

GUIDE TO GUARDIANSHIP
FOR LAY GUARDIANS APPOINTED
UNDER ARTICLE 81 OF THE
MENTAL HYGIENE LAW

MODIFIED FOR USE IN NASSAU COUNTY
MAY 2010

[Home](#)

[About Us](#)

[How Can GAN Help?](#)

Manual

- ▶ [What Is a Guardian?](#)
- ▶ [From Court Hearing to Guardianship Commission](#)
- ▶ [The First 90 Days: From Commission to Initial Report](#)
- ▶ [The Guardian for Personal Needs](#)
- ▶ [The Guardian for Property Management](#)
- ▶ [The Initial & Annual Reports](#)
- ▶ [Ending a Guardianship](#)

▶ [Español](#)

[Sample Forms](#)

[Resources](#)

[FAQs](#)

[Contact Us](#)

Manual

 [Español](#)

GUIDE TO GUARDIANSHIP - FOR LAY GUARDIANS APPOINTED UNDER ARTICLE 81 OF THE NEW YORK STATE MENTAL HYGIENE LAW

- ▶ [What is a Guardian?](#)
- ▶ [From Court Hearing to Guardianship Commission](#)
- ▶ [The First 90 Days](#)
- ▶ [The Guardian for Personal Needs](#)
- ▶ [The Guardian for Property Management](#)
- ▶ [The Initial & Annual Reports](#)
- ▶ [Ending a Guardianship](#)

Sia Arnason, MSW
Julia Spring, MSW, JD
Guardian Assistance Network
Vera Institute of Justice

Debra Sacks, LPN, JD
Sadin Institute on Law, Aging and Public Policy
Brookdale Center on Aging of Hunter College

Acknowledgments

The Guide to Guardianship for Lay Guardians Appointed under Article 81 of the New York State Mental Hygiene Law was prepared for lay guardians in New York State with support from the State Justice Institute. Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

Additional support has been provided by the Florence V. Burden Foundation, the Jacob and Valeria Langeloth Foundation, FJC, a Foundation of Donor Advised Funds. We are grateful for their encouragement and support.

The Guide was written and assembled by the coordinators of the Guardian Assistance Network, a project of the Vera Institute of Justice, in collaboration with the staff of the Sadin Institute on Law, Aging and Public Policy of the Brookdale Center on Aging of Hunter College of the City University of New York. It has been approved by the Office of Guardianship and Fiduciary Services, New York State Office of Court Administration.

The Guardianship Assistance Network, located at Kings County Supreme Court in Brooklyn, is part of the Guardianship Project of the Vera Institute of Justice, an independent nonprofit that works with leaders in government and civil society to improve the services and systems people rely on for safety, security, and justice.

The Sadin Institute on Law, Aging and Public Policy of the Brookdale Center on Aging of Hunter College of the City University of New York is an interdisciplinary project that acts as a legal support program for professionals of all kinds who are engaged in providing advocacy assistance to the elderly poor in obtaining legal entitlements.

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.



The Home Page for the Guardian Assistance Network is:
www.nycourts.gov/ip/gan/index.shtml

Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

What is a Guardian?

A guardian is an adult who is selected by a judge to make decisions for another person who needs help managing finances and making personal care decisions. Guardians are usually appointed to care for adults but sometimes parents or other family members of a child with a severe disability are appointed guardian to take care of the child throughout the child's lifetime.

Example: Guardianship for an Older Adult

Sylvia, a 92-year-old widow with dementia caused by Alzheimer's Disease, recently ended up in a nursing home after she broke her hip. Sylvia's home, in which she lived until her accident, is in bad shape. Unfortunately she does not have the means to have it repaired—she will not be able to return there. But now that she feels better she wants to leave the nursing home. Sylvia's niece, who lives in Brooklyn, applied to the court to become guardian for her aunt. After she was appointed she made arrangements for Sylvia to move to an assisted living residence, where she will have her own room and will have much more freedom of movement than she has in the nursing home. Sylvia is delighted and looks forward to her new home.

Example: Guardianship for a Young Child

Owen, who is now 4-years-old, has severe brain damage as a result of lack of oxygen during his birth. His mental age is six months and he is not going to develop further. Recently, Owen got a large sum of money as a result of a lawsuit that was brought against the hospital where he was born. The money was placed in a special trust account that will provide for his needs as he grows older. Since Owen will never be able to care for himself, he needs someone else to take care of him and manage his money. Owen's aunt, with whom he lives, applied for guardianship so that she will be able to make all personal care decisions for him, manage his money, and apply for the government benefits he may be eligible for.



Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

From Court Hearing to Guardianship Commission

- ▶ [The Order & Judgment](#)
- ▶ [The Oath and Designation](#)
- ▶ [The Fiduciary Bond](#)

The Order & Judgment

The Order and Judgment signed by the judge is the document containing the judge's decision that a guardian is needed for an incapacitated person, what general and specific duties the guardian has, and who the guardian is. At the end of the hearing the judge usually asks the lawyer for the petitioner or a lawyer for one of the other parties, to write the Order and Judgment and send it to the judge to be signed. After the judge has signed it, it is filed in the county clerk's office. In some counties this may take 90 days or more. ~~If it is taking too long, contact the lawyer to see what is causing the delay. (Click Here for a sample copy of an Order and Judgment.)~~

- ▶ [How can I get a copy of the Order and Judgment?](#)
- ▶ [What information is in the Order and Judgment?](#)
- ▶ [How do I use the Order and Judgment?](#)

NOTE: If there is some reason that the judge wants you to be able to take care of your ward's affairs immediately, the judge may sign a so called "Interim Order" in which the judge authorizes you to do something right away for your ward. Interim Orders remain in effect until the judge has signed the final Order and Judgment.

HOW CAN I GET A COPY OF THE ORDER AND JUDGMENT?

The lawyer who is writing the Order and Judgment may send you a copy in the mail, but if you don't get a copy from the lawyer you should call ~~the county clerk's~~ the attorney office to find out if the Order and Judgment has been filed yet. ~~(Some county clerks do not want to answer questions by phone and you may have to go to the courthouse to see the county clerk in person to get the information you need.)~~

[Back to Top](#) ▲

WHAT INFORMATION IS IN THE ORDER AND JUDGMENT?

The Order and Judgment states that you have been appointed the guardian of your loved one. It also describes in detail what you must do as guardian. Because each case is different, the Order and Judgment is written to describe your ward's case. It is an important document for you—even if it is difficult to read. You should keep the Order and Judgment in a safe place together with all the other official papers you will get that are described in the next pages.

Each paragraph that begins with the words "Ordered and Adjudged" will tell you a specific thing the judge has decided you must do. For instance, it will tell you:

- ▶ What type of guardian you are (for [Property Management](#), [Personal Needs](#), or both)
- ▶ Whether you must get a bond, and if so for how much
- ▶ Whatever else the judge expects you to do on behalf of your ward
- ▶ The name and address of the court examiner who reviews your reports
- ▶ The fee for the petitioner's attorney and the court evaluator for the work they have done on your ward's case (these fees must be paid out of your ward's funds)

If you have difficulty finding these sections you should ask the lawyer for help or



~~the staff in the county clerk's office to explain them to you.~~

[Back to Top](#) ▲

HOW DO I USE THE ORDER AND JUDGMENT?

The Order and Judgment is your proof that you have been appointed by the court to manage your ward's affairs and what sort of authority you have. You therefore need the signed Order and Judgment when you contact a bonding agency to apply for a bond if the judge ordered you to get one. It is also an important document when you have to do business for your ward with banks, brokerage houses, medical facilities and other institutions. In addition, the Order and Judgment is an important guide for you throughout your guardianship because it outlines what the judge expects from you.

[Back to Top](#) ▲

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

In most instances when dealing with banks, medical providers, etc., you will also need a certified copy of your commission(which is addressed later.)

Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

From Court Hearing to Guardianship Commission

- ▶ [The Order & Judgment](#)
- ▶ [The Oath and Designation](#)
- ▶ [The Fiduciary Bond](#)

The Oath & Designation

The ~~Oath and~~ Designation (sometimes just called the "Designation") gives the county clerk the power to accept legal papers on behalf of your ward in case you cannot be found. When an ~~Oath and~~ Designation form is used guardians must also promise the court that they will follow the Order and Judgment faithfully, honestly, and with care. ~~(Click here for a sample of an Oath and Designation.)~~ You must sign the Oath and Designation in the presence of a Notary Public and once it is signed, you must file it in the county clerk's office. at 240 Old Country Road,

Mineola, NY 11501

- ▶ [What information is in the Oath and Designation?](#)
- ▶ [Where can I get an Oath and Designation?](#)

WHAT INFORMATION IS IN THE ~~OATH AND~~ DESIGNATION?

In the ~~Oath and~~ Designation you state that:

- ▶ ~~You are going to carry out your responsibilities honestly, that you will be careful with your ward's money, and that you will report regularly on what you have done to care for your ward's person and property.~~
- ▶ ~~You are over 18 and a US citizen or you have a green card.~~
- ▶ You agree that the county clerk may be served with any legal papers if you cannot be found.

[Back to Top](#) ▲

WHERE CAN I GET AN ~~OATH AND~~ DESIGNATION?

You can usually get a blank copy of the ~~Oath and~~ Designation from ~~the county clerk's office in the courthouse.~~

Room 152- Guardianship Department
Nassau County Supreme Court
100 Supreme Court Drive
Mineola, New York 11501

[Back to Top](#) ▲



Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

- ▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

From Court Hearing to Guardianship Commission

- ▶ [The Order & Judgment](#)
- ▶ [The Oath and Designation](#)
- ▶ [The Fiduciary Bond](#)

The Fiduciary Bond

A fiduciary bond is court-ordered protection, a form of insurance. It is not protection for the guardian but it is protection for the person who needs a guardian. By issuing a bond the bonding agency agrees to repay the ward any money that might be lost because of the guardian's actions or mistakes. Fiduciary bonds are also called "surety bonds" but in general they are usually just called "bonds."

Not every guardian must get bonded. Guardians for Personal Needs usually do not have to get a bond, but most Guardians for Property Management do, unless the ward's assets are very limited and the judge decides that a bond is not needed. The Order and Judgment is the document that states the judge's decision about whether or not you must get a bond and, if so, for how much.

NOTE: If you are required to get a bond, you must get one as soon as possible because you cannot get your Guardianship Commission without it.

- ▶ [How do I get a bond?](#)
- ▶ [How much does a bond cost](#)
- ▶ [Where do I file the bond?](#)

HOW DO I GET A BOND? A bond is also called a surety. >Bonds are issued by a bonding agency. You must call a bonding agency as soon as possible after you have received the signed Order and Judgment. Check with the bonding agency to find out if you can submit your application by mail, phone or fax. Remember, when you contact the bonding agency you must have the Index Number available. When you apply for a bond you must show the agency a copy of the Order and Judgment, since it is the document that states what the amount is of the bond. ([Click Here for a list of bonding agencies](#)).

Whether the bonding agency permits you to be bonded depends on your > financial situation. The bonding agency wants to know whether you are financially responsible - it will check your credit rating, your income and resources, whether or not you have any debt, and whether you have ever filed for bankruptcy. If the bonding agency decides for any reason that you are not a good financial risk, it will not bond you.

NOTE: If you cannot get a bond because the bonding agency has refused to give you one, you should immediately notify the judge. Judges sometimes will reduce the bond so that the bonding agency will accept you and sometimes the judge will waive the bond requirement altogether. However, in some cases the judge will appoint someone else as Guardian for Property Management.

[Back to Top](#) ▲

HOW MUCH DOES A BOND COST?

The amount you have to pay to get a bond and maintain it, the annual premium, is based on a percentage of the value of your ward's property and income. The amount of the bond is set by the judge; the amount of the premium is set by the



bonding agency. Annual premiums must be paid out of your ward's assets. If you paid the initial premium for establishing the bond out of your own funds, you can ask for reimbursement when you submit your Annual Report. Make sure that you keep receipts!

NOTE: *If the value of your ward's assets changes after you have been bonded, you must tell the judge who will order you to obtain another bond to reflect the change.*

[Back to Top](#) ▲

WHERE DO I FILE THE BOND?

After you have received the bond from the bonding agency, ~~you must file it together with the signed and notarized Oath and Designation with the county clerk's office. In some counties the bond must first be reviewed and approved by the guardianship office, before it can be filed with the county clerk. Check with the county clerk in your county to see what the local practice is there. Remember to keep a copy of the bond and the Oath and Designation for your records.~~

NOTE: ~~You may get your Guardianship Commission from the county clerk on the same day that you file the bond and Oath and Designation.~~

Submit your Original Bond to
Room 152-Guardianship Department
100 Supreme Court Drive
Mineola, New York 11501

[Back to Top](#) ▲

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

From Court Hearing to Guardianship Commission

The Guardianship Commission is the official document that gives guardians the legal power to act on behalf of another adult - it is the paper you have been waiting for and it is your proof that you have the power to decide and act for your ward in those areas the court has ordered. ~~In most cases the Commission is attached to the Order and Judgment. (Click here to see a sample of a Guardianship Commission.)~~

Once the county clerk has given you the signed Guardianship Commission, you should make at least two copies and have each copy certified at the county clerk's office. You will need an original certified copy of the Commission for each bank, brokerage house, or other financial institution, hospital or nursing home or any other important organization or facility where you must transact business for your ward. Some institutions may want to see the Order and Judgment as well as the Commission. When you show your certified Commission to any party, you should ask them to make their own copy for their files so that you can take your own certified copy back home with you.

- ▶ [The Order & Judgment](#)
- ▶ [The Oath and Designation](#)
- ▶ [The Fiduciary Bond](#)

NOTE: The word "commission" is sometimes confusing since it also refers to court-approved compensation (payment) for work done by the guardian. But in general, a Commission is the document that provides proof that you have been appointed guardian for someone else.



A sample Commission to Guardian for use in Nassau County is attached.

In Nassau the Order and Judgment usually has a paragraph directing either the Petitioner’s attorney or your attorney (if different) to assist the Guardian with the task of obtaining the bond and/or the Commission.

This may be an explicit directive that the attorney do so or it may be implied by the paragraph that awards the attorney fees for their work in the case. Sample language of an implicit directive that the attorney assist you may read as follows:

“ORDERED AND ADJUDGED, that the Guardian shall pay from the funds of the Incapacitated Person the sum of \$ _____ to _____, Esq. as and for a legal fee \$ _____ and disbursements \$ _____, as attorneys for the Petitioner for any and all services rendered in this proceeding, including the obtaining of the bond and issuance of the Commission to the Guardian; and it is further ... “.

Since the Judge has directed that you, as Guardian, pay the attorney for work that includes the future task of “obtaining of the bond and issuance of the Commission“, you may expect the attorney to perform this task.

[Home](#)

[About Us](#)

[How Can GAN Help?](#)

[Manual](#)

- ▶ [What Is a Guardian?](#)
- ▶ [From Court Hearing to Guardianship Commission](#)
- ▶ [The First 90 Days: From Commission to Initial Report](#)
- ▶ [The Guardian for Personal Needs](#)
- ▶ [The Guardian for Property Management](#)
- ▶ [The Initial & Annual Reports](#)
- ▶ [Ending a Guardianship](#)

- ▶ [Español](#)

[Sample Forms](#)

[Resources](#)

[FAQs](#)

[Contact Us](#)

Manual

The First 90 Days: From Commission to Initial Report

Now that you have your Commission in hand you can start to make decisions for your ward the way the judge wants you to. The first 90 days after you received your Guardianship Commission are important since you are learning the rules of the law and become familiar with the requirements of the court AND you are also expected to find out how you can best care for your ward. At the end of those first 90 days you are expected to write your Initial Report to the court.

Since your job is limited to what the judge put in the original Order and Judgment you must keep this document handy so that you can refer to it any time you have a question. Some of the things you must do during the first 90 days after you have received your Commission are very general and some depend on whether you are a Guardian for Property Management or for Personal Needs, or both. You should follow the list below as you start your work as a guardian.

- ▶ [Start-Up Duties of All Guardians](#)
- ▶ [How can I take care of my duties and also get ready to write the Initial Report?](#)

START-UP DUTIES OF ALL GUARDIANS

As guardian, regardless of whether you are a guardian for Personal Needs or Property Management, you must:

- ▶ Visit your ward at least once during the first 90 days (the law requires you to visit at least four times per year)
- ▶ Attend a guardianship training program, which explains your responsibilities as guardian
- ▶ See whether you can find a will, living will, health care proxy or other contract created by your ward
- ▶ Determine what services and programs your ward needs
- ▶ Start making a plan for your ward's care
- ▶ Set up a system to keep all documents and papers in a safe place
- ▶ Keep receipts of all payments you make for your ward
- ▶ At the end of the first 90 days you must submit your Initial Report to the court

[Back to Top](#) ▲

HOW CAN I TAKE CARE OF MY DUTIES AND ALSO GET READY TO WRITE THE INITIAL REPORT?

Once you start to carry out your duties, it is wise to keep notes of everything you do on behalf of your ward. Many guardians buy a notebook for this purpose in which they write down what they have done for their ward, whom they have spoken with, the names of people and institutions they have contacted and their phone numbers and addresses. A good habit would be to write the date down for each activity you describe in your notebook – such notes to yourself are important reminders that you can use later when you start writing your Initial Report and the Annual Reports you are expected to submit in the following years.

When you visit your ward or when you undertake any task on behalf of your ward you should write down what you have done and for what purpose. When you visit your ward you should write some of your observations down. A Guardian for Personal Needs might ask for example:

- ▶ How well is your ward doing?
- ▶ Is he or she clean, well groomed, content?



- Has he or she been ill?
- How well are his or her personal and medical needs addressed?
- Are there major changes in his or her condition for better or for worse?
- What additional services and medical care does your ward need?
- What appointments must be made for your ward.
- What questions you may have for your ward's caregivers (doctors, nurses, homecare workers, therapists).
- The names, addresses and phone numbers of your ward's doctors; social workers; homecare agencies; and other relevant information.
- A list of all medications your ward is currently taking, including prescription drugs and over-the-counter medications - include how often and how much each medication is taken.

In addition to keeping a notebook you should also get in the habit of keeping all important papers together in one place, starting with your Order and Judgment and everything else that you will receive from the court over time. Other important papers you must save in a safe place are the documents you may find in your ward's home, such as: insurance papers, a will or testament, a health care proxy or living will, tax filings, contracts, and anything else you find among your ward's papers. Some guardians use a large plastic container to keep all their documents in, others designate a drawer in a file cabinet they may have.

Guardians for Property Management also must keep all bank statements, invoices and receipts for money they spend either out of their own funds or out of their ward's funds.

NOTE: *Having good notes and receipts and documents will make your task much easier in the long run when you must write your Initial and Annual Reports to the court about the actions you have taken on behalf of your ward.*

[Back to Top](#) ▲

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

[Home](#)

[About Us](#)

[How Can GAN Help?](#)

Manual

- ▶ [What Is a Guardian?](#)
- ▶ [From Court Hearing to Guardianship Commission](#)
- ▶ [The First 90 Days: From Commission to Initial Report](#)
- ▶ [The Guardian for Personal Needs](#)
- ▶ [The Guardian for Property Management](#)
- ▶ [The Initial & Annual Reports](#)
- ▶ [Ending a Guardianship](#)
- ▶ [Español](#)

[Sample Forms](#)

[Resources](#)

[FAQs](#)

[Contact Us](#)

Manual

The Guardian for Personal Needs

If you are your ward's Guardian for Personal Needs, the judge has given you the power and duty to make personal decisions for your ward in just those areas the judge decided your ward needs. And because the law says that wards must be given as much physical freedom and freedom of choice as possible, you are required to involve your ward as much as possible when decisions must be made. Examples of such personal decisions are generally those most people make for themselves in ordinary life.

- ▶ [Example](#)
- ▶ [Things Guardians for Personal Needs May Not Do](#)
- ▶ [Can I ask the Judge to change the Order and Judgment?](#)

Example: Guardian for Personal Needs

John Barnes is a retired merchant marine who lives alone in a small walk-up apartment in Brooklyn. John is known to many neighbors on his block because he is always willing to do small chores for them. Lately the neighbors have noticed that John is not looking well, his clothes are dirty, and he has lost a lot of weight. Recently John was hospitalized when he broke his hip falling on the icy street in front of his apartment. At the hospital the doctors found him confused and suffering from malnutrition. John was sent to a nursing home to learn to walk again. The staff there felt that he should not go home again because he was too frail to live alone. The nursing home applied to have a guardian appointed for John. At the hearing the judge found John to be frail but also noticed that he very much wanted to go back home again—he hated to be in the nursing home. At the hearing John agreed that he would accept a guardian to help him and that he would accept home care to make it possible for him to live alone. His next door neighbor, Harry, was appointed Guardian for Personal Needs to help John live at home, to obtain homecare for him, and to make sure that John goes for regular doctor visits and obtains the medications he needs. The judge found that John is still able to take care of his financial affairs and did not give Harry the power for Property Management.

The Order and Judgment will give you directions about your duties as Guardian for Personal Needs. For example, the judge may have given you power to make all of the decisions listed below, or just some of them:

- ▶ Where your ward will live
- ▶ Whether your ward must have home care
- ▶ Who will provide personal care or housekeeping assistance
- ▶ Whether or not your ward may have a driver's license or travel
- ▶ What social environment and social life your ward may have
- ▶ What, if any, education or training your ward may have
- ▶ What sort of medical care decisions you may make for your ward

[Back to Top](#) ▲

THINGS GUARDIANS FOR PERSONAL NEEDS MAY NOT DO

Guardians are always limited in what they are allowed to do by the Order and Judgment. Below are examples of things guardians **may not do without court approval**.

- ▶ Do anything that is not stated in the Order and Judgment
- ▶ Take away any powers or rights from the ward that the judge has not approved beforehand
- ▶ Move the ward to another home or a nursing home
- ▶ Sign the ward into a mental hygiene or substance abuse facility or force treatment, including medication, on a ward who refuses it
- ▶ Revoke a will, health care proxy, living will, power of attorney, or other contract that the ward made before a Guardian was appointed
- ▶



- Apply for a divorce on behalf of the ward
- ▶ Make end-of-life medical decisions or refuse life-sustaining treatment unless the judge gave the Guardian that power

***NOTE:** In general, guardians with medical decision-making power have the right to make routine and some major health care decisions for their wards (such as agreeing to surgery) but a guardian's powers are limited when it comes to end-of-life decisions, except for "Do Not Resuscitate Orders", also called "DNR Orders" that the patient's doctor may consider in the patient's best interest. Do Not Resuscitate Orders are medical judgments that the patient would not benefit from resuscitation when his or her heart stops or when he or she stops breathing. (Resuscitation is usually considered not to be helpful any longer when the patient is dying.) Your Order and Judgment explains what your powers are when it comes to health care decisions.*

[Back to Top ▲](#)

CAN I ASK THE JUDGE TO CHANGE THE ORDER AND JUDGMENT?

Yes, if you believe that a change is needed and have a good reason, you can always ask the judge for a change. For instance, if you think that your ward must be moved to another residence or facility, or needs other services and interventions that are not listed in the original Order and Judgment, you should discuss this with your lawyer or you may write the judge yourself or call the judge's law clerk. ~~You should explain why you are asking for the changes - the judge must approve them before you can make the changes.~~

You or or Court Examiner should explain why you are asking for the changes.- the judge must approve them before you can make the changes. [Back to Top ▲](#)

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

[Home](#)

[About Us](#)

[How Can GAN Help?](#)

[Manual](#)

- ▶ [What Is a Guardian?](#)
- ▶ [From Court Hearing to Guardianship Commission](#)
- ▶ [The First 90 Days: From Commission to Initial Report](#)
- ▶ [The Guardian for Personal Needs](#)
- ▶ [The Guardian for Property Management](#)
- ▶ [The Initial & Annual Reports](#)
- ▶ [Ending a Guardianship](#)

▶ [Español](#)

[Sample Forms](#)

[Resources](#)

[FAQs](#)

[Contact Us](#)

Manual

The Guardian for Property Management

If you are Guardian for Property Management, you must now start to manage the income and assets of your loved one. Taking control of your ward's property is called "marshalling the assets." In general, the rule about managing another person's assets is to be very careful in how you spend or invest your ward's money.

Newly appointed Guardians for Property Management have distinct responsibilities that are different from Guardians for Personal Needs. Before you start working on the various tasks you might want to review the Order and Judgment. This document is your guide.

NOTE: Whenever you do business for your ward, you must bring a certified copy of your Order and Judgment and Commission with you to prove that you are authorized by the court to act on behalf of your ward.

- ▶ [Things Guardians for Property Management May Not Do](#)
- ▶ [Guardians Must Spend Their Ward's Money Wisely](#)
- ▶ [Detailed Tasks of Guardians for Property Management](#)

THINGS GUARDIANS FOR PROPERTY MANAGEMENT MAY NOT DO

Guardians for Property Management are limited in what they are allowed to do by the Order and Judgment. Below are examples of things guardians may not do without court approval:

- ▶ Take away any powers or rights from your ward that the judge has not approved beforehand
- ▶ Sell your ward's real estate or keep your ward's real estate in your own name rather than in your ward's name
- ▶ Combine your own money with that of your ward, even if you had a joint bank account with your ward before the guardianship
- ▶ Use your ward's funds for your own purposes, or borrow from your ward
- ▶ Make investments that are risky
- ▶ Hire professionals or special experts, for example an accountant to file income tax returns, unless the judge has given you permission to do so
- ▶ Revoke a will, power of attorney, or other contract that your ward made before you were appointed

NOTE: If you believe that you have a good reason to do something that is not listed in the Order and Judgment, for instance, if you have to manage substantial assets, you may want to ask the court for permission to hire an investment broker or other financial manager to help you. You should contact your lawyer if you have one and ask for advice or ask the judge's law clerk for guidance by explaining why you believe that the Order should be changed.

You can also ask the Court Examiner for advice.

[Back to Top](#) ▲

GUARDIANS MUST SPEND THEIR WARD'S MONEY WISELY

Guardians are supposed to spend their wards' money wisely and make it last as long as possible. Without the judge's prior approval you should be careful about buying very expensive items for your ward, even if you think that your ward has enough money to pay for it or deserves it.



Examples of such major expenses are:

- ▶ Rebuilding your ward's home to make it wheelchair accessible
- ▶ Buying a special van to transport your ward
- ▶ Trying some alternative medical treatment for your ward that is not likely to be covered by your ward's medical insurance
- ▶ Taking an expensive vacation with your ward

NOTE: When you are thinking about buying something very expensive your ward needs or could benefit from, you should get it approved ahead of time by the judge. If you don't get prior approval, the court examiner, who reviews all reports, may not approve of the purchase of the item and demand that you pay this expense out of your own funds.

[Back to Top](#) ▲

DETAILED TASKS OF GUARDIANS FOR PROPERTY MANAGEMENT

The authors are indebted to Leona Beane, Esq. who developed the list of tasks described in this section and gave permission to adapt the list for this manual.

ESTABLISHING A GUARDIANSHIP CHECKING ACCOUNT

Identify all bank accounts owned by your ward (checking, savings, money market, etc.). ~~Divide any joint accounts and separate your ward's share from it.~~ Close your ward's accounts and open a guardianship checking account with your ward's Social Security Number on it and with your name as Guardian in the title, as directed in the Order and Judgment. Joint accounts can only be addressed pursuant to the Court's direction.

Example: The Guardianship Account

Joe Smith became the guardian for his wife Jane, who has Alzheimer's disease. Although the couple always had a joint bank account, now that Joe has become Jane's guardian, he must open a separate bank account for his wife. This new account has Jane's social security number on it but the account is in Joe's name as guardian for an incapacitated person. Here is how the account is titled: "Joe Smith as Guardian for Jane Smith, an Incapacitated Person".

Note: If your ward had arranged for direct deposit of income checks (Social Security, SSI, VA checks, and pensions) you need to open the Guardianship Account **first** and then request that the income checks be re-directed from the old account into the Guardianship Account. Once the checks are being deposited into the new account you can close the old one.

IDENTIFYING SOURCES OF INCOME

Identify all sources of your ward's income: pension benefits; rental income from tenants; interest income from investments; Social Security Income; Supplemental Security Income; veteran's benefits. Make a list, describing each source and the monthly amount your ward receives and arrange for all income to be deposited into the guardianship account.

If any public benefit checks are missing, arrange for the checks to be reissued.

IDENTIFYING YOUR WARD'S ELIGIBILITY FOR PUBLIC BENEFITS

If your ward does not currently receive public benefits but may be eligible, you must apply for them on behalf of your ward.

ARRANGING FOR PRE-NEED BURIAL EXPENSES

If your ward receives Supplemental Security Income or Medicaid or if you are applying for these benefits or are engaged in "Medicaid Planning," you are permitted to open a separate Guardianship savings account with no more than \$1,500 as a special burial account. This account may generate interest and grow over time but you may never use it during your ward's lifetime – it is a set aside for your ward's future funeral expenses. In addition to a separate burial savings

account, you also may obtain an irrevocable burial trust, arrange for a pre-paid funeral with a funeral home, or purchase a cemetery plot. You may want to discuss this with the judge's law clerk before you make the decision and spend your ward's funds.

NOTE: *Medicaid Planning is the process of preparing to apply for Medicaid with the assistance of an attorney who is a specialist in Medicaid law. See [Spending Down Your Ward's Assets](#) below.*

BECOMING REPRESENTATIVE PAYEE FOR GOVERNMENT INCOME CHECKS

If your ward receives Social Security benefits or Supplemental Security Income you should apply to be appointed Representative Payee (for VA benefits the Representative Payee is called "Fiduciary") and have the checks automatically deposited into the guardianship account. If your ward lives in a nursing facility or a residence for people with disabilities, you may prefer to have the facility or residence become Representative Payee. That way the nursing home will receive the money and you don't have to manage it and pay the nursing home each month.

Example: The Nursing Home as Representative Payee

Mary Elkins and her disabled brother John have lived together for many years. Ever since she turned 65, Mary had the Social Security Administration deposit her Social Security check and John's SSI check into a joint bank account. Now that John has been placed in a nursing home and Mary has become John's guardian, either Mary or the nursing home can apply to the Social Security Administration to become John's Representative Payee. If the nursing home becomes the Representative Payee the nursing home will use the money for John's monthly nursing home cost and will then apply for additional Medicaid coverage. Mary will only gain access to John's Medicaid-approved personal allowance to be used for John's personal needs. This arrangement will make managing John's funds very easy for Mary.

PAYING BILLS

You must assess your ward's monthly expenses and arrange to have these met. Include payments for rent, food, clothing, pet care, housekeeping and personal care providers, social activities, educational programs, medical expenses, and care of dependents (if ordered by the judge). Request that all recurring bills (such as those for utilities and rent) be re-directed to you so that they can be paid in a timely fashion. Identify non-recurring bills and arrange for payment. Examples of non-recurring bills are doctor's bills, payroll taxes and related expenses for household employees. You may set up a local account with a grocery store or arrange for petty cash for homecare workers to make your life a little easier. If your ward is able to manage a small amount of money you may arrange for weekly spending money so that he or she still has some independence.

NOTE: *You should always pay by check rather than cash since it is extremely difficult to account for cash payments when you write your reports to the judge. If you need to pay by money order, write down on the receipt what the payment was for. And, if you must pay with cash ask that the recipient sign a receipt for you.*

PAYING OUTSTANDING DEBTS

Identify all current debt and arrange for payment. Include court ordered payments to various professionals who were involved in the guardianship process. Check your Order and Judgment for the names of the people who must be paid and the amount of their fees.

If your ward receives Social Security benefits or Supplemental Security Income and has no financial assets, your first obligation is to ensure that your ward's monthly expenses are covered, such as for shelter, food and clothing. Guardians should advise all creditors that their wards are not capable of paying their outstanding debt by sending the creditor a letter explaining the ward's situation and the

fact that you are now Guardian and Representative Payee for your ward. [Click here for a sample letter to creditors.](#)

NOTE: Creditors can usually gain access to your ward's income before you can. However, creditors **cannot** gain access to your ward's government income checks. Furthermore, if your ward had received an "overpayment" from Social Security or SSI, and must pay the overpaid amount back to the Social Security Administration you should negotiate a monthly payment that is as small as possible so that you can pay your ward's ordinary monthly expenses without too much hardship.

ARRANGING FOR YOUR WARD'S MAIL TO BE RE-DIRECTED TO YOU

Personal mail can just be forwarded to you but official mail like bills and other statements should be addressed to you "as guardian for [your ward's name]", similar to the title on the guardianship account.

FINDING BANK ACCOUNTS WITH HELP FROM THE IRS

Example: Looking for Bank Accounts

Rudi Johnson received his Commission to act as guardian for his Uncle Jacob a week ago. Since his uncle always was secretive about his finances Rudi has no idea how much money his uncle has and where his bank accounts are located, but he wants to be sure that his uncle's funds are safe from people who have abused Uncle Jacob in the past. The first thing Rudi must do is to find Uncle Jacob's bank accounts and close them so that Uncle Jacob and the people who took advantage of him, no longer have access to the money.

One of the most difficult tasks guardians usually face is to find all the assets and sources of income of their ward. A good source of help for guardians is the **Internal Revenue Service**, which regularly receives information on all tax payers who own bank accounts or who have income from wages, pensions, or investments. If you think your ward may have bank accounts you cannot find, you may fill out IRS Form 4506T (Request for Transcript of a Tax Return). Check item #8 on the Form. After about two months the IRS will send you a report on all banks and other financial institutions that have submitted financial information to the IRS on accounts owned by your ward. There are also private agencies that will do this faster for a fee.

NOTE: IRS forms are available through its website: www.irs.gov, or by calling 1-800-829-3676. Whenever you mail a letter or form to the IRS you should attach a copy of your certified Guardianship Commission and sign your letter or form as "Guardian".

LOCATING OTHER UNCLAIMED PROPERTY

In addition to searching for your ward's active bank accounts, you may want to search for other unclaimed property that is owned by your ward, such as unclaimed tax refunds, insurance reimbursement, and neglected bank accounts. In New York State you may try www.osc.state.ny.us. For property in other states you may try the website of the National Association of Unclaimed Property Administrators, www.naupa.org.

LOOKING FOR SAFE DEPOSIT BOXES

Check with the bank to find out if your ward had a safe deposit box ~~and arrange with the bank to make an inventory of its contents. If the safe deposit box is jointly held with someone else, separate your ward's valuables from those of the other person and rent a separate box for your ward.~~

NOTE: You should check your Order and Judgment to see if the judge ordered you to check the contents of a safe deposit box. If it is not in the original Order you ~~may~~ need a special court order to gain access to the safe deposit

box. even if the box is held in joint names.

LOCATING INSURANCE POLICIES

Identify all insurance policies; make a list and include the name of the company and the policy number. Policies may include household, valuable items, liability, life, fire, auto, long term care, and medical insurance. Notify the companies of your guardianship appointment and request that all correspondence be re-directed to you.

IDENTIFYING ALL INVESTMENTS

Identify all stocks, bonds, mutual funds, and investment accounts your ward may have established in the past. Make a list of each with the name of the security, policy number, and current value. Notify all companies of your guardianship appointment (send them a copy of your Certified Commission) and request that all correspondence be re-directed to you. If your ward's assets are complicated, request permission from the judge to hire an investment broker or accountant to manage your ward's assets.

If stock certificates cannot be located, arrange for an indemnity bond.

IDENTIFYING VALUABLE PERSONAL ITEMS

Identify all valuable property at your ward's home: include jewelry, art, fine rugs, coins, stamp collections, silverware, and cash. You should have the items appraised for their estimated value and if they are not insured, you should insure them. Make sure that you make a list of all of the items.

LOOKING FOR VALUABLE DOCUMENTS

Search for important documents among your ward's papers. Look for a will, a health care proxy, a living will, a power of attorney and anything else you think may be important. Put these documents in a safe place.

LOCATING REAL PROPERTY

Identify any real estate owned by your ward and file a "Statement Identifying Real Property" with the **Property Recording Office of the county where the property is located**. These documents must be signed by you in front of a Notary Public. Real property must be kept in your ward's name. If your ward owns a co-op apartment you must notify the Co-op Board of your appointment and ask to have any mail re-directed to you. ([Click here for a sample of a Statement Identifying Real Property.](#))

A sample statement identifying real property for use in Nassau County is attached.

***NOTE:** If you wish to sell the property you must first get permission from the judge. Before you sell the property the judge may want it to be appraised by an appraiser who is listed on a court approved list and the judge will establish the fee for the appraiser.*

FILING TAX RETURNS

File federal, state and local tax returns before April 15th of each year. If you cannot file your ward's taxes on time you may file for a six months extension, using IRS Form 4868, called an Application for Automatic Extension of Time. Tax returns must be filed in your ward's name and social security number, but they must be signed by you as "**Guardian for [name of your ward], an incapacitated person.**" You should attach a copy of your certified Commission to the tax returns you file for your ward. If your ward missed filing tax returns in previous years the IRS will notify you and demand that these be filed as soon as possible. Request that the IRS waive penalties for late filing and send the IRS a copy of your Certified Commission to show that your ward is an incapacitated person and was incapable of filing taxes previously.

***NOTE:** If you need help with your ward's taxes you should ask permission from the judge to hire an accountant. If the judge approves your request, the judge will set the accountant's fee which then can be paid out of your ward's assets.*

SPENDING DOWN YOUR WARD'S ASSETS

As you are spending your ward's assets on his or her care you must make a plan for your ward's future financial needs. This may require you to engage in Medicaid planning if your ward's assets are close to being depleted. You should discuss Medicaid planning with an **elder law attorney** familiar with Medicaid. Medicaid is an important medical insurance program that covers extensive home care and nursing home care for New Yorkers who have depleted their assets and have become indigent. ~~[\(Click here for more information on Medicaid.\)](#)~~

[Back to Top](#) ▲

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

[Home](#)

[About Us](#)

[How Can GAN Help?](#)

[Manual](#)

▶ [Español](#)

[Sample Forms](#)

[Resources](#)

- ▶ [List of Offices](#)
- ▶ [Bonding Agencies](#)
- ▶ [Medical Terminology & Abbreviations](#)
- ▶ [Caring for Mentally/Physically Disabled](#)
- ▶ [Medicare](#)
- ▶ [Medicaid in NYS](#)
- ▶ [Directory for Guardians](#)
- ▶ [Mental Illness/Assisted Outpatient Treatment](#)
- ▶ [Glossary](#)

[FAQs](#)

[Contact Us](#)

Resources

Medicaid in NYS

The Medicaid program is different for each state. Each Medicaid recipient gets a permanent, plastic identification card that must be presented when services are required. In New York State Medicaid pays doctors, hospitals, nursing homes, home care agencies and other providers directly, provided they have agreed to accept Medicaid clients and Medicaid payment as payment in full. Medicaid will not pay for services of a provider who has not registered in the Medicaid program.

Providers are not required to participate in the Medicaid program. If they do, they must accept all Medicaid recipients as patients. Recipients, therefore, should be sure to find out in advance if a provider accepts Medicaid before obtaining treatment. If the provider does not accept Medicaid, the recipient of services is personally liable for any part of the bill not covered by other insurance.

How to Apply for Medicaid

Medicaid, like all "means-tested" programs where eligibility is based on income and assets, requires extensive documentation to establish eligibility. Proof is required to verify identity, residence, citizenship, disability (if the applicant is under 65 and is claiming to have a disability), marital status, income and resources and, in some cases, other information which may be necessary for an eligibility determination.

Examples of the kinds of documentation that may be submitted to verify the eligibility requirements are:

1) Personal identification

- ▶ birth certificate
- ▶ baptismal certificate
- ▶ hospital certificate of birth
- ▶ passport or immigration papers
- ▶ current driver's license
- ▶ Medicare card

2) Income statements for the last three months

Documentation must be submitted to verify all sources of earned and unearned income. The applicant's total monthly income will be compared against the Medicaid income standard to determine if the applicant has excess income. Applicants with excess income are offered Medicaid under the Surplus Income Program. Examples of documents related to income include:

- ▶ award letter from a benefits program
- ▶ copy of check from benefits program
- ▶ pay stubs showing earnings
- ▶ bank statement of interest earned

3) Asset and Resource statements for the last 36 months

Medicaid requires all applicants to open their financial history to a review process. The purpose of this audit is to allow the Medicaid program to see if the applicant has any of unreported income or whether there are any large withdrawals that are not allowed by the Medicaid program. Examples of the types of documentation that must be submitted are:

- ▶ savings bank books
- ▶ checking statements
- ▶ stock and bond certificates
- ▶ life insurance policies
- ▶ burial fund, burial plot, or funeral agreement deed to real property

4) Missing documentation (collateral investigation)

If the documents requested by the Medicaid agency are not obtainable, the applicant should present any substitute evidence



available to establish eligibility. Medicaid is jointly responsible with the applicant for exploring all factors concerning eligibility and should assist the applicant.

5) Verification of financial information

Medicaid can and will attempt to verify all financial information supplied by the Medicaid applicant. The Medicaid program has access to Internal Revenue Service records and will use the applicant's Social Security Number to find any unreported sources of income. If Medicaid uncovers some source of funds, for example a bank account, which was not reported on the Medicaid application, an investigation will be opened. In New York City, the Investigations, Revenue, and Enforcement Administration of the Human Resources Administration handles the verification.

Medicaid Covered Services in New York State

New York State covers a wide range of medical services which can be grouped into three separate categories known as community Medicaid, home care, and institutional care. A partial list of these services is provided below:

1. Community Services

- › services of physicians, dentists, nurses, optometrists, and other related professional personnel (podiatry services are available only to those individuals who are enrolled in the Medicare Savings program or who are also receiving Medicare coverage);
- › outpatient or clinic services;
- › sickroom supplies, eyeglasses, and prosthetic appliances;
- › physical therapy;
- › laboratory and X-ray services;
- › transportation when essential to obtain medical care; and
- › prescription drugs

2. Home Care Services

- › home health services such as nursing, physical therapy, occupational therapy, and home health aide;
- › personal care (home attendant) services; and
- › long term home healthcare program ("Lombardi" or "nursing home without walls")

3. Institutional Services

- › care in hospitals, nursing homes, and other medical facilities.

NOTE: Some services and supplies require prior approval for coverage and other services and supplies are covered only under certain conditions or limitations.

Information on Medicaid can be found on the website of the New York State Department of Health www.health.state.ny.us. ~~In New York City information on Medicaid can be obtained by calling (718) 557-1399 or toll free (1-877-472-8411).~~

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

In Nassau County, contact
The Nassau County Department of Social Services
60 Charles Lindbergh Blvd
Uniondale, NY 11553-3656
(516) 227-7474

Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

The Initial & Annual Reports

All guardians must regularly report to the court. These reports give the court information about your ward and how well you are taking care of your ward's affairs, what your plans are for your ward, how much money your ward has, and anything else that gives the judge a good sense that your ward is well cared for. The reports must be written in a court approved form. Copies of forms are located in [Resources](#) and additional copies can be obtained from the Guardianship Part or ~~the Court Clerk in your courthouse.~~ from your Court Examiner

- ▶ **The Initial Report** is the first report you must write 90 days after you received your Commission. This report is meant to be a picture or "snapshot" of your ward's situation at the beginning of the guardianship. ~~(Click here for a sample an Initial Report.)~~

A sample initial report for use in Nassau County is attached.

- ▶ **The Annual Report**, sometimes called the "Annual Accounting" is always due in May and covers the previous calendar year from January 1 through December 31. The period between the Initial Report and the Annual Report is the time in which you continue to care for your ward according to the judge's orders and the plans you outlined in your Initial Report. ~~(Click here for a sample of an Annual Report.)~~

A sample Annual Report for use in Nassau County is attached.

- ▶ [What Information Must Be Included In The Reports?](#)
- ▶ [Asking For Reimbursement of Your "Out-Of-Pocket" Expenses](#)
- ▶ [Asking for Changes in the Guardian's Power](#)
 - ▶ [Can Guardians Ask For Changes at Any Other Time?](#)
 - ▶ [Who Should Receive My Initial or Annual Reports?](#)
 - ▶ [What happens to the Reports after I file them?](#)
- ▶ [The Initial Report](#)
- ▶ [The Annual Report](#)

WHAT INFORMATION MUST BE INCLUDED IN THE REPORTS?

The judge will want to know that your ward is in good hands and that you are doing everything for your ward the way the judge had ordered. When you prepare to write your reports, you should first re-read the Order and Judgment so that you know exactly what the judge has given you the power to do and then start filling in the sections listed in the report forms. (This is the time where you will find that you will greatly benefit from having made personal notes and having kept receipts and all statements, invoices and bills.)

NOTE: Most guardians find that some sections of the report forms are not relevant in their particular ward's case. If you don't fill out a section because it does not apply, you should write in that section the words: **NOT APPLICABLE. Never leave a section in the form blank.**

[Back to Top](#) ▲

ASKING FOR REIMBURSEMENT OF YOUR "OUT-OF-POCKET" EXPENSES

In your reports you may ask for reimbursement of expenses you have paid out of your own funds on behalf of your ward. Below are some examples of expenses for which you may be reimbursed, **but you can only get reimbursed if you kept the receipts and if your ward has assets.**

- ▶ Lost wages while you were taking care of your ward's affairs
- ▶ The fee you paid to attend the required guardianship training
- ▶ Taxi fares, gas, mileage, or parking for your car to take your ward to the doctor or any other appointment



- ▶ The cost to photocopy papers and have them certified
- ▶ The cost of obtaining a bond, if the judge ordered you to get one
- ▶ Any payments you have made from your own funds to buy supplies and services for your ward for which you have saved the receipts

[Back to Top ▲](#)

ASKING FOR CHANGES IN THE GUARDIAN'S POWER

The time to ask for a change in the Order and Judgment is when you submit your Initial or Annual Report. Changes may be needed in the Order and Judgment over time for any number of reasons. For instance a person, who was hurt in an accident may recover and be able to do more things for him or herself. In that case the Guardian's powers could become less over time. On the other hand, some wards become more frail over time and may be less able to manage some of their affairs - in that case, the Order may be changed to give the guardian additional powers that are needed.

If you have good reasons to ask the judge for a change in your powers and you have a lawyer you should ask him or her to write a request to the judge giving all the reasons why you think the change in the Order and Judgment is needed. But family guardians without a lawyer may write the judge themselves to ask for a change in their powers. Before you write the judge you may want to call the judge's law clerk and explain what it is you would like to do – law clerks can be very helpful to you since they work closely with the judge and assist the judge with all legal questions and issues. If you don't have good reasons for the changes you request, or if the judge disagrees with you because he or she feels that your plan is not in the best interest of your ward, the judge will not approve them.

Example: The Judge's refusal to change the Order and Judgment

Three years ago Donald was appointed guardian for Personal Needs and Property Management for his mother, Millie, who lives in her own apartment in Brooklyn. Millie is doing very well, especially now that she has a home attendant three times per week. Two years ago Donald moved with his new wife to Long Island. He now wants to move Millie to an assisted living residence near his home. Having Millie nearby will make it much easier for Donald and his wife to supervise home care aids and to visit his mother frequently. Donald has asked for a change in the Order and Judgment, permitting him to move Millie to Long Island. But there is a big problem: since Millie is very happy in her apartment in which she has lived for many years and because she likes the home attendant, she does not want to move. Because the law requires that wards must be consulted about where they want to live, the judge decides that Millie should not be moved and denies Donald's request to change the Order and Judgment.

[Back to Top ▲](#)

CAN GUARDIANS ASK FOR CHANGES AT ANY OTHER TIME?

Yes, most judges will permit guardians who have an emergency to write a letter explaining why the Order needs to be changed and asking for the judge's approval before the reports are due. Before you write the judge you should call the judge's law clerk and ask him or her for guidance.

Example: Changing the Order and Judgment in an Emergency

John is his mother June's guardian for Personal Needs. His mother still lives in her own apartment but she has advanced cancer in addition to her dementia. June's doctor has advised John that his mother must be placed in a nursing home to receive care from nurses and other specialists and have access to medicines to control her pain. The judge's Order and Judgment does not give John the power to place his mother in a nursing home. However, John does not have to wait until the time he has to submit his Annual Report. John can write the judge a letter asking that the judge change the Order now so that June can be admitted to the nursing home immediately.

[Back to Top ▲](#)

WHO SHOULD RECEIVE MY INITIAL OR ANNUAL REPORTS?

Once you have finished writing either one of the reports you must sign it in the presence of a Notary Public. The notarized copy must be filed

the Guardianship Dept., Room 152, Nassau County Supreme Court with the ~~office of the county clerk~~. You should either hand deliver the original report to ~~the county clerk~~ or mail it by certified mail, return receipt requested. You ~~should~~ also mail a photo copy of the report to: must

- ▶ The court examiner who has been assigned to your ward's case. The court examiner's name is usually located in the Order and Judgment, but if it is not you can contact ~~the county clerk's office~~ to find out who the court examiner is for your ward's case.
- ▶ Your ward, unless the judge ordered you not to do so in the Order and Judgment.
- ▶ The court evaluator who reported to the court during the hearing (Initial Report only).
- ▶ Any attorney who represented your ward at the hearing (Initial Report only).
- ▶ The bond company, if you were required to get a bond (Annual Report only).
- ▶ If your ward lives in a home for people with disabilities, or another similar type of residence, you must send a copy of the report to the administrator of the residence.
- ▶ If your ward lives in a mental health facility, you must send a copy of the report to the Director of Mental Hygiene Legal Services.

Guardianship Dept.
(516) 571-2938

For both Nassau and Suffolk:
Mental Hygiene Legal Services
One Court Street
Riverhead, NY 11901

~~In Brooklyn, Queens and Staten Island this person is:
Sidney Hirschfeld, Director
Second Judicial Department, Mental Hygiene Legal
Services
170 Old Country Road
Mineola, NY 11501~~

~~In Manhattan and the Bronx this person is:
Marvin Bernstein, Director
First Judicial Department, Mental Hygiene Legal Services
60 Madison Avenue, 2nd Floor
New York, NY 10010~~

[Back to Top ▲](#)

WHAT HAPPENS TO THE REPORTS AFTER I FILE THEM?

All reports are reviewed by the court examiner who must make sure that the reports present information on all the tasks that were listed in the original Order and Judgment and that the accounting of how you spent your ward's funds is accurate and acceptable. You may be asked to change the report if the court examiner believes that changes are needed. The court examiner may also call you and ask you questions by phone or ask you to come to his or her office. After the court examiner has approved your report he or she will send a summary to the judge.

[Back to Top ▲](#)

THE INITIAL REPORT

The Initial Report is also called the "90-day Report" since it must be submitted 90 days after the day that you received your Commission.

All Guardians Must Include The Following Information In The Initial Report:

- ▶ What type of guardian you are—for personal needs, property management, or both
- ▶ Whether you have completed a guardianship training program (you must attach a copy of the certificate of attendance to your report)
- ▶ Your ward's age and where your ward lives
- ▶ The name of the facility or residence where your ward lives, if your ward does not live at home
- ▶ How often you have visited your ward during these first 90 days—you must have visited at least once
- ▶ A list of important documents you have found that your ward signed in the past, such as power of attorney, a will, a health care proxy, or a living will
- ▶ What plans you have to take care of your ward in the immediate future
- ▶ Whether there have been changes in your ward's situation since the hearing

Guardians for Personal Needs Must Provide the Following Information:

- ▶ The names and addresses of your ward's personal doctor and psychiatrist or psychologist
- ▶

The doctors' diagnosis

- ▶ A list of other professionals or service agencies that provide services to your ward (home care agencies, meals on wheels, social services). You should list each one with an address and phone number
- ▶ A list of day care programs your ward attends regularly with their names and phone numbers
- ▶ A list of medications your ward is currently taking

Guardians for Property Management Must Provide Detailed Financial Information on:

- ▶ Bank accounts your ward owned at the time of your appointment as guardian (include the name of the bank, the account number and the amount of money in each account)
- ▶ Whether you have opened a Guardianship Account
- ▶ A list of stocks, bonds, other securities that you have found, and whether you have changed the title of the accounts to your name as guardian
- ▶ A list of any other funds you have found, where they were located, what their value is, and what you have done with these funds
- ▶ A list of other personal property—such as a car, furniture, jewelry, and artwork—with a description, their location, and their value
- ▶ A list of real property your ward owns including the location, the type of property it is, and its value
- ▶ A list of the sources of your ward's monthly income, including the source and the amount each month
- ▶ A list of other income, such as interest or dividends
- ▶ A list of any debts or unpaid bills, including who needs to be paid and how much
- ▶ Any public benefits you have applied for
- ▶ Whether you have applied for insurance on behalf of your ward
- ▶ Your ward's insurance policies (medical, longterm care, homeowner's, auto, valuable items, art work, life insurance)
- ▶ Whether your ward has a safe deposit box, including the name of the bank, the address, and whether or not you have been able to see its contents and determine their value

***NOTE:** When you submit your report you should attach all receipts, invoices and bank statements so that the court examiner can easily review how you have spent your ward's money.*

[Back to Top](#) ▲

THE ANNUAL REPORT

***NOTE:** The Annual Report is always due in May and covers the previous calendar year (January 1 through December 31). Of course, for your very first Annual Report you are only expected to provide information covering the period starting with the date you received your Commission through December 31.*

All Guardians Must Provide The Following Information In The Annual Report:

- ▶ The dates ~~(at least four a year)~~ you have visited your ward and where you saw your ward. You must visit in accordance with the directive in the Order and Judgment
- ▶ Any big changes you have observed in your ward's situation or condition since the last report.
- ▶ When your ward last saw a doctor. Include the reason for the visit and the doctor's diagnosis and treatment plan (if there is one).
- ▶ A report on the condition of the ward from a professional (doctor, psychologist, nurse clinician, or social worker) who has examined or evaluated the ward in the three months prior (February, March, or April) to the submission of the Annual Report.
- ▶ Facts on which any change in your powers might be based, including ending of the guardianship.

Guardians for Personal Needs Must Also Include:

- ▶ A list of medical treatments your ward received since the last report.
- ▶ Your plan to take care of your ward's medical, dental, and mental health needs for the next year.
- ▶ Information about the social condition of your ward, including what social and personal assistance he or she has received and what your ward's social skills and social needs are.

Guardians for Property Management Must Include:

- ▶ A copy of the federal, state, and local tax returns you filed for your ward before April 15 of the same year.
- ▶ A detailed accounting of all income received and all expenses paid.
- ▶ Whether your ward was employed or whether he or she has earned wages that you have received on behalf of your ward (this applies usually to people with disabilities who are employed in supervised job situations).
- ▶ A request for reimbursement for out-of-pocket expenses you have had while taking care of our ward's affairs.
- ▶ A request for your compensation or fee, also called "commission", if the judge had ordered it in your Order and Judgment (you are not obligated to get payment but you may accept it if the judge had ordered it).

NOTE: *When you write your Annual Report you should make sure that the amounts add up properly so that the court examiners will not find fault with your report. You should attach any vouchers, bank statements, and any other documents that you can provide to show proof of the information you have provided.*

[Back to Top](#) ▲

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

If you are seeking compensation, you must include an affidavit detailing the nature of services you provided and the amount of time involved.

(Called an Affidavit of Services)

The original of your Annual Report (without support documents) is filed with the Guardianship Department, Room 152, 100 Supreme Court Drive, Mineola, NY 11501. The copy of your Annual Report filed with your Court Examiner will require supporting documentation. Contact your Court Examiner to determine how he/she wants to arrange review of these supporting documents, as originals will be required.

Home

About Us

How Can GAN Help?

Manual

- ▶ What Is a Guardian?
- ▶ From Court Hearing to Guardianship Commission
- ▶ The First 90 Days: From Commission to Initial Report
- ▶ The Guardian for Personal Needs
- ▶ The Guardian for Property Management
- ▶ The Initial & Annual Reports
- ▶ Ending a Guardianship

▶ Español

Sample Forms

Resources

FAQs

Contact Us

Manual

Ending a Guardian

All Guardians eventually must come to an end. Of course, there are several reasons why Guardians must end. Examples are:

- ▶ The ward has died
- ▶ The ward no longer needs a guardian
- ▶ The guardian has a personal reason (for example, is moving to another state) or is no longer able to perform all the duties that are required
- ▶ The judge wants to end the Guardian because he or she is dissatisfied with the guardian

NOTE: Whatever the reason is for ending the Guardian, **you may not just stop on your own.** In order to formally end your responsibilities you must ask the judge to discharge you and ask for permission to submit a "final accounting".

If your ward has died you must send the judge a copy of the Death Certificate. You must also inform all other relevant parties such as: the Social Security Administration or the Veterans Administration, your ward's pension plan, Medicaid if your ward was receiving Medicaid benefits, the executor of your ward's estate or the Public Administrator, if your ward did not have a will, and of course next of kin. All parties should be sent a copy of your ward's Death Certificate.

If you were your ward's **Guardian for Property Management** your obligation to manage your ward's funds is now greatly reduced - from now on you are only allowed to pay some outstanding bills for services rendered while your ward was still alive (for instance homecare expenses), the annual premium for the bond which remains in effect until you are officially discharged, and your wards funeral bills. All other financial management tasks must be turned over to the executor of your ward's estate or to the Public Administrator, if you ward did not have a will.

THE FINAL ACCOUNTING

Guardians for Property Management must file a report which is called a Final Accounting which has to cover financial information covering ~~the period between the end date of your last Annual Report and the date of your ward's death.~~ You should include a request for any reimbursement or payment that is still outstanding. [Click here to view sample of a Final Accounting form.](#)

the entire Guardianship period.

~~WHO SHOULD RECEIVE A COPY OF THE FINAL ACCOUNTING?~~

~~The original Final Accounting Report is filed with the county clerk and copies of it must be submitted to:~~

- ▶ ~~The court examiner~~
- ▶ ~~Every one that received your Annual Reports~~
- ▶ ~~The executor or administrator of your ward's estate~~
- ▶ ~~The Office of Legal Affairs of the Human Resources Administration if your ward received Medicaid services~~

~~After the court examiner has evaluated and approved the Final Accounting, the judge will issue an Order discharging you as guardian. The judge will also decide who will be paid from any funds that remain in your ward's estate.~~

NOTE: ~~The bond will not be terminated until after the Final Accounting has been filed and the court examiner has approved it. Once the judge has issued an Order discharging you as guardian, you may send the bonding~~



~~agency a copy of the judge's Order and ask that the bond be terminated.~~

State Justice Institute
Guardian Assistance Network | Kings County Supreme Court | 360 Adams Street, Room 723 | Brooklyn, NY 11201
(347) 296-1948 | GAN@courts.state.ny.us

Copyright ©2008
Vera Institute of Justice, Inc.
A demonstration project of the Vera Institute of Justice, Inc.

For additional materials about preparing a final accounting contact the Guardianship Department at (516) 51-2938.