



WHEREAS, because A.M. does not have substantial assets, nor does she receive income other than social security, the guardian was not required to file an inventory, open a guardianship bank account, or file accountings;<sup>6</sup>

WHEREAS, on February 8, 2022, the guardian filed a letter explaining that she wants A.M. and the guardian's husband, A.M.'s father, S.M. to jointly purchase property located in Dover, DE (the "Property");

WHEREAS, the guardian represents that the Property is already under contract, which was scheduled to close on February 7, 2022, but the closing attorney raised concerns about the guardian's authority to enter into the transaction on A.M.'s behalf;

WHEREAS, the guardian seeks permission to purchase the Property, on A.M.'s behalf; the guardian represents that the purchase would require a mortgage jointly held by A.M. and S.M., but she has not explained the terms of the proposed mortgage, nor disclosed how much of a down payment the parties plan to make at closing; the guardian did submit documentation showing the Property was appraised for \$430,000.00 as of December 21, 2021, and I infer the contract is in line with that valuation;

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<sup>6</sup> D.I. 9, 11.

WHEREAS, as guardian of A.M.'s property, the guardian is required to "do whatever is necessary for the care, preservation and increase of" A.M.'s property;<sup>7</sup>

WHEREAS, "[g]uardians, like other fiduciaries, are required to meet a reasonable prudence standard of judgment and care in managing the ward's property[;]"<sup>8</sup> under 12 *Del. C.* § 3302(a):

When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax consequences of the investment and the anticipated duration of the account and the needs of the beneficiaries; when considering the needs of the beneficiaries, the fiduciary may take into account the financial needs of the beneficiaries as well as the beneficiaries' personal values, including the beneficiaries' desire to engage in sustainable investing strategies that align with the beneficiaries' social, environmental, governance or other values or beliefs of the beneficiaries.

WHEREAS, guardians are not authorized to execute mortgages binding a person with a disability without prior approval from the Court;<sup>9</sup> such a request should only be approved if it is in the best interest of the person with a disability's estate considering the principal balance of the proposed loan, the terms and conditions of the loan (*e.g.*, type and length of loan, rate of interest and type of rate,

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<sup>7</sup> 12 *Del. C.* § 3921(c).

<sup>8</sup> *In re Buonamici*, 2008 WL 3522429, at \*6 (Del. Ch. Aug. 11, 2008).

<sup>9</sup> See 39 C.J.S. Guardian & Ward § 131 ("A guardian has no power to mortgage his or her ward's real estate, or to enter into a contract providing for acquisition of a lien thereon, unless authorized by order of court in pursuance of a statute empowering the court to make such order.").

fixed or variable), the benefit received by the person with a disability in exchange, and the person with a disability's ability to pay the loan as contractually obligated to do so, given her assets and income;

WHEREAS, generally speaking, when two people enter into a mortgage to purchase real property, they are jointly and severally liable for the property's expenses and for repayment of the mortgage, on the terms provided;

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of February, 2022, as follows:

1. The guardian's request to purchase the Property on A.M.'s behalf is DENIED.

2. The guardian has failed to demonstrate that the purchase is in A.M.'s best interests, would be a prudent financial investment, and would otherwise further the care, preservation and increase of A.M.'s assets.

3. Rather than preserve and protect A.M.'s property, the guardian's proposal would put A.M. in serious financial risk. Although the parties presumably plan for S.M. to cover the bulk of the mortgage payments, A.M. would be jointly and severally liable for the entire loan amount as a co-obligor. A.M.'s income and assets are not sufficient to meet those obligations. Under these circumstances, the risk of financial harm to A.M. outweighs any benefit she may obtain from co-owning the Property.

4. The guardian is not authorized to execute a mortgage on behalf of A.M. to purchase the Property nor to close on the proposed sale of the Property with A.M. as a co-owner.

5. This is a final report and exceptions may be filed under Court of Chancery Rule 144.

/s/ Selena E. Molina  
Selena E. Molina  
Magistrate in Chancery