

INSTRUCTIONS TO GUARDIANS OF MINORS

(Revised October 2012)

A parent is the natural guardian of a minor; however, this is not sufficient status for receiving assets on behalf of a child. Whenever a minor is due assets of value, an adult must appear before the Clerk of the Circuit Court of the jurisdiction in which the minor resides to qualify as Legal Guardian for said minor's estate.

Most, but not all, of the Sections of the Virginia Code dealing with guardianship matters can be found in 64.2-1700 through 64.2-1706 and 64.2-1800 through 64.2-1806.

The following is a very general outline of matters of which you as a Guardian of a minor will need to be aware in order to properly administer the minor's estate. Note that the minor is often referred to as the Guardian's ward.

TABLE OF CONTENTS

- I. Inventory
- II. Accounts
- III. Disbursements
- IV. Investment by Guardians
- V. Surety Bond Coverage
- VI. Compensation for Guardians
- VII. Failure to Properly File Inventory or Accounts
- VIII. Three Year Filing Privilege
- IX. Termination of Guardianship

OFFICE OF THE COMMISSIONER OF ACCOUNTS

Courthouse, Suite 6500
1425 N. Courthouse Road
Arlington, Virginia 22201
e-mail: staff@arlcoa.com

HOURS: 8:30 - 12:00 and 1:00 - 4:30 BY APPOINTMENT
703-228-7150

I. INVENTORY

A. Virginia Code Section 64.2-1300 requires every Guardian to file an inventory of the assets of the minor's estate within four months from the date of qualification.

B. The Clerk will have given you an Inventory form along with instructions at the time of your qualification. List in Part 1 the personal assets you received for your ward at the initiation of the guardianship and describe the source. For example: Cash inheritance from Estate of John Smith.....\$10,000.00. Or: Proceeds from settlement of lawsuit.....\$5,842.12. Or: Diamond wrist watch from Estate of Susan Smith.....\$400.00 and Cash from John Smith's life insurance\$11,957.50.

C. List the minor's Virginia real estate over which you do have a power of sale in Part 2. You only have a power of sale if 1) the Court has not restricted your power **and** 2) the Commissioner of Accounts has issued a notarized statement declining to impose any restrictions on the sale of such real estate.

D. List the minor's Virginia real estate over which you do not have a power of sale in Part 3.

E. List minor's non-Virginia real estate in Part 4.

F. List all regular, periodic payments from government agencies to which you are required to file a separate accounting in Part 6. For example:

Social Security benefits \$450/mo.....\$5,400/yr.

G. If your ward receives regular, periodic payments list the source and annual amount in Part 7. For example:

Interest on ABC Bank certificate of deposit.....\$500/yr.

Deceased parent's retirement benefits \$400/mo.....\$4,800/yr.

Lawsuit settlement payments \$500/qtr.....\$2,000/yr.

This information is required to enable the Commissioner of Accounts to determine if the surety on your bond is sufficient to cover the total assets received plus one year's

anticipated income.

H. Use the exact figures for valuation. Do not round numbers. Use the beginning values as of the date of qualification or date the assets were received, not the value as of the day you complete the Inventory.

I. Inventories must be printed legibly in black or blue pen or typed, and signed by each qualified guardian.

J. You should submit the fully executed Inventory form, in duplicate, with the appropriate filing fee to the Commissioner of Accounts office. The Clerk will have given you a filing fee schedule at the time you qualified.

K. Inventories may be filed by mail or in person at the Commissioner of Accounts office. You may come in to deliver an Inventory anytime during office hours, but if you need to talk with an auditor you should call for an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.

L. Each Guardian must supply the Commissioner of Accounts with his telephone numbers and complete, current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Guardian to keep the Commissioner of Accounts apprised of a current street address.

M. Inventory forms may also be downloaded from the Virginia State Supreme Court website (www.courts.state.va.us).

II. ACCOUNTS

A. Virginia Code Section 64.2-1206 requires every guardian to file accounts of the assets of the minor's estate.

B. The Clerk will have given you an Account form which must be used, along with instructions on completing the form, at the time of qualification. You will have also received a Sample Account. You need to read the instructions thoroughly before preparing your Account.

C. The first account must cover the period from date of qualification through the next four months. It must be filed with the Commissioner of Accounts within six months from the date of qualification. (Virginia Code Section 64.2-1305)

D. Second and subsequent accounts are due within 16 months from the ending date of the prior account, and should cover a 12 month period. A final account may cover less than 12 months.

E. Every account filed must be accompanied by the following:

1. Original and one copy of the account signed by each guardian that qualified.

2. A check payable to the Commissioner of Accounts in the appropriate amount for the filing fee. The Clerk will have given you the filing fee schedule at the time you qualified.

3. Bank photocopies of cancelled checks. When you set up your bank accounts make sure you use a bank that will give you copies of the cancelled checks with your monthly statements. A bank statement or brokerage statement showing the date, the check number, the payee, and the amount will also be accepted. Statements are required to document bank fees and electronic debits. **Vouchers must be organized in the same order as they appear on the Account.** Vouchers do not need to be filed in duplicate.

4. Verification of each asset that remains on hand as of the end of the account period must be provided.

a. For cash accounts, a bank statement, reconciled to agree with your account, must be provided.

b. Brokerage account statements should be supplied to verify stocks, bonds, and other securities or funds held. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or provide a statement from a bank officer certifying that the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the account.

c. Titles for cars, boats, etc., should be exhibited. Jewelry and furnishings can be supported by a statement from a disinterested third party certifying the existence and the location of said assets. The statement by the third party should include his printed name, address and daytime phone number.

d. Original Notes must be exhibited.

e. Copies of K-1 forms from the tax returns may be used to verify any limited partnership interests.

f. Where the market value of the asset is not equal to the carrying value, show the market value in parentheses within the asset description or in a separate column.

5. A final account must show ZERO assets on hand. No assets may be held in escrow by the Guardian for any reason whatsoever.

F. All original vouchers will be returned to the Guardian or his representative after the completion of the Commissioner's audit.

G. Accounts must be printed legibly in black or blue pen or typed.

H. Accounts may be filed by mail or in person at the Commissioner of Accounts office. You may come in to deliver an account anytime during office hours, but if you need to talk with an auditor you should call for an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.

I. Each Guardian must supply the Commissioner of Accounts with his telephone numbers and complete, current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each guardian to keep the Commissioner of Accounts apprised of his current street address.

J. Account forms may be downloaded from the Virginia State Supreme Court website (www.courts.state.va.us).

III. DISBURSEMENTS

A. Virginia law (64.2-1800) states that a Guardian shall provide for the minor's health, education, maintenance and support, after first taking into account the minor's other sources of income, support rights and other reasonably available resources of which the guardian is aware.

B. **However, if a minor has a living parent, Virginia law prohibits a Guardian from using any of the minor's assets for anything except costs of administration (e.g. filing fees, bond premiums, Guardian's compensation) without first obtaining approval of the Court or Commissioner of Accounts.**

1. If the total expenditures will not exceed \$3,000 during the accounting year, then the approval may come from the Commissioner of Accounts (Virginia Code Section 64.2-1802).

2. If the total proposed expenditures will exceed \$3,000 during the accounting year, then the approval must come from the Court (Virginia Code Section 64.2-1801).

3. Consult with an attorney or the Commissioner of Accounts to receive information on the exact process required.

IV. INVESTMENTS BY GUARDIANS

A. A Guardian is charged with the investment of funds under his control and must make such investments within four months from the time he collects such funds (See Virginia Code Section 64.2-1501).

B. Virginia Code Section 64.2-1502 provides a listing of securities in which a Guardian may invest. Any other investments made by a Guardian must be prudent. Some examples of approved investments are bonds, notes, and other evidences of indebtedness of Virginia, a Virginia County, a Virginia city, or the United States, as well as savings accounts, time deposits or certificates of deposits in banks, savings institutions, or credit unions authorized to do business in Virginia that are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

C. It is recommended that a Guardian use Virginia banks for guardianship accounts. This is suggested in case the Guardian cannot complete the administration of the guardianship due to his death, removal, or other reason. A substituted Guardian would be less inconvenienced in recovering the assets in Virginia than in some other state or the District of Columbia, resulting in less disruption to the administration of the guardianship.

D. A Guardian may not invest money on unsecured notes or buy real estate or lend money to himself.

E. Be sure to title all bank accounts and investments properly. Every asset should be titled: "**(Your name), Guardian for (Ward's Name)**". **Use your ward's Social Security number on each account.**

1. Do not make any guardianship asset joint with you or with anyone else. The guardianship funds belong only to the ward, and must be listed with the Guardian's name and title. Co-mingling funds can result in confusion, especially if the person listed as joint owner dies.

2. Do not title any guardianship accounts with a reference to the Uniform Transfer to Minors Act. That is something different from this type of guardianship. Do not title any guardianship account as "custodian".

V. SURETY BOND COVERAGE

A. Every Guardian for the estate of a minor shall provide surety on his bond unless the amount is so small that surety is waived pursuant to Virginia Code Section 64.2-1411. If surety is waived, then the Court will determine the amount of the personal bond.

B. The surety bond is set at an amount sufficient to cover the assets in the hands of the guardian plus 12 months worth of anticipated income. The Guardian will pay an insurance company premiums to insure that the Guardian will properly discharge his duties.

1. The Commissioner of Accounts must report to the Court if the

surety bond is insufficient. This is checked upon approval of the Inventory and each Interim Account. If the bond needs to be increased, the Guardian will be notified by a letter setting forth the amount of increase necessary to cover the existing assets and 12 months of anticipated income. A copy of the letter is sent to the Clerk of the Court and to the insurance company.

2. Reduction of the amount of the surety bond can be requested by a Guardian when an Inventory or Interim Account is filed which shows that assets on hand, plus 12 months of anticipated income, are substantially less than the current surety bond coverage. (64.2-1705)

C. The cost of the surety bond premiums are properly attributable to costs of administration and may be paid from the minor's guardianship funds.

VI. COMPENSATION FOR GUARDIANS

A. Virginia Code Section 64.2-1208 provides for Guardians to receive "reasonable" compensation.

B. The Guardian's commission is for the complete handling of the guardianship. Therefore, if a Guardian retains professionals to assist him in the administration, the fees paid the professionals are charged against the commission permitted the Guardian if the services could otherwise have been performed by the Guardian. However, if the Guardian employs an investment advisor, the advisor's fees, if reasonable, will not be deducted from the Guardian's fee.

C. Generally, the Commissioner of Accounts will permit a Guardian an annual principal fee based on the **market value** of the assets brought forward from the Inventory for the First Account or from the prior account for Second and subsequent accounts as follows:

First \$500,000	1 % (.01)
Next \$500,000	3/4 of 1% (.0075)
Balance over \$1,000,000	One-half of 1% (.005)
Balance over \$10,000,000	Prior consultation with Commissioner required

D. The Guardian will also be permitted an annual fee based on 5% of all non-investment receipts (periodic payments such as retirement, social security, rent, etc.) realized during each account period. No compensation will be allowed on investment receipts such as interest, dividends, capital gain distributions, and gains on sales.

E. Compensation should be pro-rated when the required account is for a period of less than one full year.

F. Where a Guardian is succeeded by another, the annual compensation should be pro-rated. Where there are co-Guardians, one fee shall be divided equally among them, unless they agree among themselves on a different division.

G. In some cases, the scheduled fee on principal and non-investment receipts may be less than a "reasonable" compensation. A Guardian may submit a request to the Commissioner of Accounts for a larger fee based upon the work he has performed. Conversely, if a Guardian has a very large guardianship and has little work to do, the Commissioner may reduce his commission to a reasonable amount in light of the work done.

VII. FAILURE TO PROPERLY FILE INVENTORY OR ACCOUNTS

A. Should a Guardian fail to file the required Inventory or account within the time required by law or within an approved extension period, the following actions may result:

1. A summons will be issued by the Commissioner of Accounts and served on the Guardian by the Sheriff. The summons gives the Guardian 30 days from the date of the service to file the required Inventory or account with the Commissioner of Accounts.

2. If the summons deadline is not met, the Commissioner of Accounts will make his report to the Court and request the Judge to issue a Rule to Show Cause against the Guardian. Said Rule will be served by the Sheriff, and the Guardian will be required to appear in Court to explain to the Judge why he has not filed the required Inventory or account and why he should not be removed as the Guardian.

B. Virginia Code Section 64.2-1217 provides that Guardians who fail to

settle their accounts as required by Section 64.2-1206 shall forfeit their commissions unless allowed by the Commissioner of Accounts for good cause shown.

C. Fees for the issuance of the summons and Rule, as well as any Court appearance by the Commissioner of Accounts, are charged against the Guardian personally.

D. Virginia Code Section 64.2-1216 requires the Commissioner of Accounts to send a copy of his report to the Court to the Virginia State Bar for any Guardian who is an attorney.

VIII. THREE YEAR FILING PRIVILEGE

After the First Account has been filed and approved, if the Guardian holds less than \$15,000 in assets and anticipated receipts, the Guardian may request permission from the Commissioner of Accounts to file his accounts every three years instead of annually. (64.2-1313)

The Commissioner may reject the request or may revoke it at any time after the privilege has been granted should the Guardian fail to timely and properly administer and account for the guardianship.

IX. TERMINATION OF GUARDIANSHIP

A. Termination of a guardianship is begun upon the ward reaching his age of majority, which is 18 in Virginia, or at the date or time referred to in the written instrument requiring the guardianship's establishment. (Virginia Code Section 64.2-1803)

B. Once your ward has become 18 years of age, you should compute any costs of administration due (Guardian's compensation, filing fees, etc.) and provide for those payments. All remaining assets, principal and income, should be delivered to your ward. Be certain to have your ward sign a detailed receipt for every asset you transfer to him. The receipt should be signed by your ward in front of a Notary Public.

C. File your Final Account with the Commissioner of Accounts showing a zero balance on hand, along with your ward's notarized receipt and other supporting vouchers. Send a copy of your Final Account to your bondsman so that he will stop billing you.

