

CAUSE NO. \_\_\_\_\_

GUARDIANSHIP OF

IN THE COUNTY COURT AT LAW

SITTING IN MATTERS PROBATE

AN INCAPACITATED PERSON

COMAL COUNTY, TEXAS

**COURT INSTRUCTIONS  
GUARDIAN OF THE ESTATE**

As a duly-appointed Guardian of the Estate, you are hereby advised by the Court that you **must** do the following:  
(All section references are to the Texas Estates Code unless otherwise indicated.)

**A. Fiduciary Responsibility: (§1151.152)** As a guardian, you are a **fiduciary**, a position of the highest trust and responsibility with respect to the ward, keeping all affairs confidential; maintaining accurate and complete financial records and ensuring that all dealings undertaken on behalf of the ward, such as the purchase of goods and services, are properly completed.

**Avoid conflicts of interest** (and potential removal and personal liability) by:

1. **Not commingling** your personal funds with the funds of the ward
2. **Not borrowing** money from or lending money to the ward
3. **Not selling** or encumbering real or personal property, or any interest therein, to you, a relative, friend or business acquaintance.

As a fiduciary, you and your bond surety may be held **liable** for any breach of your fiduciary duties. The requirements of the Estates Code are clear regarding your responsibilities.

**B. Qualify as Guardian:** Within twenty (20) days of receiving the order appointing you as guardian (§105.002):

1. Take and file an *oath* (§1105.051);
2. File the required *bond*, (§1105.101), and
3. Obtain *Letters of Guardianship* from the probate clerk's office (§1106.001).

**C. Limited Power of Guardian to Act without Court Authority (§1151.103)** Without prior authorization by the court, the guardian may only:

1. Purchase liability and property insurance
2. Pay taxes, court costs, & bond premiums
3. Release liens upon final payment of secured debt
4. Vote stocks by limited or general proxy
5. Pay calls and assessments

**Any other actions** by the guardian must be with **prior approval** of the court or be **ratified** by the court. You and your bond surety can be held **liable** for failure to get court approval before taking action or spending estate money. If in doubt, ask your attorney.

**D. Take Possession of all Property** of the Ward Immediately upon receiving Letters of Guardianship, **collect and take possession of all personal property and business records of the estate.** (§1151.152) This may include, as necessary:

1. **Security** Change the locks on real property
2. **Storage** Place non-perishable personal property in insured storage
3. **Perishable Property** Obtain permission to sell perishable personal property (§1158.051) **after** the Inventory has been filed and approved

**4. Standards for Management and Investment of Estate:** Set up appropriate accounts for the Guardianship funds. (All Guardianship funds must be deposited in insured accounts in the name of the Guardianship. Retain in a checking account only such funds reasonably necessary for the current support and maintenance of the Ward. You are required to invest all additional funds in insured, interest-bearing accounts (§1161.002). **Do not commingle Social Security Benefits with other estate accounts and non-probate assets. You need only to account to the Social Security Administration for the use of these funds. If Social Security is the only source of income for the Ward, it DOES NOT need to be reported in the Annual Account. In the Annual Account, just state that the Ward's only income is Social Security in which you are the representative payee and that it has been reported to the Social Security Administration.**

**5. Cancel Credit Cards** issued in the Ward's name and send written notice to credit reporting agencies that the Ward has been declared incapacitated and will not be making any loans or accepting "pre-approved" credit cards.

**E. Manage the Property** of the Ward as a "prudent person would manage one's own property." (§1151.101; 1151.151)

**1. Spending Money** - Obtain a written order of this Court authorizing any expenditure of Guardianship funds **before** any such expenditure is made. File an Application and obtain an Order for a monthly allowance for the maintenance and support of the Ward. (§1156.001) \_\_\_\_\_ **Initial here**

**2. Expenditures for Support** - A parent of a minor ward has a legal duty to support the child from his own resources. Absent a showing that the parent is unable to support the child, the parent has no authority as guardian to invade either the income or corpus of the child's estate. (§1156.051)

**3. Sales and Leases** - Obtain a written order of this Court before attempting to sell, lease, transfer or otherwise dispose of any non-cash asset of the Guardianship

**4. Insurance** - Obtain adequate health for the ward, if possible; obtain adequate property insurance on all non-cash assets and, when funds are available, make appropriate funeral and burial arrangements.

**5. Collect** all debts, rentals, or claims due to the ward, and, if necessary, with court permission, litigate on behalf of the ward

**6. Creditor's Claims** must be very carefully handled. Consult your attorney. Your improper approval of a claim or your failure to timely act on a claim can result in your personal liability

**7. Loans** Under certain circumstances, the court may authorize a guardian to mortgage or pledge estate property as security on a loan (§1151.201) or sale of estate property. (§1158.001)

**8. Gifts** The guardian has no authority to make a gift, absent specific authorization

**F. Filing an Inventory** Within 30 days after qualification, the guardian must file a sworn inventory, appraisal and list of claims due the estate of the ward. (§1154.051-1154.052)

**G. Notice to Creditors** Within one month after qualification, the guardian (through an attorney) must publish a notice to creditors in a newspaper of general circulation in the county and file a copy of the notice and the publisher's affidavit. (§1153.001) Within four months after qualification, the guardian must give notice by certified or registered mail, return receipt requested, to all secured creditors (§1153.003) and any general claimants if the guardian has actual knowledge of the debt or claim.

#### **H. Accountings**

**1.** Maintain an accurate record of all expenditures and receipts of Guardianship funds

**2.** Within 60 days of the anniversary of your qualification, file your Annual Account in the form prescribed by the Court.

**WARNING: Your Letters of Guardianship will EXPIRE one year and four months after the date of issuance unless they are renewed. The Probate Clerk cannot renew the letters until you have filed the required annual account for the guardian of the estate (§1163.001-1163.002).**

3. File your Final Account when the Guardianship is ready to be closed due to the death of the Ward, the Ward regaining capacity or (if Guardian of a Minor) the Ward reaches 18 years of age

**I. Address Changes** - Notify the Court **at once** if your address or the address of the Ward changes. Failure to do so is a cause for your removal. (§1203.102) \_\_\_\_\_ **Initial here**

**J. Attorney's Fees** - Attorney's fees and expenses may be paid upon application and order, as any other expenditure, subject to the guidelines of the court for billing procedures

**K. Questions?** Consult with your attorney (not the Court) on any matter regarding this Guardianship that you do not understand.

**RANDAL C. GRAY**, Judge  
County Court at Law #1

**CHARLES A. STEPHENS II**, Judge  
County Court at Law #2

I, \_\_\_\_\_, the Guardian of the Estate, hereby attest that I have read the above and understand its contents.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_