

\*Please note that the following excerpts were taken directly from a document prepared by Peggy Barbanei, Esq.

## II. ANNUAL REPORT (M.H.L. §81.31):

- A. **PURPOSE:** To provide all financial and personal information for the calendar year.
- B. **DUE:** During the month of May for the prior calendar year.

*PREPARATION TIP: The very first accounting period for the Annual Report is from the date of appointment through December 31<sup>st</sup> of that year. Thereafter, the Annual Report covers the period from January 1<sup>st</sup> through December 31<sup>st</sup>.*

*PREPARATION TIP: THE ANNUAL ACCOUNT IS NOT A CONTINUATION OF THE INITIAL REPORT--IT IS A SEPARATE DOCUMENT AND STANDS ALONE. IT RELATES BACK TO THE DATE OF APPOINTMENT.*

C. **FILE:** The original must be signed and notarized and filed at the Court Clerk's Office, and a copy must be sent to the Court Examiner.

D. **CONTENTS:** The contents of the Annual Report **DIFFERS SIGNIFICANTLY** from the contents of the Initial Report. While the purpose of the Initial Report is to ensure that the Guardian is taking all necessary steps toward fulfilling his fiduciary responsibilities and does contain portions devoted to assets marshaled, income collected and disbursements made, the Annual Report is detail oriented and contains financial schedules that must be precise and **BALANCED**.

- Most importantly, the Annual Report contains a **RECAPITULATION/ SUMMARY** section which **must be mathematically correct**.

- **THE ANNUAL ACCOUNT CONSISTS OF SCHEDULES:** As long as the Guardian is consistent from year to year, the schedules can be called A, B, C, or A, A-1, A-2, B, B-2, B-2, etc.. The following schedules are required:

Schedule A: Principal Marshaled

Schedule B: Income

Schedule C: Increases or Decreases to Principal (Realized and Unrealized)

Schedule D: Disbursements

Schedule E-1: Balance of Cash & Securities  
SUMMARY/RECAPITULATION SCHEDULE  
Schedule E-2: Real Estate  
Schedule E-3: All other personal property  
Schedule F: Name and address of Surety  
Schedule G: As to the Incapacitated Person

1. **PRINCIPAL MARSHALED SCHEDULE:** Follow the Order Appointing, track each asset, use real numbers (make sure you change the title of the account "Mary Sample, Guardian of Jane Sample).

*PREPARATION TIP: Follow the same procedure as setting forth the Assets marshaled for the Initial Report. Follow the list of assets set forth in the Order Appointing. In this case, since more time has usually elapsed, the Guardian has had the opportunity to marshal ALL assets. If Guardian has closed a bank account and deposited the funds into a Guardianship account in another bank, it is a good idea to state the prior Bank and account number so that Court Examiner is assured that the particular asset has been accounted for.*

(a) As to bank accounts: Guardian should list each bank account separately and include the name of the bank, the account number, the title of the account, whether the account is joint and if so, with whom, the amount in the account the date the Guardian marshaled the account.

(b) As to stocks and bonds: Guardian should list each security with the number of shares (if stocks) and the value per share as of the date the Guardian marshaled the asset.

(c) As to security accounts: Guardian should list each account separately providing the name of the brokerage house and account number, the securities list and amounts as of the date the Guardian marshaled the asset.

(d) As to other assets marshaled: Guardian should list all other monies received, whether retroactive lump sum benefits or refunds, giving details as to name or source, amount received etc.

(e) There is a separate schedule for Real Estate.

**PREPARATION TIP:** In the second year, your Schedule A *PRINCIPAL MARSHALED SCHEDULE* will become *ASSETS ON HAND ON DATE OF LAST ACCOUNTING*. Insofar as each accounting period ends December 31<sup>st</sup>, the next period begins on January 1<sup>st</sup> with the same assets that you ended the prior period with.

**2. INCOME SCHEDULE:** As in the Initial Report, Guardian should list ALL sources of income as stated in the Order Appointing. It is important to distinguish between income received and increases to principal for purposes of computing Guardian's commissions (depending on method of calculating commissions as set forth in order appointing, this distinction becomes critical).

**PREPARATION TIP: REMEMBER: ALL DEPOSITS ARE NOT INCOME and TRANSFERS ARE NOT INCOME** (transfers are nothing more than changing one type of asset for another)

(a) **EXAMPLES OF INCOME:** Social Security, Pension Benefits, Bank Account Interest, Stock Dividends, Bond Interest, Monthly Structured Settlement Payments (lump sums are considered Increases to Principal), Rental Income, I.P.'s income from employment, etc.

**PREPARATION TIP:** Items of income should be categorized and subtotaled as follows:

<i>Social Security Benefits</i>		
10 months @ \$200.	\$ 2,000.00	
2 months @ \$220.	<u>440.00</u>	\$2,440.00
 <i>Bank Interest</i>		
Chase, Checking #1234	\$ 100.00	
HSB, Savings #4567	<u>650.00</u>	<u>\$ 750.00</u>
 <b>TOTAL INCOME RECEIVED:</b>		 <u><b>\$3,190.00</b></u>

**3. INCREASES TO PRINCIPAL SCHEDULE: (ALSO "GAINS"):**  
Generally occurs when you are receiving monies – not income. There are two types of Increases to Principal: Realized and Unrealized.

(a) "Realized Increase to Principal" – refers to monies received on the sale of stocks and bonds that were sold; on monies received on the sale of real estate or other property (car, antiques, etc.) Also refers to reimbursements or refunds – monies that were previously expended (tax refunds, medical refunds) and are now being returned to the estate.

(b) "Unrealized Increase to Principal" – refers to the fluctuation of the market value of a securities account.

**EXAMPLES OF INCREASES TO PRINCIPAL:**

- Proceeds of sale of property
- Increases realized upon sale of Securities (bought stock for \$5, sell at \$7)
- Tax Refunds
- Insurance Premium Refunds
- Newly discovered and marshaled asset
- Inheritance
- Capital gain
- Unrealized increase to value of securities due to market fluctuation (worth more at end of period than was worth at beginning)

**4. DECREASES TO PRINCIPAL SCHEDULE: (ALSO "LOSSES")**

There are also realized and unrealized decreases, as follows:

(a) "Realized Decrease" – includes loss of monies on the sale of stocks and bonds or other assets; also includes monies withdrawn to purchase real estate (pursuant to prior Court approval).

(b) "Unrealized" - refers to the fluctuation of the market value of a securities account – decrease in value of securities – less at end of period than was worth at beginning.

**5. DISBURSEMENTS SCHEDULE:** – monies you expend on behalf of the Incapacitated Person from the funds of the Incapacitated Person.

**GENERALLY** – These are the expenses necessary for the everyday support and maintenance of the IP and maintenance of real property (and perhaps, for the support and maintenance of others dependent on the IP)

**PREPARATION TIP: REMEMBER:** *In the same way that all deposits are not income, ALL WITHDRAWALS ARE NOT DISBURSEMENTS. Some withdrawals are nothing more than withdrawing funds from one account and transferring the funds to another – again, transferring one type of asset for another. TRANSFERS ARE NOT DISBURSEMENTS.*

(a) MOST COMMON CATEGORIES OF DISBURSEMENTS:

- i. Payments pursuant to Court Order; Bond Premiums
- ii. Living Expenses (if lives with others, proportionate share)
  - Rent
  - Food
  - Utilities (Gas, Electric, Phone)
  - Clothing
  - Household expenses: sundries, cleaning materials
- iii. Medical Expenses
  - Doctors, hospitals, ambulance, medical tests
  - Medicines; Health Insurance
- iv. Nursing Home Care
- v. Homecare Services (employer/employee – employee taxes, including social security, medicare, withholding transmittals, unemployment insurance, disability insurance, worker's compensation insurance)
- vi. Taxes: Federal, NYS, NYC
- vii. Real Estate Expenses
  - Taxes and Insurances; Water and Sewer
  - Mortgage payments; - Repairs

\*\*\*\* **PREPARATION TIP: DO NOT LIST YOUR DISBURSEMENTS CHRONOLOGICALLY BY CHECK # OR DATE ORDER. THE DISBURSEMENTS MUST BE CATEGORIZED AND SUB-TOTALED.**

\*\*\*\* **PREPARATION TIP: DO NOT PAY ANY FEES TO ATTORNEYS OR ACCOUNTANTS WITHOUT PRIOR COURT APPROVAL.**

\*\*\*\* **PREPARATION TIP: DO NOT MAKE ANY MAJOR PURCHASES or GIVE MONETARY GIFTS WITHOUT PRIOR COURT APPROVAL. (The \$13,000 gift allowed by IRS is another issue and does not apply to guardianships.)**

(b) EXAMPLE OF DISBURSEMENTS FORMAT:

Bond Premium		\$ 1,000.00
<u>Payments Per Court Order:</u>		
Court Evaluator	\$ 2,000.00	
Jane Doe, Esq.	3,000.00	
Dr. Diamond	<u>500.00</u>	\$ 5,500.00
Rent, 12 mo. @ \$1000.00		12,000.00
<u>Home care Expenses</u>		
Ms. Jones	\$10,000.00	
Ms. Smith	<u>5,000.00</u>	15,000.00
<u>Utilities:</u>		
Telephone	\$ 500.00	
Gas	750.00	
Electric	<u>550.00</u>	<u>1,800.00</u>
TOTAL DISBURSEMENTS:		<u>\$34,300.00</u>

**PREPARATION TIP:** Some Guardians and Court Examiners find it preferable to list all payments in each category by date and check number and then give further subtotals, as follows:

Utilities:

Nynex

1/12/03, check #124	\$ 75.00	
2/13/03, check #142	72.50	
3/11/03, check #155	<u>80.25</u>	\$ 227.75

Whatever method you choose, as long as your disbursements are categorized and subtotaled, the Court Examiner will be able to make a determination as to whether the annual expenditures made on behalf of the I.P. were necessary and proper.

REMEMBER: If you expend your own monies, do not include that \$ in disbursement.

## 6. SCHEDULE OF ASSETS ON HAND (as of December 31st)

- (a) List all assets on hand at the end of the examination period:
- list each bank account separately providing: bank name, Branch #, address, account #s, title of account, amount.
  - list all stocks/bonds: name, # of shares, amount, inventory value and market value;
  - list all brokerage accounts providing: name, address, account Number, investments, amount;
  - ADD UP ALL ASSETS AND PROVIDE A TOTAL.

**\*\*** Make sure that there is a statement for each asset that shows **exact** dollar amount AS OF DECEMBER 31ST.

***PREPARATION TIP:** Some banks use mid-month statements that do not show daily balances -under these circumstances, Guardians will be unable to show a December 31<sup>st</sup> balance that matches the bank statement. Guardians should speak to Court Examiner to see if Examiner prefers utilizing the mid-month balance (as long as there is continuity from year to year). If so, Guardian's account should conform to that cut-off date with respect to income and disbursements.*

## 7. SUMMARY/RECAPITULATION SCHEDULE

This may be one of the most important components of the annual account because it proves that the schedules are mathematically correct. This should balance so that the total of all assets on hand as of December 31<sup>st</sup> are the result of the following:

Principal Received Schedule  
Plus: Income Received  
Plus: Increases to Principal  
Less: Decreases to Principal  
Less: Disbursements  
EQUALS – the balance on hand as of December 31<sup>st</sup>.

If the balance that you reach after performing the above mathematical calculations does not equal the actual balances on deposit in bank accounts, stocks, bonds, securities accounts, etc., this means that there are errors in one or more of the

schedules and/or in the calculations. Your accounting must be corrected before filed.

***PREPARATION TIP:** After the first year, the beginning balance is the ending balance of the prior year. To reiterate, while Schedule A in the first year is called "Principal Received", in subsequent years Schedule A is called "Balance on Hand" (this is the ending balance of the prior year)*

#### **8. REAL ESTATE SCHEDULE:**

List all real estate owned by the Incapacitated Person. Describe the property providing the following details:

- address
- fair market value;
- title;
- whether property is subject to a mortgage, and if so, provide details;
- whether the property is income producing and if so, provide details as to names of tenants, amount of monthly rent, whether the tenant has signed a lease and details;
- whether the property is covered by fire and liability insurance, and if so, provide details;
- whether all real estate taxes are paid to date;

#### **9. OTHER PERSONAL PROPERTY:**

List all other personal property belonging to the Incapacitated Person, including, but not limited to:

- automobiles;
- jewelry – supply an appraisal
- antique furniture - supply an appraisal
- artwork - supply an appraisal
- whether the I.P. has a safety deposit box and the contents thereof.

#### **10. SCHEDULE AS TO INCAPACITATED PERSON:**

The Guardian will be asked to provide detailed information relating to the welfare of the Incapacitated Person, including but not limited to:

- address, telephone number;
- medical information including last date and reason for doctor's care, medications, plan for medical, dental and mental hygiene care;
- functional limitations;
- activities of daily living;
- information relating to social skills;
- social needs;
- whether current residence is best;
- whether there is any need to modify Guardian's powers or terminate guardianship
- whether the I.P. has executed a Last Will and Testament and location thereof

#### **E. EXAMINATION BY COURT EXAMINER:**

1. The Court Examiner prepares a "Testimony" based upon the information contained in the Annual Report. It is a question and answer document that expands on the information contained in the Report.

2. The Court Examiner will contact the Guardian to set up a mutually convenient hearing date.

3. The Guardian should expect the Court Examiner to conduct a hearing in his/her office and will expect the Guardian to appear with the following records:

- Cancelled checks and receipts for all expenditures;
- All bankbooks, bank statements, bonds, mortgage and other securities;
- Copies of court orders in Guardian's possession;
- Insurance policies for your Ward;
- Income tax returns filed on behalf of your Ward;

- Statement by physician, psychologist, nurse clinician, or social worker who has examined Ward within the 3 months prior to filing of the Report regarding evaluation of condition current functional level and medications taken.

*PRACTICE TIP: It is a good idea to prepare in advance for your meeting with the Court Examiner. Try to arrange your cancelled checks in the manner in which they appear in your accounting. Therefore, group the cancelled checks according to category. This will make the examination go more quickly and smoothly. It is also a good idea to circle the ending balances on the bank statements; if you have bank books, it is advisable to draw a line in the book where you stopped the period.— December 31<sup>st</sup>. This will also help you determine where to begin your next accounting.*

4. When the Court Examiner is able to certify, after his/her examination of the Guardian and inquiry into the assets of the estate, the items of the income and the expenditures made, that the assets are as stated in the Annual Report, that the items of the income have been properly collected, that the payments stated to have been made were proper payments and were appropriate and necessary to the administration of the I.P.'s estate, then the Court Examiner will recommend to the Court that the account be approved, and that an order to that effect be entered.

### III. INITIAL & ANNUAL REPORTS: AFTER THE EXAMINATION

1. Once the Court Examiner determines that he/she should approve the accounting, the Court Examiner prepares a Report and proposed Court Order providing for the Court Examiner's fee, Commissions to Guardian (if Guardian is entitled), Attorney and/or Accountant fees, and whether the Guardian should file an increased or decreased bond.

2. Since Article 81 requires that the Court Examiner serves the Guardian with a copy of his/her Report on 5 days notice to the Guardian (M.H.L. §81.32(e), the Guardian will receive a copy of the proposed Order and Report with a Notice of Settlement. The date that the Judge can review the Court Examiner's Report is stated on the Notice of Settlement. If the

Guardian objects to the proposed Order and Report, the Guardian has until the date on the Notice of Settlement to submit opposition papers. If there is no opposition, the Judge will sign the order and will fill in the appropriate fees.

3. When the Order is signed, the Court Examiner will serve the Guardian with a copy of the Order. The Guardian will then pay all fees as required, obtain an increased or decreased bond (if ordered) and file the increased/decreased bond at the County Clerk's Office.

**IV. FINAL ACCOUNTS:** Article 81 has recently been amended and has enacted Section 81.44 which provides that upon the death of the IP, the Guardian shall:

1. Within 20 days of death, file a Statement of Death;
2. Within 150 days of Death, file a Statement of Assets, Notice of Claim and the Final Accounting.

Read Section 81.44 for ADDITIONAL DIRECTION and information.

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1. The filing of a Final Account is appropriate in the following circumstances:

- A. The death of the Incapacitated Person;
- B. The assets of the Incapacitated Person have become depleted;
- C. The Guardian can no longer act, and a Successor Guardian

must be appointed;

D. The Incapacitated Person has capacity.

2. The Final Account differs from the Initial and Annual Accounts in several aspects:

A. Guardian must make application for permission to file a Final Account setting forth the reason(s) why a Final Account is necessary;

B. The period covered in a Final Account varies:

(a) If annual accounts have already been reviewed and approved, Guardian usually begins the Final Account from the date of the last examined and approved annual account and covers the period through the death of the Incapacitated Person;

(b) If annual accounts have already been reviewed and approved, Guardian may begin the Final account from the date of the last examined and approved annual account and cover the period through the date of preparation of the Final Account (this is usually done when a substantial amount of financial activity took place after the death of the Incapacitated Person (i.e., payment of outstanding nursing home bills, payment of funeral and related costs, etc.).

C. Depending upon your jurisdiction, the Court may require that you prepare your Final Account covering the period from the date of Guardian's appointment through date of the Incapacitated Person's death, even if all annual accounts have been filed, reviewed and approved by the Court. Please call your Court Examiner to ascertain which method your jurisdiction requires.

*Suffolk  
Acct for whole term*

D. The Final Account must be judicially settled - notice must

be given to all interested parties.

E. The Court usually appoints counsel to represent the Incapacitated Person; this individual reviews the final account and reports to the Court. The Final account is not necessarily reviewed by the Court Examiner.

3. In the case of depleted assets, it is recommended to petition the Court to file a Final account when the assets are reduced to approximately \$25,000.00 (this amount varies). In this way, Guardian will retain sufficient funds to make final payments, i.e., Guardian's commission, attorney/accountant fee, Court Examiner/counsel fee, etc.

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

-----X  
In the Matter of the Annual Inventory and Account of

Guardian of the Person and Property of

**ANNUAL REPORT OF  
GUARDIAN**

**Index No.:**

An Incapacitated Person.

-----X

\_\_\_\_\_, residing at \_\_\_\_\_, telephone no:  
\_\_\_\_\_ as Guardian of the person and property of the above-named  
incapacitated person, who resides at \_\_\_\_\_, telephone no:  
\_\_\_\_\_, do hereby make, render and file the following report

1. On \_\_\_\_\_, 20\_\_\_\_, by Order of this Court, I was appointed Guardian for the  
person, property or person & property) of \_\_\_\_\_, an Incapacitated Person. I  
filed my Consent and Designation with the County Clerk. I obtained a bond in the amount of  
\$\_\_\_\_\_ with \_\_\_\_\_ as Surety thereon, Bond No: \_\_\_\_\_. I received  
my Commission and it is dated \_\_\_\_\_. I have continued to act as such  
Guardian since that date.

2. The following is a true and full account of all said Guardian's receipts and disbursements  
for the year 20\_\_\_\_

**SUMMARY**

<b>Schedule A</b>	Principal on hand at date of last accounting:	\$ _____
<b>Schedule B</b>	Additional Principal:	\$ _____
<b>Schedule C</b>	Changes to Principal:	\$ _____
<b>Schedule D</b>	Income Received:	\$ _____
<b>Schedule E</b>	Disbursements Paid:	\$ _____
(Add Schedules A, B, C & D then deduct E):		\$ _____
<b>Schedule F1</b>	Balance of cash & securities remaining:	\$ _____
<b>Schedule F2</b>	Real Estate	\$ _____
<b>Schedule F3</b>	All other personal property:	\$ _____
<b>TOTAL ESTATE:</b>		\$ _____
Subtotal:		\$ _____

**Schedule A - Principal On Hand on Date of Last Accounting**

(List all bank accounts, money markets, IRAs, certificates of deposits, stocks, securities, etc, giving name of bank or institution, account number, amount, shares of stock and market value and inventory value on each account):

[illegible]

**SCHEDULE B – Additional Principal**

(List all refunds or reimbursements received, proceeds from the sale of a home, proceeds from the sale of personal property, such as a vehicle, STAR rebates).

[illegible]

Detail all accounts opened or closed. Stocks and securities should include purchases including cost value, stock sales, conversions, name changes, reinvested dividends, stock splits and any other changes to name and/or value. If you abbreviate a stock, please provide a chart showing all abbreviations and use exact same abbreviation when referring to the particular stock throughout report. "Description" refers to whether it was converted, name change, reinvested, split or other changes. **IT IS STRONGLY RECOMMENDED THAT YOU OBTAIN A DETAILED 1099 REPORT.**

[illegible][illegible]

(List income received from all sources, including but not limited to, social security, pensions, veterans benefits. PLEASE ALSO INCLUDE INTEREST AS REFLECTED ON BANK STATEMENTS)

[illegible]

### SCHEDULE E – Paid Disbursements

**Note:** Please provide copies of cancelled checks, bills paid and/or receipts to support the amount listed. Please detail your disbursements. PLEASE GROUP PAYMENTS BY PAYEE NOT BY DATE OR CHECK NUMBER (i.e., Electric, Medical Insurance, Home Insurance, Home Aids, etc) PLEASE ALSO INCLUDE BANK FEES AS REFLECTED ON BANK STATEMENTS.

[illegible]

**SCHEDULE FI - Balance of Cash/Securities Remaining**

[illegible]

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**SCHEDULE F2 – Real Property**

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Address	Market Value	Mortgage Amount	Rental Income	If held jointl, with another, list names and relationship to IP

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**SCHEDULE F3 – Personal Property**

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Description	Value

**ANNUAL REPORT ON THE INCAPACITATED PERSON'S PERSONAL NEEDS:**

1. State the age, date of birth and marital status of the Incapacitated Person.  
  
Age:  
  
Date of Birth:  
  
Marital Status:
2. List and name and present address of the spouse, children and siblings living of the Incapacitated Person.
3. State the present residence address and telephone number of the Guardian.
4. State the present residence address and telephone number of the Incapacitated Person. If he or she resides in a facility, provide that information along with the name of the chief executive officer of the facility or the person otherwise responsible for the care of the Incapacitated Person.
5. State whether there have been any changes in the physical or mental condition of the Incapacitated Person and any substantial changes in medication.
6. State the date and place the Incapacitated Person was last seen by a physician and the purpose of that visit:

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7. Attach a statement by a physician, psychologist, nurse clinician or social worker or other person who has evaluated or examined the Incapacitated Person within the 3 months prior to the filing of this report, regarding the evaluation of the Incapacitated Person's condition and the current function level of the Incapacitated Person.

8. Provide a statement of whether the current residential setting is suitable to the current needs of the Incapacitated Person.

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9. Provide a resume of any professional or medical treatment given to the Incapacitated Person during the preceding year.

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10. Describe the plan for medical, dental and mental health treatment and related services for the coming year.

11. Provide a resume of other information concerning the social condition of the Incapacitated Person, including the social and personal services currently used by the Incapacitated Person, the social skills of the Incapacitated Person and the social needs of the Incapacitated Person.

STATE OF NEW YORK)

ss.:

COUNTY OF SUFFOLK)

\_\_\_\_\_, being duly sworn, states:

That I am the appointed Guardian of \_\_\_\_\_ Incapacitated Person.

The foregoing ANNUAL REPORT OF THE GUARDIAN contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said Incapacitated Person and of all money and other personal property of said person that have come to my hands or have been received by any other person(s) by my order or authority or for my use since my appointment or since the filing of my last annual report, and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of same and of all property remaining in my hands at the time of the filing of this report; also a full and complete description of the amount and nature of each investment made by me since my appointment or since the filing of my last report. I do not know of any error or omission in the account and inventory to the prejudice of \_\_\_\_\_, the Incapacitated Person.

\_\_\_\_\_  
(Signature of Guardian)

Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF SUFFOLK

SHORT FORM APPLICATION/ORDER

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

\_\_\_\_\_  
**In the Matter of**

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

To the Justice Presiding

1. Guardian respectfully requests permission to expend the sum of \$ \_\_\_\_\_  
from the Guardianship assets and/or SNT (CIRCLE ONE) for the following:

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

The current amount of the Guardianship assets is \$ \_\_\_\_\_.

The current amount of the SNT is \$ \_\_\_\_\_.

2. The Guardian believes that the aforesaid expenditure is for the direct benefit of  
the Incapacitated person.
3. I have annexed supporting expenses estimates and other necessary information.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Fiduciary

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

-----To Be Submitted to Court Examiner for Consideration-----

I respectfully recommend \_\_\_\_\_ I do not recommend \_\_\_\_\_  
Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Court Examiner

-----TO BE SUBMITTED TO ASSIGNED JUDGE FOR DECISION-----  
UPON READING AND FILING THE FOREGOING THE EXPENDITURE IS

APPROVED \_\_\_\_\_ NOT APPROVED \_\_\_\_\_

DATE \_\_\_\_\_

\_\_\_\_\_  
A.J.C.C.

## **Court Examiner Duties**

\*Please note that the below excerpts were taken directly from a document titled the Suffolk County Supreme Court Guardianship Part VI Court Examiner Duties.

### **Bonds**

The bond is the single most important facet in ensuring that the assets of incapacitated persons are protected from incompetent or malevolent fiduciaries. The court may require a property management guardian to acquire a bond amounting to the value of the incapacitated person's assets plus two years income. The County Clerk will not issue a property management guardian's commission to act prior to the filing and approval of a court ordered bond. As such, it is essential for a guardian to apply for a bond immediately following the issuance of the bench order and not to wait for a signed final order and judgment. Accordingly, the initial forty-five ( 45) day conference also includes monitoring the status of a guardian's bond application and Court Examiners must report to the court any guardian that has not obtained a court ordered bond prior to the initial forty-five ( 45) day conference.

Bonding companies, as sureties, assess an applicants eligibility based on risk of loss. Accordingly, applicants with low credit scores or a history of bankruptcy, money judgments, or previous defaults will likely be denied a bond. In such cases, Court Examiners must promptly notify the court, in writing, and a conference will be calendared before the issuing court. At this conference, the court will determine the reason( s) for the denial of a bond and explore whether there are any alternatives to requiring the guardian to obtain a bond. Such alternatives include the use of restrictive accounts that set a limit on the guardian's access to their ward's finances. In those cases where a guardian cannot obtain a bond and no acceptable alternatives to bonding are available, the court will have to appoint a new property management guardian. However, under most circumstances, a property management guardian's inability to obtain a bond does not necessarily preclude that same person from serving as a personal needs guardian.

Annual expenditures and market trends may result in significant changes in the amount of assets in a guardianship estate during the course of an accounting year. Accordingly, it is common for the court to order a guardian to obtain an increased or decreased bond commensurate with the most current accounting of the guardianship assets. In an effort to monitor compliance with obtaining an increased or decreased bond a compliance conference is scheduled, before the Guardianship Referee, thirty (30) days after the issuance of any court order increasing or decreasing a bond. Delays in obtaining an increased bond result in an under insured guardianship estate increasing the risk of a financial loss in the event of a guardian's breach of fiduciary duty. Additionally, reduced bonds typically result in a lower premium cost and delays may result in unnecessary costs to the guardianship estate. As such, Court Examiners must closely monitor whether a

guardian has complied with any court ordered changes in the amount of a bond. Adjournments of thirty (30) day compliance conferences will be granted at the discretion of the Guardianship Referee after consultation with the assigned Court Examiner.

### **Initial Reports**

Initial reports are due no later than ninety (90) days after the issuance of a guardian's commission, see MHL §81.30 (a), and under no circumstances should an initial report predate the issuance of a commission. The initial report is extremely important in that it serves as a starting off point for the first annual accounting as well as providing an overview of the incapacitated persons current physical condition and general wellbeing. Depending on when a guardian is commissioned an initial report may be the only review of the guardianship case until the first annual report is filed, which in some cases, could amount to over a year's time. As such, Court Examiners must carefully review initial reports, before confirming them, to be sure that any and all assets marshaled by the guardian are consistent with assets reported by the Court Evaluator.

Particular attention must be given to those cases where inconsistencies in reported assets would result in insufficient bonding, or in those matters where assets appear under-reported since conceivably the easiest path to a malfeasance is at this initial stage of the guardianship.

### **Annual Accountings**

Article 81 guardians are required to file an annual report for the preceding year with the Clerk of the Court no later than May 31<sup>st</sup> (see MHL §81.31). Additionally, guardians are required to provide their assigned Court Examiner with a copy of the annual report including all supporting documentation necessary to complete an examination thereof (see MHL §81.31 and MHL §81.32). In order to monitor these filings, Court Examiners are required to send, via certified mail, a written demand to any guardian that has not filed an annual report by May 31 (see MHL §81.32). A copy of the written demand must also be provided to the Guardianship Department. Court Examiners may not grant extensions to the May 31<sup>st</sup> filing deadline. Therefore, written demands should be sent out as early as June 1<sup>st</sup> and no later than June 15<sup>th</sup>. All written demands shall indicate that the guardian must file their annual report within fifteen (15) days from the date of service of the demand (see MHL 81.32). Any guardian failing to comply with the conditions of a written demand must be immediately reported to the court which thereupon may issue an Order directing the guardian to appear for a compliance hearing. Furthermore, any case(s) wherein an annual accounting is delinquent for one or more calendar years require the filing of a formal removal motion.

The Clerk of the Court is only responsible for receiving and recording an annual report in the form that it is filed. Accordingly, Court Examiners should review an annual report for facial sufficiency as soon as it is received. Incomplete or unsatisfactory annual reports, regardless of when filed, also require the issuance of a written demand for a revised report or additional proof (see MHL §81.32(d) 1). Furthermore, all orders seeking confirmation of a Court Examiner's review of an annual report shall include copies of any previously issued court orders authorizing expenditures or designating a plan of compensation. If such order(s) are not available the Court Examiner must specifically reference the date and terms of such order. This practice, if utilized, will minimize delays in processing Orders confirming annual reports.

Court Examiners are required to examine an annual report within 30 days from the date of filing (see MHL §81.32(a) 1 & 2). Therefore, to monitor compliance with this requirement, Court Examiners must provide the Guardianship Referee with a complete list of their assigned cases not in compliance with MHL §81.32(a) 1 & 2. Said list should be submitted no later than June 30th and should also include any explanations for the delinquent filings. Additionally, the Guardianship Department will conduct random in-house audits of Court Examiner inventories. Compliance hearings to address delinquent filings will be calendared on a case by case basis.



Date

Guardian's Name

Address

Address

Dear Mr./Ms. \_\_\_\_\_:

As you are aware a Justice of the Supreme Court has appointed you as guardian/trustee for \_\_\_\_\_.

I am the Court Examiner appointed to review your Initial and Annual reports. I am sending you this letter to introduce myself and to explain some of your duties as the Guardian. If you use email, please contact my office with your email address.

Please forward a copy of the following documentation, when completed: Consent and Design to Act, Bond (if applicable), and Certificate of Attendance of the Guardianship course.

As the Court appointed Guardian, you must file an Initial Report within 90 days from the date of your Commission. Enclosed please find a blank copy of the Initial Report form. The Order will list the individuals that must be served with a copy of the report.

You must also file an Annual Report for the preceding year. The report is due no later than May 31<sup>st</sup> of that year. This report must be served on the same parties as the Initial Report. I have enclosed a copy of the forms. Your first "Annual Report" will be due by May 31, 2023 for the year of 2022.

I send you this letter to assist you in performing your tasks as a Fiduciary (one having position of trust with respect to another) and to make it easier for you to supply the documentation and information that is necessary for me to review your reports. Although there are "guidelines" set by the court, and although there is a statute, which governs, I believe the following suggestions – and they are only that, suggestions – may be of assistance to you. Generally speaking, you have an obligation to account for your handling of your ward's estate no later than May 31<sup>st</sup> of each year. This is after you have filed the initial report.

201 Old Country Rd., Suite 110, Melville, NY 11747 | 631-683-1004 | kim@kimsmithlaw.com  
*kimsmithlawgroup.com*

- (1) Checking Account: **Please be certain that the bank will return to you all canceled checks.** All canceled checks should be kept in the envelope in which they are returned to you by the bank (or stapled to the statement, if there are only a few checks). If kept in an envelope, put on the front of the envelope the month and year for which the statement reports.

Each time a deposit is made the checking account, you will receive some kind of a deposit ticket or slip. Be sure that when you receive it from the bank that the date and the amount are both legible and that the name of the bank is on the document. When you receive the ticket or slip, be sure at that time to write on the paper itself the source (where the money came from) of the funds represented by the deposit. When you enter the deposit in the checkbook, also enter the source or payor in the checkbook register. If possible, you should copy all checks deposited into the checking account.

You should maintain in separate chronological order the check registers, canceled checks by month (when they are returned by the bank each month), bank statements and deposit tickets, all of which will be needed for future reference.

Expenditures (or disbursements) for the benefit of your ward should be made by check.

- (2) Securities: If securities (stocks, bonds, etc.) are held by a brokerage company, investment house, bank, or other financial institution, such institution will render monthly or quarterly statements. You should keep those statements.
- (3) Disbursements: Any time you pay out money, this is called a disbursement. There must be valid purpose for your expenditure, and it must be for the benefit for your ward, directly or indirectly. If you have an honest doubt about whether the expenditure is appropriate, the safe thing to do is to contact me first. Then possibly apply to the Court for permission to expend the money involved.

No disbursements are to be made for lawyers or accountant's fees, until the Court issues an Order approving payment of said fees.

- (4) Income: You should keep all payroll stubs, pension stubs, Social Security award letters.
- (5) Visitation: You must visit your ward at least four times a year and have an individual sign a form that confirms your visitation.

After the accounting is filed, I will contact you and ask you to supply your receipts, bills, or invoices, bank statements, deposit slips, evidence of all income, bank balances, evidence of securities transactions, if any, and all other items which pertain to income, including latest Federal Income Tax Return, expenses, assets or change in assets during the proceeding year. The purpose is to establish that you have properly managed the financial affairs of your ward and that the income and disbursements, which are claimed in your accounting, are accurate and that the assets remaining are as they should be.



ELDER LAW AND ESTATE PLANNING

Therefore, written questions will be prepared for you (with some answers typed in) and sent to you to review. I will request that after you have reviewed testimony, you call and make an appointment.

Then I will prepare a report to the Court approving or disapproving the accounting as filed by you. If your accounting needs to be amended, you will be notified. Under no circumstances are you to take commissions/compensation without a Court Order.

Although lengthy, I hope that the foregoing will be of some assistance to you and recommend that you retain this letter for future reference. Your constructive suggestions are encouraged and will be appreciated. If you have any questions or need any additional information, please contact me or my executive assistant, Christine Smith.

Very truly yours,

A handwritten signature in black ink that reads "Kim M. Smith". The signature is written in a cursive, flowing style.

Kim M. Smith, Esq.  
Kim Smith Law Group, PLLC

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

-----X  
In the Matter of the Annual Inventory and Account of

Guardian of the Person and Property of

**ANNUAL REPORT OF  
GUARDIAN**

**Index No.:**

An Incapacitated Person.

-----X

\_\_\_\_\_, residing at \_\_\_\_\_, telephone no:  
\_\_\_\_\_ as Guardian of the person and property of the above-named  
incapacitated person, who resides at \_\_\_\_\_, telephone no:  
\_\_\_\_\_, do hereby make, render and file the following report

1. On \_\_\_\_\_, 20\_\_\_\_, by Order of this Court, I was appointed Guardian for the  
person, property or person & property) of \_\_\_\_\_, an Incapacitated Person. I  
filed my Consent and Designation with the County Clerk. I obtained a bond in the amount of  
\$\_\_\_\_\_ with \_\_\_\_\_ as Surety thereon, Bond No: \_\_\_\_\_. I received  
my Commission and it is dated \_\_\_\_\_. I have continued to act as such  
Guardian since that date.

2. The following is a true and full account of all said Guardian's receipts and disbursements  
for the year 20\_\_\_\_

**SUMMARY**

<b>Schedule A</b>	Principal on hand at date of last accounting:	\$ _____
<b>Schedule B</b>	Additional Principal:	\$ _____
<b>Schedule C</b>	Changes to Principal:	\$ _____
<b>Schedule D</b>	Income Received:	\$ _____
<b>Schedule E</b>	Disbursements Paid:	\$ _____
(Add Schedules A, B, C & D then deduct E):		\$ _____
<b>Schedule F1</b>	Balance of cash & securities remaining:	\$ _____
<b>Schedule F2</b>	Real Estate	\$ _____
<b>Schedule F3</b>	All other personal property:	\$ _____
TOTAL ESTATE:		\$ _____
Subtotal:		\$ _____

**Schedule A - Principal On Hand on Date of Last Accounting**

(List all bank accounts, money markets, IRAs, certificates of deposits, stocks, securities, etc, giving name of bank or institution, account number, amount, shares of stock and market value and inventory value on each account):

[illegible]

**SCHEDULE B – Additional Principal**

(List all refunds or reimbursements received, proceeds from the sale of a home, proceeds from the sale of personal property, such as a vehicle, STAR rebates).

[illegible]

1) Bank Accounts:

[illegible]

2) Stocks/Securities:

[illegible]

\_\_\_\_\_

1. The first step is to identify the problem. This involves understanding the current situation and what needs to be changed.

[illegible]

### SCHEDULE E – Paid Disbursements

**Note:** Please provide copies of cancelled checks, bills paid and/or receipts to support the amount listed. Please detail your disbursements. PLEASE GROUP PAYMENTS BY PAYEE NOT BY DATE OR CHECK NUMBER (i.e., Electric, Medical Insurance, Home Insurance, Home Aids, etc) PLEASE ALSO INCLUDE BANK FEES AS REFLECTED ON BANK STATEMENTS.

[illegible]

**SCHEDULE FI - Balance of Cash/Securities Remaining**

[illegible]

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**SCHEDULE F2 – Real Property**

Address	Market Value	Mortgage Amount	Rental Income	If held jointl, with another, list names and relationship to IP

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**SCHEDULE F3 – Personal Property**

Description	Value

**ANNUAL REPORT ON THE INCAPACITATED PERSON'S PERSONAL NEEDS:**

1. State the age, date of birth and marital status of the Incapacitated Person.  
  
Age:  
  
Date of Birth:  
  
Marital Status:
  2. List and name and present address of the spouse, children and siblings living of the Incapacitated Person.
  3. State the present residence address and telephone number of the Guardian.
  4. State the present residence address and telephone number of the Incapacitated Person. If he or she resides in a facility, provide that information along with the name of the chief executive officer of the facility or the person otherwise responsible for the care of the Incapacitated Person.
  5. State whether there have been any changes in the physical or mental condition of the Incapacitated Person and any substantial changes in medication.
- 
6. State the date and place the Incapacitated Person was last seen by a physician and the purpose of that visit:

---

7. Attach a statement by a physician, psychologist, nurse clinician or social worker or other person who has evaluated or examined the Incapacitated Person within the 3 months prior to the filing of this report, regarding the evaluation of the Incapacitated Person's condition and the current function level of the Incapacitated Person.

8. Provide a statement of whether the current residential setting is suitable to the current needs of the Incapacitated Person.

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9. Provide a resume of any professional or medical treatment given to the Incapacitated Person during the preceding year.

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10. Describe the plan for medical, dental and mental health treatment and related services for the coming year.

11. Provide a resume of other information concerning the social condition of the Incapacitated Person, including the social and personal services currently used by the Incapacitated Person, the social skills of the Incapacitated Person and the social needs of the Incapacitated Person.

STATE OF NEW YORK)

ss.:

COUNTY OF SUFFOLK)

\_\_\_\_\_, being duly sworn, states:

That I am the appointed Guardian of \_\_\_\_\_ Incapacitated Person.

The foregoing ANNUAL REPORT OF THE GUARDIAN contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said Incapacitated Person and of all money and other personal property of said person that have come to my hands or have been received by any other person(s) by my order or authority or for my use since my appointment or since the filing of my last annual report, and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of same and of all property remaining in my hands at the time of the filing of this report; also a full and complete description of the amount and nature of each investment made by me since my appointment or since the filing of my last report. I do not know of any error or omission in the account and inventory to the prejudice of \_\_\_\_\_, the Incapacitated Person.

\_\_\_\_\_  
(Signature of Guardian)

Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

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

In the Matter of the Initial Report of

\_\_\_\_\_ x

As Guardian for

An Incapacitated person

\_\_\_\_\_ x

I, \_\_\_\_\_, residing at \_\_\_\_\_, as \_\_\_\_\_ appointed Guardian for the above-named person, do hereby make, render and file the following initial Report of Guardia as follows:

1. That your Guardian has successfully completed all educational requirements under Section 81.39 of the Mental Hygiene Law by attending class on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ sponsored by (attached)
2. That your Guardian file with the Supreme Court his/her bond in the amount of \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (attached)
3. That your Guardian received his/her commission from the County Clerk, which commission is dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (attached)
4. That your Guardian has visited the Incapacitated Person and has taken the following steps, consistent with the Court Order, and has provided for his/her personal needs as follows:

- A. Arrangements for medical, dental, mental health or related services to be provided to the Incapacitated Person:
- B. Arrangements for social and personal services to be provided to the Incapacitated Person, including services of a health care attendant and/or assistance in daily living, recreation and socialization:
- C. Health and/or accident insurance coverage, as well as government benefits, to which the Incapacitated Person is entitled and presently receives:
- D. Date/time and place of visits made by the Guardian with the Incapacitated Person since the order of appointment:

5. The following is a true and full account of all assets of the Incapacitated Person that have been received by your Guardian and placed in guardianship accounts under the control of the Guardian:

BANK ACCOUNTS

(List name and address of institution, account numbers and amount of money on hand prior to liquidation by Guardian and the institution and account numbers to which the monies were deposited)

All monies have been deposited into guardianship accounts, except:  
(explain)

STOCKS AND SECURITIES

(List name and address of company, number of shares and fair market value of stock or security as of the date of your appointment)

REAL ESTATE

(List property address, description of property [i.e. two family dwelling] and approximate value of premises, and names of tenants, if any, as well as rental income collected. Set forth date of filing of Statement Identifying Real Property with County Clerk)

PERSONAL PROPERTY

(Set forth any jewelry, collectibles, automobiles and cash and set forth approximate values)

INCOME

(Set forth and identify all sources of income which the Incapacitated Person is entitled to receive; itemize all income actually received since the date of your appointment as Guardian to the date of this report)

DISBURSEMENTS

(Set forth all payments made from the date of your appointment as Guardian to the date of this report)

ASSETS NOT YET MARSHALLED

(Set forth all bank accounts, stocks, securities and/or security accounts not yet converted to guardianship assets)

STATE OF NEW YORK)

) ss. :  
COUNTY OF )

I, \_\_\_\_\_, being duly sworn, say I am the Guardian for the above-named Incapacitated Person, the foregoing account and inventory contain, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said Incapacitated Person; and of all money and other personal property of said Incapacitated Person which have come to my hands or have been received by any other persons by my order or authority or for my use since my appointment, and of the value of all property. I do not know of any error or omission in the report to the prejudice of said Incapacitated Person.

\_\_\_\_\_  
Guardian

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public-Commissioner of Deeds