# APPLICATION FOR GUARDIAN-SHIP OF PERSON

best interests. 70 competing applications, 70 consent of proposed guardian, 69, 78 eligible candidates, 69 evidence of incapacity, 69 finding of incapacity, 64 full guardianship, 72 Guardianship Plan, 77 interim orders for disclosure, 73 joint guardians, 69 motion to approve amended Guardianship Plan, 77 onus of proof, 63 originating process, 63 partial guardianship, 74 procedural flexibility, 72 required elements of application, 63, 78 resealing foreign guardianship appointment, 64 scope of full guardianship, 72 service requirements, 78 statutory statement, 78 summary disposition procedure, 78 valid power of attorney, 64 wishes of incapable person, 70

# **APPLICATION FOR GUARDIAN-SHIP OF PROPERTY**

consent of proposed guardian, 57 general application procedure, 56 Management Plan, 57 practical challenges, 58 prescribed statements, 58 required documents, 57 service requirements, 56 statutory statement, 57 structure of application, 57 summary application procedure, 58 timing requirements, 58

# CAPACITY

capacity assessments, 36

capacity to grant or revoke powers of attorneys, 30 common law presumption of capacity, 22 degrees of capacity, 20, 67 evidence of incapacity, 30 finding of incapacity, 25, 29 impulsivity, 36 medical evidence, 27 personal care functions, 19, 67 poor judgment distinguished from incapacity, 36 statutory presumption of capacity to contract, 22 test for capacity to make personal care decisions, 66 test for capacity to manage property, 18, 25

# CAPACITY ASSESSMENTS

assessment of capacity to manage property, 30 challenging capacity assessments, 34 judicial deference, 35 mandatory notification, 34 medical evidence generally, 35 order to attend capacity assessment, 31 refusal to be assessed, 33 requirements of proper assessment, 33 weight given by courts, 34

#### **COMPENSATION**

court's supervisory jurisdiction, 41 distinguished from profit, 40 frequency of payments, 41 general principles for property guardian, 41 repayment of excess, 41

# COURT-APPOINTED PROPERTY GUARDIANS

alternatives to guardianship, 20 application procedure, 18

compensation, 41 court-imposed limitations on appointment, 39 distinguished from statutory guardians, 10 duties of property guardians, 42 eligibility to act as guardian, 22 evidence of incapacity to manage property, 26 joint guardians, 38 less restrictive alternatives, 19 onus of proof, 20 power to obtain information, 41 powers of guardian, 40 pre-existing powers of attorney, 26 prerequisites to a finding of incapacity, 19 prohibition on profit, 41 relevance of powers of attorney, 20 resealing foreign appointment, 22 right to consult, 44 supportive family members, 44 threshold test, 18, 25 transfer of decision-making authoritv. 40

# DIRECTIONS

by motion or application, 61 jurisdiction not limited by statute, 81 jurisdiction of court, 60 questions relating to guardianship of person, 80 questions relating to management of property, 60 relationship to *parens patriae* jurisdiction, 61, 91

## DUTIES AND POWERS OF PROPERTY GUARDIANS

abuse of authority, 42 acting as corporate directors contemporaneously, 46 breach of fiduciary duty, 42 compelling prior guardians to account, 44 completing contracts, 46 delegation of functions, 44 dispose of property, 45 duty of confidentiality, 49 duty to account, 48 duty to consult, 44 duty to keep records, 48 duty to obtain documents, 46 duty to search for wills, 45 fiduciary duty, 42 gifts and loans, 47 improper exercise of authority, 42 obligation to inquire into preappointment transactions, 44 personal liability, 47 property subject to specific testamentary disposition, 45 statutory duties, 43

## **DUTIES OF LAWYERS**

generally, 92 indirect sanction through cost awards, 96 relationship to guardianship jurisprudence, 95 section 3 lawyers, 24

### ELIGIBIILITY TO ACT AS PROPERTY GUARDIAN

competing applicants, 38 generally, 22 institutional guardians, 39 minimum age, 4 multiple guardians, 39 non-residents, 38 presumptive right of spouse, 38 prohibited persons, 37 trust company, 39

# **GUARDIAN OF PERSON**

age restrictions, 3, 63 apprehension order, 73 burden of proof, 63 capacity to make decisions, 66 confinement and monitoring, 76 custody of children, 73 duty to comply with Guardianship Plan, 77 duty to keep records, 75

finding of incapacity, 64 general statutory duties, 74 generally, 3, 63 good faith defence, 77 jurisdiction, 63 manner of appointment, 63 manner of decision-making, 74 minors, 3, 63 originating process, 63 Public Guardian and Trustee power of investigation, 64 required elements of allegation, 64 resealing foreign guardianship appointment, 64 right to request information and records, 73 sterilization, 77 temporary appointment of Public Guardian and Trustee, 65 use of drugs, 77

## MANAGEMENT PLAN

amending, 40 compliance with Management Plan, 53 dealing with business assets, 46 delineation of responsibilities, 39 standing to move to amend, 40 unauthorized transactions, 53 where co-guardians, 39

## MINORS

adults and minors, 4 application procedure, 83 appointment of property guardian, 83 appointment of trust company, 84 appointments by Will, 84 automatic termination, 88 bond, 84 *Children's Law Reform Act*, 4, 83 competing applications, 86 directions regarding property of minor, 89 duties of property guardian, 5 duty to pass accounts, 83 form of Management Plan, 84 generally, 83 interim orders, 87 joint guardians, 83 judicial fiat, 88 parens patriae jurisdiction, 86 parental priority, 83 payment into Court, 87 payment of interest to parent, 87 powers of guardian, 88 relationship to tort litigation, 85 removal of guardian, 89 replacement guardian, 84 restrictions on rights of minors, 83 right to withdraw from parental control, 86 sealing orders, 87 service of application, 83 service requirements, 85 views of minor, 86

# PASSING ACCOUNTS

consequences of failure to account, 56 evidence of transactions, 53 generally, 48 limitations on duty to account, 49 jurisdiction of court, 55 motion to compel passing of accounts, 49 onus of prove on guardian, 53 personal liability of guardian, 54 powers of judge, 55 procedure, 50 standard of proof, 53 standing, 49, 54 vouchers, 53

## **POWERS OF ATTORNEY**

capacity to grant powers of attorney, 67 duty to arrange assessment, 68 relief from form requirements, 67 resignation, 68 termination, 68 witness eligibility, 67

# **SECTION 3 COUNSEL**

amicus curiae, 24 assessment of legal fees, 25 221

generally, 23 liability to incapable person's executor, 25 manner of appointment, 23 payment of legal fees, 25 risks accompanying appointment, 24 role of section 3 counsel, 24

## SECTION 79 CAPACITY ASSESS-MENTS

apprehension order, 33 consequences of procedural errors, 33 jurisdiction, 31 onus of proof, 31 order to attend capacity assessment, 31 penalties for interference, 33 prerequisites to order to attend, 31 relevant time for determination, 32 required elements of assessment, 32, 34 test for capacity being in issue, 31

## SECURITY

bonding application process, 38 non-residents, 38 waiver, factors, 38

# STATUTORY GUARDIAN OF PROPERTY

application for review to Consent and Capacity Board, 15 application to court, 17 application to court for termination, 16 appointment, 10 automatic termination, 13 burden of proof, 11 Certificate of Incapacity – Property, 11 Consent and Capacity Board, 12 consequences of procedural irregularities, 11 dispensing with security, 16 emergency intervention (by PGT), 12 examining physician, 10 exemptions to automatic appointment, 11 mandatory assessment, 10 mandatory re-assessments, 14 ongoing power to re-examine at any time, 11 psychiatric facility, 10 Public Guardian and Trustee power of investigation, 18 replacement of statutory guardian of property, 16 request for assessment under s. 16 Substitute Decisions Act, 12 required elements of allegation, 18 right to demand re-assessment, 14 service requirements, 59 standard of proof, 11 standing to move to terminate, 14, 59 temporary statutory guardianship, 17 termination by application, 15, 59 test for capacity, 10

# TERMINATION OF GUARDIANSHIP

by summary disposition, 60 court-appointed property guardian, 59 personal care guardian, 66, 79 powers of the court in motion, 66 removal and substitution, 66 residual degrees of incapacity, 80 service requirements, 66, 79 statutory property guardian, 15, 59

# 222