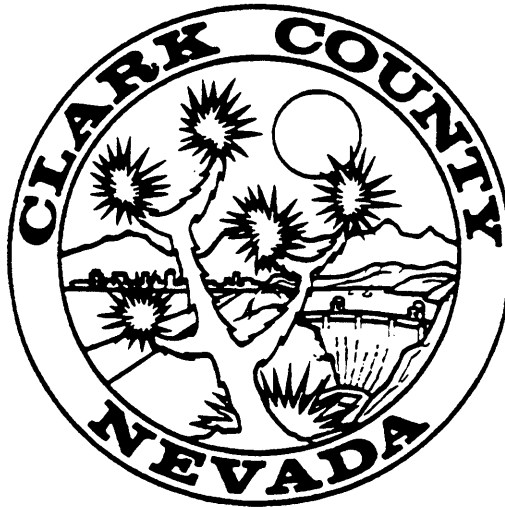


GUARDIANSHIP TRAINING MANUAL



**PREPARED AND PRESENTED
BY
THE OFFICE OF THE PUBLIC GUARDIAN**

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GUARDIANSHIP TRAINING

(Information provided as part of the Public Guardian's Training Class)
(Call 455-4332 for class registration and information)

Guardianships in Nevada are regulated by the Nevada Revised Statutes (Chapter 159).

I. DEFINITIONS

1. GUARDIANSHIP/DEFINITION:

TYPES OF GUARDIANSHIP:

- TEMPORARY GUARDIANSHIP

May be granted by a judge when the petitioner can show that:

1. Proposed ward faces a substantial and immediate risk of financial loss or physical harm or needs immediate medical attention;
2. Proposed ward lacks capacity to respond to the risk of loss or harm or to obtain the necessary medical attention;
3. Petitioner has tried in good faith to notify the persons entitled to notice under NRS 159.047.

- GENERAL GUARDIANSHIP

Person Only

Guardian is responsible for personal/medical decisions only. The ward or another person or institution representative will make all financial decisions.

Estate Only

The guardian is responsible for financial decisions only. The ward may be capable of making personal and health care decisions, or another person may be appointed guardian of the person.

Person and Estate

The guardian often serves for both the person and the estate.

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- **SUMMARY**

If the value of the guardianship does not exceed \$5,000.00, the court may dispense with annual accountings.

Incompetent: "Incompetent" includes an adult who, by reason of mental illness, mental deficiency, advanced age, disease, weakness of mind or any other cause is unable, without assistance, to properly manage and take care of himself or his property.

Limited Capacity: An adult is of "limited capacity" if he is able to make independently some, but not all, of the decisions necessary for his own care and the management of his property.

Ward: "Ward" means any person for whom a guardian has been appointed.

2. **DURABLE POWER OF ATTORNEY:**

Authorizes a designated person to make financial decisions in the event the person executing the document becomes ill and cannot. This document usually goes into effect only if the person signing it becomes incapacitated.

3. **DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS:**

A document authorizing someone to make health care decisions if the person signing the document cannot make those decisions due to any future incapacity.

4. **REPRESENTATIVE PAYEE**

An individual or facility designated to receive financial benefits from private pensions or governmental agencies, such as the Veterans Administration, Social Security Administration, Social Security Income, Civil Service, etc. The representative payee is held accountable for the monies they receive on behalf of the beneficiary and the monies must be spent only for the person it was intended to benefit.

5. **LIVING WILL/ADVANCED DIRECTIVE**

A document individuals can use to express their right to receive or refuse specific medical treatment if they become incapacitated.

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6. LIVING TRUSTS

An estate planning method by which someone can maintain control over his/her assets until that individual becomes incapacitated or dies. At that time, an individual designated in the trust document (successor trustee) automatically takes over management of the trust as stipulated.

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II. PROCEEDINGS

1. QUALIFICATIONS OF A GUARDIAN:

- Any person the court finds suitable to serve as guardian.
- Must be competent.
- Must be a Nevada resident or have engaged a Nevada resident to serve as co-guardian.

A PERSON IS NOT SUITABLE WHO IS:

- A minor.
- A convicted felon.
- A person judicially determined to have committed abuse, neglect or exploitation of another person.
- A person suspended for misconduct or disbarred from the practice of law (during the period of suspension or disbarment only).

2. PREFERENCES IN THE APPOINTMENT OF A GUARDIAN

- The court will consider a written request or preference executed by the ward prior to his/her becoming incompetent.
- Nomination of a guardian in a Will or other written document executed by the proposed ward, a spouse or parent of a minor.
- Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.
- The relationship by blood or marriage of the proposed guardian to the proposed ward.

NOTE: The Clark County Public Guardian may be appointed if:

- A. There are no family members or friends.
- B. Family members are unable to serve due to illness or other circumstances which prevent their effective performance as a guardian.

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- C. Friends or family members have exploited or neglected the person and would not be suitable to serve.
- D. Family members live in other states and cannot meet the statutory requirements.
- E. The Public Guardian is the guardian of last resort. A referral to the Public Guardian must be submitted and will be evaluated by staff prior to acceptance into the program.

NOTICE OF PROCEEDINGS: WHO IS ENTITLED TO RECEIVE COPIES OF COURT HEARINGS, ACCOUNTS, ETC?

- 1. The proposed ward.
- 2. Spouse and adult children (if none - parents, brothers, sisters of ward).
- 3. Administrator of an institution, nursing facility, or any person having the care, custody and control of the proposed ward.
- 4. If the proposed ward is a minor, the following individuals are entitled to receive legal notices:
 - Parents
 - Person or institution having care, control and custody of the minor.
 - The minor - if he or she is 14 years of age or older.
- 5. The Veterans Administration if benefits are paid to the proposed ward.

GUARDIANSHIP PETITION:

Legal document outlining the reasons for guardianship and a description of the probable value of assets belonging to the ward. The petition must also list the names and addresses of relatives within the second degree of consanguinity and persons entitled to notice and bonding requirements (if applicable).

CITATION:

Legal document that stipulates the time and place of the hearing and notice to show cause why a guardian should not be appointed. The purpose of this notice is to allow filing of objections to the guardianship, if any.

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NOTE: This document must be served by certified mail (return receipt) at least 20 days before the hearing. The citation must state that:

- The ward's rights may be affected as outlined in the petition.
- That the ward has a right to appear at the hearing and oppose.
- That the ward has a right to be represented by an attorney.

AFFIDAVITS:

Legal document used for many purposes, however, in guardianship hearings an affidavit is often used to excuse the proposed ward's presence at the court hearing. The notarized affidavit must be signed by the proposed ward's physician or psychiatrist. It must specifically outline the reasons the ward cannot attend the hearing (medical diagnosis). The affidavit must be presented to the *guardianship* commissioner at least one week before the guardianship hearing. The ward must be present at court if an affidavit is not submitted.

LETTERS OF GUARDIANSHIP:

Legal document filed with the County Clerk's office that is recognized as the instrument giving powers to the guardian to act on behalf of the ward. The Letters will indicate what type of guardianship was granted by the Court. This document must be certified by the Clerk's Office for the purposes of transferring or withdrawing funds, stocks, etc.

ORDER APPOINTING GUARDIAN:

A court order signed by the judge that orders the appointment of the guardian.

BONDING:

The court determines the amount of the bond that must be obtained by the guardian. This is based on the value of the estate of the ward. It must be renewed for as long as the court determines a bond is required. If there are no assets, no bond is required. If an estate is depleted over a period of time and amended to a summary guardianship, the court should be asked at that time to waive the bond requirement.

BLOCKING:

The court may allow certain bank accounts, investment assets and retirement accounts to be frozen or "blocked" from access in lieu of or in conjunction with the posting of a bond. Once an account is blocked, a court order will be required to release the funds.

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INVENTORY/ACCOUNTING:

Guidelines are provided in the Pre-Inventory Instructions and the Post Inventory Handout.

TERMINATION OF GUARDIANSHIP:

The court may remove a guardian if the court determines that:

- The guardian has become disqualified, mentally incompetent, unsuitable or otherwise incapable of exercising his or her authority and performing duties as provided by law.
- The guardian of the estate has mismanaged the estate of the ward.
- The ward will be better served by the appointment of another person as the guardian.
- Guardianship can also be terminated, with court permission, should a ward recover mentally and/or physically and become competent and capable to resume control of his or her affairs.
- An attorney may be appointed by the court to represent a ward who petitions the court for termination or modification of the guardianship if he is unable to retain one and the court determines the appointment is necessary to protect the ward's interest.
- When a guardian dies or is removed by the court, the court usually seeks to appoint another guardian.

CLOSING OF GUARDIANSHIP:

The guardian of the estate is entitled to possession of a ward's property and authorized to perform his duties as guardian for a period **not exceeding 90 days after the termination of the guardianship or until the appointment of an executor or administrator of the estate of a deceased ward.**

During this period of time the guardian shall:

1. Pay all expenses of administration of the guardianship estate, including those incurred in winding up the affairs to the guardianship.
2. Complete the performance of any contractual obligations incurred by him as guardian.

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3. If the guardianship is terminated for a reason other than the death of the ward, pay acceptable bills presented prior to the termination of the guardianship for obligations incurred while the guardianship was in place.
4. The guardian must file an accounting with the court when he or she petitions the court to resign as guardian.

The accounting is due:

- Within 30 days after the date the guardian is removed.
- Within 90 days after the date of termination of the guardianship.

DISTRIBUTION OF PROPERTY:

- After finishing up the affairs of the guardianship, the guardian must deliver physical possession of all the ward's property to the ward, his executor, administrator of the successor guardian, and obtain a receipt.
- If the guardianship has terminated by reason of the death of a ward, the court may order the guardian to distribute the deceased ward's property in accordance with NRS 146.070 (Set-aside) or NRS 146.080 (Affidavit).

The court will enter an order to exonerate or dispose of the guardianship bond upon the guardian filing receipts and vouchers with the court showing compliance to requirements for closing out a guardianship.

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III. LEGAL DUTIES AND RESPONSIBILITIES: GUARDIAN OF PERSON AND ESTATE

- Prepare a plan to address all medical, social, financial needs and revise as needed.
- Budgets should maximize benefits for the ward.
- Provide or arrange to supply the ward with necessities: food, clothing, shelter, incidentals. (A guardian is not required to incur expenses for the benefit of the ward except to the extent that the ward's estate will allow.)
- Examine and verify validity of all requests for payments.
- Assure that the ward is given the opportunity to be trained, educated and learn a trade if applicable.
- Meaningful visits with the ward should be no less than one time per month.
- Advocate on behalf of the ward, ensure that the ward's civil rights are protected whenever possible and utilize substituted judgement in decision making.
- Authorize/give consent for medical and dental procedures when appropriate. The guardian should utilize a decision checklist to assist with making routine decisions. As a general rule of thumb, the guardian should seek a second medical opinion for treatment or surgery that is not life threatening.

NOTE: All major surgical or dental treatment that does not pose immediate threat to life should be reviewed with the attorney of record.

- Court authorization is required for some procedures, including but not limited to, experimental medical treatment, sterilization, amputations and many other major surgical procedures.
- Court permission must also be sought to change the state of residence.

INVESTMENTS

A guardian may, without prior approval of the court, invest the ward's funds in the following:

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1. Federal deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance corporation (FSLIC) insured savings accounts in any bank or savings and loan institution.
2. Interest-bearing obligations of or fully guaranteed by the United States.
3. Interest-bearing obligations of the United States Postal Service.
4. Interest-bearing obligations of any county, city or school district of this state.

A Guardian of the Person and Estate must seek court permission for the following:

- To sell, lease, place into trust or surrender any property of the ward.
- To invest the property of the ward.
- To continue the business of the ward.
- To borrow money for the ward.
- To enter into contracts on the ward's behalf.
- To make gifts from the ward's estate or make expenditures for ward's relatives.
- To exchange or partition ward's property.
- To pay attorney's fees.

INVENTORY AND ACCOUNTING

- A written inventory of the ward's assets/property must be submitted to the court. The inventory must be amended if additional assets are discovered after the initial inventory is filed. This report should be filed within 30 days after locating additional assets.
- Complete and accurate financial records must be kept including receipts for expenditures, source of receipts and purpose of disbursements.
- Annual written accountings must be provided to the court within 60 days after the anniversary date of the guardianship appointment.
- Reports may be required by the court at different intervals or any time for a variety of reasons (status checks, summary proceedings, etc.)

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- Copies of all reports should be given to any co-guardians and attorneys involved.

NOTE: Pre-inventory and Post Inventory Instructions are outlined in Section IV and Section V.

LEGAL DUTIES AND RESPONSIBILITIES **GUARDIAN OF ESTATE ONLY**

- Protect, preserve and manage all assets belonging to the ward. A plan should be prepared to address the needs for the ward. **Personal and medical decisions can be made by the ward.**
- Budgets should be prepared to maximize benefits for the ward.
- To use the assets for the proper care, maintenance, education and support of the ward. (A guardian is not required to incur expenses for the benefit of the ward except to the extent that the ward's estate will allow.)
- Examine and verify validity of all requests for payments.

A guardian may, without prior approval of the court, invest ward's funds in the following: (Investment requirements are the same as those stipulated for Guardians of Person and Estate.)

1. Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) insured savings accounts in any bank or savings or loan institution.
2. Interest-bearing obligations of or fully guaranteed by the United States.
3. Interest-bearing obligations for the United States Postal Service.
4. Interest-bearing obligations of any county, city, school district of this state.

A Guardian of the Estate must seek court permission for the following:

- To sell, lease, place into trust or surrender any property of the ward.
- To invest the property of the ward.
- To continue the business of the ward.

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- To borrow money for the ward.
- To enter into contracts on the ward's behalf.
- To make gifts from the ward's estate or make expenditures for ward's relatives.
- To exchange or partition ward's property.
- To pay attorney's fees.

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IV. PRE-INVENTORY INSTRUCTIONS FOR GUARDIANS

Until an Inventory has been drafted and all assets have been determined, do not move or distribute any of the ward's assets.

Soon after the guardianship court hearing, you will receive your certified copies of Letters of General Guardianship from the court. Your attorney must file this document with the clerk's office and additional copies can be obtained for a fee. A certified copy of your Letters will serve as verification to financial institutions, etc., that you are a court-appointed guardian. You will be asked to show a certified copy of your Letters in order to have your name placed on the ward's bank account as signatory, open a guardianship account, transfer assets, open a safety deposit box, obtain information regarding assets, etc. Some banks, if asked, are willing to make a photocopy of your Letters for their files and return the certified copy to you. If you do need additional certified copies, you may obtain them at the clerk's office in the court building.

If you plan to charge fees for your services as guardian, maintain an accurate record of services you perform, the time you spend and the expenses you incur.

Within 30 days of your appointment as Guardian, an Inventory is to be presented to your attorney listing the assets of the guardianship. It is now necessary to ascertain what assets there are and how they are held. Determine all values as to their worth on the day of your appointment.

Following are some of the first tasks you must undertake:

GO TO THE WARD'S HOUSE:

1. Never go into the house alone until the household goods have been appraised. Preferably do not go into the house alone even after the household goods have been appraised. Ask a friend or family member, etc., to accompany you.
2. List all articles of furniture and moveable objects of value.
3. **ASSETS TO WATCH FOR, SECURE AND INVENTORY:**
 - a. Certificates of Deposit/Stocks: Secure any certificates that may be found among the ward's property.
 - b. Vehicles: Try to locate the Certificate of Title. Make a note of the year, make, model, serial number and mileage.
 - c. Clothing: Unless the ward had furs or clothing of exceptional value, the value of the clothing would usually be listed on the

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inventory as "nominal" and need not be counted.

- d. Jewelry, Furs, Personal Property of Exceptional Value: Make an itemized list describing any jewelry of value such as gold, silver or gems; any furs; and any personal property such as sterling silver, stamp collections, etc.
- e. Real Estate: Any deeds or legal papers involving real estate, real estate tax statements, legal description and street address.
- f. Insurance Policies: Any insurance policies or evidence of policies (i.e., premium or dividend statements).
- g. Monies Owed to the Ward: Watch for any evidence of loans made to family members, contracts for deed, or any other monies owed to the ward.
- h. Monies Owed by the Ward: Watch for any evidence of a mortgage or lien against the ward's real estate as this information should be included on the Inventory.
- i. Safety deposit box keys.
- j. Last Will and Testament.
- k. Military discharge papers or any other papers showing a veteran's serial number or claim number.
- l. Divorce Decree.
- m. Contracts.
- n. Recent bank statements (previous two years, if available).
- o. Recent tax returns (previous five years, if available).
- p. Birth Certificate.
- q. Death certificates of spouses, etc.
- r. Immigration documentation (passport, naturalization papers, etc.).
- s. Pre-paid funeral arrangements.

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4. Make arrangements to provide reasonable security for the property. This may include changing locks, installing dead bolts, window locks, or light timers, etc. Try to determine where keys may have been given out. If you feel it is necessary to change the locks, do so immediately. Verify that the house is insured. If no insurance can be located, arrangements must be made to obtain insurance as soon as possible.
5. Valuable personal property such as jewelry, money, securities, sterling silver, etc., should be removed from the property and arrangements made for its safekeeping. Keep a careful list of any property you remove.

ONCE THE INVENTORY HAS BEEN COMPLETED, YOU MAY BEGIN YOUR OTHER DUTIES AS GUARDIAN:

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V. POST-INVENTORY INSTRUCTIONS FOR GUARDIANS

The appointment of a guardian *does not* revoke an existing power of attorney; *separate permission is necessary*. The duties or powers of the guardian include all powers and duties listed in the Pre-Inventory Instructions. Some of the additional duties and powers of the guardian are to:

Locate the Last Will and Testament and determine contents. Your actions may have to take into account testamentary intentions, if practical.

Apply for any possible government benefits at such time as the ward is eligible. Whenever possible and appropriate, the ward's needs should be met through governmental benefits or services to which the ward is entitled rather than from his/her estate.

- Medical Assistance: When you foresee that the guardianship funds will be depleted in six months, contact Medicaid/Clark County Social Services for advice on making application for Medical Assistance, including eligibility limits and spenddown procedure.
- Veteran's Benefits:
 - a. Obtain the ward's serial number (can be found on Veteran's discharge papers).
 - b. Call the Veteran's Administration for information regarding possible benefits and becoming representative payee.
- Supplemental Security Income (SSI): Provides supplemental income for persons who are over 65 years of age or disabled and who have a limited income. Contact Social Security to inquire about their guidelines.

Prepare and mail a change-of-address card to the Post Office so mail comes to your address. File a change-of-address card with all of the ward's correspondents as soon as possible.

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GO TO THE BANK:

Take a certified copy of your Letters of Guardianship. If you are planning to open an existing safety deposit box, take a second person with you to serve as a witness or ask a bank officer to witness.

1. Change the mailing address to all bank accounts.
2. Ask the bank to seek out any additional accounts or safety deposit box of which they may have record.
3. Open a Guardianship account. Keep an accurate record of each amount deposited to open the new account. The name on the new account should read: Your name as Guardian for _____. If there are two Guardians, it should read: _____ or _____ As Guardian for _____.

4. Make a list of the contents of the safety deposit box.

To obtain access to the box, you will need a certified copy of your Letters of General Guardianship. If you have been unable to find a key among the ward's assets, you will have to make arrangements with the bank to have the lock drilled.

5. At all times, keep an accurate record of deposits made as well as monies disbursed. Although several different checks may be deposited at one time, your records should itemize each amount making up the deposit. If an account is closed or certificate is cashed, record on the deposit slip and in your check register the account number and the exact final balance.
6. Accounts held in trust for a third party may not be changed unless the funds are necessary for use by the ward.
7. Certificates of Deposit should not be cashed until the maturity date unless necessary for the care and maintenance of the ward. (A penalty for early redemption cannot be assessed as outlined in the Federal Banking Regulations.)
8. Invest all cash funds according to Nevada Revised Statutes.
9. Pay all expenses by guardianship account checks. Do not pay from your own funds and then make a reimbursement check out to yourself.
10. Close any safe deposit boxes not needed.

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Social Security, Civil Service, Railroad Retirement and Pensions:

- Apply to become representative payee on Social Security benefits, Railroad Retirement and other pension checks. Send a certified copy of Letters and request change of payee and address.
- You may wish to arrange for direct deposit of Social Security or Railroad Retirement benefits to the guardianship checking account.

Medicare and Health Insurance:

- Determine Medicare claim number. This may be different than the ward's Social Security number if benefits are paid on another's account.
- Determine if ward is covered by both Plan A and Plan B Medicare coverage. To determine coverage, call Social Security and request a duplicate card.
- Determine if all Medicare and insurance claims have been made and, if not, prepare and file claims. Claims can be filed for the previous two years.
- Make and process all potential claims for Medicare as bills are incurred.
- Locate all health insurance policies.
 - a. Contact companies to verify what coverages are in effect and what policies should be maintained.
 - b. Notify insurance companies as to the billing address.
 - Make and process all potential insurance claims as bills are incurred.
 - Determine if claims are valid and check Explanation of Benefits before making payment to service providers.
 - Discontinue unnecessary or duplicate health insurance coverage.

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Life Insurance:

- Locate all life insurance policies and contact insurance companies to:
 - a. Verify status of policies, and
 - b. Change billing address.
 - c. Determine cash surrender value prior to making application for any type of public assistance.
- Provide for safekeeping of policies.

Indebtedness:

- Determine all outstanding debts by name of creditor, amount, date incurred, purpose and security.
- Determine whether any debts were incurred while the ward was incapacitated and whether attempts should be made to revoke or cancel credit cards, lines of credit, etc.

Household Goods, Furniture, Automobiles, Etc.:

- If the cost of storage is high, **personal property no longer needed by the ward may be sold**. This includes household goods, furniture, clothing, vehicles and personal effects.
- Save family pictures, mementos, Bibles, etc. for heirs and/or residuary beneficiaries of estate.
- Verify and maintain insurance coverage on motor vehicles.

Real Estate:

- Record your Letters of Guardianship with the County Recorder's Office against all real property owned by the ward. Record the Letters of Guardianship against each property if there are multiple properties involved. Also, make sure that the Letters are recorded in the appropriate county if the property is located out of the area. You should always receive a receipt for recorded documents.
- Locate and provide for safekeeping of all Abstracts of Title and Owner's Duplicate Certificates of Title.

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- Determine whether there are any delinquent taxes, and request that the address be changed for mailing tax statements.
- Determine and verify adequacy of insurance coverage. Locate policy and provide for its safekeeping. Contact agent to change billing address. Immediately obtain adequate coverage if there is none.
- **There are special procedures to be followed before sale of the real estate as outlined in NRS.**

Taxes:

- Locate copies of income tax returns filed for the previous five years. If they cannot be found, the Internal Revenue Service can be contacted for copies.
- File Federal income tax forms when due.
- Determine whether any estimate tax payments were made for the current year and whether any estimated payments must be made. If necessary, consult a CPA to assist.
- Keep all 1099's you receive from financial institutions and Social Security for use in determining income.

Pre-death Planning:

- Determine whether the ward has expressed any preference regarding burial, cremation, funeral, etc.
- Determine cemetery location and whether the plot is owned or space is available in the burial plot of the spouse or relatives.
- Check with the local Veteran's Administration Office regarding burial in the veteran's cemetery.
- Purchase a pre-need burial plan for the ward one year prior to when the guardianship estate is expected to reach welfare limits.

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At Time of Death:

- Authorize removal of body to funeral home.
- Contact family members to make funeral arrangements. If there are no family members, make appropriate arrangements for funeral, including choosing casket and clothing, assisting in preparation of newspaper obituary place, date and time of visitation, service and notification of any known friends or relatives.
- Return any Social Security or other benefit checks representing time periods after the date of death or during the month of death (program guidelines vary).

THIS OUTLINE OF THE DUTIES OF GUARDIANS HAS THE FOLLOWING LIMITATIONS:

1. It may not include everything that must be done in a specific case, since every person's situation is different.
2. It is assumed that the appointment of a guardian is of the person and estate and is without limitations.

MEDICAL DECISION CHECKLIST

CLIENT NAME:			DATE:	
01	Determine authority:	Legal?	Guardian of Person?	
02	Physician Name:			
03	Specialist Name:			
04	Condition(s) which necessitates treatment:			
05	Has your client been informed? If so, what was his/her response?			
06	Family notification/consent:			
07	What is proposed treatment:	Inpatient?	Outpatient?	Date:
	Type of Anesthesia:			
08	Obtain written documentation of all medical reports:		Date:	
09	Urgency?	Emergency	Routine	
10	Notify attorney?	Yes	No	
11	What problems of client might impede treatment or recovery?			
12	Risks?	Benefit(s)/outcome?	Alternative Treatments?	
13	Second opinion?			
	Consent	Do not consent	If not, briefly explain below:	
	Witness:		Date	
	Witness:		Date	
	Caseworker Signature:		Date	
Comments:				

COMMONLY ASKED QUESTIONS

12. Is a guardian compensated for services provided?
13. What services are available to the ward and how do I access them?
14. How do I force the proposed ward to enter a nursing home, group home or other living arrangement if he/she objects to it?
15. What is "substituted judgement"?
16. What is financial abuse or exploitation?
17. Do I have to retain an attorney to pursue the guardianship if there is no money in the estate?
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____