

The Guardian Bulletin



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Recently, the IGA Membership Committee sent out a letter to many of you who have been past members or are current members. The intent is to increase memberships and to create income so we can continue to offer training conferences for participants to maintain their certified guardian status and/or earn continuing education units for other professional disciplines. An all-day conference is an expense which is becoming difficult to support without additional income. Being a member allows one to attend our conferences free! Something that non-members may not always be able to enjoy.

To begin the year, the *Guardian Bulletin* has an article pertaining to new laws that may affect guardianship services, an article reviewing sureties which you will find very useful, and an overview of a new guardian training program that the Illinois Office of State Guardian is planning to post on the IGA website.

New Laws in 2019 for Guardianship Services

Illinois State Senate Republican Office and ABC Channel 7 Eye Witness News 1.1.19

HB 04309 / Bush, M / Jimenez, S / "Creates the Frail Individual Family Visitation Act allowing people to petition courts for visitation when a caregiver has refused to let them see their frail family member and requires caregivers to notify the individuals family of hospitalizations and relocations" / Health

HB 04686 / Bivins, T / Bennett, T / "Prohibits an employee of an agency directly providing residential services to a ward of the state from serving as guardian over the ward." / Human Services

HB 04687 / Bennett, S / Bennett, T / "Expands who may petition a court for visitation of a ward of the state after the ward's guardian has denied it to include a spouse, adult grandchild, parent or adult sibling. Current law only allows an adult child to petition for visitation." / Civil Law

HB 4702/PA 100-1044 Uniform Powers of Appointment Creates the Uniform Powers of Appointment Act. Adds provisions concerning: governing law, common law and principles of equity; creation of power of appointment; non-transferability; presumption of unlimited authority; rules of classification; power to revoke or amend; requisites for exercise of power of appointment; intent to exercise; donor-imposed formal requirements; permissible appointment; the selective allocation doctrine; the capture doctrine; disposition of unappointed property; appointment to taker in default; the powerholder's authority to revoke or amend exercise; disposition of trust property subject to power; disclaimer; release; power to contract; creditor claims. Repeals the Power of Appointment Exercise Act and the Termination of Powers Act.

HB 04796 / Hunter, M / Feigenholtz, S / "Expands the Order of Protection for foster parents/guardians who are caring for a child that has been subject to abuse or harassment by that child's birth parents, family members or previous household members" / Criminal Law

HB 04847 / Martinez, I / Demmer, T / "Allows Adult Protective Services (APS) to investigate claims of abuse, neglect or financial exploitation (ANE) for adults who reside in assisted care facilities if the suspected abuser is a non-employee, including family members, and, the abuse occurs outside of the facility." / Human Services

HB 04848 / Althoff, P / Swanson, D / "Makes it required that a health care facility or practitioner should provide, without charge, one complete copy of a patients records if the patient is an indigent homeless veteran." / Veterans

HB 04867 / Syverson, D / Olsen, D / Adults with Disabilities Guardianship (PA 100-0659): Provides that a court may not appoint an individual a guardian of a person or estate of an adult with disabilities before the would-be guardian discloses to the court the number of adults with disabilities over which he/she currently is appointed guardian. Further provides that if a court determines the would-be guardian is appointed guardian over more than five adults with disabilities, the court shall order the circuit court clerk to notify the Guardianship and Advocacy Commission in a form/manner in which the Guardianship and Advocacy Commission prescribes. Further provides that the Guardianship and Advocacy Commission shall maintain a list of all notifications it receives under this new section for reference by other agencies, units of government, or the public.

HB 04879 / Oberweis, J / Spain, R / "When a power of attorney exists, the agent of the principal must provide records to a representative of the Office of the State Long Term Care Ombudsman within 21 days of a request to be assessed costs and attorney fees by the court." / Civil Law

HB 05157 / Raoul, K / Feigenholtz, S / "Allows that temporary custodian to serve as a surrogate decision maker for the minor in end-of-life decision-making, if the courts determines by clear and convincing evidence that granting such authority is in the best interest of the child." / Family

HB 05210 / Althoff, P / Demmer, T / "Prohibits any State court from denying petitions due to outstanding costs, fines, assessments or fees imposed or established by a court, law enforcement agency or unit of state or local government." / Business

HB 05257 / Morrison, J / Bellock, P / "Requires the Department of Children and Family Services to provide a minor's guardian ad litem or a minor's appointed attorney with a copy of each significant event report." / Human Services

HB 05558 / Harmon, D / Carroll, J / "Amends the Mental Health and Developmental Disabilities Code and requires every mental health or developmental disabilities facility to post in public areas the contact information for the Guardianship and Advocacy Commission (GAC) and the agency designated by the Governor." / Human Services

SB 01707 / Raoul, K / Lang, L / "Comprehensive mental health and substance abuse package that expands access to life-saving addiction treatment, increases health plan transparency and applies state law parity requirements to school district health plans." / Health

SB 02265 / Hastings, M / Hurley, F / "Individuals with developmental or intellectual disabilities would be covered under the Endangered Missing Person Advisory program, which provides a regional system for the rapid information alerts regarding missing persons." / Public Safety

SB 02498 / Connelly, M / Batinick, M / Expands visitation rights for non-parents. / Family

SB 03075 / Hastings, M / Halpin, M / "Requires the Department of Human Services to submit a quarterly report for at least each state-operated mental health center and state-operated developmental centers." / Labor

A Bonding Experience: Guardians, Wards and Sureties

By: Scott K. Summers, IGA Vice-President

In Illinois, there are two types of bonds associated with guardianships: surety (which run to guardianships of the estate) and no-surety (guardianships of the person).

To begin: be certain to review the entire statute on bonds (755 ILCS 5/12-1, et seq.). It runs to a number of issues that will not be discussed in this overview. Note well that local court

rules also affect bonds. Accordingly, *bonding qualifications and formalities vary among the judicial circuits.*

If a proposed guardianship runs to the person only, a no-surety bond may be used. The nominated guardian signs before a notary or court clerk a form pledging to "faithfully discharge" her/his duties to manage the ward's living arrangements and/or health care (but not the finances). It is among the papers to be handed up when a temporary or plenary guardianship of the person (only) is sought.

Issues associated with surety bonding in guardianships of the estate are much more nuanced and complex. A surety bond is an insurance policy that covers the possibility (however remote) that the guardian of the estate might waste, mismanage, or abscond with the ward's assets. It usually involves the payment of an annual premium to an insurance company, which is nearly always paid from the ward's assets.

The surety's duties are (a) to make whole the estate of the disabled person in the event of any deficiency and (b) if ordered by the court, to state an accounting if the guardian of the estate fails to do so. Although rare, these are, of course, sorry circumstances for all concerned: among other things, the surety will attempt to recoup its losses from the guardian personally. Be certain to instruct the guardian of the estate carefully, and be sure to review the guardian's records no less frequently than annually.

It is possible for a guardian along with another individual to act as sureties at twice the value of the estate, but this is strongly discouraged: it exposes the guardian and the second personal surety to what may become significant personal liabilities.

Be certain to work with a qualified representative: not every insurance producer will do. The basic qualifications are, of course, that any given surety company and producer be licensed by the Illinois Department of Insurance. In some circuits, this is may be the only requirement. Again, be certain to refer to local court rules. In particular, sureties in Cook County must also "...be authorized by the Chief Judge...". See: <http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/SuretySection/CivilSureties.aspx>

Pursuant to 755 ILCS 5/12-5, the bond shall be "...not less than 1-1/2 times the value of the personal estate if a surety company acts as surety." In other words, a \$100,000 estate requires a \$150,000 bond.

Premiums are scaled to the amount of assets under active management by the guardian of the estate. Generally, they range between 0.5 percent to 1.5 percent of the amount to be bonded.

Coverage may require a baseline or minimum amount (e.g., \$20,000.00) and/or a minimum premium (e.g., \$100.00), even if the required bond is for less.

Work with the selected surety company and the prospective guardian of the estate and obtain the bond in advance of the court hearing so that it may be submitted to the judge when orders of appointment are entered. The annual premium may have to be paid in advance. (If so, seek subsequent reimbursement from the estate by leave of court.)

On the other hand, some sureties may wait until after a guardian of the estate is appointed, and then bill. On this basis, the annual premium may be paid directly from estate assets. In any event, be aware that letters of office will not be issued until a surety bond is on file.

Agents for sureties in the larger circuits and counties sometimes may be found in proximity to probate courtrooms. In Cook County, some (not necessarily all) of the court-qualified probate bonding agents are stationed every weekday morning in the twelfth floor foyer of the Daley Center, just outside of the circuit clerk's probate division offices.

Also consider looking online. An internet search for "Illinois guardianship bonds" will produce a sampling of surety companies. Several of them have online application forms. A prospective guardian can expect to undergo a credit check and, possibly, other background reviews. Premiums may be affected by the guardian's creditworthiness and geographical location, among other factors. The agent also will want information on counsel, if not previously known to the company: after all, the presence of the lawyer is, from a practical standpoint, one of the best assurances that the guardian will perform to the satisfaction of the court (and, of course, the company).

WHAT NEEDS TO BE BONDED?

There is a certain chicken-and-egg aspect to the procurement of surety bonds. At the onset of a case (be it as temporary guardian or plenary guardian), it can be exceedingly difficult to determine with precision the value of an estate. So, what's a guardian to do?

The prospective guardian and counsel may very well have to provide the surety with a rough estimate about estate value. Err on the high side. Upon appointment, the guardian then will have the authority to investigate and collect assets and establish precise figures. If the value of the estate exceeds the initial estimate, then it is quite easy to obtain and file an additional bond.

If it turns out that the bond is too high, then it can, upon petition to the court, be reduced. The inventory due date (sixty days after a plenary appointment - see 755 ILCS 5/14-1 (a)) is the most convenient time to increase or reduce the initial bond.

In accordance with statute, the court (generally speaking) has very little discretion about reducing or waiving bonds: even management of the most meager amount of money will require bonding as a condition of appointment. (However, some latitude is afforded with respect to bonds on (a) real estate and (b) personal injury actions. Please see the discussions that follow.)

The inventory encompasses, of course, all of the monetary assets under the guardian of the estate's direct management (e.g., bank accounts, stocks, bonds, mutual funds, annuities, and IRAs, as well as any ongoing businesses), plus one year's income from all sources (social security, pensions, dividends, interest, rents, royalties, and so forth).

In addition to financial instruments, personal property must be bonded. This includes automobiles, jewelry, boats, collections, antiques, and other items of value. Also include everyday furnishings, clothing, and personal effects: approximate their values in lots, based on rummage sale or garage sale prices. (One need not inventory every sock or saucer or spoon.)

Note well that surety bonds are not substitutes for homeowner or automobile or liability or umbrella policies. Be certain that all of the estate's insurance needs are provided for separately from surety.

Pursuant to 5/12-6, judges have latitude regarding real estate owned by the ward. With the exception of land trusts, land may be bonded for a minimal amount (or not bonded at all) unless and until it is to be sold or mortgaged and converted into liquid assets. See sections 5/12-7 and 5/12-9.

In accordance with 755 ILCS 5/20-5 (a), a guardian of the estate must petition the court for authorization to sell or mortgage a ward's real estate. Tender additional bond at the time the petition is heard.

If the ward has a possible personal injury action, this too may require bonding. Section 5/12-5(b) provides that a guardian must file a bond of "...not less than 1 1/2 times the amount likely to come into his hands as the proceeds of the judgment or settlement..." unless excused by the court. Never settle a personal injury case without prior court consideration. Settlement of a minor's case in particular may require multiple (and exacting) judicial reviews.

IDEAS FOR MINIMIZING SURETY BOND PREMIUMS

Typically, the guardian of the estate need be bonded only on the amount of assets under her or his direct management. Review the estate critically, and keep the surety premiums down by bonding for only what the guardian needs. This can be done in several ways:

1. The internet makes it easy to shop around. Try searching for "Illinois guardianship bonds" or "Illinois probate bonds". Get multiple quotes. (And again, make certain that prospective sureties also qualify under local court rules.)
2. Reduce bond by taking advantage of the expansive estate planning opportunities afforded by 755 ILCS 5/11a-18 (a-5) et seq. Especially compelling is the possibility of "...creating for the benefit of the ward or others, revocable or irrevocable trusts..." pursuant to subsection (a-5)(6). Subject to court approval, this may obviate bonding requirements altogether.
3. Unless in a land trust, real estate owned by the ward need not be bonded until it is to be sold or mortgaged. Note, however, that income streams such as rents do have to be bonded. See sections 5/12-7 and 5/12-9.
4. If certain assets are not expected to be required for the direct support of the ward until sometime in the future (say a year or more), obtain court orders freezing those assets and eliminating bond requirements for them. For example, a bank account may be retitled "Estate of A.B., a Disabled Person, By C.D., Plenary Guardian of the Estate, Subject to Order of Court." Be aware that this approach may offer a false economy, however, considering the costs of a petition and court appearance to unfreeze assets. Notice should be sent to the surety.
5. Income streams, such as social security, railroad retirement, and veteran and pension benefits, might in some instances be assigned directly to a service provider, such as a nursing home or assisted living facility. These sums, then, would no longer require bonding of the guardian of the estate. If such steps are undertaken, provide trails in subsequent accountings (e.g., "On March 29, 20xx, the Social Security Administration designated the ABC Retirement Home as the new representative payee for the ward's monthly benefits.") Be aware that such assignments will have to be undertaken in any event if the ward is in a spend-down situation and the guardian of the estate is (or will be) applying for Medicaid nursing home benefits.
6. Adjust the bond amount concurrently with other matters requiring court review or appearances, such as annual accountings. For example, if the ward is in a spend-down situation, then to the extent annual expenditures exceed income, seek a bond reduction to reflect the diminished assets in the estate.
7. Obviously, if annual income exceeds expenditures, the guardian of the estate will need to secure bond for a higher amount. The surety company will help with this. In the occasional instance when the guardian is bonded at appointment for an estimated estate value (say, \$250,000.00) and the inventoried estate turns out to be worth a lesser amount (for example, \$200,000.00), seek a reduction of bond retroactive to the date of appointment (*nunc pro tunc*) through an appropriate petition. Send notice of the petition to the surety company.

8. Consider divestment. Pursuant to 755 ILCS 5/12-7, it is possible (with court approval) to reduce bond by depositing estate assets with a trust company. However, make certain that the trust company fees don't eclipse the bond premiums.

9. Finally, get the most bond for the least money. If the premium for a \$100,000 bond is the same as for, say, \$110,000, then the choice is obvious.

To conclude: Surety bonds are expensive. Manage them shrewdly. In other words - procure all required coverages while simultaneously employing strategies to minimize premiums. Remember, every premium dollar you save helps to conserve your ward's estate.

Here are links to the probate bond forms used in Cook County:

http://www.cookcountyclerkofcourt.org/forms/pdf_files/CCP0313.pdf

http://www.cookcountyclerkofcourt.org/forms/pdf_files/CCP0312.pdf

http://www.cookcountyclerkofcourt.org/forms/pdf_files/CCP0361.pdf

http://www.cookcountyclerkofcourt.org/forms/pdf_files/CCP0339.pdf

[IGA and Illinois Office Of State Guardian Cooperative Effort](#)

As you may recall, a law was passed last year that calls for guardian of person training. Training pursuant to PA 100-0483 (HB 2665) was to be implemented by September 8, 2018. If all goes well, IGA and OSG will have a power-point presentation slide show that will address the key features of guardian of person. At the end of the power-point, a certificate will be printed out that will assist the guardian for filing with the court to prove passage. The completion of exam shall occur within a year of being appointed. Other facts regarding the law:

- The program is to be free and limited to counties with fewer than 3 million residents.
- It allows the governor to designate the Office of State Guardian (OSG) as interim public guardian to fill vacancies in counties with population of 500,000 or less and is effective September 8, 2018.
- The law calls for guardian training except for those who are employees of the Office of State Guardian, public guardians, attorneys currently authorized to practice law, corporate fiduciaries, and persons certified by the Center for Guardianship Certification (CGC).
- The law does not require that it be retroactive to cover what must be thousands of past guardian appointments made by the courts.

- Website www.appointments.gov shows that twenty-two (22) counties have "Vacant" listed as public guardian. In addition, sixty-five (65) counties show appointments that have expired. However, a PG can serve until they are replaced.

As mentioned above, IGA and OSG are working on a coordinated guardian of person training. It is hoped that the training will encourage the guardians to want to learn more by consulting the resources found on the IGA website. Stay tuned in...

Thank you to SEM- Estate Management Systems

The most recent IGA conference in Springfield was very successful! SEM applications was a financial supporter of the conference and also took part in one of the program presentations. The evaluation brought out recommendations for future training which will be addressed by our Community Education & Training Committee.

- Sexuality and DD clients
- DNR conversations - how to have one?
- Understanding life support - how it works?
- Sex offender placement issues
- Rights restriction with phones/computers - provider responsibility/limits; guardian responsibility/limits/suggestions
- Utilizing SST with DHS - what services are available, and can you request
- Services and medications that are best for elderly w/Alzheimer's/Dementia and behaviors
- OIG investigation process
- Medicaid enrollment - how it works and the plans
- Updates re: rule changes with Social Security and Medicaid
- Home Care Ombudsman program
- HFS to speak about Medicaid updates
- OSG guardianship process
- Medicaid/Medicare - ICFDDs - How to regain CILA funding once ward in nursing home and able to go back to CILA and CILA funds be reimbursed
- Better understanding of ISP work/training on what they are trained in regarding PCP (Discovery) of wards
- Public Guardian Roundtable discussion of Medicaid problems, process to transfer cases from public guardian to state guardian, managing tangible personal property/inventory insurance, storage/gifting family, FOID cards, etc.