



Guardian Manual

Produced by the
Illinois Guardianship Association

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Preface and Acknowledgements

This manual is written for those who not only may be a family guardian but also for those who are considering being a guardian. This manual could not possibly cover everything about guardianship so we have included a section on Resource Websites which can be reviewed as needed. Our intent is to make this manual user friendly which will give the reader plenty of guidance to better understand the important role of a guardian.

The manual begins with some essential legal and procedural information that will serve as laying the groundwork for *Being a Guardian*. There is a check off list of steps to take following appointment. There are sample forms with essential questions to ask for making informed medical decisions. A *Contact Form* is included which can be used to not only record visits and the condition of the client/ward but will also assist the guardian in preparing an annual court report. Depending on the needs of your "ward", a legal term for which we will often substitute with "client," one will find sections of this manual that may not pertain specifically to your client. For example, even if one is not guardian of estate (finances) there will be a section including some of those duties. Section 14 -*Limitations of Guardianship* is a must read which puts guardianship in perspective All the blank sample forms that are included can be copied so you have extras in your file.

Acknowledgment for the opening three sections of this manual is made to the late Howard B. Eisenberg, Director of Clinical Programs at the SIU-C Law School. In 1999, he encouraged a group to put together a manual for Volunteer Guardians through a research grant from the Retirement Research Foundation. We thank the current and former guardianship professionals who contributed to this manual. The first revision in 2008 was partially funded by the Chicago Community Trust as well as the Department on Aging. This second revision, completed in 2015, is funded by the Illinois Guardianship Association.

We hope you find this manual useful and helps fulfill your role as guardian.

IGA Community Education and Training Committee

Guardian Manual

Legal Aspects of Guardianship

Pages

1. Concept of Substitute Decision Making.....	1-3
a. Power of Attorney	
b. Guardianship	
c. Last Will and Testament.	
d. Living Will	
e. Representative Payee	
f. Family Decision Making	
2. Procedural Aspects of Guardianship.....	4-6
a. Who May Act as Guardian	
b. Role of Guardian <i>ad litem</i> (GAL)	
c. Rights of Alleged Disabled Person	
d. Hearing	
3. Guardian Exercises Authority.....	7-8
a. Substituted Judgment	
b. Personal Liability of Guardian	
c. When Court Approval is required	
d. Residential Placement	
e. Withdrawing Life Sustaining Treatment	
f. Relationship Between Agent under Power of Attorney and Guardian	
g. Terminating the Guardianship	
<u>Being a Guardian</u>	9
4. Appointment Check Off List and Initial Assessment.....	10-11
5. Residential Placement Authority.....	12
6. Guardian Visit/Contact and Annual Report to Court forms.....	13-17
7. Medical Decision Summary and Consent form.....	18-19
8. Health Care Surrogate Act.....	20
9. Advanced Directives.....	21-23
10. Individual Program Plans/Care Plans.....	24-26
11. Individualized Education Plan.....	27-31
12. Financial Management Reporting, Inventory, and Current Accounting.....	32-37
13. Guardianship Checklist.....	38
14. Limitations of Guardianship.....	39-41
15. Website Resources.....	42
16. Comprehensive Assessment Forms.....	43-53

Legal Aspects of Guardianship

Howard B. Eisenberg *

The law presumes that every adult is fully competent, capable of making every type of decision that might be necessary. Unless a court has taken some action to change this presumption, every adult is deemed competent. This means that a parent, spouse, or child is not empowered to make decisions for an adult child, spouse, or parent, even if that individual is actually incapable of making such a decision. The exceptions to this general rule are when the individual has authorized some other person to make decisions through a power of attorney or if a court has empowered someone to make decisions through a guardianship.

1. Concept of Substitute Decision Making

No adult has the legal authority to make decisions for another adult until and unless proper legal steps have been taken to authorize such substitute decision making. There are several situations in which substitute decision making is allowed. Most commonly, parents are allowed to make decisions for their minor children. A trustee holding money for someone has the legal authority to make decisions regarding how that money is spent, so long as the decision is consistent with the trust document. An executor acting on behalf of the estate of a deceased person has the legal right to make decisions on behalf of the estate.

There are two other types of substitutive decision making, power of attorney (POA) and guardianship. POA is the authority granted to an agent under a POA. The POA is a written legal document that is signed while an individual is mentally competent appointing someone to make decisions for that individual. A POA may be general, meaning it is good only for a specified purpose and time and stops being effective when the person who signed it is no longer mentally competent. The second type of POA is a durable POA (DPOA). The word durable means that the document remains valid and the agent named continues to have legal authority even after the signer is no longer competent.

*Past Professor of Law, Director of Clinical Programs, School of Law, SIU-Carbondale 1999

The only way you can tell whether a power of attorney is a general or DPOA is to read the document. Usually the words general or durable do not appear on the document; the document must be read to determine its scope and authority.

The coverage of powers of attorney is governed by state law and is different from one state to another. In Illinois there are two specific types of DPOA; one for health care and another for property. Under a health DPOA in Illinois an individual can appoint an agent to make virtually any type of decision regarding health care. This includes admission to hospitals, consent to medical treatment, admission to nursing homes, group homes, consent for surgery, and decisions regarding whether life support should be started withheld, or withdrawn. Under Illinois law, an agent operating under a DPOA for health care can also consent to an autopsy and anatomical gifts, although in most states the agency under a POA ends when the principal dies.

A DPOA for property empowers the agent to make decisions not only about real estate, but also about other types of property that an individual will own including bank accounts, certificates of deposit and stocks and bonds. This means an agent under a DPOA can write checks on the account of the principal, deposit and withdraw money from a bank, and cash in securities. Under Illinois law an individual can limit or expand the DPOA to give very limited authority.

The important thing to emphasize regarding a DPOA is that the *person who signs the document must be mentally competent at the time*. If it is subsequently proven that the individual was not mentally competent at the time it was signed, all action taken by the agent may be invalid causing legal liability.

Once a person is no longer mentally competent there are only two ways someone else can make decisions: as guardian and through the Health Care Surrogate Act (HCSA) Each state has laws regarding both. In all states, the only way a guardian can be appointed is by order of a judge. If a person does not have a court order appointing him or her guardian, he or she is not guardian. The appointment is by judicial order after a hearing in court. Under Illinois law the person who is no longer competent is referred to as a *disabled person*. After a guardian is appointed, the person who is subject to the guardianship is called a *ward* and/or disabled adult.

Under Illinois law there are two types of guardianship. Guardianship of the person involves the same kind of decision making as in a health POA. That is, the guardian has the authority to make decisions including placement and medical. There is a broad range of personal decisions to make but the authority ends at the moment the ward dies. Guardianship of the estate relates to the property of an individual. This power includes decisions regarding real estate and all property owned by the ward, controlling money, writing checks, and safeguarding the physical property of the disabled person. *Unlike the agent under a POA, the guardian is subject to the supervision and control of the probate court and must file periodic reports regarding the property.*

Guardianships can be plenary or limited. Plenary means the disabled person lacks the ability to make any type of decision and limited is just that, the ward retains the ability to make some decisions which are outlined in the court order. Under Illinois law the guardianship is to be limited as much as possible so that the ward retains as many rights as he or she has the capacity to exercise. In addition, under Illinois law a person who requires only a limited guardianship is not considered incompetent and has legal competence to make certain decisions as directed by the court.

For an additional resource that expands on the types of guardianships available, please consult "A Guide to Adult Guardianship in Illinois" found on our IGA website at www.illinoisguardianship.org. In addition to the types mentioned above there are Temporary, Successor, Stand-by, and Testamentary. For our purposes here, the guardianships mentioned are adequate. For greater detail of guardianship you can go to the Illinois law at 755 ILCS/Probate act Article XIa.

There are a number of other legal instruments that fall into the substituted decision making categories. They are Last Will and Testament, Living Will, Representative Payee for Social Security, Veterans, Black Lung, and Mental Health Treatment Preference Declaration Act. The various public agencies will provide you with the proper forms for using these decision making instruments.

The last category of substituted decision making resides in *Family decision making*. Some people assume that family members have the legal right to make decisions regarding health and property for a family member who is seriously ill or impaired. *This is not correct.* No person has the legal right to make a

decision for any other adult unless that individual has executed a document such as a DPOA or unless that person has been declared to be disabled and has a guardian appointed or when the Health Care Surrogate Act (HCSA) is used. See section 8, page 20, for the law governing the HCSA.

2. Procedural Aspects of Guardianship

If you are a guardian and have gone through the process you have an idea of the procedure. There are a number of resources that provide a review of the legal process. For our purposes here, it will require a brief overview as you may not have been appointed yet but expect to be named soon.

To continue with Professor Howard Eisenberg's "Legal Aspects of Guardianship" the process of guardianship means a person must lack the mental ability to make decisions because of intellectual and developmental disabilities, substance abuse, mental illness, or organic brain disorders which may occur in older persons. It may mean that the person is physically unable to take care of him or herself but mentally competent so a power of attorney could be signed delegating decisions to some individual.

Guardianships are legal actions filed in court. A petition will have to be filed in the circuit court alleging that the named person (18 years or older) needs a guardian and that a named individual or agency be appointed. A signed report by a physician (within 90 days of filing) is required along with the petition. The report must specify the diagnosis and prognosis of the patient as well as a recommendation whether a guardian is necessary, and if so, the extent and scope of guardianship. There are court costs and it is recommended contacting an attorney for assistance.

Who may act as a guardian is a person over the age of 18 and has not been convicted of a serious crime nor adjudicated mentally incompetent or disabled. A guardian of estate must meet the same qualifications. (Note: being an Illinois resident is not required anymore) Frequently a close relative of a disabled person is appointed. Sometimes, a commercial bank or a public agency (public guardian) may be appointed. Usually, only one person can act as guardian. Although ultimately the judge in court will decide who the guardian is, it is always best for family and friends of the disabled person to

agree on a guardian before the legal process is filed. Otherwise, there may be a conflict and the judge will be required to resolve the matter.

Once a guardianship is filed a hearing date is set no sooner than 14 days from the date the petition is served on the alleged disabled person and no later than 30 days after that date. It is required that the alleged disabled person be personally handed copies of the petition and summons by the sheriff's office or private processor. If the legal process is not properly served, the guardianship will not be valid.

The judge will appoint an attorney to represent the legal interest of the alleged disabled person. The attorney is known as a guardian *ad litem* (GAL). The role of the GAL is to interview the alleged disabled person, inform the person of his or her rights, and submit a report to the court regarding need for a guardian. An important thing to remember is that the GAL attends the hearing and remains the disabled person's representative until the court removes the person and appoints another if needed.

The alleged disabled person has rights. Under Illinois law the alleged disabled person has very substantial rights in the guardianship proceedings. The person may demand a jury trial, can request the court to appoint experts to prepare medical reports, and can even request the appointment of a second attorney, if the GAL makes recommendations that are contrary to the articulated wishes of the person alleged to be disabled.

At the guardianship hearing the person who has filed the petition will testify as will the proposed guardian. Frequently, the petitioner and the proposed guardian are the same person. If there is no question regarding the medical evidence, the physician will not testify and the adjudication will be based on the medical report attached to the petition. In the majority of cases there is no conflict over the medical evidence. The GAL may recommend to the court that the presence of the alleged disabled person be waived. However, some judges are insistent that the individual appear unless too infirm, confused, or disabled to appear in court. At the hearing the alleged disabled person has the right to testify and call witnesses. The attorney for the alleged disabled person can cross examine the witnesses called by the petitioner. The judge also might ask questions of any of the witnesses.

Once the judge decides that a guardianship is necessary and that the individual proposed as guardian is appropriate the court will order that the person be appointed guardian. It is at this time the scope of guardianship is also ordered depending on the petition and the witnesses' testimony. Limits of authority will be determined by the judge. The court may at that time set a **bond** which will have to be posted by the guardian. The bond is a legal promise that the guardian will properly perform their duties as guardian. If an estate guardian is established the bond is simply a written promise by the guardian to safeguard the funds and other property. In the case of a large estate, however, the court may require that a commercial bond be posted. Such a bond is similar to an insurance policy in which the surety company promises to reimburse the estate of the disabled person if the guardian improperly uses the funds and/or property of the disabled person.

The judge will enter a written order appointing a guardian. However, the legal document which is the "badge" of guardianship is entitled **letters of office**. This is a one page legal paper informing everyone that the guardian has been appointed and has continuing legal authority. Presentation of the letters of office is the way the guardian proves he or she has proper legal authority. See Section 13 Guardianship Checklist for steps involved.

3. Manner in Which a Guardian Exercises Authority

Substituted judgment by a guardian for a client can be exercised in two very different ways. One, the guardian can act as a "reasonably prudent person" without reference to the manner in which the ward may have made those decisions in the past. When operating in this manner the guardian will act more conservatively regarding safeguarding the assets of the ward and in making decisions regarding the personal care of the individual.

The second way a guardian may make decisions is to determine how the client would have made the decision based on that individual's life history and past conduct. A guardian must have evidence of the way in which the ward made decisions previously. The guardian cannot speculate about how the client would have made the decision. It should be understood that the action of the guardian may have an impact on persons other than the client. For example, how the guardian of estate spends money for the benefit of the

ward is more important than the concern of the people who may inherit the client's money after the client's dies.

The personal liability of the guardian is very real. If the guardian acts honestly, consistent with law, and keeps accurate records, he or she will not be personally liable for anything to anyone! The action taken by the guardian as guardian is not action taken personally by the guardian. This means that the guardian's personal funds are not liable for payment of the client's debts nor can the creditors seek to collect those debts from the guardian personally. Generally, if the guardian acts in good faith and in the best interests of the client there is no liability to third parties. When operating as guardian of the estate there are some basic rules:

- Keep very good records regarding income and expenses.
- Set up a separate checking account.
- File the financial reports required by the court.
- The guardian does not have to be an accountant but good records are important.

Other comments and information and forms will be covered in Section 12 for Estate guardian duties.

Residential placement authority. The guardian cannot place the client in a residential facility without specific court approval. The judge's decision to grant placement authority, if granted, is made at the time when the original guardianship is established. **Important**-See Section 5 for Illinois law.

Withdrawing life sustaining treatment. The Illinois Health Care Surrogate Act (HCSA) was passed in 1991 and amended in 1998. The act provides standards for making medical treatment decisions for those lacking decision-making capacity and who have not executed a DPOA for health care. The act establishes responsibilities for Illinois physicians and health care facilities in treating patients. The HCSA is important enough to require a separate section to introduce the reader to this law. While discussion of it can be expanded in Section 8, it is recommended that legal counsel be consulted if there are further questions about implementation.

Relationship between agent under power of attorney and guardian is important. If the disabled person has executed a valid power of attorney, the (POA) continues to operate even after a guardian is appointed. An agent

operating under a durable POA for health care has broader legal authority than a guardian. In a POA for health care a person can direct the agent not to take certain action in the event of serious illness. A guardian, on the other hand, may have the legal obligation of taking such action if it appears to be in the client's best interests. Under such circumstances, the decision of the agent takes precedence over that of the guardian. However, the court that imposes the guardianship can specifically order that the guardian's decision supersede those of the agent operating under the durable POA.

Terminating the guardianship can be ended in various ways. A guardianship may be ended in various ways.

- The client dies and after the court is petitioned to discharge the guardian with a death certificate attached, the guardian is discharged. If there was an estate involved the court will also ask for a final accounting and ask for appropriate legal disposition of money remaining in estate and to turn over balance to executor along with any property.
- Guardian can resign for personal reasons or the guardian may die. If the guardian wants to resign a motion to the court is made, submission of final accounting if estate guardian, and then a new guardian is appointed. If guardian dies, the original GAL must be notified so a successor appointment can be made.
- Under Illinois law, the client can, at any time, request that his or her rights be restored. Again, after a motion is made, the original GAL is notified. The court will hold a hearing and determine whether a guardianship is necessary and, if not, will request a final accounting, if it is an estate case, and terminate the guardianship.

As the opening (3) Sections come to a close which were contributed by Howard Eisenberg with the Legal Clinic at SIU-C, he closed his remarks this way. " *The important points for an individual to remember in a guardianship is to comply with all the legal requirements, to keep good financial records, to document decisions (and visits) which are based on the 'substituted judgment' standard, not to self deal, to apply to the court for direction when in doubt, and to assure that at the end of the guardianship the matter is properly and completely closed out.*"

Being a Guardian

Perry H. Patterson*

The guardian has the awesome responsibility of making informed decisions for another person. Using substituted judgment, discussed previously in this manual, is how a guardian decides. In order for the guardian to make the required decisions and to comply with Illinois law, it is necessary to obtain as much information as possible about the client and to keep records of what one has done regarding all kinds of decisions. The sections that follow are all intended to allow the guardian to create a "paper trail" that will enable one to establish documentation for various consents and for submitting required reports to the court.

The following sections include sample forms which can be completed depending on the client's needs. Some of the sections will not apply to every guardian's duties but they should be reviewed just to make one aware of requirements in case the client's functioning changes and the guardian is given a larger role such as guardian of estate (finances). Other sections include *Comprehensive Assessment* forms, resource websites, and the *National Guardianship Association's (NGA) Standards of Guardianship practices*. The *NGA*, through the *Center for Guardianship Certification (CGC)*, is an organization a guardian may be interested in reading more about. A *Public Guardian* in Illinois requires certification by the *CGC*. *Guardianship* is a profession for many; however, certification is not required for family guardians even though it is available.

To assure you have blank copies of any form in this manual, it is advised to make copies and put in a file along with the completed forms.

-
- Perry H Patterson, Illinois Guardianship Association board member, 2015.

4. Appointment Check-Off List and Initial Assessment

Name of Event	Process to Complete	Date completed
Guardianship Hearing	Attend	
Letters of Office, Order, Oath of Office	Request copies from Circuit Clerk. Clarify type of guardianship and duties. Is it a Plenary, Limited, Estate, Temporary? Residential Placement Authority?	
Bond	Check with Circuit Clerk for whether bond needs to be set with Commercial institution or Non-surety. Non-surety requires no cash or property used as collateral.	
Notify Social Security and Public Aid/Medicaid	Provide Letters and Order and contact information	
Notify Residential Facility if client is in a facility. Ask about Advanced Directives such as DNR. See Section 5. Residential Placement and 9. Advanced Directives.	Provide Letters and Order and ask for facility contract to sign. Need to ask when Resident Care Plan is and advise facility when you want called for consents and problems.	
Notify Medical Doctor	Provide Letters and Order	
Notify Workshop or whatever program services your client is in. Ask for dates when Service Plan will be reviewed.	Provide Letters and Order. Will need to give your contact number.	
Initial Assessment	Start day of appointment	
If appointed guardian for estate, See Section 12 for the Illinois law requiring reporting and filing.	If appointment includes Guardian of Estate you have 60 days from date of appointment to file an inventory with the court.	

INITIAL ASSESSMENT

Client's Name _____ Phone _____

Address: _____

Date of Birth _____ Social Security # _____

Marital Status () Single () Married () Divorced () Widowed ()

***Does any person or agency provide care?** Yes () No () if yes, name and contact information: _____

What type of living arrangement is it? () Private home () Group Home () CILA () ICFDD () ICF () Nursing Home () Independent Apartment () Other

Ask to see latest Public Health or other survey results. Note deficiencies.

What is source and amount of monthly income?

Is there a Representative Payee (RP)? () yes () No If there is RP, provide contact info: _____

Has the person handled their own financial affairs? If not, who does? Provide name and contact information:

Does the person have a checking account, stocks, bonds, life insurance, savings or other assets? () No () Yes *If your appointment includes estate guardian, you will want to collect as much information as you can and record it on the Comprehensive Assessment forms found in Section 16. An Inventory is required to be filed within 60 days of appointment. See Inventory and Appraisal statute in Section 12.*

***Names of Siblings and other involved relatives: Provide names and contact info.**

5. Residential Placement Authority

(755 ILCS 5/11a-14.1) (from Ch. 110 1/2, par. 11a-14.1)

Sec. 11a-14.1. Residential placement.) No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian shall have the power, unless specified by court order, to place his ward in a residential facility. The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. In making residential placement decisions, the guardian shall make decisions in conformity with the preferences of the ward unless the guardian is reasonably certain that the decisions will result in substantial harm to the ward or to the ward's estate. When the preferences of the ward cannot be ascertained or where they will result in substantial harm to the ward or to the ward's estate, the guardian shall make decisions with respect to the ward's placement which are in the best interests of the ward. The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm to the ward or to the ward's estate. The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed. (Source: P.A. 90-250, eff. 7-29-97.)

If the guardian has placement authority as ordered by the court, signing of contract is important as well as reviewing the last survey which the facility has had. The surveys are, by law, posted in an area easy for review.

6. Contact Report and Annual Report Form

The contact report form is important and should be kept in a file. When routinely completed, the contact report can help track concerns you need to address and actions to take. This document will provide you the information to prepare the annual report to the court. The annual report is included in this section. If actions need to be taken as result of a meeting or discussion during the visit feel free to use the back of form to summarize.

Some suggestions on the completion of the Contact Report Form.

- The section asking about whether conditions are Better, Same, or Worse addresses key indicators. Your observations can be documented in the questions that follow that section.
- The form asks to check whether the client is Better, Same, or Worse. A decline in mood, appearance, mental alertness may only be temporary but should prompt the guardian to visit the person again in the near future or ask others to keep any eye on him or her.
- Did the person express any concerns or needs? Are these repeat concerns or needs that perhaps nothing more can be done or are they new concerns?
- If your client is receiving routine care from providers it is important that you question your client's satisfaction and if he/she has any requests.
- If the person receives caring services from other people on a regular basis, does it appear they are receiving appropriate care? Any other service provider should be questioned about the needs and wishes of the person.
- Make sure you enter any action that needs to be taken so you have a record to review as necessary.
- Were there any informed consents given for the person?
- What actions does the guardian have after the visit?

A Contact Form follows on next page. This is a sample of the record keeping a guardian may want to keep. The importance of a "paper trail" for decision making cannot be stressed enough. ***Most facility personnel are impressed with those family members and guardians who make notes during their visit. Taking the visit form with you and making notes and asking questions are highly recommended.***

Contact Report

Person's Name _____ Date of Contact _____

Contact made: () in person () by phone

Use the table below to describe how the person and their situation compared to your last contact.

	Better	Same	Worse
His/her mood or emotional state	___	___	___
His/her mental alertness	___	___	___
His/her physical appearance and dress	___	___	___
The orderliness of his/her surroundings	___	___	___
His/her ability to move about	___	___	___

Was there anything in the person's behavior or environment that was a cause for concern?

Did the person repeat or express any specific needs such as financial, nutrition, transportation, personal care, and medications?

If other people provide care such as in-home, health services, financial management, does it appear the care is what their plan calls for and is he or she satisfied?

During, or a result of this contact, did you make any decision with or on behalf of the person? Examples like medications, dental care, surgery, financial matters, release of information, application for benefits, and placement.

What action do you need to take now? (List needs, provider who needs contacted, or applications needing completed and filed.)

Name _____ Signature _____

Annual Report to Court

Pursuant to Article 11a-17(b) of the Illinois Probate Act, the court may direct the guardian of the person to file a report with the court at intervals established by the court. Illinois Office of State Guardian (OSG) shall assist the guardian in filing the report when requested by the guardian. The statewide number for the OSG is **1-866-274-8023**.

The annual report form that follows is an example. Different courts may want you to use different forms. The completion of the annual report is much easier if you have made copies of the Contact Reports and the Medical Decision Summary.

The annual report form heading is to be completed by filling in the lines for county, disabled persons name, docket number, guardian's name, and type of guardianship. The sections that follow require some explanation. Each section refers to the person who is the client (ward) and his or her minor or dependent children. If there are minor or dependent children, then the guardian is essentially serving as their surrogate (substitute) decision maker also and all the reports referenced need to include them. If there are no minor or dependent children, and most often there are not any, then only the client needs to be referenced.

Section I. Factors to include are the mood, mental condition, health problems, and whether the person has social contacts or are they isolated.

Section II. In most cases unless there has been a transfer to another facility or group home, or institution this will only include one address.

Section III. Services that could be entered are medical, dental, workshops, therapies, psychiatric, and home health. Supportive social services such as counseling, transportation, friendly visiting, home delivered meals, and homemaker/chore housekeeping, and community services like senior centers.

Section IV. Consult your Contact Report for completing this section.

Section V., VI. and VII. These sections ask for the guardian to inform the court of essential information as to the guardian's opinions for the need of continuation of guardianship for the client. The area for personal fund balance and bank account information completes the information needed. Sign the report and have it notarized before taking it to or mailing to the circuit clerk identified in the heading.

IV. Guardian's activities on behalf of ward and his/her children

Date of Personal Visits

Significant Occurrences

- | | | | |
|-----|-------|-----|-------|
| 1. | _____ | 1. | _____ |
| 2. | _____ | 2. | _____ |
| 3. | _____ | 3. | _____ |
| 4. | _____ | 4. | _____ |
| 5. | _____ | 5. | _____ |
| 6. | _____ | 6. | _____ |
| 7. | _____ | 7. | _____ |
| 8. | _____ | 8. | _____ |
| 9. | _____ | 9. | _____ |
| 10. | _____ | 10. | _____ |
| 11. | _____ | 11. | _____ |
| 12. | _____ | 12. | _____ |

V. Appropriateness of Placement:

VI. Recommendation as to the need for continued guardianship:

VII. Other information considered useful in the opinion of the guardian:

Personal Fund balance of \$ _____ held at _____
Bank Account balance of \$ _____ held at _____

Subscribed and sworn to this _____ day
Of _____, 20 _____

Signature of Guardian
Address: _____
City: _____

Notary Public

7. Medical Decision Summary

Howard Eisenberg spoke of the legal principle of autonomy when he wrote this in the Illinois Volunteer Guardian manual produced by the Volunteer Guardianship Project at Southern Illinois University-Carbondale in 1999.

"The law provides that no person may touch another person without the permission of the one who is touched. This legal principle is designed to serve the value of autonomy; the right of every person to control his or her own body. In the area of medical law, this legal concept is translated into a doctrine that provides that no medical treatment can be provided without the patient's consent because medical care involves touching and/or invading a person's body."

A guardian is given by the court "substituted decision making authority" to consent for medical intervention for another person. For this consent to be valid, it must be a competent, informed, and voluntary. However, the court has determined the person lacks decisional capacity. Therefore, the guardian must take into consideration all the information for the client as if the client could make the decision his or herself. It is very important that every effort be made to include the disabled person's wishes and thoughts in an informed decision.

The information that is collected on the *Medical Decision Summary* form is essential in making an informed decision. There must be no coercion to sway the decision one way or another. Always try to make the decision as you believe the disabled person would make. If the client objects, an alternative treatment plan can be requested. It should be presented and the consequences for refusing the treatment or its alternative must be explained to the disabled person.

The form that follows should be used when medical intervention is needed. The form contains the questions a guardian should try to find the answers to before giving consent or refusing consent. The medical service will no doubt have a consent form to sign. It is recommended that the *Medical Decision Summary* be used and the medical provider's form can then be attached for record keeping. If the guardian follows this procedure, the documentation can be used for preparation of the annual report to court, as directed by the court. The form follows and it is recommended that a file be set up with all the consents a guardian makes.

Medical Decision Consent

Client's Name _____

Medical Practitioner Requesting Consent. Enter name and contact information.

Name _____ Phone _____

What is condition that requires treatment? _____

Have you reviewed and obtained a copy of all medical records pertaining to this condition?

What is the urgency of the treatment? () Routine () Emergency () Inpatient () Outpatient

What is the proposed treatment and method of anesthesia, if needed? _____

Has the person for whom you are guardian been informed of his/her condition and of the need for Treatment? What was the response? _____

Is there any behavioral or physical condition that might prevent or delay treatment and recovery?

What are the risks, benefits, expected outcomes, and alternatives for treatment? _____

Did you seek a second opinion and, if so, from whom and what was the second opinion?

Do you consent () to treatment () not consent to treatment? If not, state reason. _____

Witness _____ Date _____

Witness _____ Date _____

Guardian or agent's signature _____ Date _____

8. Health Care Surrogate in Probate Act

(755 ILCS 40/1) (from Ch. 110 1/2, par. 851-1)

(d) A guardian acting as a surrogate decision maker under the Health Care Surrogate Act shall have all the rights of a surrogate under that Act without court order including the right to make medical treatment decisions such as decisions to forgo or withdraw life-sustaining treatment. Any decisions by the guardian to forgo or withdraw life-sustaining treatment that are not authorized under the Health Care Surrogate Act shall require a court order. Nothing in this Section shall prevent an agent acting under a power of attorney for health care from exercising his or her authority under the Illinois Power of Attorney Act without further court order, unless a court has acted under Section 2-10 of the Illinois Power of Attorney Act. If a guardian is also a health care agent for the ward under a valid power of attorney for health care, the guardian acting as agent may execute his or her authority under that act without further court order.

(e) Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward. If the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward's best interests as determined by the guardian. In determining the ward's best interests, the guardian shall weigh the reason for and nature of the proposed action, the benefit or necessity of the action, the possible risks and other consequences of the proposed action, and any available alternatives and their risks, consequences and benefits, and shall take into account any other information, including the views of family and friends, that the guardian believes the ward would have considered if able to act for herself or himself.

9. Advance Directives

www.idph.state.il.us/public/books/advdir4.htm

<http://www.illinois.gov/sites/gac/Forms/Pages/Forms.aspx>

Illinois law allows for the following three types of advance directives: (1) health care power of attorney; (2) living will; and (3) mental health treatment preference declaration. State law provides copies of sample advance directives forms. In addition, the web sites above direct you to these forms and a copy of the Illinois Department of Public Health (IDPH) Uniform Do Not Resuscitate (DNR) Advance Directive.

Mental Health Treatment Preference Declaration (MHTPD)

A MHTPD lets you declare if you want to receive electroconvulsive treatment (ECT) or psychotropic medicine when you have a mental illness and are unable to make these decisions for yourself. It also allows you to say whether you wish to be admitted to a mental health facility for up to 17 days of treatment. You can write your wishes and/or choose someone to make your mental health decisions for you. In the declaration, you are called the "principal" and the person you choose is called an "attorney-in-fact." Neither your health-care professional nor any employee of a health-care facility in which you reside may be your attorney-in-fact. Your attorney-in-fact must accept the appointment in writing before he or she can start making decisions regarding your mental health treatment. The attorney-in-fact must make decisions consistent with any desires you express in your declaration unless a court orders differently or an emergency threatens your life or health.

The MHTPD expires three years from the date you sign it. Two people must witness you signing the declaration. The following people may not witness your signing of the declaration: your health-care professional; an employee of a health-care facility in which you reside; or a family member related by blood, marriage or adoption. You may cancel your declaration in writing prior to its expiration as long as you are not receiving mental health treatment at the time of cancellation. If you are receiving mental health treatment, your declaration will not expire and you may not cancel it until the treatment is successfully completed.

Do-Not-Resuscitate Order

You may also ask your health-care professional about a do-not-resuscitate order (DNR order). A DNR order is a medical treatment order stating that cardiopulmonary resuscitation (CPR) will not be attempted if your heart and/or breathing stops. The law authorizing the development of the form specifies that an individual (or his or her authorized legal representative) may execute the IDPH Uniform DNR Advance Directive directing that resuscitation efforts shall not be attempted. Therefore, a DNR order completed on the IDPH Uniform DNR Advance Directive contains an advance directive made by an individual (or legal representative), and also contains a physician's order that requires a physician's signature.

Before a DNR order may be entered into your medical record, either you or another person (your legal guardian, health care power of attorney or surrogate decision maker) must consent to the DNR order. This consent must be witnessed by one person who is 18 years or older. If a DNR order is entered into your medical record, appropriate medical treatment other than CPR will be given to you. This webpage provides a copy of the Illinois Department of Public Health (IDPH) Uniform Do Not Resuscitate (DNR) Advance Directive that may be used by you and your physician. This webpage also provides a link to guidance for individuals, health-care professionals and health-care providers concerning the IDPH Uniform DNR Advance Directive.

What happens if you don't have an advance directive?

Under Illinois law, a health care "surrogate" may be chosen for you if you cannot make health-care decisions for yourself and do not have an advance directive. A health care surrogate will be one of the following persons (in order of priority):

- guardian of the person,
- spouse,
- any adult child(ren),
- either parent,
- any adult brother or sister, any adult grandchild(ren),
- a close friend,
- or guardian of the estate.

The surrogate can make all health-care decisions with certain exceptions. A health care surrogate cannot tell a health-care professional to withdraw or withhold life-sustaining treatment unless there is a "qualifying condition," which is a terminal condition, permanent unconsciousness, or an incurable or irreversible condition. A "terminal condition" is an incurable or irreversible injury for which there is no reasonable prospect of cure or recovery, death is imminent and life-sustaining treatment will only prolong the dying process. "Permanent unconsciousness" means a condition that, to a high degree of medical certainty, will last permanently, without improvement; there is no thought, purposeful social interaction or sensory awareness present; and providing life-sustaining treatment will only have minimal medical benefit. An "incurable or irreversible condition" means an illness or injury for which there is no reasonable prospect for cure or recovery that ultimately will cause the patient's death, that imposes severe pain or an inhumane burden on the patient, and for which life-sustaining treatment will have minimal medical benefit.

Two doctors must certify that you cannot make decisions and have a qualifying condition in order to withdraw or withhold life-sustaining treatment. If a health care surrogate decision maker decides to withdraw or withhold life-sustaining treatment, this decision must be witnessed by a person who is 18 years or older. A health care surrogate may consent to a DNR order; however, this consent must be witnessed by one individual 18 years or older.

A health care surrogate, other than a court-appointed guardian, cannot consent to certain mental health treatments, including treatment by electroconvulsive therapy (ECT), psychotropic medication or admission to a mental health facility. A health care surrogate can petition a court to allow these mental health services.

10. Individual Program Plans/Care Plans

Among the duties of a guardian that affects your client/loved one the most is your participation at the Individual Program Plan (IPP) or if in a nursing facility it is called Resident Care Plan. There are other names for plans as well. The areas shown below are essential to any review. A service provider is required by regulations to assess and get informed consent for the plan. The criteria outlined can be used as a guide. The column headed "Follow-up" can be used to enter your notes to document what is discussed at the planning meeting. Make several copies of this review so you can keep your notes as a record for future meetings. The criteria below appeared in the January edition of the *Guardian Bulletin* authored by Mary Davidson, 2015.

<u>Area</u>	<u>What to ask</u>	<u>Follow-up needed</u>
Medical	<ul style="list-style-type: none"> • Assessments - Physical, dental, vision, hearing, occupational therapy, physical therapy, pap, mammogram, monthly breast checks, labs (CBC, CMP, Lipid profile, HA1C/blood sugar, thyroid panel, PSA, etc. • Swallowing issues (coughing/pacing). Bowel and bladder habits. EGD (upper endoscopy)/Colonoscopy (lower endoscopy) if needed and age related. • Seizures and seizure medication levels (if applicable). • Updated vaccinations (flu, pneumonia, hepatitis, TB, etc.) • Do Not Resuscitate orders/Advanced Life Directives 	
Behavioral	<ul style="list-style-type: none"> • Rule out causes for behavioral issues by reviewing medical issues and dental health. • Whether lab values are out of range and side effects of medications can be causes of behavioral issues. 	

	<ul style="list-style-type: none"> • Are their regular bowel movements (type, frequency, etc.)? Rule out urinary tract infections, sleeping problems, too much caffeine, allergies, traumas, losses, environment, pain, hot, cold, thirsty, and extreme hunger. • Use of outside consults - Behavior Analysts, Pharmacists, SST/CART (state consulting groups). 	
Program	<ul style="list-style-type: none"> • Goals should increase more work and independent living skills at home such as eating, showering, dressing, cleaning, self administration of medication and how much care is required in taking medications toward independence. Community integration for access to community activities/likes/dislikes need to be addressed 	
Financial	<ul style="list-style-type: none"> • Money management issues including assistance in managing/spending money and access to ones finances (spending/saving). Receiving financial statements on a quarterly basis should be part of management. 	
Workshop/ Day Training/Co mmunity Employ- ment	<ul style="list-style-type: none"> • Ability to choose where they want to work and what type of job they want to do is very important to achieving job satisfaction 	
Personal Goals	<ul style="list-style-type: none"> • Dreams, goals, travel, purchasing of large or small ticket items, and work/employment opportunities are major points of discussion 	
	<ul style="list-style-type: none"> • 	

Basic Needs	<ul style="list-style-type: none"> • Hygiene (nails, hair, body odor/shaved), clothing/shoes (soiled, poor fitting, inappropriate, torn) are always key to client happiness. • Skin issues may require repositioning if unable to turn self. • Wheelchair maintenance and cleanliness should be addressed. • Devices such as helmets, glasses, dentures, hearing aids, and razors need checked out and be in working order. • Facility needs to be clean, safe, be comfortable, have arm chairs, and serve nutritious, adequate food. 	
Legal	<ul style="list-style-type: none"> • Any legal or charges pending including requirement of annual reports to the courts should be well documented. 	
Family	<ul style="list-style-type: none"> • Policies for visits at the home, hours, communication from the facility (what type of information do you want to receive -injuries, hospitalizations, etc) and the ability to take family member home or out of facility should be in client's records. • Visitation restrictions (family/friends that are not allowed to visit). • Advanced Directives (burial, cremation, family burial plots, prepaid burials, organ donation) should be documented in file. 	

11. Individualized Education Plan

Starting at age 14 1/2, schools are to start working with students, parents and guardians to develop a transition plan as part of the IEP. The transition plan is to facilitate transition into adulthood and is required to address education/training, employment and adult living. IEP goals should include elements of the student's individual transition goals. Included in the transition planning may be issues related to either helping the student further his/her own decision-making or considering the need for surrogacy. Schools are required to offer special education services until age 22. Hence, most students are still in school when they reach the age of majority (18). At that time, parents need to consider whether or not to pursue guardianship or some other form of advanced directive. Under Illinois law, one year prior to turning age 18, schools are to address this with parents and the student can either choose to make his/her own decisions or allow a delegation of special education rights. Here is a quote from the parent manual posted on the Illinois State Board of Education (ISBE) website:

What is the transfer of parental rights all about?

"When a young adult reaches the age of 18 in Illinois, they have truly become an adult in the eyes of the law and have the right to make their own decisions. According to IDEA 2004, at least one year before a student reaches the age of 18, the school district must inform the parent(s) and student of the rights under the federal and state regulations that will transfer from the parent to the student upon turning 18. This means that unless other arrangements have been made by the family, e.g., guardianship - the student has the right to make the final decisions about his/her education.

Delegation of rights - another option

During the 2007 legislative session, Illinois added language to the school code (23 IAC 14-6.10) that allows a student to retain independent legal status while delegating his/her right to make educational decisions. According to the added requirement, a student who has reached the age of 18 can choose to sign a Delegation of Rights to choose their parent or other adult to represent them and assist in making decisions about his/her education. This delegation applies only to

educational decisions and can be ended by the student at any time. The school district must provide a copy of the Delegation of Rights to the parent and student during the IEP meeting in the year that the student turns 17."

To create an effective IEP, parents, teachers, other school staff--and often the student--must come together to look closely at the student's unique needs. The IEP guides the delivery of special education supports and services for the student with a disability. (Ten Steps that follow come from Office of Special Education and Rehabilitative Services, USDE, July 2000.)

<p>1 Step 1. Child is identified as possibly needing special education and related services.</p>	<p>"Child Find." The state must identify, locate, and evaluate all children with disabilities in the state who need special education and related services. To do so, states conduct "Child Find" activities. A child may be identified by "Child Find," and parents may be asked if the "Child Find" system can evaluate their child. Parents can also call the "Child Find" system and ask that their child be evaluated. Or — Referral or request for evaluation. A school professional may ask that a child be evaluated to see if he or she has a disability. Parents may also contact the child's teacher or other school professional to ask that their child be evaluated. This request may be verbal or in writing. Parental consent is needed before the child may be evaluated. Evaluation needs to be completed within a reasonable time after the parent gives consent.</p>	
<p>2 Step 2. Child is evaluated.</p>	<p>The evaluation must assess the child in all areas related to the child's suspected disability. The evaluation results will be used to decide the child's eligibility for special education and related services and to make decisions about an appropriate educational program for the child. If the parents disagree with the evaluation, they have the right to take their child for an Independent Educational Evaluation (IEE). They can ask that the school system pay for this IEE.</p>	

<p>3 Step 3. Eligibility is decided.</p>	<p>A group of qualified professionals and the parents look at the child's evaluation results. Together, they decide if the child is a "child with a disability," as defined by IDEA. Parents may ask for a hearing to challenge the eligibility decision.</p>
<p>4 Step 4. Child is found eligible for services.</p>	<p>If the child is found to be a "child with a disability," as defined by IDEA, he or she is eligible for special education and related services. Within 30 calendar days after a child is determined eligible, the IEP team must meet to write an IEP for the child.</p>
<p>5 Step 5. IEP meeting is scheduled.</p>	<p>The school system schedules and conducts the IEP meeting. School staff must:</p> <ul style="list-style-type: none"> • contact the participants, including the parents; • notify parents early enough to make sure they have an opportunity to attend; • schedule the meeting at a time and place agreeable to parents and the school; • tell the parents the purpose, time, and location of the meeting; • tell the parents who will be attending; and • tell the parents that they may invite people to the meeting who have knowledge or special expertise about the child.
<p>6 Step 6. IEP meeting is held and the IEP is written.</p>	<p>The IEP team gathers to talk about the child's needs and write the student's IEP. Parents and the student (when appropriate) are part of the team. If the child's placement is decided by a different group, the parents must be part of that group as well.</p> <p>Before the school system may provide special education and related services to the child for the first time, the parents must give consent. The child</p>

	<p>begins to receive services as soon as possible after the meeting.</p> <p>If the parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. If they still disagree, parents can ask for mediation, or the school may offer mediation. Parents may file a complaint with the state education agency and may request a due process hearing, at which time mediation must be available.</p>	
<p>7 Step 7. Services are provided.</p>	<p>The school makes sure that the child's IEP is being carried out as it was written. Parents are given a copy of the IEP. Each of the child's teachers and service providers has access to the IEP and knows his or her specific responsibilities for carrying out the IEP. This includes the accommodations, modifications, and supports that must be provided to the child, in keeping with the IEP.</p>	
<p>8 Step 8. Progress is measured and reported to parents.</p>	<p>The child's progress toward the annual goals is measured, as stated in the IEP. His or her parents are regularly informed of their child's progress and whether that progress is enough for the child to achieve the goals by the end of the year. These progress reports must be given to parents at least as often as parents are informed of their nondisabled children's progress.</p>	
<p>9 Step 9. IEP is reviewed.</p>	<p>The child's IEP is reviewed by the IEP team at least once a year, or more often if the parents or school ask for a review. If necessary, the IEP is revised. Parents, as team members, must be invited to attend these meetings. Parents can make suggestions for changes, can agree or disagree with the IEP goals, and agree or disagree with the</p>	

	<p>placement.</p> <p>If parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. There are several options, including additional testing, an independent evaluation, or asking for mediation or a due process hearing. They may also file a complaint with the state education agency.</p>	
<p>10 Step 10. Child is reevaluated.</p>	<p>At least every three years the child must be reevaluated. This evaluation is often called a "triennial." Its purpose is to find out if the child continues to be a "child with a disability," as defined by IDEA, and what the child's educational needs are. The child must be reevaluated if conditions warrant or if the child's parent or teacher asks for a new evaluation.</p>	

The above ten steps, which summarizes the overall IEP process, lacks the detail a family member or guardian would need to know to assure adequate services for an IEP that supports the student's needs. Mark Schudel, Principal Consultant with the Illinois State Board of Education (ISBE), advises "that the *Parent's Guide* found at <http://isbe.net/spec-ed/html/parentright.htm> includes links to both the complete guide and the individual chapters broken into their own documents. When parents or guardians seek technical assistance from us, this is the first document we provide them to support their understanding of special education and the IRP process."

12. Financial Management and Recordkeeping

The appointment of guardian of person and estate require a lot of record keeping. Duties of guardian of person, either limited or plenary, may just involve checking on the agency who is representative payee of public benefits such as social security.

Before looking at forms it is important to outline procedures that are important to protect the client's assets, simplify financial management, and protect the guardian. Starting with guardian of estate and listing those procedures will help the guardian to oversee representative payee duties as well.

1. As estate guardian the purpose is to ensure the safety of the assets, obtain the highest and safest rate of return, and use the assets for the care of the person and for reasonable expenses of serving as guardian.
2. The guardian should be prepared to use legal counsel to determine allowable expenses that can be charged to the estate.
3. If there are considerable investment assets, a guardian may need a financial planner to help look at options.
4. A safety deposit box may be needed to keep all relevant legal and financial records. Distribution of keys is important and can be reported to the court.
5. All credit accounts should be closed. Charge cards should be destroyed and the company notified of your appointment.
6. Review all insurance policies. All insurance companies need to be notified of the guardian's appointment.
7. The guardian will need to open a new checking account and close the previous accounts. All expenses and income go through this account. Ask the bank how the account should be titled. Balance the account monthly.
8. If there is excess cash in the account, then seek a better interest for those funds if possible. Consult with the financial planner as needed.

In summary, manage the assets for maximum yield and less risk and reasonableness of expense. Seek professional advice and keep accurate records. There are basic forms provided in the manual but if one wants to use a computer program for the accounting of a client's estate, the filing of reports to the court will be much easier and more correct.

If a person is appointed guardian of estate, the guardian has the duty of filing an inventory. The Illinois law that pertains to this requirement follows:

INVENTORY AND APPRAISAL

(755 ILCS 5/14-1) (from Ch. 110 1/2, par. 14-1)

Sec. 14-1. Inventory.) (a) Within 60 days after the issuance of his letters the representative of the estate of a decedent or ward shall file in the court a verified inventory of the real and personal estate which has come to his knowledge and of any cause of action on which he has a right to sue. If any real or personal estate comes to the knowledge of the representative after he has filed an inventory he shall file a supplemental inventory thereof within 60 days after it comes to his knowledge.

(b) The inventory must describe the real estate and the improvements and encumbrances thereon, state the amount of money on hand and list all personal estate.

(Source: P.A. 81-213.)

(755 ILCS 5/14-2) (from Ch. 110 1/2, par. 14-2)

Sec. 14-2. Appraisal.) If the representative believes that it is necessary for the proper administration of the estate to determine the value of any goods and chattels, the representative may appraise them or may employ one or more competent, disinterested appraisers for that purpose and pay each of them reasonable compensation for his services.

(Source: P.A. 81-213.)

As mentioned in the law an inventory, appraisal, and at the end of the first year a current accounting is due to the court. The 60 day requirement for the inventory is obviously important. An original inventory can be followed up as needed by an "amended" or a "supplemental" based on the guardian becoming aware of additional assets or an additional appraisal of certain assets. On the form each piece of property listed includes quantity, a complete description as possible, and a value. Items can be lumped together if they are identical such as plates and kitchen utensils. Legal descriptions should be used if they are available such as property and investment documents. Appliances, furniture, and equipment should include brand name and model if possible. Mortgages and assets that carry loan payments should show the value of item less the amount of loan payable.

It is allowable to list an item as having "nominal value" or "not known." If at all possible, another person should be present as the inventory is taken. This person can countersign the inventory as a witness.

The inventory should be reviewed by an attorney prior to filing with the court. The attorney will request all the information he or she needs in order to give competent and professional advice on the further investigation of assets, the protection of assets, the pursuit of claims, questions on file, the amount of waiver of bond, the disposition of property not needed or used by the person who is the client, and any other legal issues that may arise during the review of the inventory.

The Financial Management Record, Inventory, and First (Current) Accounting follow. As mentioned earlier, the forms are examples and other types can be acceptable to the court. The important thing to remember is that one must keep accurate information available for court reporting.

IN THE CIRCUIT COURT OF _____ COUNTY, ILLINOIS

In the matter of the Estate of:

File No. _____

A Disabled Person

(FIRST) CURRENT ACCOUNT

Guardian of the Estate of
_____, a Disabled Person, respectfully submits
His/her _____ Account, from _____ 20_____
(First or Current)
the date of his/her appointment (or date of previous account) to _____
(Date)

RECEIPTS:

Item Number and Description of Receipts:

Amount

Total Receipts \$ _____

DISBURSEMENTS:

Voucher number and description of expenditures:

Amount

Total Disbursements \$ _____

RECAPITULATION:

Beginning balance		\$ _____
Plus Total Receipts	\$ _____	
Minus Total Disbursements	\$ _____	
Equals	BALANCE ON HAND	\$ _____

AFFIDAVIT

_____, on oath states that the foregoing accounting by him/her
subscribed is true and correct to the best of his/her knowledge and belief.

(Signature)

Subscribed and sworn to this _____ day
Of _____, 20____

Notary Public

13. Guardianship Checklist

Steps to take:	What is needed:	Status/Comments
1. Petition filed for guardianship.	File in county circuit court where alleged disabled lives.	
2. Physician's report prepared within 3 months of filing and attached to petition.	Report requires diagnosis & prognosis to determine type and scope of guardianship.	
3. Who may act as guardian?	Age 18 or older with no felony convictions. Family, agency, bank trust, or public guardian if available.	
4. Hearing set no sooner than 14 days after filing or longer than 30 days after the filing date.	Date is set for hearing and with all essential parties noticed of date and place.	
5. Alleged disabled person is served copy of petition and summons delivered by sheriff or his deputy.	If alleged disabled person not served the guardianship will not be valid.	
6. Guardian ad litem (GAL) is appointed to represent the alleged disabled person and remains representative as long as guardianship is in force.	This GAL is directed by the court to inform person of their rights. GAL interviews person and prepares report for court as to whether a guardian is needed. GAL also advises alleged disabled person of right to have 6 person jury and attorney.	
7. At hearing, the petitioner can testify as can the alleged disabled person.	If the alleged disabled person has an attorney, the court will allow other testimony and reports.	
8. Guardianship granted by the court.	An order is signed by judge stating the type and scope of guardianship. Letters of Office prepared and Bond if needed.	

14. Limitations of Guardianship

This section was authored by Margaret Tyne, Attorney, for the Illinois Office of State Guardian, 1994. The thrust of her article was devoted to civil liberties and the right of privacy and letting a disabled person make as many decisions as possible was very insightful. The article put into perspective what is most important for guardians to remember and that is rather than looking at guardianship as removing rights away and controlling their life it is more of being an advocate for a disabled person so they can participate in life to their fullest.

Guardians Can't Do Everything

- A. A guardian cannot change the ward's behavior. Many people want guardians to change the ward's behavior. The guardian cannot stop the ward from being self-destructive, engaging in criminal activity or make then participate in recommended therapy or programming. Therefore, if the desired result is to change behavior, guardianship is not the answer.
- B. A guardian cannot force the ward to take medication. This situation more generally arises with cases of mentally ill persons. A psychotropic medication may have serious side effects, and the use of these drugs should be limited. The Mental Health Code applies in forced medication cases and should be discussed with the case manager.
- C. A guardian cannot force the ward to stay at a facility. Legally the ward has a right to free movement. The guardian cannot authorize the caregiver to physically restrain the person from leaving. However, the guardian must have residential placement authority if a decision is made to move the ward. For mentally ill persons in a mental health facility the Mental Health Code applies.
- D. A guardian cannot sign a voluntary admission to a psychiatric hospital if a ward does not agree. Unless the ward agrees to be admitted, it is presumed the ward has not consented. Therefore, the Mental Health Code applies and the guardian will need to work with the facility.
- E. The guardian must have court approval to consent to electric convulsive therapy. The guardian must petition the court for approval. Consulting an attorney is recommended if this situation arises.
- F. The guardian may be able to consent to withholding life-sustaining medical treatment. The guardian may withdraw life-sustaining treatment under the Health Care Surrogate Act. See the section on HCSA.

G. The guardian cannot restrict the ward's civil liberties unless there is a direct correlation between the disability and an abuse of the right or the ward's inability to understand the responsibilities that correspond to that right.

1. Marriage. A guardian cannot keep a ward from getting married. The guardian can strongly suggest the ward not get married.
2. Divorce. A guardian cannot file a petition for dissolution of marriage without the ward's concurrence. An attorney should be consulted if the guardian has concerns.
3. Sterilization/Abortion. The courts have determined there is a sacred right to privacy of every woman concerned in decisions regarding abortion. The guardian must carefully weigh burden on the ward of continuing the pregnancy to term against the perceived protections of ending the pregnancy. Religious, moral, societal, and medical considerations are to be examined by the guardian in making these decisions. Sterilization is considered a very intrusive surgical procedure and should be used where other less intrusive alternatives are unacceptable. An attorney should be consulted as needed.
4. Birth Control/Sexual Activity. While some guardians believe they should protect their ward from sexual exploitation in all situations, the disabled person still has personal rights. The guardian should consider the abilities (not disabilities) of the ward and help the person to understand that emotional and medical problems can arise.
5. Parental Rights of the Ward. The ward may be unable to sufficiently care for their offspring. If a court determines that it is in the best interest of the child that the ward's parental rights be terminated, that child will be freed for adoption. The guardian may not feel it is best for the parent (the ward). An attorney should be retained to represent the ward.
6. Voting. Just because a person is disabled, it does not automatically follow that the person cannot vote. The ward has to register, meeting the same requirements of residency, citizenship, and age as anyone else. They must understand the procedure of voting such as entering the booth, voting, and returning the ballot to the judge. If the person has a physical or language disability requiring special assistance, this should be made known at the time of registration. Special

accommodations will be arranged. There are no tests of mental capacity and the disabled person does not have to be able to read or write. The guardian would want to discuss the important considerations and responsibilities of voting with the ward.

7. Driving. The motor vehicle code allows persons with physical disabilities to drive. Special adaptive restrictions will be placed on persons with physical disabilities. However, the Secretary of State cannot issue licenses to people with a mental disability if there is direct correlation between the disability and ability to drive.
8. Other Freedoms. If a person with a disability is in a mental health facility or nursing home certain rights will be protected. The ward's right to communicate will be protected without the guardian's considerations. The same protection of free speech will not be affected by the guardian's wishes. The freedom of religion and privacy also remain intact.
9. The guardian cannot make decisions regarding matters the court has not authorized. If the guardian has been appointed to manage the ward's person, no decisions regarding financial estate can be made without further court approval. If the guardian has limited powers, those powers only must be followed by the guardian or possible liability charges could be made.

Conclusion

Please remember that the guardian can only make the types of decisions that the court allows. The ward will still be able to make the type of decisions that the court has not determined the guardian should make. It is the role of a guardian to know their client very well and advocate for what is in their best interests.

15. Website Resources

The following are some website addresses for your use as needed.

1. www.illinoisguardianship.org This is the Illinois Guardianship Association's website. When one wants to know what, when, and where the next training conference is then click on Upcoming Events and review.

Other sites available are IGA Bulletin and Related Links. There is a Consumer Legal Guide link from the Illinois Bar Association and a link for the Center for Guardianship Certification. If you are interested in becoming a certified guardian you will want to know what testing is required.

Under the Illinois Guardianship and Advocacy Commission link click on Divisions and then on Office of State Guardian and then on Practitioner's Guide to Adult Guardianship in Illinois. This is an excellent overview of the guardianship law in Illinois.

There are several more related links such as Equip for Equality who advocate for disability rights and the Illinois ARC. And if you have questions on money management for your client the Consumer Financial Protection Bureau may provide you with the direction you need.

2. <http://isbe.net/spec-ed/html/parentright.htm>. Illinois State Board of Education. This website is useful when involved with Individual Education Plans.
3. www.idph.state.il.us/public/books/advdir4.htm This is site for Illinois Department of Public Health which has information on advanced directives.
4. www.guardianship.org. This site will give you information about the National Guardianship Association and all they offer in support and education. If you want Guardianship Terminology and definitions on all the legal terms involved with guardianship then this site will be helpful.

16. Comprehensive Assessment Forms.

The detailed forms in this section were the creation of the Center for Social Gerontology, Inc. in Ann Arbor, Michigan. The information collected is very inclusive so the user can be selective in recording the data that pertains to their client.

Clearly, the assessment is aimed at the older population who may need a substitute decision maker. Therefore, the sections regarding interpersonal relationships, support networks, legal status, daily living skills, financial resources, medical conditions, and feelings about illness, suffering, and dying are really important for the guardian to assess and know. However, no matter the age or disability of your client, completing the sections you feel apply will bring out important information relative to every day needs and issues.

The blank forms can be copied as needed for future use. It is recommended that a file be set up and when information changes the updated blank forms can replace the original data collected.