



# **Serving as a Guardian of the Property:** Guidelines for decision making

Training developed by the  
Guardianship Monitoring Program of the Office of the  
Public Guardian  
State of Delaware

# Introduction

If you are completing this training, you are either in the process of petitioning the Court of Chancery to become someone's guardian or you have recently been appointed guardian of someone's person.

After the training is complete, you will have a clear understanding of the guidelines guardians of the person are expected to follow as they make decisions on behalf of a disabled person.

Throughout this exercise, you will be referred to as “guardian” and the person for whom you are guardian will be referred to as the “disabled person”.

# General Standards

It is the responsibility of each guardian to know the extent and limitations of the power and authority granted to them by the Court of Chancery and understand that all actions they take as guardian must be consistent with the court order.

All guardians must comply with the rules and requirements of the Court of Chancery.

All guardians shall seek assistance, as needed, to fulfill their responsibilities to the disabled person.

All guardians must respond to, and remain in contact with, the Court of Chancery.

All guardians are required to promptly contact the Court and report any changes in the disabled person's capacity that may require an expansion or restriction of their authority as guardian.

# General Standards

All guardians must treat the person under guardianship with dignity.

All guardians shall promote social interactions and meaningful relationships consistent with the preferences of the disabled person. Guardians should encourage and support the disabled person in maintaining contact with their family and friends unless the contact will cause him or her substantial harm.

A guardian may not interfere with established relationships unless it is necessary to protect the disabled person from substantial harm.

# Acting as Guardian of the Property

The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy and self determination of the person while also maintaining confidentiality.

The guardian shall exercise only the authority granted to them by the Court of Chancery and shall ask the court for guidance whenever necessary.

When making decisions the guardian shall give priority to the goals, needs and preferences of the person under guardianship and weigh the costs and benefits to the estate. If unable to gather such information, the guardian should consult with the guardian of the person (if one exists) and others close to the individual for input.

The guardian shall consider the current wishes, past practices and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person under guardianship.

# Acting as Guardian of the Property

The guardian shall act in a manner above reproach, as his or her actions will be open scrutiny by the court at all times.

The guardian shall manage the assets/estate only for the benefit of the person under guardianship.

The guardian shall keep the assets of the person under guardianship safe by keeping accurate records of all transactions and be able to fully account for all assets at any time.

The guardian must keep all assets of the person under guardianship separate from his or her own personal assets.

If deemed in the best interest of the person under guardianship, the guardian may make claims against others on behalf of the estate and shall defend against actions that would result in a loss of estate assets.

If the disabled person has a different guardian for their person, the guardian of the property shall make a good faith effort to cooperate with that person or agency.

# Acting as Guardian of the Property

The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises when the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person under guardianship. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person under guardianship.

The guardian may not dispose of real or personal property of the person under guardianship without the permission of the Court of Chancery.

Upon the termination of the guardian or the death of the person, the guardian shall file a final accounting with the Court of Chancery and assist with the opening and closing of the estate with the Register of Wills.

# Duties and Obligations of the Guardian of the Property

Unless the court order appointing you guardian states otherwise, the following are some of your duties and obligations as guardian of the property:

- Address all issues of the estate that require immediate action such as securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
- Communicate to the person under guardianship your role as guardian and attempt to gather from the person any necessary information regarding the estate that you may be missing.
- Obtain all public and private insurance benefits for which the person under guardianship is eligible and oversee the disposition of the person's assets to qualify the person for any additional public benefit programs.



# Duties and Obligations of the Guardian of the Property

- The guardian shall thoroughly document the management of the assets of the person under guardianship and the carrying out of any and all duties required by the Court of Chancery and the State of Delaware.
- The guardian shall sign a bond, open a restricted guardianship account, file an inventory and file accountings within the timeframes described in the final order appointing him or her guardian (*Review the court order to determine if any or all of these requires have been waived*).
- The guardian shall, when appropriate, request permission from the Court of Chancery to make funeral arrangements and/or purchase a pre-need burial trust for the person under guardianship.
- If the person under guardianship has a personal allowance, the guardian may monitor and/or provide oversight of such funds.

# Failure to Comply

- If, as a guardian of person, property or both, you fail to comply to all of the rules of the Court of Chancery and the State of Delaware you may:
  - Be removed as guardian
  - Be referred to the Guardianship Monitoring Program for investigation
  - Be sanctioned by the Court of Chancery by having a judgment issued against you
  - Be referred to the Department of Justice for investigation
  - Be referred to local law enforcement for investigation
  - Be referred to Adult Protection Services (APS) or the Division of Long Term Care Resident Protection (DLTCRP) for investigation

# Resources

- The website for the Court of Chancery is:  
[www.courts.delaware.gov/chancery/guardianship](http://www.courts.delaware.gov/chancery/guardianship)
- Division of Health and Social Services (DSAAPD) Division of services for aging and adults with physical disabilities; Contact to download a copy of the Guide to Services for Older Delawareans and Persons with Disabilities.  
NCC- (302) 391-3500 Kent/Sussex- (302) 424-7310 Toll Free 1-800-223-9074  
or their website: [www.dhss.delaware.gov/dsaapd](http://www.dhss.delaware.gov/dsaapd) or (ADRC) The Aging and Disability Resource Center for other helpful information:  
<http://www.delawareadrc.com>
- Delaware Helpline (Statewide Information for health and human services programs) Toll Free 1-800-464-4357
- Dial 2-1-1 for other social services in the State of Delaware
- To Report Elder Abuse dial 911 or contact 1-800-223-9074