

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA** **SPECIFIC INSTRUCTIONS TO GUARDIANS**

Unless the appointment is made to accomplish one specific purpose, both limited and general guardians shall become (or remain) personally acquainted with the ward and maintain contact with the ward so that the guardian knows the ward's capacities, limitations, needs, opportunities, and physical and mental health. Developing such a relationship allows the guardian to exercise the powers listed in D.C. Code, sec. 21-2047 for the benefit of the ward and to comply with the reporting requirements of that Code section. Specifically, the guardian should do the following:

- (1) Upon appointment, the guardian shall qualify by filing an *Acceptance and Consent to Jurisdiction* (unless the guardian has signed the acceptance and consent at the end of the *Petition for General Proceeding*) and a bond (if the Court requires a bond). These filings must occur within fourteen (14) days of the date of appointment.
- (2) For INT cases only, the guardian shall develop a guardianship plan in consultation with the ward. That plan must be filed within ninety days of the date of appointment.
- (3) The guardian shall file a change of address promptly if either the ward or the guardian moves.
- (4) If the ward has money subject to the control of the guardian, the guardian shall ensure that money is available each month for the personal use or incidental needs of the ward. If the ward lives in a nursing home, the guardian may consider contacting the appropriate nursing home officials to establish and fund a "patient's account" with the home to be used for the monthly purchase of incidental needs of the ward. If the ward is a Medicaid recipient, the guardian shall use such amounts as are allowed by Medicaid regulations for the personal use or incidental needs of the ward.
- (5) If no conservator has been appointed and the guardian is charged with the responsibility of expending funds for the care and maintenance of the ward, the guardian shall ensure that monies available for the care and maintenance of the ward are paid to the nursing home or other authorized caretaker promptly as due.
- (6) The guardian shall become and remain informed of the ward's medical needs and desires and shall maintain sufficient contact with the ward's medical personnel and caretakers to ensure that the medical needs of the ward are satisfied fully and promptly. **The guardian shall personally visit the ward at least once every thirty (30) days.** The guardian shall seek appropriate order of the Court before consenting to any medical procedures prohibited by D.C. Code, sec. 21-2047(c) unless the authority to consent is granted in the order of appointment.
- (7) If the guardian has reason to believe that the ward is in need of protective services because of abuse or neglect by another, the guardian shall immediately report this belief to Adult Protective Services either orally or in writing. The report shall include the name, age, physical description, and location of the adult alleged to be in need of protective services; the name and location of the person allegedly responsible for the abuse, neglect, or exploitation; the nature and extent of the abuse, neglect, or exploitation; the basis of the reporter's knowledge; and any other relevant information. D.C. Code, sec. 7-1903. Any person required to report who willfully fails to do so shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$300.00. D.C. Code, sec. 7-1912. For additional information, see the Adult Protective Service website at <http://dhs.dc.gov/dhs/csp/view,a,3,q,492691.asp>.

The above instructions are for guidance only and do not include all the guardian's duties and responsibilities. Individuals serving as guardians must comply with all applicable statutory provisions, rules of Court, and Court orders issued regarding their wards.

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA** **GUARDIANSHIP INFORMATION SHEET**

The following information is provided to those individuals appointed as limited or general guardian of an incapacitated individual (ward), but is not intended to be all-inclusive. Individuals serving as guardians shall be governed by all applicable statutory provisions, rules of Court, and Court orders issued regarding their wards.

### **1. PERMANENT GENERAL GUARDIAN**

A permanent general guardian is one appointed by the Court and on whom the Court has conferred, without limitation, those general powers set forth in D.C. Code, sec. 21-2047(a) & (b) (2001 ed.).

### **2. PERMANENT LIMITED GUARDIAN**

D.C. Code, sec. 21-2044(c) reads as follows:

“The court, at the time of appointment, later on its own motion, or on appropriate petition or motion of the incapacitated individual or other interested person, may limit the powers of a guardian otherwise conferred by this chapter and create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated individual shall be endorsed on the guardian’s letters. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.”

### **3. QUALIFICATION**

A guardian qualifies by executing and filing an *Acceptance of Guardian/Conservator* form (unless the guardian signed the acceptance at the end of the *Petition for a General Proceeding*). If bond is required by order of Court, the guardian must also execute and file a bond in the amount set by the Court to qualify. These filings must occur within fourteen (14) days of the date of appointment.

### **4. POWERS**

Upon appointment, a guardian is responsible for the care, custody, and control of the ward subject to any limitations imposed by the Court. A guardian shall become (or remain) personally acquainted with the ward and maintain contact with the ward so that the guardian knows the ward’s capacities, limitations, needs, opportunities, and physical and mental health. **The guardian shall visit the ward at least once every thirty (30) days.** The guardian shall exercise only those powers under D.C. Code, sec. 21-2047(a), (b), and (c) set forth in the Court’s order of appointment or authorized by subsequent order of the Court. The powers may be found in Title 21 of the D.C. Code, Chapter 20 at [www.dccouncil.washington.dc.us/dcofficialcode](http://www.dccouncil.washington.dc.us/dcofficialcode).

### **5. PETITIONS**

Application to the court for an order after appointment shall be by the filing of a verified *Petition Post Appointment* that includes a *Notice of Hearing on Subsequent Petition* in accordance with SCR-PD 311, a *Notice of Right to Respond and/or Request an Oral Hearing* pursuant to SCR-PD 322, an order appointing counsel, and a proposed order for the court’s signature. The petition shall state specifically what is being requested and why the request is being made and shall include such supplemental information and/or documentation as may be considered appropriate.

## **6. GUARDIANSHIP PLAN, REPORTS, AND CHANGE OF ADDRESS**

(a) Filing of Guardianship Plan - For INT cases only, the guardian shall develop a guardianship plan in consultation with the ward. That plan must be filed within ninety days of the date of appointment.

(b) Filing of Reports - A guardian, limited or general, shall submit a written report to the Court at least semi-annually on the condition of the ward and the ward's estate that has been subject to the guardian's possession or control. In addition, if the ward moves, the guardian shall file a *Praeceptum – Change of Address* form promptly to notify the Court. The guardianship report shall be prepared on the *Report of Guardian* form and signed under oath. The first report shall be due six months from the date of appointment, and successive reports shall be due at six-month intervals thereafter. The Court reviews these reports and is very concerned that they be filed promptly.

(c) Service – The guardianship plan, guardianship reports, and *Praeceptum – Change of Address* shall be served upon all parties (including the ward), upon any person who has filed an effective request for notice, and upon other such persons as the Court may direct.

## **7. SUGGESTION OF DEATH**

Upon the death of the ward, the guardian shall file a *Suggestion of Death* form promptly to notify the Court that the ward has died and must serve a copy on all parties.

## **8. FINAL REPORT OF GUARDIAN**

Upon the death of the ward, termination of the guardianship, or resignation of the guardian, the guardian shall file a final report of guardian with respect to assets under the guardian's control or possession within sixty (60) days. An affidavit in lieu of final report of guardian shall be filed within sixty (60) days if no assets were administered by the guardian.

## **9. RECEIPTS**

Promptly after full distribution and settlement a guardian shall file receipts or canceled checks evidencing final distribution of any assets held.

## **10. ADDITIONAL INFORMATION**

(a) The law that applies to guardianships is D.C. Code, Title 21, Chapter 20.

(b) The court rules that apply to guardianships are in the 300 Series of the Superior Court, Probate Division Rules.

(c) No attorney fees are to be paid from estate funds unless specifically authorized by order of court after compliance with Superior Court, Probate Division Rule 308.

(d) No guardian shall commingle any estate assets with non-estate assets (i.e., no guardian shall mix any of the ward's assets with assets belonging to anyone else).

**(e) Guardians are hereby notified that any authority granted by the court to administer funds of the ward terminates upon death. Upon death of the ward, no further expenditures shall be made.**

(f) Court clerks and staff cannot give legal advice. If legal questions arise, consult an attorney. Neither the Register of Wills nor any member of her staff is permitted to recommend lawyers. If legal help is needed, consider consulting the Lawyer Referral Information Service of the D.C. Bar.

**D. C. Code, §21-2047. Powers and Duties of General  
Guardian and Limited Guardian (D.C. Code, 2001 ed., 2008  
suppl.)**

Except as limited pursuant to section 21-2044, a general guardian or a limited guardian of an incapacitated individual is responsible for care, custody, and control of the ward, but is not personally liable to third persons by reason of that responsibility for acts of the ward.

(a) In particular and without qualifying the foregoing, a general guardian or limited guardian shall:

(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) Take reasonable care of the ward's personal effects and commence protective proceedings, if necessary, to protect other property of the ward;

(3) Apply any available money of the ward to the ward's current needs for support, care, habilitation, and treatment;

(4) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs;

(5) Report in writing the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or on any order of the court, but at least semi-annually;

(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

(7) Include the ward in the decision-making process to the maximum extent of the ward's ability; and

(8) Encourage the ward to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible.

(b) A general guardian or limited guardian may:

(1) Receive money payable for the support of the ward under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) Take custody of the person of the ward and establish the ward's place of abode within or without the District, if consistent with the

terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward;

(3) Institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward, if no conservator for the estate of the ward has been appointed;

(4) Consent to medical examination and medical or other professional care, treatment, or advice for the ward, without liability, by reason of the consent for injury to the ward resulting from the negligence or acts of third persons, unless the guardian fails to act in good faith;

(5) Obtain medical records for the purpose of applying for a government entitlements or private benefits and have the status of a legal representative under the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; Sec. 7-1201.01 et seq.); and

(6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) [Repealed].

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court pursuant to section 21-2060(a).

(Feb 28, 1987, D.C. Law 6-204, Sec. 2(a), 34 DCR 632; May 10, 1989, D.C. Law 7-231, Sec. 27, 36 DCR 492; Sept. 22, 1989, D.C. Law 8-34, Sec. 2(h), 36 DCR 5035; Oct. 22, 2008, D.C. Law 17-249, Sec. 2(g), 55 DCR 9206.)

**D. C. Code, §21-2047.01. Limitations on Temporary, Limited, and General Guardians (D.C. Code, 2001 ed., 2008 supplement)**

A guardian shall not have the power:

(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have

consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

- (4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of Chapter 5 of Title 21 or Chapter 13 of Title 7;
- (5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or
- (6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

(Oct. 22, 2008, D.C. Law 17-249, Sec. 2(h), 55 DCR 9206.)