

Guardian of the Estate - Video 8

Guardian of the Estate Part 1

(Introductory music and images)

Speaker appears in comfortable, neutral setting. At times words and pictures will appear next to them or in place of them to support the dialogue.

This is the first of three videos focused on your role as a guardian of the estate. In Pennsylvania, the guardian of the estate is someone appointed by the court to manage an incapacitated person's finances. It is the guardian of the estate's responsibility to make decisions on behalf of the incapacitated person about their income, investments, real estate, expenses, and other property they own, such as a car. In addition, the guardian of the estate must apply for, maintain, and renew government benefits on behalf of the incapacitated person. You may also be responsible for maintaining health insurance for the incapacitated person.

Keep in mind, as guardian of the estate, you have a duty to manage the incapacitated person's assets and income using good judgment and only for their benefit.

It is very important that you do not mix your assets with those of the incapacitated person. This is called co-mingling, and it is not allowed. You should always maintain a separate bank account for the incapacitated person with their name on the account and your name listed as their guardian to manage the account and write checks. Do not move or deposit the incapacitated person's money into your accounts or into any joint accounts.

If you are guardian of the estate, you may spend the incapacitated person's income for their care and benefit. Income includes money they earn, Social Security and Veteran's benefits, returns on investment, annuity payments, and pension or retirement income.

The principal is any money or investments the incapacitated person had at the time you became their guardian and any money or investments they obtain while you are guardian that are not part of their income, like shares of stock, the value of any real estate, or money they inherit from a loved one.

You must get approval from the court before taking certain actions. This includes selling the incapacitated person's real estate, giving gifts or charitable donations of any value, transferring the incapacitated person's money or property to others, and spending their savings or investments, which is referred to as invasion of principal. The judge may have set a yearly allowable gift giving, donation, or invasion of principal limit in the initial court order appointing you guardian. If this occurred, you only need to seek permission from the court if the gift, donation, or invasion of principal exceeds the approved limit in your court order. If the judge did not set an annual limit, you need to get court approval every time, or you may propose an annual budget for approval by the court.

Unless you are also appointed the guardian of the person, you do not have any decision-making power or responsibility related to personal care and medical decisions

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for the incapacitated person. If someone else is the guardian of the person, it is important to work with them in areas where the incapacitated person's personal care and finances overlap, such as what housing or activities they can afford that meet their needs.

Within the first 90 days after you are appointed guardian of the estate, you must complete, and submit to the court, an inventory report. The inventory is a report that documents the value of the incapacitated person's assets as of the time you were appointed guardian. This report sets the baseline for the incapacitated person's financial situation to help the court in monitoring the guardianship.

You will need financial statements for accounts and investments, any business or other financial documents, and a determination of the fair market value of real estate, vehicles, and other valuable items to complete the inventory. Common examples of assets that must be included in the inventory are cash, bank accounts including checking, savings, IRAs, promissory notes, uncashed checks and refunds, partnerships, other business interests, insurance policies, valuables, real estate, vehicles, boats, trailers, contents of safe deposit boxes, brokerage accounts, stocks, bonds, and mutual funds.

You will need to report any annual income the incapacitated person receives, including wages from a job, Social Security benefits, Supplemental Security Income, Social Security Disability (SSDI), Veterans Administration (VA) disability benefits, Pension income, and other benefits paid to the incapacitated person on a regular basis. If you are applying for federal or state benefits on the incapacitated person's behalf, this will also need to be reported on the inventory.

You must report the estimated annual expenses on the inventory. These expenses include monthly bills, mortgage payments, car payments, and more.

You may not invest the incapacitated person's money in a business owned or controlled by you.

You may not loan or gift the incapacitated person's money to yourself or others without advance permission from the court.

You must make investment and asset management decisions that are low-risk and beneficial to the incapacitated person.

Let's talk about joint ownership. If the incapacitated person is married and has one or more joint assets with their spouse, it is important to tell the court and get court approval to maintain them as joint assets. Joint assets may include joint interest in a home, a bank account, or other property or investments.

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It is important to identify to the court any retirement savings of one spouse in which the other spouse has an interest. All these items should be identified to the court either at the initial hearing or when the inventory is filed.

In some cases, it is in the best interest of the incapacitated person to divide the joint assets. Whether the appropriate decision is to keep the assets as joint assets or to divide the assets, court approval should be sought before any changes are made. It is important to get a court order acknowledging the joint assets and approving the proposed plan to divide them.

If the incapacitated person has joint assets with someone other than their spouse, such as an adult child or other family member, these joint assets must also be disclosed to the court at the initial hearing or on the inventory. The guardian should propose to the court whether it would be best to divide the asset or maintain the asset as a joint asset.

Finally, keep in mind, you may not let anyone else make decisions for you regarding the incapacitated person's finances, but you may hire professionals including accountants, attorneys, and investment advisors to offer advice and services needed to manage the incapacitated person's estate. Reasonable fees for these professionals may be paid from the incapacitated person's income. If the incapacitated person does not have enough income to pay the fees, you may request court approval to pay these fees from principal.

As guardian of the estate, your responsibility is first and foremost to protect and support the incapacitated person through your management of their money and property. To learn more about this important role, watch Guardian of the Estate Parts Two and Three.

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