

PUBLIC INTEREST LAW INITIATIVE
GUARDIANSHIP BASICS AND BEYOND
HANDLING THE WARD'S FINANCES
JUNE 20, 2019 AT DANVILLE AREA
COMMUNITY COLLEGE

I Opening Account

A. Gather assets

1. Obtain records

a. Tax returns

- i. Review returns to find sources of income and deduction
- ii. Look for income from mutual funds, pensions, profit sharing, annuities, partnerships, trusts, passive investments and business

b. Bank records

- i. Statements
- ii. Check book and register
- iii. CD information
- iv. On-line banking information
- v. Ownership of account – individual, joint, POD
- vi. 1099 information
- vii. Determine current values

c. Retirement Benefit Information

- i. Type of benefit – IRA, Pension, Government (Federal or State), 401 or 403 Plan, Annuity
- ii. Status of Plan – Qualified or Non Qualified
- iii. Is the benefit owned by the ward or is it inherited
- iv. Are payments being made
- v. Is the plan in RMD and if so have all required distributions paid
- vi. Who is beneficiary of the Plan
- vii. Is court order needed to establish a new beneficiary
- viii. 1099-R information
- ix. Determine current values

d. Brokerage Accounts

- i. Statements
 - ii. Basis information
 - iii. Ownership – individual, joint, TOD
 - iv. 1099
 - v. Determine current values
- e. Paper Certificates and Electronic Shares
 - i. Stocks and Bonds
 - ii. Government Bonds
 - iii. Ownership – individual, joint, POD
 - iv. Basis
 - v. 1099
 - vi. Dividend reinvestment
 - vii. Determine current values
- f. Life Insurance Policies
 - i. Ownership
 - ii. Type of Policy
 - iii. Premium status
 - iv. Beneficiary
 - v. Cash Value
 - vi. Loan against policy
 - vii. If Whole Life determine current value
- g. Safe Deposit Boxes
 - i. Ownership
 - ii. Inventory
- h. Personal Property
 - i. Household
 - ii. Vehicles – Obtain title
 - iii. Jewelry
 - iv. Coins and collections
 - v. Firearms (need for a FOID)
 - vi. Obtain Insurance

- vii. Safeguard or store
- viii. Determine current value – Appraisal (§14-2 of Probate Act*)

i. Real Estate

- i. Residence, Business, Investment
- ii. Title Evidence
- iii. Environmental
- iv. Insurance
- v. Basis
- vi. Appraisal (§14-2 Probate Act) at discretion of Guardian
- vii. Leases
- viii. Management

j. Liabilities

- i. Current monthly
- ii. Notes and mortgage

2. The assets, if not needed by the ward, should be in the possession of the Guardian

- a. Kept in a secure location
- b. Not co-mingled with the personal property of the guardian
- c. Clear indication that the property is owned by the ward
- d. Safe or Safe Deposit Box in name of Estate
- e. All property of the ward must be kept in Illinois without leave of Court (§19-9 Probate Act)

B. Change mail address if necessary

C. Change Locks if necessary

D. Have all mail sent to Guardian

* All references to the Probate Act are to 755 ILCS 5/1-1 et seq. (2019)

E. Establish accounts for Guardian

- 1. Most banks require certified Letters of Office

2. W-9 form – for ward
 3. Identification of Guardian
- II Inventory must be filed within 60 days of issuance of Letters of Office (§14-1 Probate Act)
- A. The Inventory is the foundation for the estate
 - B. The first Accounting should tie to the Inventory
- II Maintaining Records
- A. Manual Systems
 1. Ledgers for Receipts and Disbursements
 2. Asset pages
 - a. Asset Description
 - b. Shares or Face Value
 - c. Basis
 - d. Dividend, Interest
 - e. Reinvestment information
 - f. Mutual Fund distributions of income
 - g. Mutual Fund capital distributions
 - h. Sale information
 - B. Automated Systems
 1. Set up as a sole proprietorship
 - a. Initial Assets from Inventory
 - b. Initial Liabilities from Inventory
 - c. Receipts – by asset from Inventory
 - d. Disbursements – Payment of bills by Vendor
 - e. Distributions to ward
 - f. Purchase of new assets and create a new asset in system
 - g. Sale of assets and delete or reduce existing asset in system
 - h. Payment of Long Term liability and adjust liability
 2. Use of an automated system allow system to generate reports
 - a. A Profit and Loss or Income Statement can produce both Summary and Detail Statements to submit to court

- b. A Balance Sheet on first day of fiscal year and last day of fiscal year will show beginning and ending Account Holdings
- c. A Summary Court Accounting can be typed with the computer reports as exhibits

III Paying Bills

A. Approval of Bill

- 1. Either on face of bill or separate form (voucher) indicate the bill is approved or in rare cases it is not approved
- 2. Indicate the type or category of expense (needed for tax purposes)
- 3. Indicate payment date and check number (after bill entered in system and check written)

B. Keep bills and vouchers (if used) in file

- 1. Can use a 12 pocket file for each month
- 2. New file should be used for each year

C. Keep pocket file for Income and Receipts

- 1. Can arrange by asset
- 2. Keep dividend and interest payment information by asset
- 3. Keep dividend reinvestment information by asset
- 4. Keep pension, IRA and all retirement information
- 5. Keep sale information such as confirmations by asset

D. Keep Income Tax Information in folder or file for each year

IV Investments

- 1. Guardian has duty to keep ward's money invested (§21-2 Probate Act)
 - a. Keep small amounts in checking account
 - b. Guardian can be surcharged for keeping large sums uninvested through the negligence or wrongful acts at 90 day US T-Bill Rate (2.34% on 6/1/19)
 - c. If possible use interest bearing checking accounts
 - d. Corporate Fiduciaries use sweep accounts that may not be available to an individual
- 2. If Guardian initially receives an investment that is not approved under the Probate Act, it can be held only with court approval (§21-2(b) Probate Act)

3. Only allowed to hold or invest in type of property described in Sections 21-2.01 Through 21-2.15 of the Probate Act (§21-2(c) Probate Act)
- a. Sec. 21-2.01. Obligations of the United States.
 - b. Sec. 21-2.02. Obligations of which both the principal and interest are guaranteed unconditionally by the United States.
 - c. Sec. 21-2.03. Obligations of any corporation wholly owned, directly or indirectly, by the United States or any agency or instrumentality of the United States.
 - d. Sec. 21-2.04. Insured accounts, deposits, and certificates. Withdrawable capital accounts, deposits, investment certificates or certificates of deposit of state and federal savings and loan associations but, unless otherwise authorized by a court of competent jurisdiction, only to the extent that the accounts, deposits or certificates are insured by the United States or any of its agencies, and share accounts in federal and state credit unions if the credit unions are insured by the National Credit Union Administration. Amounts invested in a savings and loan association in excess of the amount insured by the United States or any of its agencies shall be secured by a surety bond taken from a surety authorized to transact business in this State in such sum, under such conditions, and with such security sufficient to save the estate from loss.
 - e. Sec. 21-2.05. Municipal bonds. Instruments providing for the payment of money executed by or on behalf of any state of the United States or the District of Columbia or any governmental entity organized by or under the laws of any state of the United States or the District of Columbia, to carry out a public governmental or proprietary function, acting through its corporate authorities, or that any governmental entity has assumed or agreed to pay and that, at the time of investment, have been given one of the top 4 rating grades by a nationally recognized rating service.
 - f. Sec. 21-2.06. Savings and time deposit certificates of a state bank or a national bank doing business in this State but, unless otherwise authorized by a court of competent jurisdiction, only to the extent that such deposits are insured by the United States or any agency thereof, even though the bank of deposit is the

representative of the ward's estate. Amounts deposited in savings and time deposit certificates of such bank in excess of the amount insured by the United States or any agency thereof shall be secured by a surety bond taken from a surety authorized to transact business in this State in such sum, under such conditions and with such security sufficient to save the estate from loss.

g. Sec. 21-2.07. Notes secured by real estate. All of the notes secured by a first mortgage or trust deed upon improved or income producing real estate situated in this State and not exceeding two-thirds of the value thereof at the time of the investment.

h. Sec. 21-2.08. Corporate obligations. Obligations of any company incorporated under the laws of the United States or of any state of the United States or the District of Columbia that, at the time of investment, have been given one of the top 4 rating grades by a nationally recognized rating service.

i. Sec. 21-2.10. Real estate located in any state of the United States or the District of Columbia.

j. Sec. 21-2.11. Life, endowment, or annuity policies. Life, endowment, or annuity policies on the life of the ward, or on the life of any person in whose life the ward has an insurable interest, if the ward is the beneficiary, when the policies are issued by companies, associations or fraternal organizations that, at the time of investment, have been given one of the top 4 rating grades by a nationally recognized rating service. The order may authorize the payment of annual premiums without further application to the court.

k. Sec. 21-2.12. Stock. Shares of any corporation with a market capitalization of over \$200,000,000 if the shares are listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange or an electronic securities quotation system regulated by the Securities and Exchange Commission.

No investment in shares of a corporation may be made under this Section that, at the time such investment is made, would cause the market value of all stock held in the ward's estate to exceed two-thirds of the market value of the estate then held by the representative.

l. Sec. 21-2.13. Common trust funds. Interests in one or more common trust funds, as defined in and from time to time established, maintained and administered pursuant to the Common Trust Fund Act, the investments of which are not restricted to the investments otherwise authorized for representatives by Sections 21-2.01 through 21-2.12 and 21-2.14 of this Act, provided that the investment in such common trust fund meets the standard of the prudent investor rule for the investment of trust funds.

m. Sec. 21-2.14. Mutual funds. Interests in any open-end management type investment company or investment trust (hereafter referred to as a "mutual fund") registered under the Investment Company Act of 1940, the investments of which are not restricted to the investments otherwise authorized for representatives in Sections 21-2.01 through 21-2.13 and 21-2.15, including without limitation a mutual fund that receives services from or pays fees to the representative or its affiliate, provided that the investment in the mutual fund or funds meets the standard of the prudent investor rule for the investment of trust funds. A representative or its affiliate is not required to reduce or waive its compensation for services provided in connection with the investment and administration of the estate because the representative invests, reinvests, or retains estate assets in a mutual fund for which it or its affiliate provides services and receives compensation if the total compensation paid by the estate as fees of the representative and mutual fund fees, including any advisory or management fees, is reasonable. However, a representative may receive fees equal to the amount of those fees that would be paid to any other party under Securities and Exchange Commission Rule 12b-1.

n. Sec. 21-2.14a. Illinois prepaid tuition contract. An Illinois prepaid tuition contract, as defined under the Illinois Prepaid Tuition Act.

o. Important to know what these investments are

p. Must monitor for changes

q. For large amounts of money may be negligence to invest only in assets that have no potential for growth

r. For large accounts must have both an investment goal, policy and a strategy

- s. Guardian should have knowledge and experience in investments
 - 4. Have duty to monitor, price, ratings, outlook and make changes when necessary
- V Operation of Business of Ward
- 1. Guardian may seek approval of court to operate an unincorporated business of the ward (§19-7 Probate Act)
 - 2. Guardian should have knowledge and experience
- VI Sale of Personal Property (§19-2 Probate Act)
- 1. Personal property may be sold when it is in the best interest of ward
 - 2. If type of personal property is business property or is income producing may lease with leave of court
 - 3. If ward is in farming business can borrow money for farming with leave of court
 - 4. If Guardian believes it to be in best interest of ward to sell personal property must petition court for approval (§19-4 Probate Act)
 - a. Court may direct that notice be given or may have hearing without notice
 - b. Recommend if notice is not needed that the petition set forth the reasons that notice is not needed
 - c. Private sale needs no notice
 - d. Public sale needs notice
 - e. Court may direct one or three time (once a week for three weeks with first publication not less than 5 days nor more than 21 days before the sale
 - 5. Must report in Annual Account the amount of proceeds from the sale
- VII Sale or Lease of Real Estate
- 1. Lease of Real Estate used in operation of a business such as farm (§20-2 Probate Act)
 - a. Requires petition with copy of proposed lease
 - b. Notice to ward
 - 2. Sale of real estate (§20-3 Probate Act)
 - a. Requires a petition
 - b. Reasons for sale are that it is necessary or expedient for the support and/or education of the ward; for the payment of debts; or for reinvestment
 - 3. Procedure for petition

- a. Set forth facts and circumstances as to why the sale is necessary
 - b. Describe property, those who have interest or liens or are in possession and all of these (except the ward) shall be made a party defendant
 - c. If there is a contract, it must be attached.
 - d. If there is no contract describe how proposed sale is to be conducted
 - e. Court may appoint GAL to represent ward
 - f. Summons to issue to all defendants
4. Court has powers in §20-6 of Probate Act
- a. Court has power to clear issues of title
 - b. With approval of mortgage holder, life tenants sell clear of those interests
 - c. Power to establish amount of homestead of ward
 - d. Resolve lien disputes
 - e. Care should be taken to insure that liens are not more than value of real estate
 - i. Ward is alive and deficiencies will remain as liabilities
 - ii. Consensual work outs can be used if approved by court
5. If appraisal is ordered by Court the property cannot be sold for less than 2/3 of the appraised value (§20-8 Probate Act)
6. Court may order a public or private sale
- a. If public sale notice is required (§20-7 Probate Act)
 - b. Can be conducted by means of internet if court approved
 - c. Publication notice required for public sale once a week for three weeks with first notice not less than 25 days before sale
 - d. Public Sale must be between 10:00 am and 5:00 pm
 - e. Order sets forth terms of sale
7. Report of Sale must be filed (unless the sale was a private sale by contract when the Contract was attached to the petition
- a. Report must set forth the description of property sold, name of purchaser, date and terms of sale, and the manner in which the order was executed
 - b. Notice of hearing must be given to all parties who entered appearances
 - c. At hearing court will enter an order approving report and confirming sale

8. Following approval and confirmation the Guardian can deliver deed to purchaser

VIII Accounts

1. Must file verified account within 30 days following one year after the issuance of Letters of Office (§24-11 Probate Act)
2. Subsequent accounts are to be filed as required by the court and if the court does not set a date for the next account, the account shall be filed 30 days after the approval of the last account that is filed
3. Contents of the account
 - a. The receipts and disbursements
 - b. The property on hand
 - c. Accompanied by such evidence of disbursements as the court requires
 - i. The disbursement file should be in court for inspection
 - ii. Review of the disbursement file by the GAL is sometimes used to verify the disbursements
 - d. Court may also require the Guardian to show proof the investments and personal property are in his possession
4. Notice of hearing is given 10 days before hearing
 - a. If funds are derived from VA notice is required to VA
 - b. GAL is to get notice
 - c. If there is a Guardian of the Person who is different from the Guardian of the Estate notice is to be given to Guardian of the Person
5. Order approving account is entered at hearing
6. In the event of the death or legal disability of the Guardian it is the duty of the surety on the bond or the Guardian's personal representative or heirs and legatees may present the account
7. If Letters of Office are revoked and the former Guardian fails or refuses to file a Final Account, the surety on the bond is to file the account
8. The Court may state an account for the representative who dies or is legally disabled, if the surety on the bond, personal representative of the Guardian, or his heirs and legatees does not file a Final Account within 60 days from the death or disability and the order is binding against the surety on the bond.

9. The court may enter a Citation against the Guardian to appear and show cause why he should not be held in contempt. Normal rules for a Petition for Rule to Show Cause apply
10. When minor attains majority or dies, the estate closes. Good practice to file Final Account and obtain a discharge and cancellation of bond
11. When a disabled adult dies guardianship ends
 - a. Guardian continues with authority of Administrator to Collect
 - b. When personal representative is appointed file final account have court approve and discharge from office and cancel bond
12. Liability of Guardian and Surety
 - a. If there is any mismanagement of the estate while the Guardian was in office, the Guardian is liable to the successor representative (whether it be a Guardian or personal representative of a deceased ward)
 - b. An action can be brought against both the Guardian and surety