



SUPREME COURT of the STATE of NEW YORK
COUNTY of SUFFOLK
Guardianship Clerk's Office
400 Carleton Avenue
Central Islip, NY 11722
(631) 853-6214

INFORMATION FOR APPOINTED GUARDIANS

Dear Appointed Guardian,

All persons appointed Guardian must complete the attached forms "Designation and Consent to Act", "UCS 872" (if not in an exempt category indicated in 22 NYCRR Part 36 (copy attached)) and a "Commission" and return them to the court at the above address. If your appointment is as "Temporary Guardian" a Commission may not be required (see appointing Order).

All persons appointed "Guardian" (except possibly "Temporary Guardian" as above stated) may not undertake any action on behalf of the person who is the subject of the Guardianship until a "Commission" has been issued to the "Guardian". The "Commission" which is not valid until signed by the County Clerk, evidences the appointment, and authority of the "Guardian". Third persons, such as physicians, hospital personnel, pharmacists, bankers, stock brokers, taxing authorities, government officials and any other you might interface with in your capacity as "Guardian" should ask you for evidence of your authority to act on behalf of your ward. When they do, produce a copy of your "Commission", which should satisfy all such third persons of your authority to act. Some of these persons or entities may require a "Certified Copy" of the "Commission" which is a more official document and requires a fee (call the court for the fee amount).

Your "Commission" will not be signed by the County Clerk and returned to you until the above forms have been filed and you have obtained, the court has approved your "Bond" (if one was ordered). When you send your "Commission" and the other documents to the Court, be sure to include request for however many copies of the "Commission" you want, a stamped self addressed envelope and (if requested) a check for the "Certified Copies".

If this appointment is for a "Temporary Guardian", follow the instructions in the Order of appointment, you may not be required to obtain a bond and/or file a commission to perform your Temporary Guardian duties. Since for the purpose of record keeping, Temporary Guardian and Guardian are distinctly separate appointments, when the final Order and Judgment is signed, a new "Designation and Consent to Act", UCS 872 and "Commission", must be filed with the Court. When you obtain your "Commission" as "Guardian", signed by the County Clerk, the "Temporary Guardianship" terminates and your actual "Guardianship" with all of the powers granted by the court begins. In order to be discharged as "Temporary Guardian" you must file a report detailing all actions taken and requesting to be discharged.

As an appointed fiduciary, **if you are in one of the exempt categories of Part 36**, you have the right to retain counsel and other persons or entities of your own choosing to assist you in

performance of your duties as Guardian. The reasonable fees of these persons or entities are generally payable out of the assets of your ward. Nevertheless, such fees must not be paid out from Guardianship funds without a court order approving same. The court is not, however, bound by any retainer agreement signed by you in your capacity as Guardian or otherwise. Thus, the court may award counsel fees in amounts less than agreed upon therein or, it may deny outright, a request for payment of a particular fee. Therefore, it is imperative that you understand all of the provisions of any retainer agreement before you sign it.

Please note, that you are not required to retain counsel, but if you act as your own attorney you are charged with knowledge of all applicable statutes, rules and regulations and/or any court orders issued in the proceeding. You must timely comply with any and all requirements imposed thereon.

NOTE: If you are a Part 36 fiduciary, an application must be made to the Court for the appointment of persons or entities as indicated in Part 36.1(a) of the Rules.

As a result of the statutory framework, persons appointed Guardian may only exercise over their ward's person and property those powers, which the court has expressly conferred upon them at the hearing which has been held. Accordingly, you must be fully familiar with the powers conferred upon you, as you may only take action on behalf of your ward commensurate with such powers.

Please be advised that under Article 81 of the Mental Hygiene Law, Guardianship is considered a remedy of last resort and all appointments must take the "least restrictive form of intervention" upon the affairs of the ward who shall retain all rights and powers not expressly conferred upon their appointed Guardians.

Unless otherwise expressly authorized to do so by a specific provision contained in the Order and Judgment appointing a Guardian or a subsequent order issued by the court, **NO APPOINTED GUARDIAN MAY:**

1. Issue directives regarding LIFE SUSTAINING TREATMENT for your ward. Accordingly, you are without authority to issue "DO NOT RESUSCITATE" or like directives concerning hydration or nutrition of your ward.
2. Issue directives regarding the administration of psycho tropic drugs or electro convulsive therapy. Accordingly, you are without authority to authorize the administration of Psycho tropic drugs or electroconvulsive therapy to your ward.
3. Arrange for placement of your ward in any mental hygiene or other facility, which falls within the purview of Articles 9, 15, or 21 of the mental Hygiene Law.
4. Countermand, alter, revoke, amend or act in any manner inconsistent with any advance written directive of your ward, such as those contained in any Health Care Proxy, Living Will, and Power of Attorney or like instrument.
5. Sell or Transfer real estate owned by your ward without further application to the Court.

Unless otherwise stated in the appointing order all persons appointed Guardian must attend a Guardianship training program approved by the Office of Court Administration (see M.H.L. § 81.39) and also unless otherwise stated in the appointing order, you must complete these educational requirements within 90 days of the issuance of your "Commission". You are required

to certify such completion in your Initial Report, a sample of which is supplied to you in your training material. Check with your attorney as to the scheduling of the next available training session or you may call the Suffolk Academy of Law (which gives the training course) at (631) 234-5588 .

If you are a "Temporary Guardian", "Special Guardian", "Ancillary Guardian" or "Interim Guardian" the following paragraphs regarding Initial and Annual reports do not apply to you. These appointments are governed by the appointing Order and you are only required to submit a report of your actions when they are completed with a request to be discharged.

As Guardian (except for the above stated categories) you must file an Initial Report with the court within 90 days of the issuance of your Commission (see M.H.L. § 81.30). In addition to filing your original report with the court, you must mail a copy to the Court Examiner, whose name appears in the final Judgment and on the Appointment Notice. The Court Examiner is charged with overseeing your proceedings as Guardian. His or her name and telephone # are on the Appointment notice. He or she will advise you and provide assistance to you with regard to your filing requirements.

All Guardians (except for the above stated categories) must file an original annual report, a sample of which is supplied to you in your training material, each year during the month of May, to the court (and a copy of same to the Court Examiner), which details all of the actions undertaken by them for the previous calendar year in the capacity as Guardian (see M.H.L. § 81.31). Failure to file such account may subject you to removal as Guardian. If it is found that monies of your ward were improperly accounted for or improperly spent, you may be subject to a "surcharge" whereby you will be required to personally pay such funds back into the estate of your ward. Please be advised that even if your appointment is limited to the personal needs of your ward and involves no property management, you are still required to report annually to the court and Court Examiner regarding your activities as Guardian of your ward's personal needs. For those who serve as both personal needs and property management Guardian, your report must address both capacities.

Please Note:

If your Initial Report was due to be filed between May 1st and December 31st, then you must file your first Annual Report in May or the year immediately following even though such annual report covers a period less than 12 months.

If your Initial Report was due to be filed between January 1st and April 30th, your first Annual Report is not due to be filed until May of the following year. However, such Annual Report must cover the period commencing with the issuance of your commission and ending on December 31st of the year immediately preceding the May filing.

NOTE: CO-GUARDIANS MAY COMPLETE SEPARATE DESIGNATION AND CONSENT TO ACT, BUT MUST COMPLETE A SINGLE COMMISSION