

**ORDER AND JUDGMENT FOR THE APPOINTMENT
OF A GUARDIAN**

MHL ARTICLE 81

Annexed is a sample “Order and Judgment” form to be used as a guide in Kings County Supreme Court for the appointment of a Guardian, pursuant to Article 81 of the Mental Hygiene Law.

The language contained in said form is not intended to be all inclusive. Each judgment should be adapted to the individual case, and you are to familiarize yourself with the appropriate sections of Article 81 in preparing same. In reviewing the sample form, attention should be given to the footnotes, the use of pronouns, singular and plural nouns, and the like, to conform your order and judgment to your case.

The judgment should conform to the court’s decision in accordance with the transcript of the hearing.

Each such judgment is to be submitted to the Clerk’s Office (Room 850), accompanied by:

1. A Notice of Settlement
2. Proof of Service on all interested parties entitled to notice, the court evaluator and the attorney for the incapacitated person.
3. The portion of the transcript which reflects the court’s decision.
4. Where applicable, the order and judgment should be accompanied with a copy of the Lis Pendens and proof of filing with the County Clerk’s Office.

At I. A. S. Part 76 ___ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the _____ day of _____ 20__.

PRESENT:

HONORABLE _____ ,
Justice

-----X
In the Matter of the Application of

Petitioner ,

**ORDER AND JUDGMENT
APPOINTING GUARDIAN OF
THE PERSON AND PROPERTY**

For the Appointment of a Guardian of the
Personal Needs and / or Property Management of

INDEX NO. _____

A Person Alleged to be Incapacitated,

Respondent ,

-----X

An Order having been duly made herein at the I. A. S. Part 76 _____ of this Court on the _____ day of _____, _____ , directing that _____ and _____ show cause why a Guardian of the Person and / or Property (hereinafter “Guardian”) should not be appointed for _____ and granting other relief, and _____ having been appointed and appeared as Court Evaluator for the alleged incapacitated person and _____ having appeared for the petitioner herein, and come on for a hearing on the _____ day of _____ , 200____ and

_____ ¹ _____
having appeared, and _____ ² _____ having testified and the parties having adduced their proof and it appearing therefrom to the satisfaction of this Court that the alleged incapacitated person is unable to provide for personal needs and / or property management and cannot adequately understand and appreciate the nature and consequences of such inability, and the Court having made the findings required by Section 81.15 of the Mental Hygiene Law in a decision made on the record, on the _____ day of _____, 20_ ____ , and upon all the pleadings and proceedings heretofore had herein, and due deliberation having been had, on motion of _____, Esq., attorney for the petitioner, it is

ORDERED AND ADJUDGED, that _____ be and hereby is determined to be a person requiring the appointment of a Guardian as the Court has found that said incapacitated person is likely to suffer harm because of an inability to provide for personal needs and / or property management and is unable to adequately understand and appreciate the nature of and consequences of such inability; and it is further

ORDERED AND ADJUDGED, that _____ ³ _____ of _____, telephone number _____ is hereby appointed Guardian of the Person and Property of _____, upon filing with the Court, pursuant to Section 81.25 of the Mental Hygiene Law, a bond in the sum of \$ _____, with sufficient sureties, conditioned that said Guardian will _____

¹List name(s) of all respondents, etc., on whom the Order to Show Cause directed that service be made, including Court appointees.

²List all parties who testified at the hearing.

³Insert the name, address, zip code and telephone number of the guardian (or co-guardian) appointed. The wording in this decretal paragraph should track the Court's decision in respect to the appointment, i.e., Guardian, Co-Guardian, Guardian for the personal needs, Guardian for the property management. If different individuals are appointed as Guardian for the needs and Guardian for the property, only the property management Guardian is **required to file a bond, the amount of which shall be fixed by the Court.**

in all things faithfully discharge the trust imposed herein, obey all the directions of the Court in respect to the trust, make and render a true and just account of all monies and other properties received pursuant to the authority granted herein and the application thereof, and of all acts performed in the administration of the trust imposed herein whenever required to do so by the Court, and will file the designation required by §81.26 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED,⁴ that pursuant to 22 NYCRR §36.1 the Guardian shall / shall not be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED AND ADJUDGED , that the guardian appointed pursuant to Part 36 of the Rules of the Chief Judge **may not** act as his / her own attorney or retain counsel without **prior court approval** , and it is further

ORDERED AND ADJUDGED, that the Guardian shall not have the authority to pay counsel fees without prior approval of the Court; and it is further

ORDERED AND ADJUDGED, that the Guardian shall pay the premium on said bond from the funds of the incapacitated person to the surety or its agent within sixty (60) days after **receiving the commission** , and shall continue to pay the **annual** renewal premium from those funds within sixty (60) days after the bond renews until such time as a final accounting of the proceedings has been judicially approved and the bond discharged by Order of this Court; and it is further

ORDERED AND ADJUDGED, that the surety and its agent may bring a motion in this Court to collect unpaid premiums if such payments are not timely made, and it is further

ORDERED AND ADJUDGED, that the caption of this proceeding shall be amended to reflect the appointment of said Guardian as follows:

⁴Guardians when family nominated, not-for-profit organizations or family members shall not be subject to Part 36 Rules of the Chief Judge.

_____ Guardian's Name _____, as guardian
of _____ Index No. _____

(Incapacitated Person's Name , an Incapacitated Person; and it is further

ORDERED AND ADJUDGED,⁵ that pursuant to §81.27 of the Mental Hygiene Law, upon the filing of such bond and designation as required by the statute a commission in the due form of law shall be issued by the Clerk of the Court; and it is further

ORDERED AND ADJUDGED,⁶ that _____ is hereby appointed the Trustee of the Supplemental Needs Trust annexed hereto, and is directed to file with the Clerk of the Court, Kings County, a "Consent to Act" as Trustee, Oath, Designation, duly acknowledged by the Trustees, and it is further

ORDERED AND ADJUDGED,⁶ that upon filing of the bond required by the Trustee, _____ of the _____ Supplemental Needs Trust, the Trustee is given the authority with respect to the above property management of the incapacitated person and shall marshal said assets of _____ for the purpose of investing such assets as would a prudent person of discretion and intelligence in such matters seeking reasonable income, and to apply so much of the income and principal of the Incapacitated Person as is necessary for the comfort, support, maintenance and well-being of said incapacitated person; and said funds shall be held in accounts titled, " _____ as Trustee of the Supplemental Needs Trust on behalf of _____ , an Incapacitated Person", and it is further

ORDERED AND ADJUDGED,⁶ that the Trustee shall file with the Clerk of the Court, _____

⁵If the Court issued an Interim Order setting a bond, indicate the date of the Interim Order, and when the bond was obtained.

⁶These decretal paragraphs should only be used if the application to establish a Supplemental Needs Trust was granted at the time of the hearing.

within twenty (20) days of the signing of this Order, an executed copy of the Supplemental Needs Trust Agreement authorized hereunder, and it is further

ORDERED AND ADJUDGED, that for the purpose of section 9-I (post) of the Banking Law, this order shall be deemed a declaration of incompetence and no banking institution or savings bank shall impose any penalty for the repayment of a time deposit prior to maturity; and it is further

ORDERED AND ADJUDGED, that the Guardian shall serve for an indefinite period of time; and it is further

ORDERED AND ADJUDGED, that the authority of the Guardian of the Property shall extend to all of the property of the Incapacitated Person, both real and personal, including but not limited to the following:⁷

- A. **INCOME** (List all income here)
- B. **BANK ACCOUNTS** (List all bank accounts & securities here)
- C. **REAL ESTATE** (List all real property here)

and it is further

ORDERED AND ADJUDGED, that said Guardian of the Property before taking possession of any personal property, other than the above mentioned, shall file an application with the court to fix the bond approved by a Justice of this Court pursuant to Article 81 of the Mental Hygiene Law, and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the Guardian of the Property, upon demand and presentation of a certified copy of the commission, all property of the Incapacitated Person, of every kind and nature which may be in their possession or under their control; and it is further

⁷ Income should include Monthly Social Security, Pension, Rental, Interest and Dividends. List all Banks and account balances with partial account numbers (i.e. "account ending in") and any other assets owned by the Incapacitated Person. If there is a lengthy list of securities, etc., they should be added to a separate page and annexed to the order as Schedule "A".

ORDERED AND ADJUDGED, that the Guardian shall have the following powers as set forth in Section 81.21 of the Mental Hygiene Law, with respect to property management of the Incapacitated Person:

a)⁸

and it is further

ORDERED AND ADJUDGED, that the Guardian of the Property may, without prior authorization of the Court, make reasonable expenditures for the purpose of providing the Incapacitated Person with necessities or preserving the property of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the Guardian may, without prior authorization of the Court, invest surplus funds in investments eligible by law for the investment of trust funds and may dispose of investments so made and reinvest the proceeds as so authorized. Except as herein provided, no investment shall be made by the Guardian other than pursuant to an order of the Court authorizing such investment. Nothing herein contained shall be deemed to limit the power of the Court to approve any investment made without its authorization, or to control the disposition of the property of the Incapacitated Person's funds, or to make a new order respecting investments at any time; and it is further

ORDERED AND ADJUDGED, that the Guardian may not alienate, mortgage, lease or otherwise dispose of real property without the special direction of the Court obtained upon proceedings taken for that purpose as prescribed in Article 17 of the Real Property Actions and Proceedings Law, provided, however, that without instituting such proceedings, the Guardian may, with the authorization of the Court lease Real Property for a term not to exceed five years and may,

⁸ Section 81.21 enumerates those powers which may be granted, but not limited to those listed. State those powers that are being sought consistent with the functional limitations of the Incapacitated Person.

without further authorization of the Court, lease a primary residence for the Incapacitated person for a term not to exceed three years; and it is further

ORDERED AND ADJUDGED, that the Guardian must seek Court approval to expend, transfer or withdraw funds in excess of five thousand dollars (\$5,000.00), and it is further

ORDERED AND ADJUDGED,⁹ that the Guardian is hereby directed to purchase a pre-paid irrevocable funeral contract within one hundred eighty (180) days from the issuance of the commission, and it is further

ORDERED AND ADJUDGED,⁹ that the Guardian shall establish a separate luxury account for the benefit of the Incapacitated Person in amounts not to exceed the applicable Medicaid regulations, and it is further

ORDERED AND ADJUDGED,⁹ that the Guardian shall establish a separate burial account for the Incapacitated Person in amounts not to exceed the applicable Medicaid allowances, and it is further

ORDERED AND ADJUDGED, that the Guardian is hereby directed to establish an account in the amount of \$ _____ , to be set aside for the payment of fees at the termination of the Guardianship of the Incapacitated Person, and it is further

ORDERED AND ADJUDGED, that the Guardian may, without prior authorization of the Court, maintain in his / her own name and official title any civil judicial proceeding which the incapacitated person might have maintained were he / she competent, including but not limited to Landlord-Tenant Court proceedings; and it is further

ORDERED AND ADJUDGED, that in the event the Guardianship of the Incapacitated

⁹These paragraphs are intended for use only where the IP is confined to a nursing home/or where such placement is anticipated.

Person is to be terminated for reasons other than death, the Guardian shall apply to the Court by Ex Parte application for permission to bring a Final Account of the proceedings, or for direction as to the disposition of the Incapacitated Person's property then remaining and for any other instructions concerning said termination with sixty (60) days, and it is further

ORDERED and ADJUDGED, that pursuant to MHL §81.44(c)(1), the guardian shall serve a copy of the statement of death, within twenty (20) days of the incapacitated person's death, upon (i) the court examiner, (ii) the duly appointed representative of the deceased incapacitated person's estate or the personal representative named in the deceased incapacitated person's will or any trust instrument if no personal representative has been appointed, (iii) the public administrator or the chief fiscal officer of the county, and (iv) all interested parties in this proceeding pursuant to §81.16(c)(3); and it is further

ORDERED and ADJUDGED, that pursuant to MHL §81.44(c)(2), the guardian shall file the original statement of death together with proof of service with the court which issued the letters of guardianship; and it is

ORDERED and ADJUDGED, that pursuant to MHL §81.44(d), the guardian shall serve a statement of assets and notice of claim, within one hundred fifty (150) days of the incapacitated person's death, upon (I) the duly appointed representative of the deceased incapacitated person's estate or the personal representative named in the deceased incapacitated person's will or any trust instrument if no personal representative has been appointed, or (ii) the public administrator or the chief fiscal officer of the county; and it is further

ORDERED and ADJUDGED, that except for property retained to secure any known claim, lien or administrative cost of the guardianship pursuant MHL §81.44(e), the guardian shall deliver all guardianship property to (I) the duly appointed representative of the deceased incapacitated

person's estate or the personal representative named in the deceased incapacitated person's will or any trust instrument if no personal representative has been appointed, or (ii) the public administrator or the chief fiscal officer of the county, pursuant to MHL §81.44(d); and it is further

ORDERED and ADJUDGED, that pursuant to MHL §81.44(f), the guardian shall file a final report within one hundred fifty (150) days of the incapacitated person's death, with the clerk of the court and proceed to judicially settle the final report upon such notice as required by MHL §81.33© and shall serve (i) the court examiner, (ii) the duly appointed representative of the deceased incapacitated person's estate or the personal representative named in the deceased incapacitated person's will or any trust instrument if no personal representative has been appointed, (iii) the public administrator or the chief fiscal officer of the county, (iv) all interested parties in this proceeding, and (v) the counsel to review/referee appointed to review the proceeding; and it is further

ORDERED AND ADJUDGED, that should the Incapacitated Person reside in a nursing home or residential facility at the time of their death, the director of the facility shall notify the Court within thirty (30) days, and it is further

ORDERED AND ADJUDGED, that upon the death of the Incapacitated person the Guardian shall have the authority to pay bills of the Incapacitated Person which were incurred prior to the death of the Incapacitated Person provided the Guardian would otherwise have had the right to pay such bills; and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.36 (e) of the Mental Hygiene Law, upon the death of the Incapacitated Person, the Guardian of the Property shall have the authority to pay for the reasonable funeral expenses of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the Guardian shall have such authority as may be granted by any statute of the United States of America or the State of New York unless such statute

specifically requires the permission of the Court before the exercise of the power granted therein;
and it is further

ORDERED AND ADJUDGED that in the event the incapacitated person received financial assistance from the City of New York, then in that event the guardian shall reimburse the New York City Human Resources Administration Program (“Medicaid”) for any and all medical expenses paid on behalf of the incapacitated person out of the excess resources of the incapacitated person; and it is further

ORDERED AND ADJUDGED, that pursuant to 81.20 of the Mental Hygiene Law the Guardian shall:

- A. Exercise only those powers that the Guardian is authorized to exercise by order of the Court;
- B. Exercise the utmost care and diligence when acting on behalf of the Incapacitated Person
- C. Exhibit the utmost degree of trust, loyalty and fidelity in relation to the Incapacitated Person;
- D. Visit the Incapacitated Person not less than four times per year;
- E. Afford the Incapacitated Person the greatest amount of independence and self determination with respect to property management and personal needs in light of that person’s functional level, understanding and appreciation of his functional limitations, personal wishes, preferences and desires with regard to managing the activities of daily living;

and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.20 of the Mental Hygiene law

the Guardian shall:

- A. Preserve, protect and account for the Incapacitated Person's property and financial resources faithfully;
- B. Determine whether the Incapacitated Person has a Will, determine the location of any Will and the appropriate persons to be notified in the event of the death of the Incapacitated Person, and in the event of the death of the Incapacitated Person, notify those persons;
- C. 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;
- D. At the termination of the appointment, deliver the property of the Incapacitated Person to the person legally entitled to it; and
- E. Perform all other duties required by law; and it is further

ORDERED AND ADJUDGED, that to the extent of the net estate available therefor, the Guardian shall provide for the maintenance, and personal well being of the Incapacitated Person and then may, without further order of the Court, provide for the maintenance and support of persons legally dependent upon the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that any safe deposit box owned by the Incapacitated

Person shall be opened by the Guardian in the presence of a representative of the bank and a representative of the surety on the Guardian's bond, unless the surety waives being present in writing, and the Guardian shall promptly file an inventory of the contents of the safe deposit box with the Court, subscribed by all present; and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.22 of the Mental Hygiene Law the Guardian shall have the authority to make the following decisions concerning the personal needs of the Incapacitated Person:

a) ¹⁰ ;

and it is further

ORDERED AND ADJUDGED, that pursuant to Mental Hygiene Law Section 81.39 no later than ninety (90) days after the issuance of a commission, the Guardian shall complete a training program approved by the Chief Administrator of the Courts and obtain proof that the training was completed; and it is further

ORDERED AND ADJUDGED, that pursuant to Mental Hygiene Law Section 81.30, no later than ninety (90) days after the issuance of the commission to the Guardian, the Guardian shall file with the Court an initial report in a form prescribed by the Court and proof of completion of the Guardian education requirements under the Mental Hygiene law Section 81.39; and it is further

ORDERED AND ADJUDGED, that the Guardian shall file during the month of May in the Office of the Clerk of the County of Kings, an Annual report in the form required by Mental Hygiene Law Section 81.31; and it is further

ORDERED AND ADJUDGED, that the compensation to be paid to the Guardian from the

¹⁰ Section 81.22 enumerates those powers which may be granted, but not limited to those listed. State those powers that are being sought consistent with the functional limitations of the Incapacitated Person.

estate of the Incapacitated Person shall be fixed by the Court not to exceed that allowed as the compensation provided for a Guardian pursuant to Surrogate's Court Procedure Act §2307, subject to approval of the Court, for services actually rendered; and it is further

ORDERED AND ADJUDGED, that the Guardian fully cooperate with the Court Examiner designated by the Appellate Division to examine the condition, care and finances of the Incapacitated Person and this Court has been advised that the designated Court Examiner is _____¹¹ of _____¹¹, (____) _____¹¹; and it is further

ORDERED AND ADJUDGED, that the petitioner shall serve upon the Court Examiner and unless the Guardian is a party to the proceeding, upon the appointed Guardian, by regular mail, a copy of the petition, the report of the Court Evaluator and all other papers submitted to the Court in relation to this proceeding to date; and it is further

ORDERED AND ADJUDGED, that the Court Examiner named herein shall inform the Court in writing that the initial report / annual account has not been examined, and it is further

ORDERED AND ADJUDGED, that the Guardian shall take no annual commissions and 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 the Guardian shall make the following disbursement(s) from the funds of the Incapacitated Person:

- a) to _____ the sum of \$_____ for services rendered as Court Evaluator;

¹¹Upon submission of the Order and Judgment, the Court will write in the name, address and telephone number of the Court Examiner assigned to this matter.

b) to _____ the sum of \$ _____ for services as attorney for the petitioner; and if is further

ORDERED AND ADJUDGED,¹² that the Temporary Guardian shall file with the court within sixty (60) days of service of a copy of this Order and Judgement with notice of entry, a detailed report of all acts performed and a true and just account of all monies and other properties received, and it is further

ORDERED AND ADJUDGED, that pursuant to Mental Hygiene Law Section 81.16 (c)(3), notice of all further proceedings with regard to this matter shall be given to:¹³ ; and it is further

ORDERED AND ADJUDGED, that pursuant to Mental Hygiene Law Section 81.16 (e), a copy of this Order and Judgment shall be personally served upon and read to the Incapacitated Person by¹⁴ _____ , the _____; and it is further

ORDERED AND ADJUDGED, that any appointee herein shall comply with Judiciary Law Section 35-a and Part 36 of the Rules of the Chief Judge and no fee shall be paid to such appointee until such appointee has filed the Notice of Appointment and Certification of Compliance form UCS 872 with the Court; and it is further

ORDERED AND ADJUDGED, that a copy of this Order and Judgment with notice of entry shall be served on all parties as directed in this Judgment pursuant to 81.16(c)(3) within ten (10) days of the signing of this Order; and it is further

ORDERED AND ADJUDGED, that the Guardian and / or Counsel are hereby directed to

¹²This decretal paragraph should be used where a Temporary Guardian was appointed prior to the Permanent Guardian.

¹³List all interested parties as directed by the Court and Pursuant to 81.16 MHL

¹⁴81.16(E) authorizes the reading to be done by the Court Evaluator, the Attorney for the Incapacitated Person or by the Guardian.

appear before this Court for a compliance conference to be held on the _____ day of _____, 20_____, at which time, the Guardian shall inform the Court as to the status of the posting of the bond, commission, and education requirement. In the event that the Guardian has obtained the bond and the commission prior to the scheduled conference date, the Guardian and /or Counsel shall notify the Court Examiner Specialist at 347-401-9442, prior to the conference and same may be waived.

ENTER

J. S. C.