

COURT INSTRUCTIONS
GUARDIAN OF THE ESTATE

Thank you for accepting appointment as the Guardian of the Estate of a minor or incapacitated individual (the Ward). As duly-appointed Guardian of the Estate, you are hereby advised by the Court that you must do the following: (All section references are to the Texas Probate Code unless otherwise indicated.)

A. Fiduciary Responsibility: (§771FF); As a Guardian, you are a **fiduciary**, a position of the highest trust and responsibility with respect to the Ward, keeping all affairs confidential; maintaining accurate and complete financial records and ensuring that all dealings undertaken on behalf of the Ward, such as the purchase of goods and services, are properly completed.

Avoid **conflicts of interest** (an potential removal and personal liability) by: 1) not comingling your personal funds with the funds of the Ward; 2) **not** borrowing money from or lending money to the Ward; 3) **not** selling or encumbering real and personal property, or any interest therein, to yourself, a relative, friend or business acquaintance.

As a fiduciary, you and your bond surety may be held **liable** for any breach of your fiduciary duties. The requirements of the Probate Code are clear regarding your responsibilities.

B. Qualify as Guardian: Within twenty (20) days of receiving the Order appointing you as Guardian (§699):

1. Take and file an Oath (§700);
2. File the required bond, (§702); and
3. Obtain Letters of Guardianship from the Probate Clerk's office; (§659)

C. Limited Power of Guardian to Act Without Court Authority (§774(b)) without prior authorization by the Court, the Guardian may only:

1. Purchase liability and property insurance;
 2. Pay taxes, Court costs, & bond premiums;
 3. Release liens upon final payment;
 4. Vote stocks;
 5. Pay calls and assessments; (§774(b))
- Any other actions by the Guardian must be with prior approval of the Court or be ratified by the

Court. You and your bond surety can be held liable for failure to get Court approval before taking action or spending estate money. If in doubt, ask your attorney.

D. Take Possession of all Property of the Ward immediately upon receiving Letters of Guardianship, collect and take possession of all personal property and business records of the estate. (§771) All personal property of the Ward in the State of Texas should remain in Texas unless prior Court Approval is obtained. This may include, as necessary:

1. **Security** Change the locks on real property;
2. **Storage** Place non-perishable personal property in insured storage;
3. **Perishable Property** Obtain permission to sell perishable personal property (§812) after the Inventory has been filed and approved.
4. **Accounts and Investments** Set up appropriate accounts for the Guardianship funds. (All guardianship funds must be deposited in insured accounts in the name of the Guardianship. Retain in a checking account only such funds reasonably necessary for the current support and maintenance of the Ward. You are required to invest all additional funds in insured, interest-bearing accounts. *(Do not comingle Social Security Benefits with other estate accounts and non-probate assets. You need only to account to the Social Security administration for the use of these funds.)*)
5. **Cancel Credit Cards** issued in the Ward's name and send written notice to credit reporting agencies that the Ward has been declared incapacitated and will not be making any loans or accepting "pre-approved" credit cards.

E. Manage the Property of the Ward as a "prudent person would manage one's own property." (§768)

1. **Spending Money** – Obtain a written Order of this Court authorizing any expenditure of Guardianship funds before any such expenditure is made. Within 30 days, get an order for a monthly allowance for the maintenance and support of the Ward. (§693)(b)(3) Regardless of purpose, never spend any guardianship funds beyond your allowance unless you first obtain, through your attorney, a written Order of this Court authorizing such expenditures. You may be subject to removal and held personally liable for any deficiencies if you spend an allowance for purposes not approved in the court order setting up the allowance or if you spend other funds without Court approval.
2. **Expenditures for Support** – A parent of a minor Ward has a legal duty to support the child from his own resources. Absent a showing that the parent is unable to support the child, the parent has no authority as guardian to invade either the income or corpus of the child's estate. (§777)
3. **Sales and Leases** – Obtain a written Order of this Court before attempting to sell, lease, transfer or otherwise dispose of any non-cash asset of the Guardianship;
4. **Insurance** – Obtain adequate health insurance for the Ward, if possible; obtain adequate property insurance on all non-cash assets; and, when funds are available, make appropriate funeral and burial arrangements.
5. **Collect** all debts, rentals, or claims due to the Ward, and, if necessary, with Court permission, litigate on behalf of the Ward; (§786)
6. **Creditor's Claims** must be very carefully handled. Consult your attorney. Your improper approval of a claim or your failure to timely act on a claim can result in your personal liability. It is important to know that once a claim is presented, you allow or disallow the claim, in whole or part within 30 days or it will be rejected by operation of law. If this occurs, the creditor will have to file suit to secure payment of the claim. If the claim is found to be just, then you will be personally liable for the cost of this suit and you may be removed for failure to properly act upon this claim. In order to pay debts owed by the estate, you must obtain Court permission by first submitting to the Court an Application. Once a claim is allowed, it will be presented to the Court for approval or disapproval.
7. **Loans** Under certain circumstances, the Court may authorize a Guardian to mortgage or pledge estate property as security on a loan: (§781) or sale of estate property (§811)

8. **Gifts** The Guardian has no authority to make a gift, absent specific authorization.

F. Notice to Creditors Within one (1) month after qualification, the Guardian (through an attorney) must publish a Notice to Creditors in a newspaper of general circulation in the county and file a copy of the notice and the Publisher's Affidavit. (§783) Within four (4) months after qualification, the Guardian must give notice by certified or registered mail, return receipt requested, to all secured creditors (§784) and any general claimants if the guardian has actual knowledge of the debt or claim.

G. Accountings

1. Maintain an accurate record of all expenditures and receipts of Guardianship funds;
2. On or before 60 days after the anniversary of your qualification, file your Annual Account in the form prescribed by the Court.
3. Any cash or securities in your possession or held by any bank or depository must be verified by an appropriate letter or certificate.
4. If you receive Social Security benefits on the Ward's behalf, you must attach to your Annual Account, a copy of the most recent Representative Payee Report you filed with the Social Security Administration (SSA), accounting for your use of those funds. (A report to SSA is required annually.)
5. As part of your Annual Account, you must swear or affirm that you have filed all tax returns and paid all taxes due, with the date, amount paid, and the name of the governmental entity to whom the taxes were paid.

WARNING: Your Letters of Guardianship will expire one year and four months after the date of issuance unless they are renewed. The Probate Clerk cannot renew the Letters until you have filed the required Annual Account for the Guardian of the Estate. (§741)

6. File your Final Account when the Guardianship is ready to be closed due to the death of the Ward, the Ward retaining capacity or (if Guardian of a Minor) the Ward reaches 18 years of age.
 - a. Close Guardianship of Person , file a Final Report. Use same form as Annual Report.
 - b. Close Guardianship of Estate, file Final Account (§749). Final Account must show all property that has come into your hands

since the last Annual Account , and disposition of such property. Show debts paid and debts outstanding, and reason debt not paid. Any property in possession, fully reported and verified in same manner as Annual Accounts.

c. After the Court has reviewed the Final Account and entered an Order approving it, the Court will Order any remaining assets delivered to whomever the Court has determined is legally entitled to assets. After all property has been accounted for and receipts of delivery approved, the Court will enter an order closing the guardianship and relieving you of any further responsibility in connection with the guardianship. (§752) The process is complicated and detailed by Texas law, and you should seek the advice of your attorney.

H. Address Changes – Notify the Court at once if your address or the address of the Ward changes. Failure to do so is a cause for your removal.

I. Attorney's Fees – Attorney's fees and expenses may be paid upon Application and Order, as any other expenditure, subject to the guidelines of the Court for billing procedures.

K. Questions? Consult with your attorney (not the Court) any matter regarding this Guardianship that you do not understand.

**Darrell Cockerham, Judge
County Court for
Hood County, Texas**

I acknowledge receipt of a copy of these instructions.

Name: _____
Guardian: _____ Date _____

Printed Name

Signed in duplicate, and one (1) original retained in the Court's file. Guardian's initials: _____

NO. G00 _____

GUARDIANSHIP OF _____, § IN THE COUNTY COURT
§ OF
AN INCAPACITATED PERSON § HOOD COUNTY, TEXAS PROBATE

COURT'S REPRESENTATIVE PAYEE REPORT

If you are the Ward's representative payee, you must do one of the following:

1. Complete this form and attach it to your Annual Report (if there is no guardian of the estate) or to your Annual Account (if you are the guardian of the estate), **OR**
2. Attach a copy of the most recent Representative Payee Report that you received from the Social Security Administration to your Annual Report (if there is not guardian of the estate) or to your Annual account (if your are the guardian of the estate).

Did you as representative payee, decide how the Ward's funds were spent over the past year?

Yes NO

If "No," explain: _____

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- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| A. During the last reporting period, what was the total amount of benefits that the Social Security Administration paid you as the representative payee? | \$ _____ |
| B. During the reporting period, how much of the money from Question A was spent on food and housing for the Ward? | \$ _____ |
| C. During the reporting period, how much of the money from Question A was spent on other items for the Ward such as clothing, education, medical/dental expenses, recreation, or personal items? | \$ _____ |
| D. During the reporting period, how much of the money from Question A was saved for the Ward's future use? | \$ _____ |

Please account for any remaining funds: _____

I declare under penalty of perjury that all the information on this form any accompany statements are true and correct to the best of my knowledge.

Guardian/Representative

Date