WESTMORELAND COUNTY ORPHANS' COURT
DUTIES OF THE GUARDIAN OF AN INCAPACITATED PERSON

The following outline is not intended to be taken as specific legal advice upon any particular occasion, for which the advice of qualified counsel is recommended. Please do not ask Court personnel to give legal advice on specific issues as they are not permitted or qualified to do so.

FAMILIARITY WITH THE COURT ORDER APPOINTING YOU

You must examine and be familiar with the Court Order that appoints you as Guardian of the Estate and/or the Person of the Incapacitated Person. This is particularly true in that you may only be authorized to exercise power in certain limited ways, unless you have been appointed "plenary" (general) Guardian of the Estate and/or Person. If your appointment is subject to limitations, you must not exceed those limitations. The following description of duties must, in every case, be limited by the terms of the Order appointing you. You must also determine whether you have been directed to enter Bond (insurance) and if so, provide for the entry of an appropriate sized Bond before undertaking any of your duties.

GUARDIAN OF THE ESTATE

EXPENDITURE OF INCOME/PRINCIPLE

The Guardian of the Estate may expend monthly income for the care and maintenance of the Incapacitated Person without the necessity of Court approval (See: 20 PA. C.S.A. § 5536(a)). (For example, if the Incapacitated Person received a monthly social security benefit in the amount of $1,000.00 and a monthly pension in the amount of $1,000.00, then the guardian may expend $2,000.00 per month for the care and maintenance of the Incapacitated Person without the necessity of Court approval. In such a case a monthly expenditure in excess of $2,000.00 would require a Court Order approving such expenditures. In addition, the sale of real estate also requires Court approval.)

BOND REQUIREMENTS

In the event the Court requires the Guardian to secure a bond, the Guardian may obtain a list of bonding companies through the Register of Wills' Office or by consulting with their attorney.

INQUIRY AND DISCOVERY OF ASSETS

You must make reasonable inquiry into the existence and whereabouts of all valuable assets of the Incapacitated Person, including the determination of fair market value on the date of your appointment, which may require appraisals of realty, personalty, or statements from banks or securities firms as to values of accounts and securities, or appraisals of antiques or jewelry.

SAFEGUARDING OF ASSETS

Once the assets have been discovered and values determined, you are under a duty to provide for reasonable safeguarding of the assets to protect them from being dissipated, lost, stolen or destroyed. In this regard, you should confirm that adequate insurance is in place for assets such as a residence, automobile or other valuable assets, together with confirming the requirements to maintain such insurance coverage.

MANAGEMENT OF ASSETS

You must also manage these assets using the standard of reasonable prudence so that they will produce income for the benefit of the Incapacitated Person. However, you should not reinvest assets in uninsured accounts or products unless specifically authorized by the Court.

PAYMENT OF DEBTS, OBLIGATIONS AND EXPENSES

You are authorized, generally, to pay reasonable debts, obligations and expenses of the Incapacitated Person, and in particular support, medical expenses and maintenance of the Incapacitated Person which may include education where appropriate.

ANNUAL REPORT

You are required to file an Annual Report that will include an Inventory. The report is to be filed at least once within the first 12 months of your appointment unless otherwise stated on the Court Order. Please examine the Order for specific instructions. This document should contain, so far as you have been able to discover using reasonable efforts, a list of all real estate, personal property, bank accounts, securities and any and all other valuable assets belonging to the Incapacitated Person with values stated on the date of your appointment. The Annual Report must describe in detail the current principal of the Estate and how it is invested, the current income of the Estate, the expenditures of principal and/or income since the date of appointment and the needs of the Incapacitated Person for which you have provided financially since the date of your appointment. Court permission must be obtained before any real estate is sold or principle used. You must follow your first Annual Report with succeeding Reports on the twelve (12) month anniversary of your appointment for each year thereafter that you continue to act as Guardian of the Estate of the Incapacitated Person. You must also, within sixty (60) days of the death of the Incapacitated Person, file a Final Report. Orphans' Court reporting forms are available from the Supreme Court site at www.courts.state.pa.us (Click on "UJS Forms" and then click on the "Orphans' Court Forms" Section.)

FIDUCIARY DUTY GENERALLY

As Guardian of the Estate of the Incapacitated Person you are a "fiduciary." Legally you are obligated to exercise prudent judgment in the management of the Estate of the Incapacitated

Person for his/her benefit only and to avoid conflicts of interest or decisions which may benefit yourself. You may not invest the Incapacitated Person's assets in businesses or corporations owned or controlled by you, nor may you loan the Incapacitated Person's funds to yourself for such enterprises unless you have requested in writing from the Court permission to do so and have specifically been authorized beforehand. However, you should also not allow the Incapacitated Person's assets to remain idle. Any idle assets which fall into your management should, with prudence, be placed into productive form. Two simple examples are that cash in a checking account should be transferred to a savings or money market so that income is produced. Vacant residential or commercial property, likewise, should be leased to produce income, where practicable.

As fiduciary you are also authorized, within reason, to hire experts for your advice including accountants, investment advisers, and attorneys to assist you in proper management of the assets of the Incapacitated Person. The reasonable fees and commissions for these experts are properly chargeable to the Estate of the Incapacitated Person.

ESTATE PLANNING

In the absence of an existing estate plan and where the assets of the Incapacitated Person for whom you are Guardian are substantial, you may request the Court to authorize estate planning on behalf of the Incapacitated Person or the members of his or her family to include establishing trusts, making gifts, disclaiming interest in property or powers of appointment, all of which may be needed to manage and properly dispose of the Incapacitated Person's assets. In such an effort, the advice of a qualified attorney, investment adviser and/or CPA will likely be very helpful, if not essential.

GUARDIAN OF THE PERSON

GENERAL DUTY

As either limited or plenary (general) Guardian of the Person, you have a general responsibility to assert the rights and the best interests of the Incapacitated Person. In doing so, the expressed wishes or preferences of the Incapacitated Person shall be respected to the greatest possible extent. If these expressed wishes and preferences, however, conflict with your independent judgment of what is in the best interests of the Incapacitated Person, then you should follow your independent judgment, but only to the extent necessary to pursue the best interests of the Incapacitated Person.

PLAN OF SUPPORTIVE SERVICE

Where appropriate, you should assist in the development of a plan for supportive services for the Incapacitated Person, which plan will explain how these services will be obtained. This may not be necessary in every case, depending upon the circumstances of the Incapacitated Person as you find them upon the commencement of your duties.

ENCOURAGEMENT OF INCAPACITATED PERSON TO PARTICIPATE IN DECISIONS

You must encourage the Incapacitated Person to participate to the maximum extent feasible within the limitations of his or her ability. You should also encourage the Incapacitated Person to act on his or her own behalf whenever he or she may be able to do so. You should further encourage the Incapacitated Person to develop or regain his or her capacity to manage his or her personal affairs insofar as may be possible under the circumstances.

GENERAL CARE, MAINTENANCE & CUSTODY OF THE INCAPACITATED PERSON

Where authorized by the terms of the Court Order appointing you, you shall have general responsibility for the care, maintenance and custody of the Incapacitated Person. Your attention to these duties may be limited by the terms of the Court Order, however, and in exercising these duties you must not exceed that authority. Your primary guiding principle should be to follow what is in the best interests of the Incapacitated Person, even in situations that may conflict with your personal beliefs, or your personal interest. If the best interests of the Incapacitated Person conflict irrevocably with your strongly held personal beliefs or personal interests, you may and should apply to the Court for guidance or for relief from your duties and transfer those suited to another person. You must avoid any conflict of interest in your pursuit of the best interests of the Incapacitated Person.

PLACE FOR INCAPACITATED PERSON TO LIVE

If so provided by the Court Order appointing you, you may be empowered to select a place in which the Incapacitated Person will reside. Again, you must follow the standard of what is in the best interests of the Incapacitated Person, using your own independent judgment. You should attempt to discern the preferences as expressed by the Incapacitated Person and members of his or her family and to accommodate these with respect to the place in which the Incapacitated Person will be living, except in those instances where your judgment determines that this would conflict with the best interests of the Incapacitated Person.

RESPONSIBILITY FOR TRAINING, EDUCATION, MEDICAL, AND PSYCHOLOGICAL SERVICES OF INCAPACITATED PERSON

You must refer to the Court Order to determine the extent of your authority in these regards. Where so provided by the Court Order, however, you may be given the responsibility to provide for the training, education, medical and psychological services, or for the social and vocational opportunities to be offered to the Incapacitated Person. You may also be authorized to assist the Incapacitated Person in the development of maximum self-reliance and independence. Again, your guiding principle should be what is in the best interests of the Incapacitated Person and consideration of expressed wishes of the Incapacitated Person or family members would be appropriate where it does not conflict with this principle.

CONSENTS/APPROVALS FOR INCAPACITATED PERSON

The term of the Order appointing you may also give you the authority to enter consents or approvals for various medical, surgical, psychological, or other treatment alternatives which may become available for the Incapacitated Person. As before, you should endeavor to follow the express wishes of the Incapacitated Person and family member to the extent that these do not conflict with the overriding principle of what is in the best interests of the Incapacitated Person. Your independent judgment on these issues, however, should not be overridden by family wishes.

ANNUAL REPORT

You are required to file an Annual Report at least once within the first 12 months of your appointment unless otherwise stated on the Court Order. You must follow your first Annual Report with succeeding Reports on the twelve (12) month anniversary of your appointment for each year thereafter that you continue to act as Guardian of the Person of the Incapacitated Person. You must also, within sixty (60) days of the death of the Incapacitated Person, file a Final Report. Orphans' Court reporting forms are available from the Supreme Court site **www.courts.state.pa.us** (Click on "UJS Forms" and then click on the "Orphans' Court Forms" Section.)

POWERS WHICH MAY ONLY BE GRANTED BY THE COURT

Unless specifically included within your guardianship Order, you shall not have the power to:

(A) Consent, on behalf of the Incapacitated Person, to an abortion, sterilization, psychosurgery, electro convulsive therapy, or the removal of a healthy body organ.

(B) Prohibit the marriage or consent to the divorce of an Incapacitated Person.

(C) Consent, on behalf of the Incapacitated Person, to the performance of any experimental biomedical or behavioral medical procedure, or participation in any biomedical or behavioral experiment.

PARTIAL LIST

This list of duties and responsibilities is partial and is by no means complete. If you are the individual Guardian of the Estate and/or the Person and there is no institutional or corporate co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities, which cannot, for reasons of space, be set forth here.