiene Legal Service if the incapacitated person resides in a mental hygiene facility, the chief executive officer of a facility if the incapacitated person resides in a facility and the Court Evaluator, if any.

ORDERED AND ADJUDGED that compensation (to be paid by the Guardian from the incapacitated person's assets unless otherwise stated) which is deemed reasonable for the services provided is approved for the following in the following amounts:

Court Evaluator: \$ _____.

Court-Appointed Attorney: \$ _____ (checks to Mental Hygiene

Legal Service shall be made payable to "NYS Unified Court System")

Petitioner's Attorney: \$ _____

Expert Witnesses (**Specify**): \$ _____

(**Other**): \$ _____.

Compensation shall be approved in a separate order, upon submission of affidavits of services.

ORDERED AND ADJUDGED that Guardian/Co-Guardians

shall

shall not

be required to complete a training program, as required by Mental Hygiene Law section 81.39, within a reasonable period after issuance of the commission.

ORDERED AND ADJUDGED that the following is appointed Court Examiner:

ORDERED AND ADJUDGED that the Final Accounting in this matter is hereby referred to the Court Examiner to hear and report to the Court pursuant to Mental Hygiene Law 81.33.

ORDERED AND ADJUDGED that the following shall be served with notice of all further proceedings in this matter:

- []** (Name of PING.)
- []** Guardian/Co-Guardians.
- []** Mental Hygiene Legal Service.
- []** Court Examiner.
- []** Bonding Company.
- []** Veterans Administration.
- []** Other. (Specify)

ORDERED AND ADJUDGED that the court shall maintain jurisdiction over this matter and that the Rules of the 9th Judicial District's Guardianship Accounting Part (111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601) shall govern all procedures for the examination and settlement of said reports and accountings.

The person in need of guardianship may not be permanently removed from the geographical jurisdiction of this court without a prior written court order.

ORDERED AND ADJUDGED that the Guardian shall file the Designation of the Clerk to Receive Process and obtain the bond and Commission within 30 days of the signing of the Judgment and that **Petitioner's counsel** shall be responsible for assisting the person whom the Court has appointed as Guardian in filing the Guardian's designation with the County Clerk and obtaining the commission from the County Clerk, unless said individual is represented by his / her own separate counsel.

ORDERED AND ADJUDGED that a copy of the "Findings of Fact, Conclusions of Law and Judgment" shall be personally served upon and read to (Name of PING) by the Court Evaluator, by counsel for (Name of PING) or by the Guardian in accordance with Mental Hygiene Law section 81.16 (e).

ORDERED AND ADJUDGED that a copy of the Findings of Fact, Conclusions of Law and Judgment and Order To Show Cause and Petition shall be served by petitioner's counsel, by regular mail,

upon the Guardian /Co-Guardians and the Court Examiner only. A copy of the Findings of Fact, Conclusions of Law and Judgment (**NOT** the Order To Show Cause and Petition) shall be served upon all counsel, and all persons entitled to notice of further proceedings within 20 days of the date of the Judgment. An affidavit of service that such service was timely done shall be filed with the Guardianship Part. Failure to comply may result in sanctions.

ORDERED AND ADJUDGED that any appointee herein shall comply with Part 36 of the Rules of the Chief Judge by filing the proper forms with this Court when applicable. Any subsequent affidavit or affirmation of service submitted to this Court must contain a statement indicating such compliance and be accompanied by a properly completed Approval of Compensation.

ORDERED AND ADJUDGED that the Guardian is to report to the Court Examiner, in writing within 30 days, of a change in the incapacitated person's place of residence and of any significant change in the incapacitated person's assets, physical and/or mental condition. Additionally, the Guardian is to immediately notify this Court, the Surrogate's Court and the Court Examiner of the death of the incapacitated person and within 20 days of the death, file an original death certificate with this Court and a copy of the death certificate with the Court Examiner, duly appointed personal representative of the estate or, if none, with the personal representative named in the will or a trust document, and the Public Administrator.

ORDERED AND ADJUDGED, on or before 90 days from the date that the Commission to Guardians is issued, the Guardian of the Property and Guardian of the Person must file with the Court Examiner¹ and the Guardianship Referee² proof (copies acceptable) that they have complied with all of the preliminary requirements (commission, bond, educational training, if required). Failure to timely comply shall result in a mandatory compliance conference to be held at the court. *Petitioner's counsel is directed to ensure that all preliminary requirements are timely complied with by the Guardian(s).*

ORDERED AND ADJUDGED that the Guardian is not authorized to act, including marshaling of assets and collecting income, until the Guardian receives the official Commission issued by the County Clerk. The Guardian shall file a copy of the Commission with the Court Examiner and the Court

¹The name and address of the Court Examiner is located on page 12/13 of this Judgment.

²Address of the Guardianship Referee:: Westchester Supreme Court, Guardianship Part, 111 Dr. Martin Luther King, Jr. Blvd., 14th Floor, White Plains, NY 10601.

within 5 days of its issuance.

ENTER:

DATED: _____, 2012
WHITE PLAINS, NY

HON. J. EMMETT MURPHY, J.S.C.

The Petitioner's Name, Address and Telephone Number are:
(Specify)

The Attorney for the Petitioner's Name, Address and Telephone Number are:
(Specify)

-----X
In the Matter of

COMMISSION TO GUARDIAN
INDEX NO.

(Name of incapacitated person/ward)
-----X

{ } = choice **must** be made of either selection.

[] = choice **may** be made of either, both, any, all selections.
Mark choice with X:

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

By judgment of this Court, dated _____, 20____, the following was appointed:

[] Guardian of the Property: _____
(Name, address, phone number).

[] Guardian of the Person: _____
(Name, address, phone number).

[] Co-Guardian of the Property: _____
(Name, address, phone number).

[] Co-Guardian of the Person: _____
(Name, address, phone number).

for: _____
(Name of Person In Need of Guardian, address, phone number)

The Guardian of Property was granted the following powers:

[] 1. Marshal the incapacitated person/ward's income and assets and establish bank, brokerage and other similar accounts as 'GUARDIANSHIP' accounts titled as follows: "**Guardianship Account for [name of incapacitated person] by Guardian of the Property, [Guardian's name]**", utilizing the incapacitated person's Social Security number, in a bank that shall provide either banking statements, canceled checks, or copies of

approval;

14. Pay the funeral expenses of out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same;

15. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

16. Lease a primary residence for up to 3 years.

17. Exercise or release powers held by the incapacitated person as trustee, personal representative, including Executor, beneficiary, guardian for a minor, guardian, or donee of a power of appointment.

18. Collect and open all of the incapacitated person's mail; to have full authority to direct, forward or stop the delivery of mail and to take all lawful actions with regard to the incapacitated person's mail, including the establishment of a post office box in the Guardian's name for the incapacitated person for the delivery of all mail, if necessary.

19. Pursuant to Mental Hygiene Law §81.20 (6)(vi), if the incapacitated person owns real property, the Guardian of the Property, within 30 days of Judgment, is to file and have recorded and indexed under the name of the incapacitated person, a notarized statement with the County Clerk where the property is located (send a copy to the Court Examiner), **identifying**, including the tax map numbers, the real property owned by the incapacitated person/ward and also stating the date of the Guardianship Judgment finding that the person now has a Guardian of the Property; and **listing** the Guardian of the Property's and Surety's (if any) name, address and telephone number on this statement.

The guardianship of the property shall be for

an indefinite duration.

a period of _____ (Specify time).

The Guardianship of the Person shall have the following powers with regard to the personal needs of the **incapacitated person /ward**:

1. Determine who shall provide personal care or assistance for him/her;

2. Make decisions regarding social environment and other social aspects of his/her life;

3. Determine whether he/she should travel;

4. Determine whether he/she should possess a license to drive;

5. Authorize access to or release of confidential records, including any and all medical/dental/mental health providers' records governed by the Federal Health Insurance Portability and Accountability Act (HIPAA); and which shall include the authority to discuss and consult with all medical/dental/mental health providers for the incapacitated person regarding condition, treatment and care.

6. Make decisions regarding education;

7. Apply for government and private benefits;

8. Choose the place of abode,

provided that **the incapacitated person /ward** shall not be placed in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801, without his / her consent or further order of the court.

including placement or continued placement in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801 and including the authority to effectuate all necessary documentation for such placement; provided that no consent shall be given to the voluntary formal or informal admission of **incapacitated person /ward** to a mental hygiene facility under article 9 or 15 of the Mental Hygiene Law or to an alcoholism facility under article 21 of the Mental Hygiene Law.

9. Consent to or refuse generally accepted routine or major medical or dental treatment, provided that treatment decisions are made consistent with the findings of Mental Hygiene Law section 81.15 and in accordance with the standards in Mental Hygiene Law section 81.22 (a)(8), and provided further that no consent shall be given to the administration of psychotropic medication or electroconvulsive therapy without the consent of **incapacitated person /ward** or further order of this court or a court of competent jurisdiction.

10. Execute a Do Not Resuscitate Order in accordance with the provisions of Article 29-B of the Public Health Law.

11. Other.

The guardianship of the person shall be for

an indefinite duration.

a period of _____ (Specify time).

The Guardian is to report to the Court Examiner, in writing within 30 days, of a change in the incapacitated person/ward's place of residence and of any significant change in the incapacitated person/ward's physical or mental condition. Additionally, the Guardian and /or Nursing Home is to immediately notify this Court, the Surrogate's Court and the Court Examiner of the death of the incapacitated person/ward and file a copy of the death certificate with this Court and the Court Examiner.

The incapacitated person/ward may not be permanently removed from the state of New York without a prior written court order.

The Guardian of the Property has filed a designation.

A bond was required in the amount of \$ _____ and has been filed.

The Guardian/co-Guardians represent that this commission accurately states the authority granted by the Court of the Guardianship Part in this matter, pursuant to the Judgment.

DATED: _____, 200
_____, NY

CLERK

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

_____ X

In the Matter of

DESIGNATION

INDEX NO. _____

(Name of Incapacitated person /ward)

_____ X

I / We, _____, residing at
(Guardian of Property)

_____, and

_____, residing at
(Co-Guardian of Property)

_____ do hereby

designate the Clerk of the County of Westchester, as a person on whom service of any process may be made in like manner and with like effect as if it were served personally upon the Guardian / Co-Guardians of the Property, whenever the Guardian / Co-Guardians of the Property cannot, with due diligence, be served within the State.

DATED: _____, 20____

(Signature of Guardian)

(Signature of Co-Guardian)

State of New York)

§.s

County of _____)

On this ___ day of _____, 20____, before me came _____

(Name of Guardian)

_____, to me known to be the individual(s) described in, and who

(Name of Co-Guardian)

executed, the foregoing instrument known as a Designation, and acknowledged that he / she / they executed same

Notary.

Instructions for the Use
of the HIPAA-compliant Authorization Form to
Release Health Information Needed for Litigation

This form is the product of a collaborative process between the New York State Office of Court Administration, representatives of the medical provider community in New York, and the bench and bar, designed to produce a standard official form that complies with the privacy requirements of the federal Health Insurance Portability and Accountability Act ("HIPAA") and its implementing regulations, to be used to authorize the release of health information needed for litigation in New York State courts. It can, however, be used more broadly than this and be used before litigation has been commenced, or whenever counsel would find it useful.

The goal was to produce a standard HIPAA-compliant official form to obviate the current disputes which often take place as to whether health information requests made in the course of litigation meet the requirements of the HIPAA Privacy Rule. It should be noted, though, that the form is optional. This form may be filled out on line and downloaded to be signed by hand, or downloaded and filled out entirely on paper.

When filing out Item 11, which requests the date or event when the authorization will expire, the person filling out the form may designate an event such as "at the conclusion of my court case" or provide a specific date amount of time, such as "3 years from this date".

If a patient seeks to authorize the release of his or her entire medical record, but only from a certain date, the first two boxes in section 9(a) should both be checked, and the relevant date inserted on the first line containing the first box.

WWW. NYCOURTS.GOV



AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name	Date of Birth	Social Security Number
Patient Address		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:

8. Name and address of person(s) or category of person to whom this information will be sent:

9(a). Specific information to be released:

Medical Record from (insert date) _____ to (insert date) _____

Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: _____ Include: (Indicate by Initialing)

_____ Alcohol/Drug Treatment

_____ Mental Health Information

_____ HIV-Related Information

Authorization to Discuss Health Information

(b) By initialing here _____ I authorize _____

Initials Name of individual health care provider

to discuss my health information with my attorney, or a governmental agency, listed here:

_____ (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: <input type="checkbox"/> At request of individual <input type="checkbox"/> Other:	11. Date or event on which this authorization will expire:
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Date: _____

Signature of patient or representative authorized by law.

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER _____ X

In the Matter of _____,
Guardian of the Person and/or Property of

STATEMENT UNDER
MENTAL HYGIENE
LAW §81.20(a)(6)(vi)

Index # _____

_____ X
An Incapacitated Person

NOTICE IS HEREBY GIVEN that an owner of real property in this county, one _____, has been adjudicated by the Supreme Court, Westchester County, on _____, to be incapacitated and in need of a Guardian as provided in Article 81 of the Mental Hygiene Law and which judgment was entered _____ in the office of the Clerk of Westchester County.

The incapacitated person is:

The property owned by the incapacitated person is

_____ Drive
Scarsdale, New York
New Rochelle Block _____, Lot _____

Being the same premises conveyed to _____ and _____ by deed dated _____, and recorded in the Office of the County Clerk for the County of Westchester on _____ in liber _____ of deeds at page

Caption of Case

NOTICE OF PENDENCY

Index No. _____

NOTICE IS HEREBY GIVEN that a guardianship proceeding has been commenced, pursuant to article 81 of the Mental Hygiene Law, and is now pending in this Court, upon the petition of the above named petitioner for judgment declaring _____ Name of AIP an Incapacitated Person and appointing a Guardian for him/her, with the power to marshal the assets of _____ Name of AIP, including certain real property, house and premises, known generally as _____ Street Address, New York, and more particularly described in a deed recorded in the County Clerk's Office of _____ County County, in Book _____ of Deeds, at Page _____, and adjudging said real property an asset of the Guardianship Estate.

The premises affected by said proceeding, at the commencement of this proceeding, and at the time of filing this notice are situated in the City (Town or Village) of _____, County of _____, State of New York, and are more particularly described in a deed from _____ Grantor to _____ Grantee, dated _____, 19, recorded in the _____ County Clerk's Office _____, 19, in Book _____ of Deeds, at Page _____, as follows:

Deed Description

INCLUDE BLOCK AND LOT NUMBERS.

Signature of Attorney or Party Filing Notice

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

ORDER TO OPEN
SAFE DEPOSIT BOX

of

MILDRED JONES, an INCAPACITATED PERSON

----- -x

PRESENT: HON. LOUIS C. PALELLA,
Justice of the Supreme Court

UPON reading and filing the Affirmation of (Name of Attorney for Guardian) dated the day of , 1994, the (Name of Bank), a corporation doing business at , New York, is hereby ordered, directed and authorized to allow JOHN JONES, the Guardian herein, his attorney, (Name of Attorney for Guardian), ESQ., and (Name of Evaluator/Court Examiner), the Evaluator/Court Examiner, hereinbefore appointed by this Court, to open the safe deposit box of MILDRED JONES, the Incapacitated Person herein, in the presence of an Officer of the (Name of Bank) for the purpose of making a complete inventory of the contents of the safe deposit box and to remove the contents and retain them under the control and custody of the JOHN JONES;

ORDERED, that the said (Evaluator/Court Examiner) prepare a written report of such inventory, certify the same to be a true and complete inventory of the contents of said safe deposit box and file the original with the Court within fifteen (15) days of such safe

deposit box open and inventory, and it is further

ORDERED, that the said (Evaluator/Court Examiner) file his Supplemental Report relating to said safe deposit box opening and inventory within fifteen (15) days of same.

Signed this day of , 1994, at White Plains, New York.

E N T E R

JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

In the Matter of the Application
of

Index No.

JOHN JONES, Guardian

AFFIRMATION

of

MILDRED JONES, an INCAPACITATED PERSON,

Seeking an Order to Open Safe Deposit Box

----- x

(Name of Attorney for Guardian), an attorney at law, duly licensed to practice law in the State of New York, under the penalty of perjury, does affirm as follows:

1. I am the attorney for JOHN JONES, who was appointed by this Court as Guardian of MILDRED JONES, an Incapacitated person.
2. In reviewing the documents and other items made available to your Affirmant, and in particular, the report of the (Name of Evaluator/Court Examiner), the existence of two safe deposit boxes in the name of MILDRED JONES were found, both of which were maintained in the (Name of Bank).
3. The second safe deposit box is maintained in the (Name and address of Bank). This safe deposit box is identified by the number (Number of Box). This information was obtained from the report of (Name of Evaluator/Court Examiner).
4. It is important to this Court and to JOHN JONES, the Guardian herein, that the contents of the safe deposit box be completely inventoried and that a report of said inventory be filed with this Court, and that the contents thereto be removed and brought under the

At a Special Term, Part VI of
the of the Supreme Court of the
State of New York, held in and
for the County of Westchester,
at the County Courthouse,
111 Grove Street, White Plains,
New York on the day of
1994.

P R E S E N T :

HON. LOUIS C. PALELLA

Justice of the Supreme Court

----- x

In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

ORDER TO SHOW CAUSE

of

MILDRED JONES, an INCAPACITATED PERSON

For Leave to Sell Real Property

----- x

Upon the annexed Petition of JOHN JONES, Guardian, duly verified
on the day of , 1994, together with the Exhibits annexed
thereto and upon all of the pleadings and proceedings heretofore had
herein, and due deliberation having been had thereon,

NOW, on Motion (Attorney for Guardian), it is Ordered that
(Name of I.P.) herein, Jane Doe, John Dow, Ron Doe, and the (Name of
Surety), the surety herein,

SHOW CAUSE before this Court at a Hearing at a Special Term, Part
VI thereof, to be held in and for the County of Westchester at the
County Courthouse, 111 Grove Street, White Plains, New York, on the
day of , 1994, at 10:00 a.m., or as soon thereafter as
Counsel can be heard,

*Sale of
Real Estate*
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

PETITION

of

MILDRED JONES, an INCAPACITATED PERSON,

For Leave To Sell Real Property.

----- x

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

The Petition of JOHN JONES respectfully sets forth, states and alleges:

1. That I am the Guardian of MILDRED JONES, an Incapacitated Person, having been appointed as such Guardian by an Order of this Court duly made on _____, 1994, and entered in the Office of the Clerk of the County of Westchester on that date.

2. That the said MILDRED JONES is the owner of certain real property located at (Address of Property), also known as (Tax Map Designation, Section, Block and Lot) in the (City, Town, Village of), County of Westchester and State of New York, said real property is more particularly described in the Contract of Sale and marked Schedule "A", a copy of which is annexed hereto and marked "Exhibit "A".

3. That on the (date of Contract of Sale), a Contract of Sale, (see Exhibit "A" attached hereto) was entered into between Petitioner as Seller, and (Name of Purchasers), as Purchasers, for the sale and purchase of said real property for the sum of (Amount of Purchase

Price).

4. That annexed hereto and made a part hereof is the appraisal of (Name of Appraiser), a licensed real estate broker, dated , 1994 setting forth the fair market value of the subject real property to be the sum of (Amount of Appraisal). Should the Court require another appraisal, Petitioner shall pay for same from the Guardianship assets.

5. That the said MILDRED JONES is presently a patient at (Name of Facility/Nursing Home) located at (Address of Facility/Nursing Home), where the costs for her care and maintenance is approximately (Amount of yearly cost) a year for said nursing home.

6. That the other assets other than the real property are various bank accounts which have become depleted as well as a (Name of Brokerage Account, Stocks, etc. if any), but the upkeep and maintenance of the real property is depleting the assets of the Incapacitated Person, while the real property remains unoccupied.

7. That your petitioner is desirous of relieving the Incapacitated Person's estate of this tremendous burden and expense.

8. That the real property is presently vacant and there is always the fear of vandals.

9. That it is respectfully submitted that it would be to the best interest of the Incapacitated Person to sell the real property in accordance with the terms of the annexed Contract of Sale.

10. That the advertising of the within real property for sale, for a period of four (4) consecutive weeks by Notice of Sale posted conspicuously on the premises, is now required by the amendment to §1722(5) of the Real Property Actions and Proceedings Law, effective September 1, 1977, but should be dispensed with because the house being

At a Special Term, Part VI of
the of the Supreme Court of the
State of New York, held in and
for the County of Westchester,
at the County Courthouse,
111 Grove Street, White Plains,
New York on the day of
1994.

P R E S E N T :

HON. LOUIS C. PALELLA

Justice of the Supreme Court

----- x

. In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

JUDGMENT AND ORDER

of

MILDRED JONES, an INCAPACITATED PERSON

----- x

UPON the application of JOHN JONES, the Guardian of MILDRED JONES,
the INCAPACITATED PERSON herein, to sell her interest in certain real
property by a Petition dated , 1994, and the
Contract having been placed in evidence and the appraisal of said
property having been annexed thereto and a hearing having been held in
this matter wherein the appraiser, (Name of Appraiser), having
testified, now is it

On Motion of (ATTORNEY'S NAME), attorneys for the Petitioner
herein, it is

ORDERED, ADJUDGED AND DECREED that the Contract of Sale
heretofore submitted with the Petition be and the same is hereby
approved, and it is further

ORDERED, ADJUDGED AND DECREED that the said JOHN JONES, Guardian herein of the property of MILDRED JONES, Incapacitated Person, be and hereby is authorized to convey the interest of the said MILDRED JONES in and to the subject real property upon the terms and conditions set forth in the aforesaid Contract to (Name of Purchasers), and it is further

ORDERED, ADJUDGED AND DECREED that the said Guardian be and he hereby is authorized in the name of the and on behalf of the said Incapacitated Person, to execute, acknowledge and deliver to the (Name of Purchasers), the purchasers named in the said Contract of Sale, good and sufficient Deed of the Estate, title and interest of said Incapacitated Person in and to the subject premises together with any other instrument necessary to effect such transfer of her interest, and it is further

ORDERED, ADJUDGED AND DECREED that the sum of (\$) be paid to the (Name of Broker) as and for a broker's commission pursuant to the aforementioned Contract of Sale, and it is further

ORDERED, ADJUDGED AND DECREED that the sum of \$ be paid to (Name of Appraiser) for his appearance in Court and his testimony as an expert witness as to the value of the real property referred to herein, and it is further

ORDERED, ADJUDGED AND DECREED that the requirement of publication pursuant to §1722(5) of the Real Property Actions and Proceedings Law of the State of New York be and is hereby dispensed with, and it is further

ORDERED, ADJUDGED AND DECREED that as soon as practicable after delivery of the Deed and receipt of the consideration, that the said

Guardian report back to the Court for further instructions as to the disposition of the proceeds.

E N T E R in Westchester County

JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

NOTICE OF MOTION

of

MILDRED JONES, an INCAPACITATED PERSON

For Leave to Sell Real Property

----- x

S I R S :

PLEASE TAKE NOTICE that on Motion of (Name of Attorneys), upon the Report of the Guardian, JOHN JONES, the Exhibits annexed thereto, a Judgment and Order dated (date of Order) and the Closing Statement as prepared by counsel, a motion will be made on 1994, at a Special Term, Part VI of the Westchester County Courthouse, 111 Grove Street, White Plains, New York, for an Order approving the sale of the property of MILDRED JONES, the Incapacitated Person herein, and judicial approval of the payments made and set forth in said report as well as the setting of the fee for (Name of Attorney for Guardian), the attorney for JOHN JONES, Guardian herein, and for such other and further relief as to the Court may seem just and proper.

Dated: White Plains, New York
, 1994

(Name of Attorney)
Attorneys for Guardian
1 Main Street
White Plains, New York 10601
(914) 333-3333

TO: (Name(s) of Interested Parties)
(Name of Surety on Bond)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

In the Matter of the Application
of

Index No.

JOHN JONES, Guardian

REPORT OF SALE

of

MILDRED JONES, an INCAPACITATED PERSON

----- x

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

JOHN JONES, Guardian of the Property of MILDRED JONES, the Incapacitated Person herein, respectfully reports:

1. That pursuant to an Order of this Court duly granted at a Special Term, Part VI of this Court on the _____ day of _____ 1994, and filed in the Office of the County Clerk of the County of Westchester, Exhibit "A" annexed hereto, (Name of Attorney for Guardian) did arrange for a closing in the above noted matter.

2. That pursuant to the aforesaid Order of _____ 1994, I did transfer the Deed to the property of the Incapacitated Person being (address of property) City of _____ County of Westchester, and State of New York, to the Purchasers, (Name of Purchasers), for the consideration of (\$ _____) DOLLARS.

3. Annexed hereto as Exhibit "B" is a Closing Statement showing the adjustments, crediting the Seller and Purchasers for (taxes, fuel, etc), and said statement shows how the consideration was paid.

4. That I respectfully ask the Court to approve the payment of the Real Estate Broker's fee, the New York State Transfer Tax as well

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

JOHN JONES, being duly sworn, deposes and says:

That I am the Guardian in the within action; I have read the foregoing Report of Sale and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

JOHN JONES, Guardian

Sworn to before me this
day of , 1994.

Notary Public

At a Special Term, Part VI of
the of the Supreme Court of the
State of New York, held in and
for the County of Westchester,
at the County Courthouse,
111 Grove Street, White Plains,
New York on the day of
1994.

P R E S E N T :

HON. LOUIS C. PALELLA

Justice of the Supreme Court

----- x

In the Matter of the Application

Index No.

of

JOHN JONES, Guardian

ORDER
CONFIRMING SALE

of

MILDRED JONES, an INCAPACITATED PERSON

For Leave to Sell Real Property

----- x

UPON reading and filing the Notice of Motion and Report Sale of
JOHN JONES, the Guardian of MILDRED JONES, the INCAPACITATED PERSON
herein, verified on the day of , 1994, together with the
Order granting leave to sell said property signed on the day of
 , 1994, the Closing Statement and upon all of the other
pleadings and proceedings had herein, it is.

On Motion of (ATTORNEY'S NAME), attorneys for the Guardian herein,
it is

ORDERED, that the sale of the interest of real property owned by
the above named Incapacitated Person as described in the Contract of
Sale heretofore approved be and the same hereby is in all respects
confirmed and it is further

ORDERED, that the said JOHN JONES, Guardian herein of the property of MILDRED JONES, Incapacitated Person, be and hereby is directed to make payments out of the proceeds of the sale amounting to (amount of proceeds of sale (\$) DOLLARS as follows:

to (Name of Attorney for Guardian), the sum of (\$) DOLLARS, for legal services rendered by him on behalf of the Incapacitated Person relative to the within sale;

to (Name of Appraiser), the appraiser herein, the sum of (\$) DOLLARS, and

to (Name of Broker, if any), the sum of (\$) DOLLARS as and for the broker's commissions, and it is further

ORDERED, that the payments noted in the Closing Statement are hereby approved and it is further

ORDERED, that the balance of the proceeds of this sale remaining in the hands of the Guardian, to wit: the sum of (\$) DOLLARS be deposited in the Guardian account for the benefit of the Incapacitated Person, and it is further

ORDERED, that the bond filed by the Guardian herein shall be increased by the sum of (Amount of Net Proceeds from sale of real property),

E N T E R in Westchester County

JUSTICE OF THE SUPREME COURT

**COURT APPROVAL OF THE SALE OF REALTY BELONGING
TO AN INFANT OR INCAPACITATED PERSON:
RPAPL ARTICLE 17**

BY: EDWARD D. LOUGHMAN, III*

Although guardians, adult guardians, conservators and committees are charged with the maintenance and control of the property of their wards, that does not include the power to transfer real estate.¹ In order to convey good title, the transfer must be approved by the Court pursuant to article 17 of the Real Property Actions and Proceeding Law.² Although this article will focus on its use in connection with the sale of unproductive or no-longer-needed property belonging to an incapacitated person, the procedure is also available to sell property belonging to an infant whether to pay debts, improve the premises or for other purposes.³

SCENARIO

Assume that an incapacitated person can no longer be managed in his or her home. Whether upon the lack of objection of the incapacitated person or after a hearing pursuant to section 81.22(a)(9) of the Mental Hygiene Law, the property owner is confined to a nursing home. Assuming that a spouse, child or other person dependent upon the incapacitated person does not reside there and that it is otherwise unproductive, the real estate must be sold. Not only would its upkeep and maintenance be a drain on the incapacitated person's resources but the proceeds should be used to generate income or pay bills. Accordingly, grounds to seek Court approval to sell exist.⁴

*Member, Muldoon, Horgan & Loughman, New Rochelle, N.Y. Special thanks to Charles Devlin, Senior Law Clerk to the Honorable Louis C. Palella, Justice of the Supreme Court for his comments.

¹ The statute uses the terms "dispose of" real property or an "interest in real property." It defines "dispose of" as "to sell, convey, exchange, mortgage, release or lease." R.P.A.P.L. §1701(5). An "interest in real property" is broadly defined to "include any term, estate or other interest in real property, vested or contingent, of an infant in being, an incompetent person, or a conservatee including an inchoate right of dower and a possibility of reverter, and also the contingent interest of an infant not in being." R.P.A.P.L. §1701(3). Although a guardian for an incapacitated person is not mentioned, any reference in a statute to committee or a conservator it is deemed to include an adult guardian. L.1992, Ch. 698, §4.

² See R.P.A.P.L. §1753.

³ R.P.A.P.L. §1753.

⁴ R.P.A.P.L. §1711(2).

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PROCEDURE

Like any property, the real estate should be effectively marketed. Any agreements with real estate brokers should clearly be made as guardian on behalf of the incapacitated person and be subject to Court approval. Presumably, notice⁵ has already been filed with the County Clerk alerting the world that a guardian has been appointed. Consideration should be given to hiring an independent appraiser to assess value, especially in a county such as Westchester where the petitioner is allowed to choose the appraiser who will testify at the hearing.

The contract of sale should expressly be conditioned upon Court approval pursuant to article 17 of the Real Property Actions and Procedure Law.⁶ Provision should be made for flexibility in the closing date to allow time for Court approval.

Once the contracts are signed, a special proceeding must be commenced to obtain approval.⁷ If an adult guardian, conservator or committee is in place, the application can be made within the context of that proceeding.⁸ The application is made by petition and order to show cause.⁹ In Westchester, an affidavit of an appraiser is customarily attached.¹⁰

⁵ Mental Hygiene L. §81.20(6) provides in pertinent part: a guardian who is given authority with respect to property management for the incapacitated person shall:

(vi) 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 name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the, address, and telephone number of the guardian and the guardian's surety.

⁶ R.P.A.P.L. §1745.

⁷ R.P.A.P.L. §1712.

⁸ The proceeding remains open because the Court retains jurisdiction to approve annual accountings.

⁹ Although R.P.A.P.L. §1721 refers to a notice of petition, it refers to notice "to such persons and in such manner as the Court may direct" - indicative of an order to show cause. Because Mental Hygiene Law §81.16(c) directs the Court in the judgment appointing the guardian, to "identify all persons entitled to notice of all further proceedings" it could be argued that notice of petition would be adequate. Customarily, order to show cause is used directing service by certified mail, return receipt requested upon the incapacitated person, his or her counsel, if any, the Court Examiner appointed to review the annual accounts and those who appeared in the guardianship proceeding.

¹⁰ In Nassau, Queens and perhaps other counties, the Court, in the Order to Show Cause appoints an appraiser pursuant to R.P.A.P.L. §1742 who is directed to appraise the property. Accordingly, in those counties, hiring your own may be an unnecessary (and unreimbursable) expense.

At the hearing on the return day, petitioner should be prepared to establish the contract, the steps taken to market the sale and why the price is reasonable. The appraiser will give his or her expert opinion as to the value of the property. Generally, unless the appraiser's estimate of value is significantly higher or some other irregularities exist, the sale will be approved. If waiver of the posting and publication requirements was requested, good cause therefore should be shown. "Good cause" might include that the premises were vacant and that posting and publications would invite vandalism, that the premises were adequately advertised and that the appraised value was obtained or exceeded.

Upon approval, an order and judgment should be submitted to the Court. It should approve the contract, refer to the parties and purchase price, authorize the guardian to convey the property and, if appropriate, waive the posting and publication requirements. It will also award or approve the appraiser's fee and the broker's commission. Once signed, copies should be given to the buyer's attorney and the title company, as well as to those who appeared.

Although the requirements of each title company should be checked, the deed should be from the guardian, as guardian of the named incapacitated person and refer to the Court of appointment, index number and date of the order and judgment approving the sale. Such a deed, if given in good faith and pursuant to Court order, "has the same validity and effect as if executed by the person in whose behalf it was executed, and as if the infant were of full age or the incompetent person or conservatee were of sound mind and competent to manage his affairs."¹¹

Your task is not yet done as the order and judgment will direct the guardian to report under oath¹² and order that the attorney hold the proceeds in an escrow account.¹³ Accordingly, application should be made, usually by notice of motion, to confirm the sale. Notice should be given to the same parties noticed by the order to show cause. The application consists of the guardian's report of sale under oath and should contain the attorney's closing statement, describe the proceeds received and justify expenditures made. It should ask that the report of sale be approved, the sale confirmed and that an attorney's fee be awarded. The attorney's affidavit of services should accompany the report. A proposed order and judgment should be submitted granting the requested relief and leaving spaces for the Court to insert the amount of attorney's fee it approves and the amount of additional bond required as a condition to turning the monies over to the guardian (if an additional bond has not already been filed).

¹¹ R.P.A.P.L. §1753.

¹² R.P.A.P.L. §1745.

¹³ In Queens County and perhaps others, an additional bond to cover the expected proceeds must be filed prior to and as a condition to closing.

Once signed, the order and judgment, with notice of entry, should be served on the parties. Obviously, the next accounting filed will refer to the order and show the net proceeds received.

CONCLUSION

Although the provisions of article 17 add steps to the transfer of real estate belonging to an infant or an incapacitated person, they are not onerous and serve not only to protect the infant or incapacitated person, but to ensure the transfer of good title.



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At a Special Term Part VI
of the Supreme Court of the
State of New York held in
and for the County of
Westchester, at 140 Grand Street,
White Plains, NY on the day
of September, [REDACTED]

P R E S E N T :

HON. LOUIS C. PALELLA,
JUSTICE

X

In the Matter of the Petition of
[REDACTED], as Guardian of
the Person and Property of

[REDACTED] an Incapacitated Person,

for Authority to Place her in a Nursing Home

X

ORDER TO SHOW CAUSE
Index # [REDACTED]

UPON the annexed Petition of [REDACTED], duly
verified this 19th day of [REDACTED] together with the
affirmation of [REDACTED] dated September 21, [REDACTED] the
affidavit of Maureen [REDACTED] sworn to the 18th day of September,
[REDACTED] and the affirmation of Rajiv Sandana, M.D. dated the 21st day
of September [REDACTED] and upon all the pleadings and proceedings
heretofore had herein, and due deliberation having been had
thereon,

NOW, on motion of MULDOON, HORGAN, & LOUGHMAN, ESQS., it is
ordered that [REDACTED] the Incapacitated Person, [REDACTED]
brother of the Incapacitated Person, and MENTAL HYGIENE LEGAL
SERVICES, Show Cause before this Court at a hearing to be held in
the County of Westchester at 140 Grand Street, White Plains, NY on

the ____ day of _____ [REDACTED] at 10:00am or as soon thereafter as counsel can be heard, why an order should not be entered:

1. Authorizing the Guardian to place the Incapacitated Person in a nursing home on the grounds that it is no longer reasonable under the circumstances to maintain her in the community.

2. Granting such other and further relief as this Court may deem just and proper, and it is further

ORDERED, that service of a copy of this Order and the Petition upon which it has been granted be made upon the petitioner personally and upon the other following individuals by certified mail return receipt requested on or before the ____ day of September, [REDACTED], and that said service shall be deemed good and sufficient service:

1. [REDACTED]
Sound Shore Medical Center
16 Guion Place
New Rochelle, NY 10802
2. [REDACTED]
3. MENTAL HYGIENE LEGAL SERVICES
P.O. Box 570
Elmsford, NY 10523

and it is further

ORDERED that [REDACTED] is appointed counsel to represent the interest of [REDACTED] herein.

F:\ADGUAR [REDACTED]

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
IN THE COUNTY OF WESTCHESTER _____ X

In the Matter of the Petition of _____
_____, as Guardian of the Person
and Property of

_____, an Incapacitated Person,
for Authority to Place her in a Nursing Home

PETITION
Index # _____

To the Supreme Court of the State of New York, County of Westchester.

The petition of _____, by Muldoon, Horgan & Loughman, LLP
his attorneys, respectfully shows:

1. _____, the incapacitated person, is 74 years of age having been born _____ She was declared incapable of managing her affairs on June 16, 1982 and _____ was appointed her Conservator. On November 6, 1995 the Conservatorship was converted to a Guardianship and _____, became her Guardian and _____ her Standby Guardian.
2. She is now hospitalized at Sound Shore Medical Center, 16 Guion Place, New Rochelle, New York as a result of a seizure suffered _____. The affirmation of Rajiv Sadana, M.D. is attached. Dr. Sadana has been prepared to release _____ from Sound Shore Medical Center since _____.
3. Before her admission she resided at the _____, _____ Avenue, New Rochelle, New York. She has resided there since _____. The _____ is a not-for-profit adult home with thirty five residents.
4. Because of increasing disruptive behavior, however _____ will not accept her back. The details of her behavior are more fully described in the accompanying affidavit of Maureen _____, sworn to the _____ day of _____.

5. [REDACTED] suffers from paranoid schizophrenia. Throughout the years she has been periodically hospitalized at Harlem Valley Psychiatric, Wingdale, New York, St. Vincents Hospital, 275 North Street, Harrison, New York, Rockland Psychiatric Hospital 140 Old Orangeburg Road, Orangeburg, New York and New Rochelle Hospital (now Sound Shore) for acute episodes. Each time she was stabilized and able to return to the [REDACTED]

[REDACTED] The last few times, however, I met with increasing resistance from Maureen [REDACTED], who thought her condition had deteriorated to the extent that the [REDACTED] was no longer an appropriate place for her to reside. On the previous occasions I was able to convince Mrs. [REDACTED] to accept her back. This time she will not.

6. Unfortunately, at the time of this episode I was on vacation in [REDACTED]. The situation became critical on [REDACTED] when her treating physician, Rajiv Sadana, M.D. determined she was capable of being discharged but the [REDACTED] would not accept her. Fortunately, however, [REDACTED], was familiar with [REDACTED] and was able to visit with her and investigate alternative placements. As is more fully shown by her accompanying affirmation dated [REDACTED] 1999, by the affirmation of Dr. Sadana and by the affidavit of Mrs. [REDACTED] nothing short of a nursing home is acceptable.

7. As is more fully shown in the affirmation of [REDACTED] [REDACTED] [REDACTED] will not consent to a nursing home. She understands that the [REDACTED] will not accept her, but intends to live in a hotel in Manhattan and return to work. She now thinks her former employers (she retired on June 1, 1975), the frequent subject of her paranoia, will help her if she has problems.

8. Not only is it clear that it is no longer reasonable to maintain her in the community but it is also clear that her refusal to consent is based upon her failure to comprehend her functional limitations and needs.

9. The people entitled to notice of this proceeding are:

[REDACTED]

10. As the Incapacitated person does not consent, I ask the Court to appoint counsel pursuant to Mental Hygiene Law section 81.10 (c)(3).

WHEREFORE, petitioner seeks an order pursuant to section 81.22 (a)(9) of the Mental Hygiene Law authorizing the Guardian to place the Incapacitated Person in a nursing home on the grounds that it is no longer reasonable under the circumstances to maintain the incapacitated person in the community and such other relief as may be just.

Dated: New Rochelle, NY

[REDACTED]

Muldoon, Horgan & Loughman, LLP

By: _____

Edward D. Loughman, III
Attorneys for plaintiff
271 North Avenue
New Rochelle, NY 10801
(914) 636-5051

State of New York)
)ss.:
County of Westchester)

[REDACTED], being duly sworn, says that he is the petitioner in the within action, that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
day of September **[REDACTED]**

Notary Public

F:\ADGUAR**[REDACTED]**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER X

In the Matter of the Petition of
[REDACTED] as Guardian of
the Person and Property of

[REDACTED], An Incapacitated Person,
for Authority to Place her in a Nursing Home.

AFFIRMATION
Index [REDACTED]

_____ X

RAJIV SADANA, M.D., a physician licensed to practice medicine in the State of New York affirms under penalty of perjury and pursuant to C.P.L.R. 2106 as follows:

1. I am a physician licensed to practice medicine in the State of New York. I have been practicing medicine for three years and am board-certified and specialize in internal medicine.

2. I am making this affirmation at the request of [REDACTED] of Muldoon, Horgan & Loughman, LLP, attorneys for [REDACTED], Guardian of [REDACTED]

3. I understand that [REDACTED] is petitioning the Court for permission to place [REDACTED] in a skilled nursing facility.

4. Among my patients is [REDACTED] who has been a patient of mine since her former physician retired in 1995.

5. [REDACTED] suffers from chronic schizophrenia and depression in addition to having a seizure disorder. She has no insight into her problem and lacks the capacity to make her own decisions.

6. On September 7, [REDACTED] I was called to the [REDACTED] as Miss [REDACTED] was refusing to take medication to control her seizure disorder and to manage her psychiatric

condition. I was able to persuade her to take her medication at that time.

7. [REDACTED] continued refusal to take her medication that week led to disruptive behavior and ultimately a seizure. She was hospitalized on September 10, [REDACTED] at the Sound Shore Medical Center in New Rochelle, New York where she remains.

8. On Monday, September 14 [REDACTED] I sought to discharge Anne with the understanding that she would be returning to the [REDACTED], where she had been living, but later learned that the [REDACTED] was not willing to allow her return.

9. I spoke to Miss [REDACTED] as recently as yesterday and Miss [REDACTED] indicated to me that she intends to return to her former employer [REDACTED] and live in Manhattan.

10. Miss [REDACTED] is now in need of a skilled nursing facility for a variety of reasons including:

- a. Miss [REDACTED] becomes agitated quickly.
- b. Miss [REDACTED] is now beginning to suffer from dementia in addition to being a chronic schizophrenic who suffers from depression.
- c. Miss [REDACTED] is no longer willing to take her medications on her own.
- d. Miss [REDACTED] generally requires the assistance of one person to walk.

Dated: New Rochelle, New York
[REDACTED]

F:\ADGUAR [REDACTED]

RAJIV SADANA, M.D.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER _____ X

In the Matter of the Petition of
[REDACTED] as Guardian of
the Person and Property of

[REDACTED] An Incapacitated Person,
for Authority to Place her in a Nursing Home.

AFFIDAVIT
Index [REDACTED]

STATE OF NEW YORK)
)ss.
COUNTY OF WESTCHESTER)

MAUREEN [REDACTED], being duly sworn, deposes and says:

1. I am the Administrator of the [REDACTED] New Rochelle, New York, a not-for-profit adult home with thirty-five residents who we require to be ambulatory.

2. I make this affidavit at the request of Eileen Songer McCarthy, an associate of Muldoon, Horgan & Loughman, LLP, attorneys for [REDACTED] as Guardian for Anne Jones.

3. I have been the Administrator of the [REDACTED] for four years, and an employee of the [REDACTED] for twelve years. [REDACTED] has been a resident of this facility during my entire tenure, except during periods when [REDACTED] was confined to a psychiatric facility. I understand that [REDACTED] has resided here since December [REDACTED]

4. Maintaining [REDACTED] at the Colburn Home has at all times been challenging as we are an adult home, not a psychiatric adult home. Her paranoia has manifested itself in continual unfounded accusations of both myself and my staff. We are accused of stealing her belongings, going through her room and conspiring with her former employers in a plot against her.

5. Each time that [REDACTED] has been hospitalized as a result of a psychiatric breakdown there would come a time that [REDACTED] and I spoke in regard to [REDACTED] return to [REDACTED]. Each time I indicated that [REDACTED] was a difficult resident and I was reluctant to let her return; however, each time I agreed to take her back, under certain guidelines, in light of her long-standing relationship with the [REDACTED].

6. In July of 1993 I indicated to [REDACTED] that [REDACTED]'s poor walking ability, and falls on a number of occasions, led me to recommend that she be transferred to a skilled nursing facility. However, I agreed to keep [REDACTED] with the understanding that [REDACTED] would employ private aides to assist [REDACTED] in walking to and from meals and activities. The aides were initially hired to accompany [REDACTED] from 9 a.m. to 3 p.m.

7. In Spring of 1997, after [REDACTED] release from Rockland Psychiatric Hospital, I contacted [REDACTED] to indicate that if [REDACTED] was to remain at the [REDACTED], he would have to increase the hours that the private aides were at the home to 8:30 a.m. to 6 p.m. so that an aide was available to take her to all meals. He did this so as to be able to keep [REDACTED] at the [REDACTED].

8. I can not allow [REDACTED] to return to the [REDACTED] because of a continuing and escalating pattern of behavior which has included:

- a. Verbally abusing the staff of the [REDACTED]
- b. Attempting to be physically abusive to other residents of the [REDACTED] [REDACTED] (including attempting to trip other residents in the hallway);
- c. Being physically abusive to one of her private duty aides in my presence;

- d. Exposing herself in the hallway of the home and threatening to or actually urinating in the hallway;
- e. Refusing to shower for a period of up to three months;
- f. Refusing to take her medication.

9. The same pattern of behavior which prompts me to refuse to allow Miss [REDACTED] to return to the [REDACTED] would also lead me to recommend that Miss [REDACTED] be placed in a skilled nursing facility equipped to deal with difficult personalities.

Maureen [REDACTED] Administrator,
[REDACTED]

Sworn to before me this
18th day of September [REDACTED]

NOTARY PUBLIC

At a Special Term Part VI
of the Supreme Court of the
State of New York held in
and for the County of
Westchester, at 140 Grand Street,
White Plains, NY on the day
of October, [REDACTED]

P R E S E N T :

HON. LOUIS C. PALELLA,
JUSTICE

X

In the Matter of the Petition of
[REDACTED], as Guardian of
the Person and Property of

JUDGMENT

Index # [REDACTED]

[REDACTED], an Incapacitated Person,

for Authority to Place her in a Nursing Home

X

The Petition in writing, duly verified the 19th day of
September, [REDACTED] by [REDACTED] the petitioner therein
named, having been presented to this Court wherein it is requested
that the Guardian be granted the authority to place the
Incapacitated Person, [REDACTED] in a nursing home on the grounds
that it is no longer reasonable under the circumstances to maintain
her in the community, and the Court, by Order to Show Cause granted
September [REDACTED] having required notice of the presentation of
said petition to be given to [REDACTED] and Mental
Hygiene Legal Services which was appointed counsel for [REDACTED]
and proof of due service upon [REDACTED] Sound Shore
Medical Center, and Mental Hygiene Legal Services having been duly
filed, and

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The Court having there upon considered said petition then and there presented, and a hearing having been held on the [REDACTED] day of October, [REDACTED] and Eileen Songer McCarthy of Muldoon, Horgan & Loughman, LLP, Esq. having appeared for the petitioner, and the petitioner having appeared in person, and Marita McMahon of Mental Hygiene Legal Services having appeared on behalf of [REDACTED] and [REDACTED] having appeared,

AND upon the evidence presented at the aforesaid hearing which included the testimony of Rajiv Sadana M.D., the testimony of [REDACTED], the testimony of Maureen [REDACTED] administrator of the [REDACTED] and the testimony of [REDACTED],

AND it appearing to the satisfaction of the Court, by clear and convincing evidence that it is no longer reasonable for [REDACTED] to maintain [REDACTED] in the community, and the decision of this Court rendered on the record on October [REDACTED] and after due deliberation,

NOW, on motion of Muldoon, Horgan & Loughman, LLP, attorneys for the petitioner, it is

ORDERED AND ADJUDGED, that the Court grants the Guardian the authority, pursuant to M.H.L. §81.22(a)(9), to place [REDACTED] in a nursing home; and it is

ORDERED AND ADJUDGED that the Court grants the petitioner's application to give severance pay to [REDACTED], personal aide of [REDACTED] since 1993, in the amount of [REDACTED] and to [REDACTED] personal aide of [REDACTED] since 1993, in the amount of [REDACTED]; and it is

ORDERED AND ADJUDGED that the Court grants the petitioner leave to apply to the Court, on notice to the proper parties, to make a gift on behalf of [REDACTED] to the personal aides; and it is

ORDERED AND ADJUDGED that the Guardian shall pay from the funds of [REDACTED] the sum of \$ [REDACTED] to Dr. Rajiv Sadana, M.D. for his services rendered in connection with this petition; and it is

ORDERED AND ADJUDGED that the Court grants the petitioner the authority to continue the use of the personal aides on a limited and decreasing basis over the next few months to ease [REDACTED]'s transition into the nursing home; and it is

ORDERED AND ADJUDGED that Muldoon, Horgan & Loughman, LLP is granted leave to make a subsequent application, on notice to Mental Hygiene Legal Services, for payment of their fees and disbursements incurred as attorneys for the petitioner once [REDACTED] is placed in a nursing home; and it is

ORDERED AND ADJUDGED that a true copy of this Order and Judgment be served forthwith upon counsel in this proceeding.

E N T E R :

J.S.C.

N

ABOUT SPEAKERS

LISA CITARELLA

LEGAL

WESTCHESTER COUNTY SUPREME COURT

EXPERIENCE: *Court Attorney-Referee: Mental Hygiene Article 81 Guardianship Part*
March 2011-present

WESTCHESTER COUNTY SUPREME COURT, White Plains, N.Y.

Principal Law Clerk: Hon. Robert DiBella, J.S.C. and Acting Surrogate
January 2004-February 2006
August 2008- March 2011

PUTNAM COUNTY SUPREME COURT, Carmel, N.Y.

Principal Law Clerk: Hon. John W. Sweeny, Jr., J.S.C.
February 2003-December 2003

WESTCHESTER COUNTY COURT, White Plains, N.Y.

Principal Law Clerk: Hon. Kenneth H. Lange, J.C.C.
January 2002-February 2003

WESTCHESTER COUNTY SUPREME COURT, White Plains, N.Y.

Principal Law Clerk: Hon. John M. Perone, A.J.S.C.
January 2001-January 2002

LAW OFFICES OF ROBERT P. TUSA, Yonkers, N.Y.

Staff Counsel for Allstate Insurance Company: June 1999-January 2001

MARK A. VARRICHIO & ASSOCIATES, Bronx, N.Y.

Associate: June 1996-June 1999

OTHER:

WESTCHESTER COMMUNITY COLLEGE, Valhalla, N.Y.

Adjunct Professor: Spring 2010
"Criminal Law for Paralegals"

Panelist: May 2002, Rome, Italy

Environmental Law & Orders of Protection in Domestic Violence cases sponsored by Columbian Lawyers Association of Westchester County and L.U.M.S.A. University.

Panelist: September 2003, Judicial Institute, White Plains, N.Y.

"Death Penalty Cases Up Close and Personal: Lessons in Teamwork from the 9th J.D."

EDUCATION: ST. JOHN'S UNIVERSITY SCHOOL OF LAW, Queens, N.Y.

J.D. 1994

FAIRFIELD UNIVERSITY, Fairfield, C.T.

B.A. *Cum Laude* in Politics, 1991

Honors: Dean's List; Pi Sigma Alpha, Political Science Honor Society

BAR New York 1995; Connecticut 1994; North Carolina 2008;
ADMISSIONS: District Court, SDNY and EDNY, 1996; U.S. Supreme Court 2005.

BAR Columbian Lawyers Association of Westchester County, former Board Member
ASSNS: Yonkers Lawyers Association
St. John's University School of Law Alumni Association

Michele Gartner

Michele Gartner is OCA Special Counsel for Surrogate and Fiduciary Matters. She previously served as a Principal Court Attorney for Kings County Surrogate's Court, and prior to that, she served as the Public Administrator of Nassau County. She received her JD from the University of Buffalo School of Law.

Peter T. Goodrich, Esq.

Goodrich and Bendish Attorney & Counsellor At Law
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Practice Areas

- Car Accidents
- Criminal Law
- DUI & DWI
- Estate Planning
- Personal Injury

Jurisdictions Admitted to Practice

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Education

St Johns

Professional Associations

Member, New York State Bar 1972-Current

Lisa Herman is the Deputy Chief Attorney for the 9th Judicial District of the Mental Hygiene Legal Service Appellate Division of the Supreme Court Second Judicial Department (“MHLS”). She graduated from the University of Maryland in 1993 with a Bachelor of Arts in Psychology. She graduated cum laude with a Juris Doctorate from New York Law School in 1996. She has been employed with MHLS since February of 1998. As an MHLS staff attorney she represented clients in Mental Hygiene Law Article 9 civil commitment hearings and jury trials, Surrogate’s Court Procedure Act Article 17A guardianship proceedings and Mental Hygiene Law Article 81 guardianship proceedings. She has handled hundreds of Mental Hygiene Law Article 81 guardianship proceedings, in the role of counsel to the Alleged Incapacitated Person. She has presented on topics related to Mental Hygiene Law Article 81 proceedings on many occasions before audiences such as Pace University in White Plains, New York, the Westchester County Bar Association in White Plains, New York, the Rural Law Center of New York in Saranac Lake, New York and the Judicial Institute in White Plains, New York.

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Admission to the Bar:

New York State: February 25, 1981
United States District Courts for the Southern and Eastern
Districts of New York: May 12, 1981
United States Court of Appeals for the Second Circuit:
January 27, 1986
Supreme Court of the United States: April 6, 1987

Education:

Fordham Law School, J.D., 1980
Associate Editor 1979-80
Staff member 1978-79
Fordham University, B.A. History, 1976
Iona Preparatory School, 1972

Employment:

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(formerly known as
Muldoon & Horgan)
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8/80 to Present
Member of the firm
1/1/86 to Present
General Practice including
Guardianship, Trusts and Estates, Real Estate,
Litigation and Commercial Law.

Manhattanville College
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Purchase, NY 10577-2406

1996-2001: Adjunct
Professor - American
Law & Business
1998: Adjunct Professor -
The American Legal
System: Its Origin & Development
1994-1995: Attorney
Coordinator, Paralegal Program
1986 - 1995: Member, Advisory Board,
Paralegal Program
1982 - 1995: Adjunct Professor, Paralegal Program

Publications:

- “‘Notarize’: Word Without Meaning”, 31 Westchester Bar Journal 87 (2004)
- "'Vouching-In', The Key to the Sublessor's Defense of a Sublessee's Warranty of Habitability Counterclaim", 28 NYSBA N.Y. Real Property L.J. 121 (2000)
- "Court Approval of Sale of Realty Belonging to an Infant or Incapacitated Person: RPAPL Article 17", 25 Westchester Bar J. 25 (1998).
- "The New Adult's Guardian Law", 20 Westchester Bar J. 133 (1993);
- "Conservatorship Contests", 16 Westchester Bar J. 185 (1989);
- "Tenants Post-Surrender Liability: Must the Landlord Mitigate Damages", 13 Westchester Bar J. 323 (1986);
- "The Supporting Deposition: Key to the Defense of a Simplified Traffic Information", 12 Westchester Bar J. 249 (1985);
- Project, The Speedy Trial Act: An Empirical Study, 47 Fordham L. Rev. 713 (1979).

Additional Information:

- Co-Chair, Westchester County Bar Association Committee on Adult Guardians 1997 -2001 (Chairman 1993-95).
- Lecturer, Article 81 Certification Program Westchester County Bar Association 1994-1999
- Pace University School of Law Article 81 Certification/CLE Program 1994 to present.
- Lecturer, New Rochelle Bar Association CLE 2009 & 2012
- Editor-in-Chief, Westchester Bar Journal 1988-1995 (Managing Editor 1986-1988).
- Small Claims Arbitrator, New Rochelle City Court, 1983 to date.
- Member, Panel of Arbitrators, Ninth Judicial District 1981-1986, 1999 to present.
- Member New York State Bar Association (Member: Real Estate, Trust & Estates and Trial Lawyers Committees).
- Member Westchester County Bar Association (Member of Board of Directors 1995-1998).
- Member New Rochelle Bar Association (President 1994-96).
- Member New Rochelle Waterfront Revitalization Commission 1993-94.
- Member, Echo Bay Yacht Club, New Rochelle, NY, (Commodore 2006-2008, 2011)

References available on request.

KEANE & BEANE P.C.

ATTORNEYS AT LAW

Multi-Faceted Law Firm. Singular Client Focus.

Deepankar Mukerji

Of Counsel



Professional Experience

Deepankar Mukerji conducts a general law practice in the areas of elder law, Medicaid planning, estate administration and planning, guardianships, real estate and trusts. He is well known for his work in the elder law arena. Mr. Mukerji became of counsel to the firm in 2007 after twelve years with the Westchester County Department of Social Services.

Admissions

- State Courts of Connecticut
- State Courts of New York

Professional Associations

- New York State Bar Association (Vice-Chair, Legislation Committee; Vice-Chair, Diversity Committee; Ninth District Representative; Executive Committee Member)
- Westchester County Bar Association (Vice-Chair, Elder Law Committee)

Professional Activities/Publications

Mr. Mukerji is a frequent lecturer on elder law issues for the New York State Bar Association, Westchester County Bar Association and Pace University School of Law. His lectures have included: "Hot Topics in Elder Law: Home Care"; "Hot Topics in Elder Law: Medicaid Issues"; and "Paying for Long Term Care".

In 2011, *Elder Law Attorney* published "Article 17-A Guardianships -- In Need of a Legislative Overhaul" by Mr. Mukerji. He is also an Editor and Contributor for *Elder Law E-News*.

Community Service

Mr. Mukerji is on the Board of Directors for the Center for Aging in Place Support. He is also active in the Long Term Care Council of Westchester and the Geriatric Mental Health Coalition of Westchester.

Education

- 1995, J.D., Fordham University School of Law
- 1983, B.A., State University of New York at Buffalo

Practice Areas

- Elder Law

J Donna Sullivan, LCSW, C-ASWCM

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Biography

J Donna Sullivan is a NY State licensed clinical social worker. She holds a Masters in Social Work from Hunter College, a Masters Degree in Education from Iona College, post masters certificates in geriatrics from Columbia University and Boston University. She is certified as an Advanced Social Work Case Manager (C-ASWCM) through the National Association of Social Workers (NASW). She holds national certification from the National Association of Geriatric Care Managers.

Ms. Sullivan has worked in the field of aging for more than 20 + years including, most recently, as the Director of Senior Programs for Scarsdale Family Counseling. Previously she has worked as a social worker in several nursing homes in Westchester, the Bronx and New York City, and as a geriatric care manager for Sherwood Associates, an eldercare planning and management firm in Riverdale, New York. She has her own geriatric care management business, *AgeWiseConnections*, teaches at Mercy College in Dobbs Ferry and works part time as the Program Supervisor of the Long Term Care Ombudsman Program (LTCOP) at the Mental Health Association - Westchester.