

Termination of Guardianships Due to Death or Otherwise

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*Court Examiner*  
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## **STEPHANIE M. WHIDDEN, ESQ.**

Stephanie M. Whidden, Esq. is an attorney with a private law practice in Kingston, New York. Her practice focuses on estate planning and administration, and complex real estate litigation. She has been the Town of Hardenburgh attorney since 1988. Since 1999, by appointment of the State of New York Supreme Court, Appellate Division Third Judicial Department, she has been the Court Examiner of initial and annual reports of guardians of incapacitated persons in Mental Hygiene Law Article 81 proceedings pending in Ulster County, New York.

She is a member of the California and New York State Bars, the New York State Bar Association Trusts-Estates and Real Property Law Sections, and the Ulster County Bar Association.

Stephanie Whidden graduated from the University of California at Berkeley in 1981 and the University of San Francisco School of Law in 1984. She practiced secured creditor law in the state and federal courts in San Francisco until 1987 when she relocated to New York, took the New York State Bar and joined the law firm of Howard C. St. John & Associates in Kingston, New York, where she remained until 1999, when she opened her own practice. In 1999, she became a certified mediator through Albany Law School, and an arbitrator with NASD (n/k/a FNRA).

In 2008, she became a Property Manager of two (2) large apartment buildings in New York City (with 65 residential units and 5 commercial units), which she managed until 2011 when she brokered and handled the sale of the buildings and the dissolution of the limited liability company which owned the buildings.

**TERMINATION OF ARTICLE 81 GUARDIANSHIPS**  
**DUE TO DEATH OR OTHERWISE**

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Court Examiner  
Ulster County  
New York

**I. MHLS81.36**

81.36 governs the discharge of a guardian under three sets of circumstances:

- A) 81.36(a)(1) The incapacitated person (IP) has become able to exercise some or all of the powers necessary to provide for personal needs or property management which the guardian is authorized to exercise;
- (3) The IP has died; or
- (4) For some other reason, the appointment of the guardian is no longer necessary for the IP.

**Examples:**

- 1) 81.36(a)(1) IP no longer needs guardianship due to increased capacity.

Matter of Alexandre Penson, 289 A.D.2d 155; 735 N.Y.S.2d 51 (1st Dept. 2001)

The evidence showed that the IP was now living independently with his wife in Florida, understood his limitations and sought the advise of an attorney and financial consultants in formulating a plan that both secured his financial future and afforded him a current level of independence and self-determination. The guardian was discharged and the IP was restored to capacity status. A trust fund created in NY by the guardian was dissolved and the funds were transferred to a Florida trust created by the IP. Since the transfer took place prior to an accounting of the NY trust, reserves were properly withheld pending the final accounting to satisfy possible claims against the NY trust for legal fees and health care expenses. The Court noted that the IP could meet his needs in Florida without these reserve funds.

Matter of Warshawsky, 1/9/95, N.Y.L.J. 30, col.4 (Sup. Ct., Kings Cty.) (Leone.J.)

IP petitioned for discharge of the guardian on the ground that he was no longer incapacitated. Two employees of the nursing home said his condition had improved enough for discharge, and a friend said she would assist him with cooking and shopping at home. However, a psychiatrist and the guardian said the IP still required nursing home care. The Court discharged the guardian finding the IP was capable of exercising the power that had guardian's authority.

Matter of Perl, 77 A.D.3d. 525; 910 N.Y.S.2d 52 (1<sup>st</sup> Dept. 2010), involved an application by the IP to terminate the guardianship which was denied because the Court believed her to be vulnerable to exploitation.

The Appellate Division denied that branch of the IP's motion, pursuant to 81.36(a)(1), which was to terminate the guardianship, noting that although the IP was able to handle her considerable monthly allowance, she was vulnerable to exploitation and was not able to manage the entirety of her wealth. The Court also denied that branch of the IP's motion, pursuant to 81.35, which was to remove the guardian for cause, noting that the guardian had acted diligently to protect the IP's interests, and that any deficiency in his filing of accounts was relatively minor, and could be remedied in ways other than his removal.

- 2) 81.36(a)(4) Guardianship no longer necessary due to relocation of IP and transfer of guardianship, dissipation of assets, or accomplishment of special purpose guardianship to recover and liquidate property and fund a Supplemental Needs Trust, ("SNT"), or community pooled trust.

In the Matter of Yehuda C., 63 A.D.3d 923 (2nd Dept. 2009)

The appellants had been granted guardianship of their incapacitated son in a proceeding in Kings

County. All of the child's property, including a sizable medical malpractice settlement, was placed in a SNT. The guardians moved their family to Israel for religious reasons and later petitioned for, and were granted, guardianship of the person and property of their son by the Family Court in Israel. Upon subsequent application to the Supreme Court in Kings County to terminate their guardianship and SNT, the Supreme Court denied their application. On appeal, the Appellate Division held that there was no longer a need for a New York guardianship and that it would be impractical and unnecessary for a New York Court and Court Examiner to provide duplicate supervision of the guardianship of a child in a foreign land. The Court further held that while the guardianship of the person and property of the child should be terminated, there was no basis for the termination of the SNT.

- B) 81.36(b) governs the process for termination of a guardianship. The application for relief may be made by the guardian, IP or any person entitled to commence an Article 81 proceeding.
- C) 81.36(c) requires a hearing on notice to all persons entitled to notice pursuant to 81.16(c)(3) (those persons designated to receive notice in the Order establishing the guardianship).
- D) 81.36(d) The person objecting to the termination of the guardianship has the burden of proof.
- E) 81.36(e) The conclusion of the guardianship results in the guardianship assets being returned to the IP by the guardian.

## II. MHL§81.35 & 81.37

Removal of a guardian pursuant to 81.35 and resignation or suspension of a guardian pursuant to 81.37 are other reasons for termination of a guardianship.

### A) 81.35 Removal of Guardian

Upon motion, the Court appointing a guardian may remove a guardian for failure to comply with an Order, if guilty of misconduct, or for any other cause which to

the Court shall appear just (emphasis added).

The motion can be made by the Court Examiner pursuant to 81.32, or by anyone entitled to commence an Article 81 proceeding, or by the IP.

**B) 81.37 Resignation of Guardian**

The Court appointing a guardian may allow a guardian to resign or suspend the powers of a guardian.

In the case of In re N.Y. Foundation for Senior Citizens, 14 A.D.3d 317 (1<sup>st</sup> Dept. 2005), the Court granted the guardian's request to resign after the IP threatened to shoot the guardian's case workers. No hearing was necessary because the record documented that the IP's resistance to the guardianship made the provision of services to the IP impossible.

In re Samuel Neubauer, pending in Ulster County, involved a petition by the Temporary Acting Commissioner of the Department of Social Services for resignation as guardian of the person due to her inability to control the IP with respect to his residency, medical treatment and medication. Over the objection of all other interested persons, the petition was granted leaving the guardian of the property with a greatly increased burden.

**III. MHL§81.33 - Final Report**

Whether 81.35, 81.36 or 81.37 is the ground for removal, discharge or resignation of a guardian, 81.33(b) specifies the Court shall order a final report which shall include the same information as set forth in 81.31 (unless the IP died, then the information set forth in 81.31(b) (5) and (6) is unnecessary) (emphasis added).

Notice of the filing of the Final Report is to be given to all persons specified in the Order establishing the guardianship.

It should be noted that the Court can disallow or disagree with the Final Report even if there are no objections filed. See, Matter of Jones, 24 Misc.3d 980; 881 N.Y.S.2d 613 (Sup. Ct. Kings Cty. 2009) (Barros, J.), in which the Court stated it is "not a rubber stamp" and denied

legal fees and commissions to the guardian and counsel to the guardian due to overreaching, self-dealing and actions which lead to artificial inflation of fees due to the guardian.

81.33(d) allows the Court to appoint a Referee to hear the matter and report to the Court. The contents of the Referee's Report on the Final Report differ from jurisdiction to jurisdiction. Some trial court judges request from the Referee the review of property management by the guardian from the inception of the guardianship to its conclusion. Other judges prefer review from the most recent Annual Report to the conclusion of the guardianship.

81.33(e) provides that if the Court appoints a Referee, the Referee's Report may be confirmed by motion or by judicial approval of the Court in the context of the 81.35, 81.36 or 81.37 application. The Court fixes the compensation of the Referee which is to be paid by the guardianship estate unless the IP is indigent.

See, In re: Final Accounting of Garcia, (Anita B.), 39 Misc.3d 1228(A) (Sup. Ct., Suffolk Cty. 2013) (Leis, J.), in which the Court held the guardian responsible for payment of the Referee's fees due to the guardian's failure to comply with the Court's directions for 12 years to file a final account, requiring the Referee to take and state the final account on behalf of the guardian.

81.34 permits a guardian to petition the Court for a decree releasing and discharging the guardian and the sureties on his bond, if any, and from any further liability to the interested persons involved with the guardianship proceeding.

The petition must show the names and addresses of all persons entitled to notice (those persons listed in the Order creating the guardianship).

A guardian of the property must show the following:

- All taxes have been paid, or no taxes are due
- Make full disclosure of any actions affecting the IP's property

If the IP is dead, if there is not yet a personal representative of the estate, the guardian is to pay all estimated estate and

income tax charges, as well as other charges of an emergent nature.

#### IV. MHL§ 81.44 - Death of the IP

A) Upon the death of an IP, the authority of a guardian ceases immediately. See, Vellozi v. Dray, 267 A.D.2d 695; In re: Estate of Baron, 180 Misc.2d 766; and In re Allen, 16 Misc.2d 1104A..

However, the guardian retains certain limited powers:

81.21(a)(14) - arrange for and pay funeral expenses

81.21(a)(19) - pay bills after the death of the IP,  
81.36(e) provided the authority existed to pay such bills prior to death, until a temporary administrator or executor is appointed.

81.21(a)(20) - defend or maintain any judicial action or proceeding to a conclusion until an executor or administrator is appointed.

See, In re Saphier, 167 Misc.2d 130,131 (1995), in which the Court relied on 81.36(c), 81.20(a)(6)(iii) and 81.20(a)(6)(v) to allow the guardianship to continue following the death of the IP in order to allow the guardian to conclude a criminal matter regarding recovery of the IP's violin worth \$3,000,000.00.

See also, In re Rose BB, 262 A.D.2d 805,808, (3<sup>rd</sup> Dept. 1999), in which the Court did not require the immediate discharge of the guardian where there was a dispute regarding preservation of the IP's property.

See also, In the Matter of the Accounting of Russell Artuso and Patrick Artuso, as Co-Guardians, 4 Misc.3d 1003A (Surr. Ct. Monroe Cty. 2004) (Calveruso, J.), in which the Court allowed the guardianship to continue to enable counsel for the guardian to continue prosecuting a civil action since no personal representative had been appointed for the IP's estate.

See also, Estate of Brooke Astor, 2007 N.Y. Misc. LEXIS 8143 (Surr. Ct. Westchester Cty.) (Surr. Scarpino), in which the IP's bank, which had been a guardian of the property for a year prior to the IP's death, was granted an extension of its powers post death, due to its familiarity with the IP's property.

However, the prudent guardian will seek Court authorization to continue to represent the IP's property interest post death. Several Courts have held that in the absence of a further Order from the Court modifying the guardian's authority to allow for representation of the IP's estate in a proceeding post death, pursuant to 81.36(a)(3), the guardian is without authority to continue to represent the IP's property. See, Matter of Vita V. (Cara V.), 100 A.D.3d 913 (2d Dept. 2012); and Estate of Buchwald, 38 Misc.3d 1225A (Surr. Ct., Queens Cty. 2013) (Surr. Kelly).

The Surrogate Court in the Estate of Buchwald, Id., states:

"The within matter highlights, unfortunately, the recurrent scenario when an individual appointed as a guardian pursuant to Article 81 of the Mental Hygiene Law, does not fulfill her statutorily mandated duties upon the death of her ward."

B) 81.44 was created by 2008 N.Y. Laws 175, effective January 3, 2009, and amended by 2011 N.Y. Laws 97, §1 (Part C, Subpart G), effective September 22, 2011.

The purpose of 81.44 is to provide an effective and efficient road map to facilitate transition from guardianship administration to estate administration upon the death of an IP. 81.44 provides a statutory time line for settling the guardian's final report and the transfer of the guardianship assets to the estate administrator.

81.44 is divided into four parts:

- \* Notice
- \* Delivery of Guardianship Assets
- \* Final Report
- \* Enforcement Mechanism

1) Notice - 81.44(c) Statement of Death:

The Statement of Death is to be served within twenty (20) days of the death of the IP on the Court Examiner, the Court-appointed representative of the decedent's estate, or the representative named in the decedent's Will or Trust, or a public administrator of the county in which the guardianship was established.

The Statement is to be served by regular mail and certified

mail return receipt requested, unless otherwise directed by the Court, [81.44(b)]. The Statement of Death with proof of service is to be filed with the Court in which the guardianship is pending, [81.44(c)(2)].

**2) Delivery of Guardianship Assets - 81.44(d)  
Statement of Assets and Notice of Claim:**

Within one hundred fifty (150) days from the date of death of the IP, the Statement of Assets and Notice of Claim must be served upon the decedent's personal representative or, if none, upon the public administrator of the county in which the guardianship is pending.

The Statement shall contain the Index Number and name of guardianship proceeding, name and address of IP at time of death, list of all assets with estimated value, and list of all claims with name of creditors and amount of their claims. Delivery of the guardianship assets to the personal representative of the decedent's estate or public administrator must occur within one hundred fifty (150) days.

The Guardian is allowed to retain sufficient property to pay known claims, liens or administrative costs of the guardianship, pending settlement of the Final Account, unless ordered otherwise by the Court upon notice to the Court Examiner [81.44(e)].

See, Estate of Edgar Elis, 12/10/09, N.Y.L.J. 36, guardian permitted to retain \$7,500.00 reserve; Estate of William T. Lukas, 11/25/09, N.Y.L.J. 35, guardian allowed to retain \$20,000.00 reserve; and Estate of Irving Israel, Deceased, 10/22/09, N.Y.L.J. 34, guardian retained \$25,000.00 reserve.

**3) Final Report - 81.44(f):**

Within one hundred fifty (150) days from the date of death of the IP, the guardian must file the Final Report with the Clerk of the Court of the county in which the guardianship is pending, and proceed to judicially settle the Final Report upon notice to the personal representative of the decedent's estate and all persons listed in the Order creating the guardianship. Only the Court may grant an extension of time. See attached examples of Final Reports - there is no uniform Final Report form.

The Court Examiner has no authority to review and report on the Final Report unless appointed by the Court as Referee. The Court Examiner is usually appointed as the Referee due to

familiarity with the Initial and Annual Reports.

Compensation must be fixed by the Court in a Court Order. The Court may use whatever criteria seems reasonable such as hours spent in review of the Final Report and preparation of the Referee's Report, attendance of motion hearings or conferences, etc. Or, the Court may rely on the statutory guidelines established by Part 806.17(c).

**4) Enforcement Mechanism - 81.44(g):**

If the guardian fails to serve the Statement of Assets and Notice of Claim, turn over the guardianship assets, (less the reserve), file the Final Report and seek its judicial settlement within one hundred fifty (150) days of the death of the IP, any person may file a petition to compel the guardian to account, to suspend and/or remove the guardian and to take and state the guardian's account.

**CONCLUSION**

The Courts' calendars continue to be congested with numerous guardianships which as a result of the death of the IP or the depletion of assets are inactive or abandoned. These matters are an unnecessary drain on judicial resources.

It has been suggested that the Court Examiners should take action to seek the termination of these cases, whether by motion practice or the request to the trial court judge for an informal letter order of discharge. The Bond, if any, should not be cancelled until a final accounting is approved by the Court.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

In the Matter of the Guardianship of

\_\_\_\_\_  
An Incapacitated Person

**STATEMENT OF DEATH  
OF INCAPACITATED  
PERSON**

Index No. \_\_\_\_\_

TO THE SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF \_\_\_\_\_

1. Name of Guardian:
2. Name of Incapacitated Person:
3. Last address or residence of Incapacitated Person:
4. Date of Death of Incapacitated Person:
5. Place of Death of Incapacitated Person:
6. Name of Nominated or Appointed Personal Representative of Incapacitated Person's estate, if any (e.g. executor):
7. Address of Personal Representative:
8. Name and addresses of persons entitled to notice of further guardianship proceedings as ordered by the court pursuant to MHL 81.16 (c)(3):

Name:

Address:

Relationship to Incapacitated Person:

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Guardian's signature)

Sworn to before me this  
(day) day of (month, year).

\_\_\_\_\_  
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

In the Matter of the Guardianship of

An Incapacitated Person

**STATEMENT OF ASSETS  
AND NOTICE OF CLAIM**

Index No. \_\_\_\_\_

TO THE SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF \_\_\_\_\_

1. Name of Guardian:
2. Name of Incapacitated Person:
3. Address of the incapacitated person at the time of death:
4. A description of the nature and approximate value of guardianship property as of the date of death is:  
[description]
5. The approximate amount and description of any claims, debts or liens against the guardianship property (e.g. Medicaid liens, tax liens, and administrative costs) is:  
[list]

Dated: \_\_\_\_\_

(Guardian's signature) \_\_\_\_\_

Sworn to before me this  
(day) day of (month, year).

(Notary public signature)

\_\_\_\_\_  
Notary Public

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ULSTER

In the Matter of the Final Report  
of \_\_\_\_\_, as  
Guardian for

FINAL REPORT AND ACCOUNT

Index No. \_\_\_\_\_  
RJI No. \_\_\_\_\_

Accounting Period:  
\_\_\_\_\_, to  
\_\_\_\_\_

\_\_\_\_\_ ,  
an Incapacitated Person,

-----  
STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ : ss:

I, \_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_, respectfully submit the following account:

SECTION 1 - INFORMATION PERTAINING TO THE GUARDIAN

(1) GUARDIAN

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No. (\_\_\_\_\_) \_\_\_\_\_

(2) APPOINTMENT

Date of Order: \_\_\_\_\_

Court: \_\_\_\_\_

Name of Judge/Justice: Hon. \_\_\_\_\_

(3) BOND (if applicable)

Bonding Company Name/Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Value of Bond: \$ \_\_\_\_\_

If the bonding requirement was waived, so state \_\_\_\_\_

SECTION 2 - LAST WILL AND TESTAMENT

- (1) To your knowledge, did the incapacitated person execute a Last Will and Testament?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the location of the Will.

\_\_\_\_\_

\_\_\_\_\_

If yes, has the Will been submitted to probate?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, when and to which Court?

Date \_\_\_\_\_

Court \_\_\_\_\_

SECTION 3 - POWER OF ATTORNEY

- (1) To your knowledge, has the incapacitated person executed a Power of Attorney?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the name and address of the person with the Power of Attorney:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

SECTION 4 - EARNINGS

- (1) Have you used or employed the services of the incapacitated person?

Yes \_\_\_\_\_ No \_\_\_\_\_

- (2) Have any monies been used by or received on behalf of the incapacitated person based upon such services?

Yes \_\_\_\_\_ No \_\_\_\_\_

SECTION 4 (continued)

- (3) If yes, please set forth the date, source and amount of monies earned or derived from such services:

<u>Date</u>	<u>Source</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

SECTION 5 - PROPERTY MANAGEMENT

If you have been granted powers regarding the property management of the incapacitated person, please provide the following information, consistent with your Order of Appointment, pertaining to your fulfillment of your responsibilities to the incapacitated person to provide for property management as follows:

- (1) Have you identified, traced and collected assets of the incapacitated person since your appointment?

Yes \_\_\_\_ No \_\_\_\_

If no, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (2) Have all of the incapacitated person's past and current income tax returns and payments been brought up-to-date?

Yes \_\_\_\_ No \_\_\_\_

If no, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 6 - SCHEDULES AND SUMMARY

Please complete the attached Schedules "A" through "F" and the Summary. If you have nothing to list on a schedule, state "None".

SCHEDULE "A"  
ASSETS ON HAND AT THE BEGINNING OF THE ACCOUNTING PERIOD

Please list all assets of the incapacitated person over which you had sole control as Guardian as of the beginning of the accounting period.

*For purposes of this Final Accounting, the accounting period is defined as the date from the most recent Annual Report or from the Initial Report of Guardian, as the case may be, to the date of this Final Report.*

Do not include in this schedule Trust principal in which the incapacitated person has an income interest, property under joint control of any Court, or real property not transferred to the Guardian.

(1) BANK ACCOUNTS AND CASH

- (a) Please list the name and address of institutions, account numbers and balance deposited in banks or other financial institutions.

<u>Name/Address</u>	<u>Account No.</u>	<u>Value</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (b) Please also list any cash on hand not in bank accounts.

\_\_\_\_\_  
\_\_\_\_\_

(2) CORPORATE AND GOVERNMENT SECURITIES (e.g., corporate stocks and bonds - federal, state or municipal bonds and notes)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SCHEDULE "A" (continued).

- (3) PRESENT OR FUTURE INTERESTS (e.g., interests in partnerships, trusts, litigation settlement funds or pensions)

Please list the estimated values of all present and future interests the incapacitated person has in property that has not been transferred to your control.

<u>Description of Interest</u>	<u>Estimated Value</u>
_____	_____
_____	_____
_____	_____
_____	_____

- (4) OTHER PERSONAL PROPERTY (e.g., furniture, jewelry, art work)

Please list and describe other personal property and indicate the estimated value.

<u>Description</u>	<u>Estimated Value</u>
_____	_____
_____	_____
_____	_____
_____	_____

- (5) REAL PROPERTY

- (a) Please describe location and type of real property, type of interest and market value.

<u>Location/Type</u>	<u>Interest</u>	<u>Market Value</u>
_____	_____	_____
_____	_____	_____

- (b) Please also provide the date of filing of a statement identifying the real property with the County Clerk as required by Mental Hygiene Law Section 81.20(a)(6)(vi).

\_\_\_\_\_

SCHEDULE "B"  
ASSETS RECEIVED DURING ACCOUNTING PERIOD

Please list all principal assets during the period of this report (show the date received, source and amount or value):

<u>Date Received</u>	<u>Source</u>	<u>Amount/Value</u>

SCHEDULE "C"  
INCOME RECEIVED DURING ACCOUNTING PERIOD

Please list all income received during the period from property interests listed in Schedules "A" and "B" (show date received, source and amount).

<u>Date Received</u>	<u>Source</u>	<u>Amount/Value</u>

SCHEDULE "D"  
LOSSES INCURRED DURING ACCOUNTING PERIOD

Please list all realized losses incurred on principal assets, whether due to sale or liquidation, indicating the asset involved, the date and amount of loss.

<u>Date</u>	<u>Asset Description</u>	<u>Amount of Loss</u>

SCHEDULE "E"  
MONIES PAID OUT DURING ACCOUNTING PERIOD

Please list all disbursements, excluding investments, during the period, including date of payment, payee and amount.

<u>Date of Payment</u>	<u>Payee</u>	<u>Amount</u>

SCHEDULE "F"  
ASSETS ON HAND NOW

Please list assets on hand now and value thereof.

(1) BANK ACCOUNTS AND CASH

(a) Please list the name and address of institutions, account numbers and balance deposited in banks or other financial institutions.

<u>Name/Address</u>	<u>Account No.</u>	<u>Value</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Please also list any cash on hand not in bank accounts.

\_\_\_\_\_  
\_\_\_\_\_

(2) CORPORATE AND GOVERNMENT SECURITIES (e.g., corporate stocks and bonds - federal, state or municipal bonds and notes).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) PRESENT OR FUTURE INTERESTS (e.g., interests in partnerships, trusts, litigation settlement funds or pensions).

Please list the estimated values of all present and future interests the incapacitated person has in property that has not been transferred to your control.

<u>Description of Interest</u>	<u>Estimated Value</u>
_____	_____
_____	_____
_____	_____
_____	_____

SCHEDULE "F" (continued)

(4) OTHER PERSONAL PROPERTY (e.g., furniture, jewelry, art work)

Please list and describe other personal property and indicate the estimated value.

<u>Description</u>	<u>Estimated Value</u>
_____	_____
_____	_____
_____	_____
_____	_____

(5) REAL PROPERTY

(a) Please describe location and type of real property, type of interest and market value.

<u>Location/Type</u>	<u>Interest</u>	<u>Market Value</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

SUMMARY

PART I

Total beginning balance  
(as shown on Schedule "A").....\$ \_\_\_\_\_

Total additional assets  
(as shown on Schedule "B").....\$ \_\_\_\_\_

Total income received during the accounting  
period  
(as shown on Schedule "C").....\$ \_\_\_\_\_

TOTAL OF PART I.....\$ \_\_\_\_\_

PART II

Total losses during the accounting period  
(as shown on Schedule "D").....\$ \_\_\_\_\_

Total monies paid out during the accounting  
period  
(as shown on Schedule "E").....\$ \_\_\_\_\_

TOTAL OF PART II.....\$ \_\_\_\_\_

PART III

Balance on Hand Now  
Period (Total of Part I minus Total of  
Part II).....\$ \_\_\_\_\_

(this amount should be the same as Schedule "F")

VERIFICATION

STATE OF NEW YORK:  
COUNTY OF \_\_\_\_\_ : ss:

\_\_\_\_\_, being duly sworn, state that I am the Guardian of the within named incapacitated person and that the attached Final Report, Schedules "A" through "F", and Summary are, to the best of my knowledge and belief, a complete and true statement of my activities as such Guardian, receipts and payments on behalf of such incapacitated person, money and other property which has come into my possession or has been received by others pursuant to my order and authority since the date of my appointment or last report, and the value of such property. I do not know of any error or omission in the Final Report, Schedules "A" through "F", and Summary to the prejudice of such incapacitated person.

\_\_\_\_\_  
Signature

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

GUARDIAN'S FINAL ACCOUNTING

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

In the Matter of the Final Accounting of

Index Number \_\_\_\_\_

Guardian for

Date: \_\_\_\_\_

an Incapacitated Person

I, \_\_\_\_\_ being the Guardian of the Person and / or Property of \_\_\_\_\_, an incapacitated person, do hereby make, render and file this final account and inventory (NOTE: A final accounting need only report back to the time of the last court approved annual accounting):

I was duly appointed as Guardian of the Person and / or Property of the within named incapacitated person by order of this court dated \_\_\_\_\_, and thereafter, pursuant to said order did file with the County Clerk of the County of \_\_\_\_\_ a bond with the \_\_\_\_\_ Company in the amount of \$ \_\_\_\_\_ as surety thereon, and have continuously acted as such Guardian since the date of my appointment. The date incapacitated passed away on was \_\_\_\_\_. I have enclosed a copy of the death certificate.

NOTE: FOLLOW THE FORMAT OF THE ANNUAL ACCOUNTING WITH REGARD TO FINANCES.

PLEASE CHECK APPROPRIATE BOX [ ] WHERE INDICATED  
AND FILL IN BLANKS WHERE INSTRUCTED

\*\*\*\*\*

In the Matter of

\_\_\_\_\_  
Name of Incapacitated Person

- [ ] Dutchess County  
[ ] Orange County  
[ ] Putnam County  
[ ] Rockland County  
[ ] Westchester County

\_\_\_\_\_  
Index No.

NOTICE OF FINAL ACCOUNTING

The incapacitated person listed above passed away on \_\_\_\_\_. The Final Accounting of the Guardian for the Incapacitated Person, a copy of which is attached hereto, will be filed within the next 5 days with the Court Examiner and in the County Clerk's office in:

- |   |   |   |
|---|---|---|
| [ ] Dutchess County Clerk<br>22 Market Street<br>Poughkeepsie, NY 12601<br>(845)486-2131  | [ ] Putnam County Clerk<br>40 Glensida Avenue<br>Carmel, NY 10512<br>(845)225-3641                                | [ ] Orange County Clerk<br>255 Main Street<br>Goshen, NY 10924<br>(845)291-2690 |
| [ ] Rockland County Clerk<br>27 New Hempstead Road<br>New City, NY 10956<br>(845)638-5070 | [ ] Westchester County Clerk<br>110 Dr. Martin Luther King, Jr., Blvd.<br>White Plains, NY 10601<br>(914)995-3070 |   |

As an interested person, you are entitled to file written objections to the Final Accounting within 45 days of service on you of the Final Accounting. Objections must be in the form of a sworn affidavit, in which any item in the final account to which objection is made is specifically identified and detailed reasons for the objection given. Copies of all documentary evidence supporting the objection must be attached, as exhibits, to the affidavit. Your name, address and telephone number, or that of any attorney representing you, must appear at the conclusion of the objections.

1. A copy of the objections must be mailed (certified mail, return receipt requested) to the Court Examiner and the Guardian at the address listed in the Final Accounting and to all other interested persons, whose names and addresses are listed in the Final Accounting.

2. The original of the objections, plus an affidavit of mailing of the copy of the objections to the guardian and all other interested person, must be filed in the county clerk's office designated above.

3. A copy of this Notice of Final Accounting and the objections filed in the county clerk's office, plus a copy of the affidavit of mailing to the guardian and all other interested persons, MUST be mailed (certified mail, return receipt requested) to the following Court Examiner at the address below:

<input type="checkbox"/> Stephen Abels, Esq. 154 East Main Street Brewster, NY 10509 (845) 628-4000	<input type="checkbox"/> Thomas J. Altferi, Esq. 56 Harrison Street New Rochelle, NY 10801 (914) 632-0900	<input type="checkbox"/> April D. Bowie, Esq. 29 Chase Rd., Box 265 Scarsdale, NY 10583-0265 (914) 618-2394	<input type="checkbox"/> Bruce Bozeman, Esq. 6 Gramatan Ave. 5 <sup>th</sup> Flr. Mt. Vernon, NY 10550 (914) 668-4600
<input type="checkbox"/> Christopher Canfield, Esq. 963 Route 6 Mahopac, NY 10540 (845) 628-4000	<input type="checkbox"/> Anthony S. Colavita, Esq. 575 White Plains Road Eastchester, NY 10709 (914) 793-1222	<input type="checkbox"/> Robert S. Cypher, Jr. Esq. Smith Abbott, L.L.P. Three New York Plaza N. Y., N. Y. 10004-2442 (212) 981-4501	<input type="checkbox"/> John T. Gildea, Esq. 175 Main Street (S-401) White Plains, N.Y. 10601-3126 (914) 946-1582
<input type="checkbox"/> Carolyn E. Harting, Esq. P.O. Box 218, Route 22 Bedford, NY 10506 (845) 279-5555	<input type="checkbox"/> Angelo J. Ingrassia, Esq. 626 East Main Street Middletown, NY 10940 (845) 342-3366	<input type="checkbox"/> Stuart M. Mitchell, Esq. 81 First Avenue P.O. Box 779 Nyack, New York 10960 (845) 358-4300	<input type="checkbox"/> Patricia L. Moro, Esq. 573 North State Road Briarcliff Manor, N.Y. 10510 (914) 762-0776
<input type="checkbox"/> Guy Parisi, Esq. 222 Bloomingdale Road White Plains, NY 10605 (914) 287-7374	<input type="checkbox"/> John Perona, Esq. 2180 Boston Post Road Larchmont, NY 10538 (914) 834-3500	<input type="checkbox"/> Allan B. Rappleyes (Jr.) 35 Market Street Poughkeepsie, NY 12601 (845) 454-1110	<input type="checkbox"/> Vincent Rijppa, Esq. 2975 Westchester Avenue (Suite 207) Purchase, NY 696-1800 (914) 696-1800
<input type="checkbox"/> Richard H. Sarajian, Esq. 67 North Main Street P.O. Box 1070 New City, NY 10956-8070 (845) 634-7018	<input type="checkbox"/> Marianne Sussman, Esq. 222 Bloomingdale Road White Plains, NY 10605 (914) 683-0900		

OTHER:

4. An affidavit of mailing to the Court Examiner must be filed in the county clerk's office designated above.  
THE ABOVE FOUR (4) STEPS MUST BE COMPLETED WITHIN 45 DAYS OF YOUR RECEIPT  
OF THE COPY OF THE FINAL ACCOUNT.

The Court Examiner will audit the Final Accounting and report to the 9<sup>th</sup> Judicial District Guardianship  
Accounting Part.

NO ASSETS OF THE INCAPACITATED PERSON MAY BE DISTRIBUTED OR TURNED OVER  
TO SURROGATE'S COURT UNTIL THE FINAL ACCOUNTING SUBMITTED BY THE GUARDIAN  
HAS BEEN APPROVED BY THE GUARDIANSHIP ACCOUNTING PART.