

## GUARDIAN'S POWERS UNDER ARTICLE 81

**NOTE: PLEASE SUBSTITUTE NAME OF INCAPACITATED PERSON FOR "IP"**

### PROPERTY MANAGEMENT POWERS

- 1) Transact any banking business including establishing checking accounts, savings accounts, certificates of deposit, collecting, negotiating, depositing, withdrawing, endorsing checks, drafts, or any negotiable instrument and any incidental powers related thereto.
- 2) Prosecute, defend, settle, and maintain any cause of action, arbitration, or civil judicial proceeding. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court. The authorization provided for in this subdivision shall terminate upon the death of the Incapacitated Person and the appointment of an executor or administrator.
- 3) Marshal all income and assets, and exercise the necessary incidental powers to effectuate such power including the power to open and inventory safe deposit boxes, and the power to redirect and open any and all mail directed to the Incapacitated Person.
- 4) Prepare, complete, and sign all tax returns, and pay the tax due as shown by said returns; appear on behalf of the IP before Federal, State and Local taxing authorities; prosecute, defend and settle all tax claims, litigation, assessments and levies relating to any taxing authority or any type of tax.
- 5) Establish, terminate, change or complete any transaction regarding pension retirement incentives, IRA/Keogh/SEP and similar plans, programs and annuities.
- 6) Compromise, forgive, collect, prosecute, pay, and settle bills and debts with creditors and debtors.
- 7) Endorse, collect, negotiate, deposit and withdraw Social Security, pension or annuity benefit checks.

- 8) Apply, negotiate, prosecute and settle actions, claims and arbitrations for government entitlements and benefits of all kinds with any governmental administration or agency. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court.
- 9) Provide support for persons dependent upon the IP for support whether or not the IP is legally obligated to provide that support.
- 10) Convey, release or assign contingent and expectant interests in property, both real and personal, including marital property rights and any right of survivorship incidental to joint tenancy or tenancy by the entirety or tenancy in common, upon authorization of the Court.
- 11) Convey, release or assign any other interests of the Incapacitated Person in tangible personal property with a value less than \$1,000.
- 12) Exercise or release powers held by the IP as trustee, personal representative, guardian for a minor, guardian for donee, or power of appointment.
- 13) Enter into, rescind, assign, repudiate any and all contracts.
- 14) Create revocable or irrevocable or supplemental needs trusts of property which may extend beyond the incapacity or life of the IP with the terms thereof to be approved by the Court.
- 15) Exercise any right to an elective share in the estate of the IP's deceased spouse.
- 16) Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer consistent and pursuant to §2-1.11(c) of the Estates, Powers and Trust Law upon authorization by the Court.
- 17) Authorize access to or release confidential records.

- 18) Invest funds of the Incapacitated Person as permitted by the prudent investor rule of section 11-2.3 of the estates, powers and trusts law.
- 19) Retain attorneys, accountants, auctioneers, appraisers, property managers and real estate brokers and pay the necessary disbursements and fees for such individuals [in amounts not to exceed \$\_\_\_\_\_ per year.] ***(If Guardian is an attorney, change to: "upon authorization by the Court".)***
- 20) Pay the funeral expenses of the IP.
- 21) Lease or mortgage real property for the benefit of the IP.
- 22) Sell or purchase real property for the benefit of the IP upon authorization by the Court pursuant to Article 17 of the Real Property Actions & Proceedings Law.
- 23) File, prosecute, compromise and settle all personal and property insurance claims and all incidental powers related thereto necessary to effectuate this power, including without limitation the power to surrender insurance policies for cash value. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court.
- 24) Exercise rights to elect options and change beneficiaries under life insurance or annuity policies owned by the IP upon authorization by the Court.
- 25) Pay bills after death, if the debts were incurred prior to death and if authority to pay any such bill would otherwise have existed, until a temporary administrator or executor is appointed.

#### **PERSONAL NEEDS POWERS**

- 26) Determine who shall provide the personal care, health care and assistance for the personal needs and health of the IP. To enter into contracts for the same and pay such persons, firms or corporations.
- 27) Make decisions regarding social environment and other social

aspects of the life of the IP.

- 28) Determine whether the IP should travel or should have a license to drive an automobile.
- 29) Make decisions regarding education of the IP and participation in mental health programs and the necessary powers to implement such decisions.
- 30) Consent to or refuse generally accepted routine or major medical or dental treatment. Treatment decisions shall only be made: (a) in accordance with the IP's wishes, religious and moral beliefs, or, if such are not known and cannot be ascertained with reasonable diligence, in accordance with the IP's best interests, including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving life, the preservation or improvement or restoration of health or functioning, relief of suffering, adverse side effects of treatment, less intrusive alternative treatments, and such other concerns and values of a reasonable person in the IP's circumstances, (b) with consideration of the requirements of Mental Hygiene Law §81.15, and (c) subject to the provisions of Mental Hygiene Law §81.29(e) dealing with life sustaining treatment.
- 31) Choose the place of abode of the IP, consistent with the Findings pursuant to Section 81.15 of the Mental Hygiene Law, including the power to move the IP to a nursing home or other residential facility as those terms are defined in the Public Health Law §2801, and consistent with the factors set forth in Section 81.22(a)(9) of the Mental Hygiene Law.