

Consumer Legal Guide



Your Guide to Being a Guardian



ILLINOIS STATE

BAR ASSOCIATION

ASK A LAWYER

BEING A GUARDIAN

So . . . a judge has just named you guardian of your husband, wife, parent, relative, or friend. What does that mean? What can you do as guardian? What do you have to do? This pamphlet should help answer some of your questions. This pamphlet assumes that you have been appointed guardian by an Illinois Court. It does not explain how to become a guardian. You will most likely need the assistance of an attorney to have yourself named as a guardian.

Generally, a guardian is given the authority to make decisions for and carry out tasks on behalf of their ward. However, there are different types of guardians. You may be a:

- Guardian of the Person (hereafter called Personal Guardian)
- Guardian of the Estate (hereafter called Estate Guardian)
- Limited Guardian
- Plenary Guardian
- Temporary Guardian
- Successor Guardian

A personal guardian tends to the personal care of the ward, while an estate guardian is the guardian of a person's estate (real estate, personal property, money, and the like). One person can be guardian of both, or separate guardians may be appointed. The focus of this pamphlet is on the duties of the personal guardian and estate guardian of a disabled or older person.

A limited guardian has only those powers granted by the court order appointing the guardian, while a plenary guardian holds all powers available to guardians under the law. A temporary guardian has only certain powers for no more than 60 days. Any of these guardians may be of the person, the estate, or both.

A successor guardian takes over by order of the court for a previously appointed guardian. The successor guardian usually has the same duties and powers as the previous guardian.

Although not the focus of this pamphlet, a guardian may also be appointed of an individual's person, estate, or both, due to that individual being a minor, currently defined as being a person less than 18 years old.

A guardian has the duty to act in the best interests of their ward. Remember that no matter what type of guardian you are, your duties and powers may be limited by the court order which appoints you. Read this court order carefully.

DUTIES OF THE PERSONAL GUARDIAN

As personal guardian, you have probably been given custody of a disabled person or minor, this person often being called the ward. If the ward has minor or dependent children, you may have custody of them as well.

You have a duty to take care of your ward. You will decide where the ward will live. You cannot place the ward in a nursing home or other residential facility unless you are specifically given that authority by the Court. You are responsible for the ward's support, care, comfort, health, maintenance and placement, if appropriate, in an educational program. All of these expenses may be paid from the ward's income and assets.

You are to see that your ward gets the medical, dental, grooming, and other professional services that the ward needs. The law requires that you "assist the ward in the development of maximum self-reliance and independence."

You are not required to spend your own money for any of these expenses, however you may be responsible for seeking the money needed from the ward's income and assets. If you spend more than the ward's estate can afford, you may be held personally responsible for those amounts. If the ward does not have enough money to pay for what is needed, it is your responsibility to apply for government assistance programs that may help pay for these services. *You do not have to spend any of your own money for the benefit of your ward* unless you are a disabled ward's spouse.

If the ward has more money than is needed for the ward's daily care, you have the duty as guardian to invest those assets in a responsible manner.

There are other responsibilities you have which are explained more specifically by Illinois law. There are also a number of activities in which you may not engage. You are encouraged to consult with an attorney to become familiar with them.

If the court directs you to do so, you will also have the responsibility of making reports to the court. These reports shall specifically address points required by Illinois law, such as detailing what kind of care the ward has been given, and whether guardianship is still necessary. Your attorney or the Office of the State Guardian can also assist in this area.

If the ward has enough money, you can be paid for serving as guardian. Your bill for services must be supported by careful records and approved by the court.

DUTIES OF THE ESTATE GUARDIAN

Simply put, the estate of the ward is everything the ward owns. It includes land, money, bank accounts, furniture, cars, clothes...everything. Your responsibility over this property may be defined or limited by the order appointing you as guardian.

In general, you have the duty to take care of, manage, and invest the ward's estate. You must take care of the ward's estate even more carefully than you would your own. You must be frugal, conservative, and cautious. The Court may authorize you to spend the ward's money for the comfort, support, and education of the ward, as well as certain expenses of the ward's family. If the ward receives benefits from the Veterans Administration, you must give the Veterans Administration notice before requesting this authorization from the Court.

You may be able to sell some of the ward's property to pay for the ward's care, but you will need a Court order to do so. *You cannot treat the ward's property as your own!* You must keep your money separate from that of your ward.

Outside of the disabled spouse exception discussed earlier, you will not be personally liable for your ward's debts. However, you can be forced to pay for any mismanagement or fraudulent use of the ward's estate. You *will not* be protected by getting your ward's consent to an expenditure. Remember, you were appointed

guardian because the court ruled that the ward was unable to make such decisions. You should establish a new, fully-FDIC insured checking account to pay for the ward's expenses. It should be titled: Estate of "your ward," "your name," Guardian. The ward's Social Security number should be used on this account.

You must keep a careful record of all transactions involving any of the ward's property. This can range from balancing the checkbook to hiring an accountant at the estate's expense. Every bill that you pay and all money that you receive on behalf of the ward must be reported periodically to the court.

To be able to identify the source of money you receive when the time for accounting comes, it can be helpful to describe the source of the money on the bank deposit ticket.

You cannot sell, lease, mortgage, or use as security the ward's land, house, car, furniture, or any other property without a court order. You also will need the court's permission to operate an ongoing business of the ward's. Seeking permission from the court commences with filing a petition in the Circuit Clerk's Office. You may not take any of the ward's property out of the State of Illinois.

INVENTORY

As estate guardian, the first deadline you have to be concerned with is the filing of an inventory. The inventory is a sworn document that lists all of the ward's assets, including real estate, business interests, cash accounts, and all other property. The inventory must be filed with the court within 60 days of your appointment as guardian.

You must list all the land the ward owns, describe generally any building on such land and, if there are mortgages on the property, give details of the mortgages. You must list all bank accounts, with balances as of the date of your appointment.

The ward's cash should promptly be put in a Federally insured, interest-bearing bank account, if feasible. Any cars, boats, stocks, bonds, insurance policies, valuable artwork or jewelry, or other unusually valuable items should be listed separately. Small household items may be listed together.

If the ward owns something jointly with another person, that property also should be listed with a notation that it is jointly owned. The full value of that property should be stated.

You will have to petition the court to sell or spend any property the ward owns jointly with anyone else, including you, on the ward's behalf.

If, after filing the inventory, you find additional assets, you must file a supplemental inventory within 60 days of discovering the additional assets.

SOCIAL SECURITY

If the ward has been receiving Social Security benefits, you should contact the local Social Security office to inform that office of your appointment as guardian. You will need to provide the Social Security office with the court documents (often titled Letters of Office) appointing you as guardian.

The Social Security office can provide you with information on using the benefits on behalf of the ward. It may be convenient to have the Social Security checks directly deposited in the new guardianship account. Social Security benefits should be spent before any of the ward's other assets.

VETERANS ADMINISTRATION BENEFITS

If the estate of the ward is derived in full or in part from payments made directly to the estate by the Veterans Administration, notice of any request to invest or spend any of the ward's funds must be given to the Veterans Administration regional office. You should contact either your attorney or a representative of the Veterans Administration office for details as to how this is to be handled.

TAXES

You are responsible for filing the ward's income tax returns, both federal and state, if the

ward has enough income to require the filing of returns. You will be responsible for paying any estimated income taxes due in April, June, September, and January. You can pay all these taxes with the ward's money.

You must pay the real estate taxes on any land that the ward owns. You should look into all exemptions available to the ward, such as elderly and homestead exemptions. These taxes can also be paid with the ward's money.

OTHER DUTIES AND RESTRICTIONS

You have the duty to appear for and represent the ward's interests in all legal proceedings. You may hire an attorney to handle any legal matters involving the ward or the ward's property. With the court's permission, you may use the ward's funds to pay these attorney fees.

You may have a duty to apply for public aid from the Department of Human Services on your ward's behalf. This department is commonly known as the Public Aid office. The Illinois Department of Human Services will inform you as to whether your ward qualifies or what steps you need to take so that your ward will qualify. The guidelines vary greatly depending upon whether your ward is married or single, has dependents, and has certain assets. Additional information may be obtained from your local Human Services office. Do not wait until your ward runs out of funds to seek this help.

You also may have a duty to apply for the State of Illinois program known as the Benefit Access Program. If your ward is 65 or older, or at least 16 and totally disabled, and has an annual household income below a certain amount, you should look into applying for the Benefit Access Program. This program provides cash rebates for property taxes, a small rebate for various other taxes, and a small grant for blood pressure, heart, diabetes and arthritis medicines. Additional information and applications may be obtained from:

Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield, IL 62702-1271
Phone Toll-free: 1-800-252-8966 or 1-888-
206-1327 (TTY)

Additional information and a digital application process may also be found online at <https://idoaweb.aging.illinois.gov/baa/>.

You cannot use the ward's assets to make any gifts or donations without a court order.

INVESTMENTS

It is the duty of the estate guardian to invest the ward's money in accounts that earn interest at a rate equal to or greater than the rate on 90-day United States Treasury Bills. If you fail to do so, you may be assessed penalties. You may, however, keep reasonable sums of money which do not earn such interest available to pay for the ward's current expenses.

The law limits you to specific kinds of investments, unless otherwise authorized by the court. These investments are specified by Illinois law; they include bonds backed by the United States or its agencies; federally-insured accounts in banks, savings and loans, and credit unions; real estate; certain kinds of annuities; and certain kinds of money market funds. Before making an investment, you should consult with an attorney knowledgeable in this area.

Other kinds of investments, such as corporate stock, are allowed by law, but there are detailed restrictions regarding such investments.

With the approval of the court, the estate may retain any of the ward's investments made prior to your appointment.

You should make certain that funds on deposit in any one financial institution do not exceed FDIC insurance limits.

ACCOUNTS

You must submit a sworn account to the court within 30 days following the end of your first year as estate guardian.

This account lists all receipts and disbursements you made for the ward and all the property you presently control for the ward.

The court may require you to present cancelled checks for all disbursements. An updated account must be filed every three years. The court also may require more frequent accounting. Finally, you must file an account within 30 days after you cease serving as guardian.

If the ward receives Veterans Administration benefits, a copy of the account must be sent to the Veterans Administration at least 10 days prior to its presentation to the Court.

You may submit a petition for fees for yourself with each account. You should keep careful records of the time you spend on the ward's estate and of any expenses you incur.

As stated earlier, there are other responsibilities that you have which are explained more specifically by Illinois law. In addition, there are certain activities in which you may not engage. You are encouraged to consult with an attorney to become familiar with them.

Similarly, you also have the responsibility of making reports to the Court of your activities as Estate Guardian addressing points specified by Illinois law. Your attorney or the Office of the State Guardian can also assist in this area as well.

TERMINATION OF THE GUARDIANSHIP

Your responsibilities as guardian will continue until the court relieves you of the obligation. This may occur upon the termination of the guardianship, upon the death of the ward, or upon your resignation or removal. This applies to both guardianships of the person and of the estate.

The guardianship of a disabled person may be modified or terminated if the disabled ward's ability to manage his or her affairs changes. You also have the right to resign as guardian at any time.

If you wish to resign, or if the guardianship should be terminated because it is no longer necessary for the ward, you must petition the court for permission to resign or to terminate the guardianship. If you are resigning as guard-

ian, and if the ward remains disabled, you will need to request the court to appoint a successor guardian. If a disabled ward's capacity is restored, you should obtain the court's permission to transfer the ward's property to the ward. In either case, you will be required to prepare a final account listing all transactions made since the last account was prepared.

Any guardianship will terminate upon the death of the ward. If your ward dies, you must notify the court and request that the guardianship be closed. Until an administrator or executor is appointed to manage the deceased ward's assets, you retain the authority to manage and collect the ward's assets if you are the estate guardian. You do not have the right to make any more payments from the ward's estate. If you served as estate guardian of the deceased ward, you will need to prepare a final account listing all transactions made since the last account was prepared.

Finally, it is possible for the court to remove you as guardian if it finds that you are not performing all of your duties properly, for instance, if you:

1. are found to be incompetent or are committed to a mental health institution;
2. are convicted of a felony;
3. waste or mismanage the ward's estate;
4. fail to give sufficient bond after being ordered to do so by the court;
5. fail to file an inventory or accounting after being so ordered by the court;
6. move so that you cannot be found by the court or others involved with your ward's care; or
7. become incapable of, or unsuitable for, discharging your duties for any reason;8. or if there is any other good reason, such as the death of the guardian.

Before removing someone as guardian, the court will give the guardian an opportunity to appear in court and explain the situation. After hearing all of the evidence pertaining to the guardianship, the court will decide whether or not the guardian should continue to serve. The court can impose any restrictions on the guard-

ian's actions that it deems are necessary to protect the ward.

IN CONCLUSION

As you know, you have assumed some very important responsibilities for your ward. The Elder Law Section Council of the Illinois State Bar Association hopes that this pamphlet has answered some of your questions and will help you help your ward. For further information, please do not hesitate to contact an attorney.

If you're looking for an
Illinois lawyer, look to
IllinoisLawyerFinder.com



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For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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