

Guardianship of the Estate

A guardian of an incapacitated person's estate has a fiduciary duty to possess and manage the incapacitated person's real and personal property in the manner that a reasonably prudent person would manage his or her own property.

A guardian of the estate also has a duty to collect and account for all rents, profits and revenue of the incapacitated person and to bring any lawsuits necessary to collect on any claims due to the incapacitated person.

Bond

A guardian of the estate is required to purchase a corporate surety bond made payable to the judge who appointed the guardian, and the premium for such bond is payable from the estate of the incapacitated person and is intended to insure the incapacitated person's estate against any mismanagement, negligence or theft by the guardian.

A guardian of the estate must make sure that the bond premium is paid annually and report that information to the court on the guardian's annual accounting.

Qualification & Letters of Guardianship

The date on which the guardian of the estate has qualified by filing a bond and oath is known as the "qualification date" and many duties of the guardian begin with the qualification date.

Once the guardian has qualified, the clerk of the court, upon request and payment, may issue letters of guardianship to the guardian of the estate. These letters expire unless the guardian of the estate files an annual account in a timely manner that is approved by the court.

A guardian of the estate should use letters of guardianship to retitle any bank accounts in the name of the incapacitated person into bank accounts in the name of the guardian as guardian of the estate of the incapacitated person. The guardian of the estate should never commingle estate funds with the guardian's own person funds.

Inventory, Appraisement & List of Claims

A guardian of the estate has a duty to file an inventory, appraisement and list of claims within 30 days of the qualification date. A guardian of the estate can be removed by the court without notice for failing to timely file the inventory.

An inventory must include all the real property in Texas owned by the incapacitated person and all personal property, wherever located, that has come into the guardian's possession.

The inventory should list the fair market value of the incapacitated person's assets as of the day that the guardian qualified to serve, and should distinguish between separate

property and community property owned by the incapacitated person and list any property jointly owned by the incapacitated person and any third parties.

The inventory should also contain a list of claims that the incapacitated person has against any third parties such as notes receivable or possible legal claims. The inventory should not list any claims that third parties have against the incapacitated person.

If the guardian of the estate later discovers additional property owned by the incapacitated person, the guardian should file a supplemental inventory listing those additional assets.

Monthly Allowance

If a monthly allowance is not included in the order appointing the guardian, the guardian of the estate's attorney may apply within 30 days of qualification for an allowance to pay the recurring monthly expenditures for the health, education, support and maintenance of the incapacitated person and his or her property.

Other Expenditures

If the guardian of the estate needs to make an expenditure for the benefit of the incapacitated person that exceeds, or is not included in, the monthly allowance, the attorney for the guardian should apply to the court for approval of the expenditure and obtain an order to make the expenditure.

If, for some reason, prior court approval to make an expenditure is not obtained, an expenditure may be ratified by court order, upon application, if it was not possible or convenient to obtain prior court approval, and there is clear and convincing evidence that the expenditure was reasonable and proper, and the incapacitated person received the benefit of the expenditure, and the expenditure was of a type that would have normally been granted by the court if prior permission had been requested.

Mandatory Notice to Creditors

The Texas Estates Code outlines a complicated process by which a Guardian will provide notices to creditors and ensure that only proper claims are filed with and approved by the Guardian and the Court.

Sale of Assets

A guardian of the estate must seek court approval to sell real or personal assets from the estate of the person under guardianship. Details of this process are outlined in the Texas Estates Code.

Investments

A guardian of the estate is required to invest all funds other than funds immediately necessary for the incapacitated person's education, support, and maintenance.

As to investments, a guardian of the estate must exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion and intelligence exercises in the management of the person's own affairs. The Texas Estates Code outlines the factors and considerations involved in managing a guardianship estate; however, a guardian should know and understand local practice on these issues as well.

Gifts

The guardian of the estate may apply to the court for permission to make gifts from the incapacitated person's estate to charities or certain relatives or will or trust beneficiaries after giving notice to all interested parties and conducting a hearing to show that such gifted funds are not needed for the support of the incapacitated person and that the ward had an interest in benefiting the recipient of the gift.

The court may appoint a guardian ad litem to determine whether the gifting plan is in the best interests of the incapacitated person, and may sign an order allowing such gifts after conducting a hearing on the guardian's application.

Annual Accounts

Within 60 days of one year from the qualification date, the guardian of the state must file an initial annual account that contains a sworn written exhibit of all claims against the estate presented to the guardian during the accounting period and tells which claims have been allowed and paid, which claims were rejected, and which claims have become the subject of a lawsuit and the status of those lawsuits.

The annual account must list any additional property that has come into the estate that was not previously listed on the inventory and show any change in the estate property that was not previously reported.

The annual account must also provide a complete list of all receipts and disbursements for the accounting period, and provide an accurate list of the property being administered and the balance in all cash and stock accounts must be verified by the depositories.

Within 60 days of the end of the last accounting period, the guardian of the estate must file annual accounts with the court until the death or restoration of the incapacitated person.

Compensation of Guardian of Estate

The guardian of the estate is entitled to reasonable compensation upon application to the court at the time the court approves an annual or final accounting filed by the guardian.

A court may authorize compensation for a guardian in an estimated amount to be paid on a quarterly basis if the court finds that delaying the compensation until the annual account would create a hardship for the guardian.

A fee of five percent of the gross income earned by the estate during the accounting period and five percent of all money paid out of the estate during the accounting period is considered reasonable if the court finds that the guardian has taken care of and managed the estate in compliance with the standards in the Estates Code.

Reimbursement of Expenses

A guardian of the estate is entitled to reimbursement from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian including reimbursement of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other matter in the guardianship.

Restoration of Person Under Guardianship

If the guardian of the estate believes that the person under guardianship has regained capacity, or has regained sufficient capacity with supports and services, to manage financial affairs, the guardian of the estate may file a written application with the court to find that the person under guardianship is no longer an incapacitated person and may seek to close the guardianship.

If the person under guardianship wishes to be restored to capacity, the person under guardianship may write an informal letter to the court at least once a year asking to be restored, and anyone who knowingly interferes with the transmission of the request to the court may be found to be guilty of contempt of court.

Upon receiving an application or informal letter requesting restoration, the court shall appoint an attorney ad litem to determine if restoration of rights is appropriate.

Removal of Guardian of the Estate

A guardian of the estate may be removed without notice for failing to timely qualify, failing to timely file an inventory, failing to timely file a new bond, being absent from the state for three months or more without court permission, evading service of process, or failing to appoint a resident agent if guardian is not a Texas resident.

A guardian of the estate may be removed with notice for misapplying or embezzling estate funds, failing to file an annual or final account, failing to obey a court order, gross misconduct or mismanagement of duties, becoming incapacitated, becoming incarcerated, abusing, exploiting, or neglecting the incapacitated person, or failing to use the estate to maintain suitable living conditions for the incapacitated person.

A court may remove a guardian of the estate on its own motion after serving the guardian by certified mail, return receipt requested to answer at a time and place set in the notice.

A court may remove a guardian of the estate on the motion of an interested person after the guardian has been cited by personal service to answer at a time and place set in the notice.

A guardian of the estate has 30 days after the court signs an order of removal to apply for reinstatement, and the court is to hold a hearing for reinstatement within 60 days of the date of the removal order.

Successor Guardian of the Estate

If the guardian of the estate resigns, is removed or dies, the court may appoint a successor guardian on application and service of notice as directed by the court, or may appoint a successor guardian without notice if the court finds that a necessity exists for the immediate appointment of a successor guardian.

The successor guardian must file an inventory, appraisal and list of claims of the estate that comes into the hands of the successor guardian within 30 days after the date the successor guardian qualifies to serve by filing a bond and oath.

Death of Incapacitated Person

The guardian of the estate, subject to court approval, may make all funeral arrangements and pay the funeral expenses and all other debts out of the estate of a deceased person under guardianship.

The guardian of the estate has standing to apply to probate the incapacitated person's will or to apply to determine heirship of an incapacitated person who dies intestate.

Final Account

Upon the death or restoration or majority of a minor, the guardian of the estate must file a verified final account with the court as enumerated in the Texas Estates Code.