

IN THE GUARDIANSHIP OF

IN THE PROBATE COURT

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NO. 3

AN INCAPACITATED PERSON/ MINOR CHILD

BEXAR COUNTY, TEXAS

**COURT INSTRUCTIONS TO THE GUARDIAN OF THE PERSON AND ESTATE
OF AN INCAPACITATED ADULT OR MINOR**

As the duly appointed Guardian of the Person and Estate of the above-named ward, the Court hereby advises you that you must comply with the following statutory requirements:

1. **File your Guardian’s Bond and Oath or Declaration within 20 days after the date of the order** appointing the guardian. *This is a mandatory requirement.* The date on which both the bond and oath/declaration have been filed is your QUALIFICATION DATE. §§ 1105.051, 1105.101, *Estates Code*
2. **Explain the Ward’s Bill of Rights** to the ward in the ward’s native language, or preferred mode of communication, and in a manner accessible to the ward, upon appointment and on annual renewal of the guardianship. The Bill of Rights for a Person Under Guardianship is attached hereto. § 1151.351, *Estates Code*
3. **Issue Notice to Creditors as follows (these are mandatory requirements):**
 - a. **Notice to unsecured creditors is required within one (1) month after receiving Letters of Guardianship.** Notice is given by publishing the notice one time in a newspaper printed in the county where the letters are issued. Publisher’s affidavit showing date of publication shall be filed with the clerk. § 1153.001, *Estates Code*
 - b. **Notice to secured creditors is required within four (4) months after receiving Letters of Guardianship.** Notice is given by qualified delivery method, as defined by § 22.0295, *Estates Code*, to the creditor’s last known address. The Guardian’s Affidavit of Notice to Secured Creditors, along with copies of each notice sent with proof of delivery attached, shall be filed with the clerk. § 1153.003, *Estates Code*
4. **File an Inventory, Appraisal and List of Claims of the Estate within 30 days after your qualification date. This is a mandatory requirement. Failure to file an inventory, appraisal and list of claims within 30 days of qualification or any extension granted by the Court may result in penalties, including revocation of Letters of Guardianship and possible removal as guardian.** § 1154.051, *Estates Code.*
5. **File your sworn Annual Account each year, no later than 60 days after the anniversary date of your qualification date. This is a mandatory requirement. Failure to file the Annual Account may result in an order to show cause, revocation of letters, removal as guardian, and/or a fine not to exceed \$1,000.00 (§ 1163.151, *Estates Code*).** Your attorney should prepare this account. Your annual accounting period will be from _____ through _____, and will be due on _____ of each year until the guardianship of this estate is closed. § 1163.001, *Estates Code.* The **Annual Account** form is located at <https://www.bexar.org/3072/Orders-Forms>.
6. **File your sworn Annual Report of the Condition, Welfare and Well-Being of the Ward each year, no later than 60 days after the anniversary date of your qualification date. This is a mandatory requirement. Failure to file the Annual Report of the Guardian of the Person may result in an order to show cause, revocation of letters, removal as guardian, and/or a fine not to exceed \$1,000.00 (Sec. 1163.151, *Estates Code*).** Your annual reporting period will be from _____ through _____ and will be due on _____ of each year until this guardianship is closed. *Sec. 1163.101, Estates Code.* The **Annual Report of the Person** form is available at <https://www.bexar.org/3072/Orders-Forms>.
7. **Place all guardianship funds in insured accounts in the name of the guardianship.** Such funds must be invested at the highest interest rate then available. An investment plan must be filed with and approved by the Court for guardianship funds that are not immediately necessary for the education, support and maintenance of the ward. *Chap. 1161, Estates Code.*

8. **Obtain a written order of this Court authorizing any expenditure of guardianship funds before any such expenditure is made.** Apply for and obtain such a written order of this Court authorizing a monthly or annual allowance from guardianship funds for the maintenance and support of the ward, where applicable. *Chaps. 1155, 1156, Estates Code.*
9. **Maintain an accurate record of all expenditures and receipts of guardianship funds.** *Chaps. 1151, 1163, Estates Code.*
10. **Keep all Social Security funds you receive on behalf of the ward separate and apart from guardianship funds,** as you will need to account to the Social Security Administration for the use of these funds. *SSA Publication No. 05-10076, Rev. Jan. 2009.*
11. **Preserve, protect and insure, if insurable, all non-cash assets of this guardianship.** *Chap. 1151, Estates Code.*
12. **Obtain a written order of this Court before attempting to sell, lease, transfer or otherwise dispose of any non-cash asset of this guardianship.** *Chaps. 1158, 1159, 1160, 1161, & 1162, Estates Code.*
13. **File your Final Accounting and Final Report of the Condition, Welfare and Well-Being of the Ward when the guardianship is ready to be closed** due to the death of the ward or a judicial finding that the ward has regained competency. **This is a mandatory requirement.** Your attorney should prepare the Final Accounting. *Chap. 1204, Estates Code.*
14. Consult with your attorney on any matter regarding this Estate that you do not understand. **Failure to comply with the mandatory requirements of the Texas Estates Code may result in penalties up to and including revocation of letters of appointment, removal as guardian, and/or fines up to \$1,000.00.**



Judge Barbie Scharf-Zeldes
 Probate Court No. 3
 Bexar County, Texas

I, _____, the duly appointed Guardian of the Person and Estate, hereby attest that I have read the above and understand its contents.

 Date

Signature _____
 Guardian of the Person and Estate

NOTICE TO THE GUARDIAN: These Instructions from the Court are intended to inform you of your duties and responsibilities under the Estates Code and under the orders of this Court, in order to facilitate your compliance. Your attorney should explain these instructions to you and ensure that a copy is provided to you. If you have any questions or there is any part of these instructions that you do not understand, consult your attorney. You are required to sign a copy of these Instructions and file it with the clerk. By signing this form, you are acknowledging that you have received these Instructions from the Court.

DIRECTIONS FOR FIDUCIARY

As the GUARDIAN of the person and estate, you are a FIDUCIARY, entrusted with the care, supervision and protection of the Ward, and for the management, protection and preservation of the property of the estate for the benefit, care and maintenance of the Ward.

The following DO's and DON'T's are basic rules which you should follow to properly and conveniently perform your administrative and accounting duties as guardian of the Ward's estate:

DO

1. Open a designated guardianship checking account that is SEPARATE from your own personal bank account. You must not mix guardianship funds with your own personal funds. This is for proper accounting of transactions relating to guardianship estate property and for tax considerations.
2. Use the guardianship checking account for all money paid out. The cancelled checks and bank statements are a reliable record of how you have spent the estate funds for administrative costs and for the care, maintenance and education of the Ward.
3. Keep an accurate record of all receipts and all disbursements. Use a spreadsheet or accounting software to track all guardianship-related expenses and income. An accounting tracking form is attached for your convenience.
4. Consult your attorney regarding any questions you may have. Your attorney will prepare the Inventory, Appraisal, and List of Claims required under Estates Code, § 1154.051 using the information you have provided regarding the Ward's property at the time the guardianship was granted, and will prepare an Annual Accounting every year as required under Estates Code, § 1163.001, using the information you provide in the estate accounting records.
5. Manage the assets of the estate as a prudent person would, exercising reasonable care, skill and caution, and in agreement with the court's direction or approval. Many fiduciaries consult with professional advisors such as a Certified Public Accountant (CPA), especially for larger guardianship estates.
6. Pay the bond premium(s) when due, if applicable – failure to maintain your bond could result in your removal as the guardian of this estate.

DO NOT

1. Do not treat the property as your own. It is **not** your property, and must be used only for the care, maintenance, and education of the Ward or as otherwise directed by the Court. Keep the Ward's property separate from your own property. **NOT DOING SO COULD BE A CRIMINAL OFFENSE.**
2. Do not spend, transfer, liquidate, sell, or distribute ANY of the Ward's property or funds without first obtaining Court approval, except to:
 - a. Release a lien on payment at maturity of the debt secured by the lien;
 - b. Vote stocks by limited or general proxy;
 - c. Pay calls and assessments;
 - d. Insure the estate against liability in appropriate cases;
 - e. Insure estate property against fire, theft, and other hazards; and
 - f. Pay taxes, court costs, and bond premiums.
3. Do not delay in reporting to the Court when required. Follow your attorney's directions on signing papers and filing them with the Court.

BOND RESPONSIBILITIES

1. Your bond remains in effect until a final discharge is issued by the Court and is delivered to the surety. You must provide a copy of an order closing the guardianship of the estate and discharging the sureties on the bond to the person or company that signed as surety on your bond.
2. Your bond must be in the amount ordered by the Court. The court must order all increases and decreases to the bond amount.
3. The bond premium, including renewal premiums, must be timely paid and are a legitimate expense to the estate for which you are personally responsible for paying each year when due.

Bill of Rights for Persons under Guardianship

Estates Code § 1151.351

Texas law provides a bill of rights to you as a person under a guardianship. Your guardian will explain these rights to you, which are listed below.

A person under a guardianship retains all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

Unless limited by a court or otherwise restricted by law, you have the following rights:

- (1)** to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
- (2)** to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
- (3)** to be treated with respect, consideration, and recognition of the ward's dignity and individuality;
- (4)** to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);
- (5)** to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;
- (6)** to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- (7)** to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;
- (8)** to exercise full control of all aspects of life not specifically granted by the court to the guardian;
- (9)** to control the ward's personal environment based on the ward's preferences;
- (10)** to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;
- (11)** to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
- (12)** to have a court investigator or guardian ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;
- (13)** to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;
- (14)** to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;
- (15)** to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054 of the Texas Estates Code, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006 of the Texas Estates Code;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation;

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward;

(25) to make decisions related to sexual assault crisis services, including consenting to a forensic medical examination and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in an evidence collection kit and disclosure of related confidential information, and receiving counseling and other support services; and

(26) to have private communications with the ward's physicians or other medical professionals, unless the court, after a hearing requested by the ward's guardian, orders the private communications to be limited due to:

(A) the risk of substantial harm to the ward; or

(B) the communications being unduly burdensome to the physician or medical professional.

This bill of rights does not replace or repeal other remedies you have under the law.