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## CHAPTER 5

# GUARDIAN OF THE PROPERTY

The court appoints a guardian of a person's property to manage funds, to do banking, to pay bills, to sell assets, to settle claims, and generally to act as a property manager for someone who cannot act for herself. The guardian of the property has control over the **guardianship estate**, or all the property and income that the person owns or to which she is entitled. In this chapter we describe the job of guardian of property.

### WHAT ARE THE POWERS AND DUTIES OF THE GUARDIAN OF THE PROPERTY?

A guardian of the property must act as a **fiduciary** of the disabled person. A fiduciary is someone who can be trusted to act in the best interest of the disabled person. This means that a guardian must act honestly and faithfully to preserve the disabled person's property and to use the assets for the benefit and welfare of the person.

The guardian of the property has broad powers to handle the assets and income of the disabled person. This includes the authority to collect all money due to the disabled person, such as pension and Social Security checks, debts owed, and rent or mortgage payments.



The guardian may close bank accounts owned by the disabled person, reopen them in the name of the guardian, and use those funds for the expenses of the disabled person. The guardian may spend the person's money to pay for housing, food, clothing, transportation, medical care, to pay child support or alimony, to pay other bills the person may owe, to file tax returns and pay taxes, and generally to pay for the expenses of the person.

The guardian may also make decisions about the person's property, such as whether to sell or mortgage real estate, whether to invest in stocks or bonds, and whether to borrow money to make repairs to a home.



*A guardian of the property must act for the person's best interest.*

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## DOES A GUARDIAN HAVE TO POST A BOND?

The court may order the guardian to post a **bond** with the court. A bond is a kind of insurance policy which guarantees that if the guardian mishandles the person's funds, the bonding company will cover the loss. The bonding company will try to recover from the guardian any losses it must pay out.

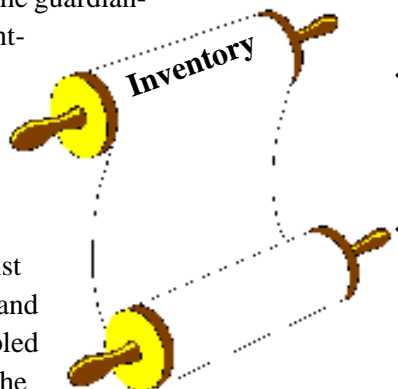
The court decides whether to require a bond or not. Ordinarily, a bond is not required if the entire estate is worth less than \$10,000. The cost of the bond is an expense the guardian can charge to the estate.

## WHAT REPORTS MUST THE GUARDIAN OF THE PROPERTY MAKE TO THE COURT?

The guardian of the property must file an **inventory** of all property within 60 days of being appointed guardian. She must file an **annual accounting** one year after being appointed and every year after that. When the person dies or is found to no longer be disabled, the guardian must file a final accounting and a petition asking the court to terminate the guardianship and her appointment as guardian.

## WHAT IS AN INVENTORY?

An inventory is a list of all of the assets and income of the disabled person at the time the guardian is appointed.



The guardian must file the inventory with the court within sixty days of being appointed guardian of the property. The guardian may have to search through the papers and personal effects of the disabled person, and talk to relatives and friends in order to identify exactly what the person owns. Each item must be clearly described and the fair market value of each item must be stated. The guardian must swear that the inventory is a complete and accurate list of the assets of the disabled person.

## WHAT IS AN ACCOUNTING?

The guardian must keep records of everything she does with the disabled person's money and property. Usually, the guardian must file a report with the court one year after being appointed and each year after that. The accounting must contain the following:

- ◆ A description of all assets of the disabled person and where the assets are located.
- ◆ A summary of all expenses since the last report was filed, the current balance of bank accounts, and the value of the person's assets.
- ◆ A list of all property bought or sold, and the names of the persons who bought or sold the assets.
- ◆ A summary of all income the disabled person received.



*A guardian of the property must file an inventory sixty days after being appointed, and an accounting each year.*



*A guardian must use the same degree of skill and care that a reasonable person would use in handling her own property.*

The trust clerk for the court where the guardianship is filed can supply a form for the accounting. The guardian must swear that the information she is giving is true.

#### **WHAT HAPPENS IF THE GUARDIAN FAILS TO FILE AN INVENTORY OR AN ACCOUNTING?**

If the guardian of the property fails to file the required inventory or accounting, the guardian can be removed by the court and will not be paid for her work.

If the total value of the estate is less than \$10,000, the guardian may ask that she not be required to file an accounting. However, the guardian is still subject to questions from the trust clerk at the circuit court. She must deposit the money in an insured financial institution.

#### **WHO OWNS THE PROPERTY—THE GUARDIAN OR THE DISABLED PERSON?**

The guardian holds legal title to the property after appointment, but can only use the property to provide for the best interest of the disabled person. The guardian may not use the property of the disabled person to benefit the *guardian*. If the guardian uses the property for her own interest, she may be held personally liable for the losses to the disabled person and could be subject to criminal penalties.

#### **CAN A GUARDIAN GIVE GIFTS TO HERSELF OR TO OTHERS FROM THE DISABLED PERSON'S FUNDS?**

The guardian has the duty to manage the funds in the guardianship estate in the best

interest of the disabled person. The guardian may not give gifts unless the gift was a pledge the disabled person made before becoming incompetent. If a guardian gives unpledged gifts, she could be subject to civil or criminal liability.

#### **CAN A GUARDIAN MAKE INVESTMENTS?**

The guardian may make conservative investments if the disabled person has sufficient funds for her daily needs and the money is not needed for her welfare. If the disabled person has limited assets and income, the guardian may need a court order to invest money in other than an interest bearing checking or savings account.

#### **WHAT ARE THE LIMITS OF THE GUARDIAN OF THE PROPERTY?**

The guardian of the property is entitled to handle the property and income in the best interest of the disabled person unless limited by the provisions in a will, trust, or order of the court.

#### **IS THE GUARDIAN OF THE PROPERTY ENTITLED TO A FEE?**

Yes. The guardianship statute provides that the guardian of the property can receive a fee for services provided each year. The fee the court allows is a percentage of the amount of income and assets in the guardianship estate. The guardian must file a request with the court in order to be allowed to collect the fee.