

THE SALE OF REAL PROPERTY PACKET

NOTICE

The petition must comply with the provisions of section 1722, subdivision 5 of the Real Property Actions and Proceedings Law as amended by Chapter 286 of the Laws of 1977 effective September 1, 1977.

If petitioner seeks either to shorten the period of posting or publication or to have the Court dispense with posting or publication, the petition must set forth facts relied upon as constituting cause for the granting of such relief.

In a case in which the period of posting or publication is shortened or dispensed with, Court approval of the contract of sale will nevertheless be subject to the report of an independent Court-appointed appraiser and compliance with applicable requirements of Article 17 of the Real Property Actions and Proceedings Law.

Real Property Actions are to be commenced in the county where the property exists.

(Despite the aforestated, applications to sell Real Property located in another county are accepted and presented to the Court. However, it is in the Court's discretion whether to entertain the applications or decline to sign and direct an ancillary proceeding be commenced in the county where the property is located).

At IA Part of the Supreme Court of the State of New York, held in and for the County of Nassau at 100 Supreme Court Drive, Mineola; New York, on the ___ day of _____ 20__

PRES E N T :

Hon.

Justice

-----x

In the Matter of the Application of

JOHN DOE

as Guardian of the Property or
Guardian of the Person and Property of

MARY DOE

an Incapacitated Person or Person In Need of a
Guardian, for leave to sell (his/her) interest
in certain real property.

-----x

ORDER TO SHOW CAUSE

Index No.

Upon the annexed Petition of John Doe, duly verified the ___ day of _____ 2 __ ,
(together with the exhibits) thereto annexed), and upon all of the pleadings and proceedings heretofore
had herein, and due deliberation having been had, it is

On motion of _____, attorney for the petitioner,

ORDERED, that (insert all parties entitled to notice including Surety, and Attorney General if
in State Hospital - *see*, RPAPL 1721, MHL 81.07(d))

SHOW CAUSE before this Court at IA Part ___ thereof, to be held in the Supreme Court
Building, 100 Supreme Court Drive, Mineola, New York, on the ___ day of _____ 2____ .
at ___ a.m./p.m., or as soon thereafter as Counsel can be heard, why a judgment should not
be rendered:

1. Granting the relief prayed for in the Petition;
2. Authorizing and directing the sale of the interest of the above named (Incapacitated Person or Person In Need of a Guardian) in the real property described in the Petition, in accordance with the statutes and rules of this Court;
3. Granting permission to the petitioner, as Guardian of the Property of the within named (Incapacitated Person or Person in Need of a Guardian) to make the conveyance and carry out these proceedings; and
4. Granting such other and further relief as the Court may deem just and proper.

Now on the Court's own motion, it is

ORDERED that _____ of _____, a licensed real estate broker and appraiser is hereby appointed to go upon the subject premises and to make an appraisal thereof, and to report same under oath in writing and orally to the Court at a hearing to be held on the return date hereinbefore fixed, for the purpose of taking testimony and inquiring into the merits of this application; and it is further

ORDERED, that service of a copy of this Order, and the supporting papers upon which it is granted, upon all persons herein named, including the appointed real estate appraiser, personally or by certified mail, at least __ days prior to said return date, be deemed good and sufficient service; and it is further

ORDERED, that the decision on this application be held in abeyance pending the aforesaid hearing.

E N T E R :

JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
In the matter of the application of ___ as Guardian of the
(Person and Property) (Property) of

VERIFIED PETITION

Index No.

an (Incapacitated Person) (Person in Need of a Guardian)
for leave to sell her/his interest in certain real property.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK; COUNTY OF NASSAU

The petition of _____ respectfully states' and alleges;

FIRST; That he/she is the Guardian of the person and property/property of _____, an

(Incapacitated Person) (Person in Need of a Guardian), having been appointed as such by Order

of this Court made the ___ day of _____, 20__ ,

SECOND: That the (Incapacitated Person) (Person in Need of a Guardian) is the

owner of certain real property situated in the (Village of, Town of, etc.) as same is more

particularly described under Contract of Sale annexed hereto,

THIRD: That on the ___ day of _____, 20__ , a Contract of Sale, a copy of

which is annexed hereto and made a part hereof, was entered into between _____ as Seller, and

_____ Purchaser, for the sum of \$ _____

FOURTH: That the said property consists of

(Insert short description of property; number of lots, approximate measurements, nature of improvements, etc. Also, set forth the reason(s) why it would appear to be in the best interests of the (Incapacitated Person) (Person in Need of a Guardian to have property sold),

FIFTH: That the (Incapacitated Person) (Person in Need of a Guardian) presently resides at

_____.

SIXTH: That *the only* assets other than the subject real property owned by the

(Incapacitated Person) (Person in Need of a Guardian) are _____ (list same)

SEVENTH: That in view of the foregoing, it is respectfully submitted that it would be in the best interests of the (Incapacitated Person) (Person in Need of a Guardian) to sell the real property in accordance with the terms of the annexed Contract of Sale.

EIGHTH: That the interested parties to this proceeding are _____ (list same)

NINTH: That posting and publishing be waived (set forth facts - see * NOTICE) WHEREFORE, Petitioner respectfully requests an Order of this Court directing the interested parties to show cause why an Order should not be made confirming the annexed Contract of Sale and to execute the necessary deeds and conveyances, and that the Court appoint an appraiser and direct a hearing before this Court to inquire into the merits of this application; and further, direct service upon the interested parties in such manner as the Court may deem proper; and for such other and further relief as the Court may deem just and proper.

WHEREFORE, Petitioner respectfully requests an Order of this Court directing the interested parties to show cause why an Order should not be made confirming the annexed Contract of Sale and to execute the necessary deeds and conveyances, and that the Court appoint an appraiser and direct a hearing before this Court to inquire into the merits of this application; and further, direct service upon the interested parties in such manner as the Court may deem proper; and for such other and further relief as the Court may deem just and proper.

Dated:

(VERIFICATION)

At IA Part__ of the Supreme Court of the State of New York, held in and for the County of Nassau, at 100 Supreme Court Drive Mineola, New York, on the ___ day of _____, 20__ .

PRESENT:

**Hon.
Justice**

-----X

**In the Matter of the application of ____
as Guardian of the
(Property or Person and Property) of**

**ORDER APPROVING
CONTRACT OF SALE**

Index No.

**an (Incapacitated Person) (Person in Need
of a Guardian, for leave to sell
(his/her) interest in certain real property**

_____X

An application having been made by _____,

Guardian of the (Property or Person and Property) of _____, (an Incapacitated person) (Person in Need of a Guardian) for leave to sell his/her interest in certain real property and a hearing having been held on said application before this Court on the _____ day of

_____, 20__, it is

Upon reading and filing the Petition of _____, verified on the ___ day of _____, 20__, the Order of this Court granted on the ___ day of _____, 20__, the affidavit of service of _____, sworn to on the ___ day of _____, 20__, the appraisal of _____

and upon all the other pleadings and proceedings had herein, and after the hearing held before this Court

on the ___ day of _____, 20___ from which it appears that the interests of the said (Incapacitated Person) (Person in Need of a Guardian) will be substantially promoted by the sale of his/her interest in the real property described in the Contract of Sale heretofore submitted, and it further appearing that the bonds heretofore filed by the Guardian are insufficient to protect the interest of the said (Incapacitated person) (Person in Need of a Guardian), it is

On motion, of _____

ORDERED, that the said _____, as Guardian of _____ be and he hereby is authorized to convey the interest of _____ in and to the subject real property upon the terms and conditions set forth in the aforesaid Contract to purchaser(s), and it is further

ORDERED, that the said _____ be and he/she hereby is authorized in the name of and on behalf of the said (Incapacitated Person) (Person in Need of a Guardian) to execute, acknowledge and deliver to the said _____, the purchaser named in the said Contract of Sale, a good and sufficient deed of the estate, title and interest of said (Incapacitated Person) (Person in Need of a Guardian) in and to the subject premises together with any other instrument necessary, to effect such transfer of his/her interest, and it is further

ORDERED, that before the delivery of the deed as herein provided and receipt of the consideration, the Guardian shall file a real property bond in this in the sum of \$ _____ to be first approved by a Justice of this Court, and it is further

*ORDERED, that within **THIRTY-FIVE (35) DAYS** of the date hereof, the Guardian/Trustee shall notify the Court by email to nass-art81comply@nycourts.gov as to his/her obtaining/filing of the real property bond as directed herein and the scheduled closing of title; and it is further*

ORDERED, that the Guardian pay to _____, appraiser, the sum of \$_____ for his services rendered in this proceeding, and it is further

*ORDERED, that within **TEN (10) DAYS** after delivery of the deed and receipt of the consideration, the Guardian/Trustee shall notify the Court of such by email to nass-art81comply@nycourts.gov and it is further*

ORDERED, that as soon as practicable (or within 30 days) after delivery of the deed and receipt of the consideration, the said Guardian shall report back to this Court for an Order Confirming the Sale and for further instructions as to the disposition of the proceeds, including payment of legal fees and their compensation.

ENTER:

JSC

At an IA Part __of the Supreme Court of the State of New York, County of Nassau, held at the Courthouse located at 100 Supreme Court Drive, Mineola, New York, on the __day of_____,20__

P R E S E N T :
HON.

Justice of the Supreme Court.

-----X

In the Matter of the Application of

**ORDER
APPROVING
CONTRACT OF SALE**

as Guardian of the Personal Needs and Property' Management of

Index No.

an Incapacitated Person, for Leave to Sell his Interest in and to Certain Real Property.

Premises:

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A proceeding having been commenced pursuant to Article 81 of the Mental Hygiene Law for the appointment of a Guardian for_____, an Alleged Incapacitated Person; and following a hearing conducted herein, the Court having found _____, to be an Incapacitated Person, and having appointed _____, as the Guardian for his Personal Needs and Property Management by Order and Judgment date_____, and the said Order and Judgment having directed that the Guardian "... comply with Article 17 of the Real

Property Actions and Proceedings Law for the purpose of selling ...

any real property in which has or will have an interest []", and

An application having thereafter been made by the Guardian _____, for leave to sell the interest of _____ in and to certain real property located in _____, and owned by _____ and his brother, _____ as Tenants in Common; and upon

reading and filing the Petition of _____ dated the ___ day of _____, 20___,
the Order to Show Cause granted by this Court on _____ directing a hearing on this application;
the Affidavit of Service by Certified Mail of _____, sworn to on

evidencing service by certified mail, return receipt requested, upon _____; the real
estate appraiser, _____; the Court Examiner,
_____; SURETY COMPANY _____, the surety on the bond of
the Guardian _____,

[REHABILITATION AND HEALTH CARE CENTER; NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION; TENANT IN COMMON; and the Geriatric Care Manager, (if applicable)] and

Upon the written appraisal of _____, a New York State
Certified Residential Real Estate Appraiser, dated _____ and a hearing having been
conducted before the Court on _____, and attended by the Guardian _____,
and the Court having heard from the parties and the real estate appraiser, on the record, and

It appearing such property has been vacant for a significant period and is subject to vandalism,
waste, and depreciation, and that _____, has acclimated well
to

_____ REHABILITATION AND HEALTH CARE CENTER, _ New York; and

it further appearing that based upon the ' current physical and cognitive status of

_____, **is not** likely to return to an unsupervised setting in the community, and that

the expense of maintaining the premises is imprudent based upon the continuing costs of care of

_____ ; and the Court having determined that the interests of the

Incapacitated Person will be substantially promoted by the sale of the real property located at _____, as described in the Contract of Sale submitted herein, and having further determined that the bond surety heretofore filed by the Guardian is insufficient to protect the interests of the Incapacitated Person; and no one appearing in opposition to such application, and after due deliberation,

NOW, on motion of the Guardian _____, it is

ORDERED, that _____ as Guardian of _____ an Incapacitated Person, be and he hereby is authorized to convey the interest of _____, in and to the subject real property upon the terms and conditions set forth in the aforesaid Contract of Sale to _____, the Purchasers named therein, for the purchase price of \$ _____ and it is further

ORDERED, that the said Guardian be and he hereby is authorized in the name of and on behalf of the Incapacitated Person _____, to execute, acknowledge, and deliver to the Purchasers named in such Contract of Sale a good and sufficient Deed of the estate, title, and interest of _____ in and to the subject real property, together with any other instruments or documents necessary to effectuate the transfer of his/her interest; and it is further

ORDERED, that prior to delivery of the Deed as herein provided and receipt of consideration, the Guardian shall file a real property bond in this proceeding in the sum of \$ _____, to be first approved by a Judge of this Court, and it is further

ORDERED, that at or prior to the closing of title, the Guardian shall pay from the assets of the Incapacitated Person the sum of \$ _____ to the appraiser _____, for services

rendered in connection with his appraisal of the subject real property and his appearance and testimony at the aforesaid hearing; and it is further

ORDERED, that pursuant to Real Property Actions and Proceedings Law Section 1722(5), the posting and publication of the proposed sale is hereby dispensed with; and it is further

ORDERED, that the Guardian shall have the authority to pay the Incapacitated Person's *pro rata* share of all reasonable closing costs and disbursements required to be paid in order to effectuate the transfer of title, including but not limited to: (a) any outstanding real estate taxes that may have accrued as against the subject premises; (b) title charges as are necessary to effectuate the transfer of title; (c) any encumbrances as against the subject premises, and (d) a real estate brokerage commission(s) to the real estate broker retained by _____, not to exceed the cumulative sum of FOUR (4%) PERCENT of the sales price, payable only if, as, and when title closes. Pursuant to Real Property Law Sections 463(1) and (7), no property condition disclosure credit shall be given to the Purchasers at closing with regard to the ownership interest attributable to _____, as Tenant-in-Common, and it is further

ORDERED, that the net proceeds of sale received by the said Guardian on behalf of _____, shall be deposited into the guardianship account(s) currently maintained on behalf of the Incapacitated Person in the State of New York as required pursuant to the Order and Judgment of this Court dated _____; and it is further

ORDERED, that no later than THIRTY (30) DAYS after delivery of the Deed and receipt of the consideration, the Guardian shall report back to this Court for an Order confirming the

sale and for farther instructions as to the disposition of the proceeds of sale, including payment of legal fees and other compensation. Such report shall also contain evidence of the payment of the fee awarded to the real estate appraiser as directed hereinabove.

E N T E R :

JSC

“GUIDELINES” PERTAINING TO AN ATTORNEY’S APPLICATION FOR
COMPENSATION TO BE PAID FROM THE FUNDS OF AN INCAPACITATED PERSON
FOR THE SALE OR PURCHASE OF REAL PROPERTY - (Mental Hygiene Law, article 81)

It is not this Court’s intention to set forth, a “hard and fast” rule concerning compensation due an attorney representing a Guardian in the sale or purchase of realty. However, as a matter of policy, an attorney should not expect to be paid an hourly rate for services rendered in connection with the preparation, contract and closing of such transaction. As is customary in the private sector, absent extraordinary circumstances, a “flat” fee should be the basis for said application. (See, Matter of Schwartz, NYU, 8/31/9A at 15. Col 1.) As to the required judicial proceeding for Court approval thereof under RPAPL article 17, petitioner’s attorney may seek “reasonable” compensation based upon an itemization of the time consumed therefor.

(Supreme Court, Nassau County - 4/30/02

At IA Part _ of the Supreme Court of the State of New York, held in and for the County of Nassau, at 100 Supreme Court Drive, Mineola, New York, on the __ day of _____, 20__

PRESENT:

Hon. _____
Justice

-----X

In the Matter of the Application of

ORDER CONFIRMING SALE

Guardian of the (Property or Person and Property) of

Index No.

An Incapacitated Person or Person in Need of a Guardian,
for leave to sell his/her interest in certain real property.

-----X

Upon reading and filing the Closing Statement annexed hereto, the affidavit of _____,
sworn to on the __ day of _____, 20__, and upon _____,
all the other pleadings and proceedings had herein, it is

On motion of _____

ORDERED, that the sale of the interest in the real property owned by the above named
(Incapacitated Person/ Person in Need of a Guardian) as described in the contract of sale heretofore
approved be and the same hereby is in all respects confirmed; and it is further

ORDERED, that the said _____, as Guardian of the
of the above named (Incapacitated Person/Person in Need of a Guardian) be and he/she is directed to make
the following disposition of the proceeds of the sale amounting to \$ _____,

to _____, Esq., the sum of \$ _____ for legal

services rendered by him on behalf of the (Incapacitated Person/ Person In Need of a Guardian) relative to the within sale; to _____, appraiser, the sum of \$ _____;

(Provide for payment *of any* other fees) * and it is further

ORDERED, that the balance of the proceeds of the sale remaining in the hands of the Guardian, to wit, the sum of \$ _____, be deposited in the Guardian account, and it is further

ORDERED, that the real property bond filed in the within proceeding in the sum of \$ _____ be and the same hereby is cancelled and the surety is discharged from all other and further liability as to all matters embraced in this proceeding upon the approval and filing of an additional Guardian bond in the sum of \$ _____.

ENTER

J.S.C.

** must have closing statement