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CUNY SCHOOL OF LAW

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INSTRUCTIONS AND SAMPLE FORMS FOR INDIVIDUALS

SEEKING GUARDIANSHIP WITHOUT AN ATTORNEY

This instructional packet was created to assist individuals, who cannot afford an attorney, with guardianship proceedings. Because guardianship proceedings are very serious, can deprive a person of many rights, and are complex, we recommend that all individuals who can hire an attorney!

If you cannot hire an attorney, and must start a guardianship proceeding, this packet is designed to make that process as easy and understandable as possible. For further assistance, we have included contact information and website links to other guardianship resources.

In addition to the instructions and sample forms, please use the checklist below to ensure that no step is missed. For questions and referrals regarding guardianship, you can call the Elder Law Clinic at Main Street Legal Services (contact information is listed above).

Good Luck!

Sincerely,

Elder Law Clinic

Created by: Main Street Legal Services, Elder Law Clinic Interns of CUNY School of Law:
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Law in the Service of Human Needs

GUIDE TO BECOMING A GUARDIAN WITHOUT A LAWYER

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GETTING STARTED

Before You Apply For A Guardianship...Look For Alternatives!

- In some cases, a person who has already executed, or has the mental capacity to execute, a power of attorney, living will, health care proxy, and/or representative payee arrangement with social security may not need a guardian. For descriptions about these additional alternatives, see the Do-It-Yourself (DIY) Guardianship [website](#) available from the CUNY School of Law homepage. Please refer to the end of this guide to see a list of alternatives that may be explored before beginning the guardianship process.

You Can Apply For A Guardianship Without An Attorney!

- However, it is **STRONGLY RECOMMENDED** that you seek out the services of an attorney if you can afford it. This guide should be used by people who cannot hire an attorney. The guardianship process is different for every state. Below is information specific to people trying to be a guardian in the state of New York.

How To Use This Guide:

1. Carefully read this guide. It will give you detailed instructions on how to become a guardian.
2. Review the forms attached to this guide. These forms include instructions on how to become a guardian.
3. Fill out the forms attached to this guide
4. Submit the completed forms to the court.
5. Make sure that you have answered “YES” to all questions on the *Checklist for Guardianship Petitioners*.

What Is An Article 81 Guardianship Proceeding?

Generally

DEFINITION:

A guardianship proceeding is a legal action brought by someone (petitioner) who believes that another person cannot take care of her/his own personal needs, e.g. healthcare. Or, the petitioner believes that the person cannot manage her/his property, e.g. pay bills. In some cases, a petitioner believes that a person cannot manage both personal needs and property management. The petitioner believes that because of this person's inability, the court should appoint someone to have the powers to make decisions about personal needs or financial management on behalf of that person. For the purpose of these types of hearings, the person who might need a guardian is called either an Alleged Incapacitated Person (AIP) or a Person In Need of a Guardian (PING).

PROVING YOUR CASE:

You must show by clear and convincing evidence, i.e. that the evidence is highly or substantially probable to be true than not true, that the person is likely to suffer harm because:

- The appointment of a guardian is necessary
- s/he cannot manage her/his property and / or provide for her/his personal needs and
- s/he cannot understand and appreciate the nature and consequences of not being able to care for her/his own property, and or, own personal needs.

SCOPE OF POWERS:

If this legal action is successful, a guardian will be appointed by the court to make certain decisions on behalf of the person. Because the court tries to respect and promote the rights of the person who needs a guardian, the powers of a guardian are limited to those that are the "least restrictive."

POWERS:

The powers of a guardian are separated into two different areas: 1) property management; and 2) personal needs. A guardian's powers might be limited to just one of these categories, but often a guardian's powers include both. If you are the one petitioning for guardianship, you can pick and choose which powers you want to ask for.

- Property management may include, but is not limited to, the power to pay bills, authorize the release of confidential records, make gifts, enter into contracts, marshal assets, create trusts, pay for funeral expenses, and apply for government and private benefits.
- Personal needs may include, but are not limited to, the power to manage what kind of medical treatment the person should receive, determine where the person should live, decide the social activities of the person, determine if the person should travel, make decisions regarding education, and apply for government and private benefits.

Who Can Apply To Be A Guardian?

- Any interested person over 18 may petition the court to become a guardian. This includes a spouse, family members, someone who lives in the home of the person who may be in need, and any other person or organization who is concerned about the person's well-being.

The Responsibilities Of A Guardian

- According to Article 81 of the Mental Hygiene Law, a guardian has many legal responsibilities.
 - ☑ A guardian must personally visit the person at least four (4) times a year.
 - ☑ A guardian must also send reports to the court.
 - ☑ These reports must describe how the person is doing. The first report is due 90 days after the guardian officially qualifies as guardian. The next reports are due once every year in May.
 - ☑ The law states that a guardian must handle this responsibility by always making decisions for the person as if the person was making those decisions on her/his own with her/his best interest in mind. Below, is a diagram of the powers, tasks, and ethical responsibilities of a guardian.

Diagram Of The Powers, Tasks, And Ethical Responsibilities Of A Guardian



BEFORE THE HEARING

The Documents You Need to File For Guardianship:

1. Request for Judicial Intervention:

This form has to be filed for the court to take your case and assign it to a judge. See the attached “Request for Judicial Intervention” instructions on how to fill out this form. Be sure to make a copy of the RJI for the County Clerk’s office to have on file. A Request for Judicial Intervention cost \$95 and you must also pay \$210 to get an Index Number. This number is what you and the court system will use to track your case as it goes through the system. You can purchase the index number by going to the County Clerk’s office of the courthouse where you will be filing. The County Clerk’s office will want a copy of the verified petition for their records, so be sure to bring a photocopy of your original petition for them to keep when you pay for the index number.

***Please Note:** There may be a way to get this fee waived. A person petitioning for guardianship may be able to file for a “poor person’s” affidavit to request a waiver of these fees. See the attached “Poor Person’s Affidavit” for instructions on how to do this.

Also Note: The County Clerk’s office does not accept personal checks, and filing fees change periodically. Check the [New York Unified Court System](#) or contact the County Clerk to find and/or verify the current filing fee.

2. Order to Show Cause:

Explains legal rights, along with date, time, and place of the hearing. It also describes the rights afforded to the incapacitated person, and it lists the same powers over the alleged incapacitated person that you requested in your petition. Although the Order to Show Cause is signed by a judge, it is your responsibility to write it and submit to the court for the judge’s approval. The judge will then fill out the time, date, and place of the hearing. See the attached “Instruction Sample Order to Show Cause” for the information necessary to put in the order to show cause.

3. Verified Petition:

Explains to the court why a guardian is necessary for the person and why you should be the guardian. You must describe why the person needs a guardian and why you, or somebody else, should be the guardian. It also lists the specific powers you think the guardian needs. The petition gives you the opportunity to tell the judge your story, so be as specific as possible when describing why the person needs a guardian.

- Read and fill out the attached “Petition Form” for the information necessary to put in the Verified Petition.
- Sign the petition and verification in front of a notary public. A notary public can often be found at banks or in offices near courthouses.

4. Notice of Proceeding:

This form is mailed together with the signed Order to Show Cause to interested parties. See the attached “Sample Notice of Proceeding” for the information that’s necessary to put in the notice of proceeding.

Where And How To File?

- ☑ Bring the RJI, Verified Petition and Order to Show Cause to the Guardianship Clerk, have them file the papers (stamped filed), and purchase an Index Number.
 - The Guardianship Clerk has an office in the Supreme Court building of every county. Below is a list of where the Guardianship Clerks offices are in New York City.

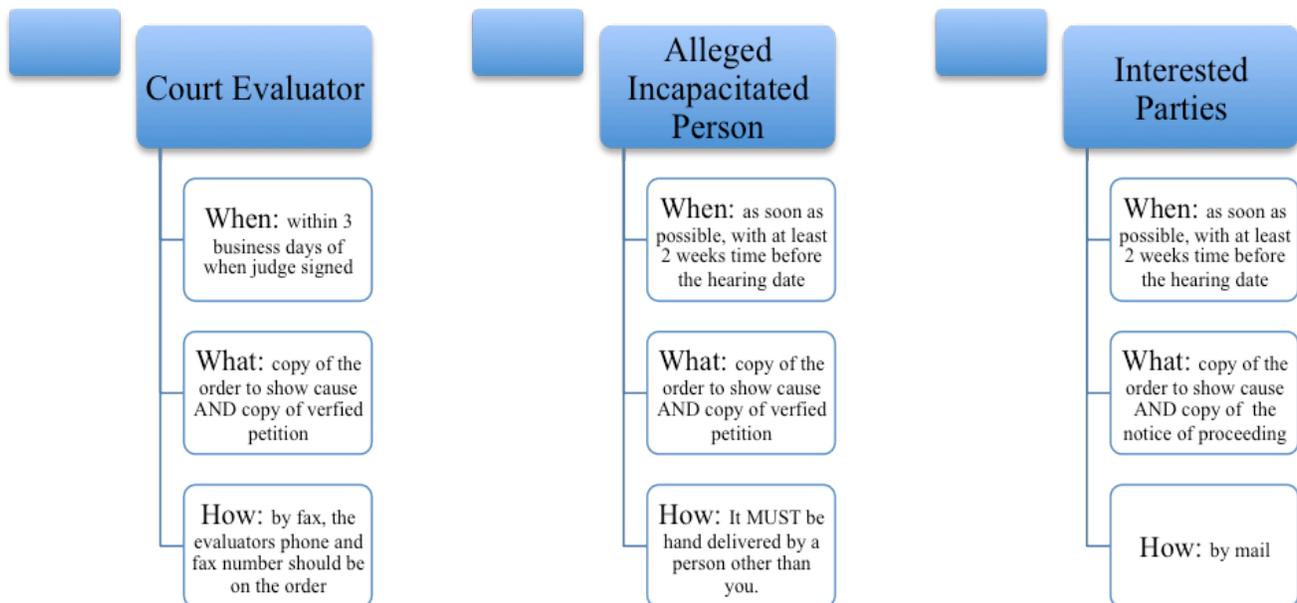
(List is current through December 13, 2011)

- Manhattan:
Scott Singer, Guardianship Clerk
60 Centre Street, Room 148
New York, NY 10451
(646) 386-3328
- Queens:
Charles Nocilla, Guardianship Clerk
88-11 Sutphin Boulevard, Room 100
Jamaica, NY 11435
(718) 298-1040
- Bronx:
Jose Pagan/ Laura Conaty, Guardianship Clerks
851 Grand Concourse, Room 6M-10
Bronx, NY 10451
(718) 618-1330
- Brooklyn:
Joseph Musolino, Guardianship Clerk
360 Adam Street, Room 850
Brooklyn, NY 11201
(347) 296-1757
- Staten Island:
Elyse VonEgloffstein, Guardianship Clerk, Trial Part 12
18 Richmond Terrace
Staten Island, NY 10301

After You Have Filed The Order To Show Cause And Verified Petition

- ☑ You have to get a signed copy of the order to show cause. There may be a few ways to get this copy. Call the clerk a few days after the hearing and see if the signed copy of the Order to Show Cause is ready to be picked up. You may have to go to the court personally to make a copy, or the secretary might be able to fax the order to show cause to you.
 - The Order to Show Cause will schedule a hearing date that is usually within 28 days from the date the Order to Show Cause was signed by the judge. The first thing to do is, check that date and make sure you are available to come to court on that day.
- ☑ Once you have a copy of the order to show cause, you have to send copies of the order to a few people. Below is a checklist detailing who you will have to send a signed copy of the order to, by when, what other paperwork may be needed, and how you have to send the copy.
 - It is important to note, always read the order. The order may have a different list from below or change the date in which the list of people should receive the paperwork.

Who to Send the Order to Show Cause to and How



THE HEARING

Preparing for the hearing

- It is impossible to predict everything that might happen at the hearing. Each judge is different, and each judge runs her courtroom differently. However, you can take the following steps to prepare for the hearing.
 - ☑ Prepare what you are going to say. You will have to testify in court. Carefully review your verified petition in order to ensure that the relief you request in your petition matches what you will say in court.
 - Tip: develop a clear and short story telling the judge why you should be a guardian and why the alleged incapacitated person is in need of a guardian. Practice what you are going to say before the hearing.
 - Be prepared to describe the person’s daily routine, what services the person uses or needs, and why she/he is no longer able to manage personal needs and/or property.
 - ☑ Prepare and inform other witnesses. If there are other people who you think should testify in court, such as family members, neighbors, people who care for the person, and social workers, let them know of the hearing date and time.
 - ☑ During the hearing, ask questions! Remember, it’s okay to ask for the judge or attorney questioning you for clarification when you don’t understand something. Everyone has a right to be heard fairly and justly in a court of law, with or without an attorney.

At The Hearing

- Evidence will be presented to the judge regarding whether the person needs a guardian. Questions or objections may be raised by any interested person, this includes you! The burden is on you, the petitioner, to establish that the person really needs a guardian. Most often, the judge will decide whether or not to appoint a guardian at the end of the hearing. Sometimes, the judge will withhold the decision and mail it at a later date.
- At the end of the hearing, the judge will issue an order on the record stating his/her decision on whether a guardian will be appointed, with which powers, for how long, etc.
 - On the record means that everything stated in the hearing is being recorded either electronically or typed up by the court reporter.
- At the end of the hearing, the judge will usually direct the petitioner to “settle” the order. See below for a step-by-step guide to “settling” an order.

WHAT TO DO AFTER THE HEARING

Settling the Order

1) What does it mean to “settle” the order?

Settling the order is when the parties come to an agreement on what should be written in the order. This must be consistent with the judge’s oral ruling during the hearing. In this situation the petitioner (you) is usually in charge of drafting the order.

2) How do you draft the order?

You must get the court transcript (record) from the court reporter. At the end of the hearing, you will be given the court reporter’s contact information so that you can get a print copy of the transcript. Once you receive the transcript, you will then refer to the portion of the hearing where the judge orally makes his or her decision, and draft a written order consistent with the judge’s oral ruling. See form

3) What has to be in a written order?

The order should describe in detail: the court’s findings with regard to the AIP’s condition, the need for a guardian, the nature of guardianship, and any limitations on the guardian’s power(s).

4) What you do after you write the order?

You must then send it to the AIP, or if represented by a lawyer, the AIP’s lawyer so that they can make any changes that they believe is consistent with the judge’s ruling. Once both parties agree to the terms of the order, a copy, signed by both parties, is sent to the judge’s clerk for the judge to modify and/or sign. Once the judge signs the order, it is “entered.” “Entered” refers to the process of the order being filed with the County Clerk’s office.

5) What to do after the order is entered?

The petitioner must then send a **Notice of Entry** along with the final order, to all persons who received a copy of the **Verified Petition**. A **Notice of Entry** simply informs everyone that the order is final and has been signed and entered.

After the Order is Settled, Signed and Entered by the County Clerk

The Guardian Must:

- ☑ Obtain a bond with a surety company, unless the judge has waived this requirement. This applies in cases where the person who needs the guardian has a lot of money or property.
- ☑ Sign an **Oath and Designation form**. This is where you swear to carry out the duties of a guardian, and file it with the County Clerk. Prepare a **Written Commission** and submit it to the County Clerk along with the Oath and Designation form. Within 5 days of the County Clerk receiving the Oath and Designation form, they will sign and return it to you. This is called the **Written Commission**, which is proof that you are lawfully authorized to act within your designated power(s) on behalf of the incapacitated person.
- ☑ Complete a guardianship-training course within 90 days of the appointment. The Office of Administration periodically offers classes and provides a list of guardians who have completed the course. The Guardianship Assistance Network (GAN) also provides training programs and other resources for guardians.
- ☑ File an **Initial Report** with the assigned **court examiner**. The initial report must include proof that you have completed the training and have begun taking steps to fulfill your duties to the incapacitated person. If you believe changes need to be made to the powers authorized to you, then you must state that in the report and explain why. You should ask the court examiner for help if any changes need to be made.
- ☑ File an annual report in May. You must file an annual report in May about the previous calendar year. For example, you report for the year of 2012 will be filed in May of 2013. report similar to an initial report, every year. Sample annual reports can be found at the Guardianship Assistance Network website, or at the New York City Civil Supreme Court website.
 - **Remember:** A guardian must keep careful and detailed records on all activity regarding the incapacitated person.
 - This includes, but is not limited to: receipts, bills, notes, medical records, government benefit records, etc. This documentation must be included with the annual report.

*See Checklist for Guardians below:

CHECKLISTS FOR GUARDIANSHIP PETITIONERS

Before the Hearing:

- ☐ Fill out the **Verified Petition** (and have it notarized)
- ☐ Fill out the **Order to Show Cause**
- ☐ Fill out the **Request for Judicial Intervention (RJI)**
- ☐ Take the **Verified Petition, Order to Show Cause, and RJI** to the Court and file the forms with the court clerk and receive an index number
- ☐ Wait a few days for the judge to sign the **Order to Show Cause**
- ☐ Personally deliver the signed **Order to Show Cause** and the **Verified Petition** to the person who needs a guardian (the AIP or PING) and his or her lawyer, if applicable
- ☐ Send (via mail or fax) the **Order to Show Cause** and **Verified Petition** to the Court Evaluator
- ☐ Fill out the **Notice of Proceeding** and send the signed **Order to Show Cause** and the **Notice of Proceeding** to all interested parties (family, friends, etc.)
- ☐ Prepare for the hearing: have a statement to say to the judge, have all documents in order, prepare witnesses (if applicable)
- ☐ Go to the hearing

AFTER THE HEARING

(If the judge appoints you as guardian)

- ☐ Prepare an **Order** form (ask the Judge if he or she has an Order form to fill out)
- ☐ Fill out the **Notice of Settlement**. The “return date” on the **Notice of Settlement** should be 15 days from the day you mail it.
- ☐ Mail the **Order** and **Notice of Settlement** to all interested parties
- ☐ File the **Order** and **Notice of Settlement**, along with an **Affidavit of Service**, with the court clerk
- ☐ Wait a few days for the judge to sign the **Order** and then pick up the **Order** from the Court
- ☐ Mail the signed **Order** to all interested parties
- ☐ Fill out the **Oath and Designation** (and have it notarized)
- ☐ Fill out the **Commission**
- ☐ File the **Oath and Designation** and **Commission** with the court clerk.
- ☐ Complete a guardianship training course
- ☐ File an **Initial Report** with the Court Examiner

* Must be completed within three business days, ** Must be completed ASAP, with at least 2 weeks time before the hearing

ALTERNATIVES TO GUARDIANSHIP

POWER OF ATTORNEY

- When you give someone power of attorney, that person acts as your agent and will have the authority to spend your money and sell or dispose of your property during your lifetime without needing your consent or having to tell you. However, in exercising this authority, your agent must act according to the instructions you have provided. Where there are no specific instructions, they are required to act consistently with your best interests.
- Your agent may be given the authority to make gifts in excess of \$500.00 a year. Such actions can significantly reduce your property or change how your property is distributed at your death. Similarly, the gifts made by your agent must be consistent with any instructions you have provided or otherwise be in your best interests. For your agent to make gifts to himself or herself, you must separately grant that authority.
- You can request information from your agent at any time. At any time and for any reason, you can appoint a different individual as your agent or terminate your power of attorney altogether, so long as you are of sound mind. If you are no longer of sound mind, a court can remove your power of attorney if she or she is acting improperly.
- Your agent cannot make health care decisions for you. Instead, you can establish a health care proxy to make health care decisions for you.

***For more information regarding power of attorneys, please go to:**

New York General Obligations Law, Article 15, Title 15 which is available at a law library or online through the New York State Senate or Assembly websites:

www.senate.state.ny.us or www.senate.state.ny.us

HEALTH CARE PROXIES

- **Health care proxies** are agents that are appointed and granted the authority to make decisions about medical treatment for a person whose doctor declares is unable to make their own health care decisions. In order to give legal decision making authority to a family member or friend, an agent should be appointed as a health care proxy. If no one is available or suitable to serve as an agent, a **living will** can provide clear and convincing evidence of a person's wishes, morals, and religious beliefs regarding medical treatment.
- Appointing an agent as a health care proxy is the most effective way of maintaining control over decisions concerning medical treatment, visitation, and access to medical records. You do not need a lawyer to appoint someone as your health care proxy. Rather, you just need two adult witnesses, other than your proposed health care agent.

***For more information** and to get a health care proxy form, please visit the New York State Department of Health Website, or click "**here**".

*You can also get a Health Care Proxy Form and a Living Will at the New York State Bar Association website, or click "**here**".

ASSISTED OUT-PATIENT TREATMENT

- Assisted Out-Patient Treatment (AOT) is available for individuals who have a mental disorder and cannot live in the community independently without being a danger to themselves or others. Therefore, AOT allows individuals and institutions (such as hospitals) to petition the court for AOT services for the mentally disabled person in need of rehabilitation. The goal of the AOT Program is to enable individuals with mental disorders to live safely in the community, avoid repeated inpatient hospitalizations, and ensure they have access to comprehensive outpatient services.
- A person may be ordered to receive Assisted Outpatient Treatment (AOT) if a court finds that he or she:
 - is at least 18 years of age and suffers from a mental illness and
 - is unlikely to survive in the community without supervision based on a clinical determination and
 - has a history of non-compliance with treatment for mental illness which has led to 2 hospitalizations for mental illness in the preceding 3 years or resulted in at least 1 act of violence toward self or others, or threats of serious physical harm to self or others, within the preceding 4 years (time period may be extended in the event of current or recent hospitalizations) and
 - is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community and
 - based on treatment history and current behavior, is in need of outpatient treatment to prevent a relapse or deterioration likely to result in serious harm to self or others and
 - will likely benefit from Assisted Outpatient Treatment.
- Authorized petitioners for AOT include:
 - any person 18 years of age or older with whom the subject resides;
 - the parent, spouse, adult sibling, or adult child of the subject;
 - the director of a hospital in which the subject is hospitalized;
 - the director of any public or charitable organization, agency or home providing mental health services to the subject or in whose institution the subject resides;
 - a qualified psychiatrist who is either supervising the treatment of or treating the subject for a mental illness;
 - a licensed psychologist or a licensed social worker who is treating the subject of a mental illness;
 - the director of community services, or his or her designee, or the social services official of the city or county in which the subject is present;
 - a parole or probation officer assigned to supervise the subject.

***For more information**, go to the NY State Department of Mental Health or click [“here.”](#)

REPRESENTATIVE PAYEE

- When an individual who receives Social Security or Supplemental Security Payments cannot manage their benefits by themselves, Social Security will allow a family member, friend or qualified organization, to receive those benefits on behalf of the individual. This person is known as a “Representative Repayee” and must use the benefits to pay for the individual’s current and/or reasonably-known future needs. Representative Repayees must keep careful records of their use of the individual’s benefits and must complete an annual accounting which can be done online at: <http://www.ssa.gov/payee/form/index.htm>. For more information about Representative Repayees, please go to the Social Security Administrative website: <http://www.ssa.gov/payee/>.
- Or, contact:
 - By Mail:
Social Security Administration Office of Public Inquiries Windsor Park Building 6401 Security Blvd. Baltimore, MD 21235
 - By Telephone:1-800-772-1213

SUPPLEMENTAL NEEDS TRUST

- A supplemental needs trust (SNT) is a trust established to allow people to have excess income and still be eligible to receive government benefits. For example, if a person is currently receiving Medicaid and/or needs Medicaid to receive a home health care aid, they can still be eligible so long as their excess income goes into the SNT. There are different types of SNTs. Some SNTs allow you to put your own funds into a trust while other trusts are established using the funds of someone else.
- To establish a SNT with your own money, there are two types to consider:
 - Individual trusts and Pooled Trusts.
- With individual trusts, any money left over after the person passes is used to pay back Medicaid, and if there is still money leftover, it then goes to the individual’s estate. With pooled trusts, any money left over in the trust goes to the non-profit organization that administers the trust, for the benefit of other individuals.
- To qualify for an Individual SNT, an individual must:
 - Be under the age of 65; and
 - Have a severe and persistent disability (recognized by the state). *If you receive Social Security Disability payments then you will automatically be recognized by the State as having a severe and persistent disability

- There are limitations on what an individual SNT can pay for. Depending on which government benefit(s) a person receives or hopes to receive, determines which limitations will be placed on their SNT. For example, a person who receives Supplemental Security Income cannot use the SNT to pay for any expenses relating to shelter (such as rent or a mortgage) or food, but can use the SNT funds on almost anything else.
- For Pooled Trusts, the SNT can pay for most expenses, such as rent, utilities, and credit card bills. However, it is the non-profit organization that administers the trust that pays these expenses for the individual. The individual cannot access the money in the trust directly.
- To qualify for an pooled SNT, an individual:
 - Can be ANY age; and
 - Have a severe and persistent disability (recognized by the state). *If you receive Social Security Disability payments then you will automatically be recognized by the State as having a severe and persistent disability

At an I.A.S., Part _____ of the Supreme Court of the State of New York, County of New York at the Supreme Court Building _____

on the _____ day of _____, 20__.

P R E S E N T :

HONORABLE _____ JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF _____

-----X

In the Matter of the Application of

[Your Name] Petitioner,

ORDER TO SHOW CAUSE
Index No.: _____

For the Appointment of a Guardian of the Personal Needs and Property Management of

_____,
[Name of Alleged Incapacitated Person (AIP) or Person In Need of a Guardian (PING)]

An Alleged Incapacitated Person Pursuant to Article 81 of the Mental Hygiene Law,
Respondent.

-----X

IMPORTANT

AN APPLICATION HAS BEEN FILED IN COURT BY

[Your Name] **WHO BELIEVES YOU MAY BE UNABLE TO**

TAKE CARE OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS.

[Your Name] **IS ASKING THAT** _____
[Name of Proposed Guardian]

BE APPOINTED TO MAKE DECISIONS FOR YOU. WITH THIS PAPER

IS A COPY OF THE APPLICATION TO THE COURT SHOWING WHY
_____ BELIEVES YOU MAY BE UNABLE TO TAKE

[Your Name]

CARE OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS.
BEFORE THE COURT MAKES THE APPOINTMENT OF SOMEONE TO
MAKE DECISIONS FOR YOU THE COURT HOLDS A HEARING AT
WHICH YOU ARE ENTITLED TO BE PRESENT AND TO TELL THE
JUDGE IF YOU DO NOT WANT ANYONE APPOINTED. THIS PAPER
TELLS YOU WHEN THE COURT HEARING WILL TAKE PLACE. IF
YOU DO NOT APPEAR IN COURT, YOUR RIGHTS MAY BE
SERIOUSLY AFFECTED.

YOU HAVE THE RIGHT TO DEMAND A TRIAL BY JURY. YOU
MUST TELL THE COURT IF YOU WISH TO HAVE A TRIAL BY JURY.
IF YOU DO NOT TELL THE COURT, THE HEARING WILL BE
CONDUCTED WITHOUT A JURY. THE NAME, ADDRESS, AND
TELEPHONE NUMBER OF THE CLERK OF THE COURT ARE:

[Name of Clerk for your County]
[Address of Clerk for your County]

THE COURT HAS APPOINTED A COURT EVALUATOR TO
EXPLAIN THIS PROCEEDING TO YOU AND TO INVESTIGATE THE
CLAIMS MADE IN THE APPLICATION. THE COURT MAY GIVE THE
COURT EVALUATOR PERMISSION TO INSPECT YOUR MEDICAL,

PSYCHOLOGICAL OR PSYCHIATRIC RECORDS. YOU HAVE THE RIGHT TO TELL THE JUDGE IF YOU DO NOT WANT THE COURT EVALUATOR TO BE GIVEN THAT PERMISSION. THE COURT EVALUATOR'S NAME, ADDRESS, AND TELEPHONE NUMBER ARE:

[The Court will fill in the name of the Court Evaluator here]

YOU ARE ENTITLED TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT THE COURT TO APPOINT A LAWYER TO HELP YOU AND REPRESENT YOU, THE COURT WILL APPOINT A LAWYER FOR YOU. YOU WILL BE REQUIRED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO.

You and any other party to this proceeding have the right to:

- Present evidence
- Call witnesses, including expert witnesses, and
- Cross-examine witnesses, even those witnesses called by the court

On reading and filing the annexed petition of _____, duly verified on
[Your Name]

_____, from which it appears that the Alleged Incapacitated
[Date you signed the Order to Show Cause]

Person or the Person in Need of a Guardian, above named, is physically present in New York County, State of New York and that the appointment of a Guardian is necessary to provide for the personal needs and to manage the property and financial affairs of that person; and that person agrees to the appointment, or that the person is incapacitated as defined in subdivision (b)

of Section 81.02 of the Mental Hygiene Law; and it appearing that the Alleged Incapacitated Person owns or possesses certain property within the State of New York.

LET _____, the alleged incapacitated person or person in need of a
[Name of AIP or PING]

guardian, and those persons entitled to service pursuant to Mental Hygiene Law Section 81.07(e) and the court evaluator, hereinafter named,

[The Court will fill in the appropriate names here]

SHOW CAUSE before me or the Justice presiding at I.A.S. Part ____ of this court, to be held in the _____ County Supreme Court, located at _____
[Name of County] *[Address of Court in Your County]*

, on the ____ day of _____, at _____ AM or PM of that day, or as soon
[Court will fill in the date and time that the hearing will take place]

thereafter as counsel can be heard,

WHY a Guardian should not be appointed for the Personal needs and Property Management of _____ an Alleged Incapacitated Person or Person in Need of a
[Name of AIP or PING]

Guardian , upon the Guardian qualifying in accordance with the statutes of the State of New York in such cases made and provided; and

WHY a personal needs and property management guardian should not be authorized to exercise the following powers on behalf of the Alleged Incapacitated Person or Person in Need of a Guardian if the relief sought in the petition is granted:

PERSONAL NEEDS POWERS

If a Guardian is appointed for you, the Guardian may have the authority to exercise the following powers over your person:

[List ONLY the personal activities that you think the AIP or PING cannot perform on his/her own]

PROPERTY MANAGEMENT POWERS

If a Guardian is appointed for you, the Guardian may have the authority to exercise the following powers over your property:

[List ONLY the property/ financial activities that you think the AIP cannot perform on his/her own]

SUFFICIENT REASON APPEARING THEREFOR:

ORDERED, that _____ of _____,
[Name of Court Evaluator] [Address of Court Evaluator]

New York is hereby appointed Court Evaluator herein to investigate the claims made in the petition; to determine whether Counsel should be appointed by the Court; and report to the Court the functional abilities and limitations of the Alleged Incapacitated Person in this proceeding; and it is further

ORDERED, that _____ of _____,
[Name of AIP's Lawyer, if applicable] [Address of AIP or PING's Lawyer, if applicable]

New York is hereby appointed Counsel to represent _____ in this
[Name of AIP or PING]

proceeding, and it is further

ORDERED, that service pursuant to MHL § 81.07 (e)(2)(i) of a copy of this Order and of the papers upon which it is granted upon _____ by personal delivery, on or
[Name of AIP or PING]

before the _____ Day of _____, be deemed good and sufficient
[Day] [Month, Year]

service, and it is further

ORDERED, that this Order to Show Cause and the papers upon which it is based shall be served personally, by overnight delivery or by fax, pursuant to MHL § 81.07 (e)(2)(ii) upon

_____, the Court Evaluator and _____, the
[Name of Court Evaluator] *[Name of AIP or PING's Lawyer, if applicable]*

court appointed attorney on or before the _____ day of _____ shall be
[Day] *[Month, Year]*
deemed good and sufficient service; and it is further

ORDERED, that service by mail of the Order to Show Cause and Notice of Proceeding, pursuant to MHL §81.07 (g)(2) upon the following:

[List All Interested Parties, other than the AIP or PING, the court evaluator, and the attorney for the AIP or PING, if any]

ENTER,

[Judge's Signature]

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
[Name of County]

_____ X
In the Matter of the Application of:

**Verified
Petition**

[Your Name]
Petitioner

Index No:

For the Appointment of a Guardian of the
Person and/or Property of

[Name of Alleged Incapacitated Person (AIP)]
Person Alleged to be Incapacitated

Respondent

_____ X

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

The Petition of _____, as an interested party of the ALLEGED
[Your Name]

INCAPACITATED PERSON, _____, respectfully shows as follows.
[Name of AIP or PING]

1. The alleged incapacitated person is _____ years old, and was born on
[Age of AIP or PING]

_____.
[AIP or PING's Date of Birth]

2. S/he lives at _____ His/her
[AIP or PING's Address]

telephone number is _____.
[AIP or PING's Area Code and Home Telephone Number]

[If applicable add:]

_____ is currently a patient at _____,
[Name of AIP or PING] *[Name of Hospital or Facility]*
located at _____, having been admitted
[Address of Hospital or Facility]

on or about _____ His/her room is located at _____. Her
[Date of Admission] *[Location of Room]*

telephone number is _____.
[Area Code and Telephone Number at Hospital or Facility]

3. Describe the marital status of AIP or PING, including spouse's relationship to petitioner, date of marriage, medical and mental status of spouse, and residence of spouse:

4. As described in this petition, _____ is incapacitated in that he/she is
[Name of AIP]
unable to provide for his/her personal needs and property management and cannot adequately understand and appreciate the nature and consequences of such inability.

5. *Describe with particularity the AIP's current condition:*

6. *Describe with particularity items illustrating the AIP's inability to function in a manner necessary to prevent harm to himself or herself. (i.e. Describe the AIP's inability in some of the following areas: mobility, eating, toileting, dressing, grooming, housekeeping, cooking, shopping, money management, banking, driving or using public transportation, and other activities related to personal needs and to property management):*

7. Because of his/her condition, _____ is unable to consistently
[Name of AIP]
provide for his/her own personal needs and is likely to suffer harm in the following areas:
[List area's where AIP will suffer harm, for example, proper nutrition, health care and hygiene, safety measure, and living environment]

8. _____ is likely to suffer harm because he/she cannot adequately understand and appreciate the nature and consequences of his/her inability to provide for property management. The specific allegations that demonstrate that _____ would suffer harm are as follows:

[Name of AIP]

[List with particularity AIP's inability to handle various aspects of property management including inability to protect assets and meet financial obligations. For example, inability to attend to financial transactions, balance a checkbook, manage social security check, budget and allocate resources.]

9. In light of the medical conditions and functional limitations listed above, I believe that _____ is likely to suffer harm and that the least restrictive form of intervention is the appointment of a guardian of the person with the following powers: *[List personal needs powers being sought]*

10. In light of the medical conditions and functional limitations listed above, I believe that _____ is likely to suffer harm and that the least restrictive form of intervention is the appointment of a guardian of the property with the following powers: *[List property management powers being sought]*

11. I am asking the court that I be appointed guardian of the person and property of _____.

[Name of AIP]

WHEREFORE, your Petitioner respectfully requests that the Court:

- 1) Declare that _____ is a person who is incapacitated, as that term is defined in Section 81.02(b) of the Mental Hygiene Law;

- 2) Appoint a Court Evaluator for _____;
- 3) Appoint _____ as Guardian; and
- 4) Grant such other further relief as this Court deems just and proper.

Dated: _____
_____, New York

VERIFICATION

STATE OF NEW YORK)
 ss.:
COUNTY OF _____)

_____, being duly sworn, says that s/he is the petitioner in the above-named
[Your name]
proceeding and that the foregoing petition is true to his/her own knowledge except as to the matters
therein stated to be alleged information and belief and as to those matters s/he believes it to be true.

Print Name

Signature

Sworn to before me this _____ day of _____

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

[Name of County]

-----X

In the Matter of the Application of

NOTICE OF PROCEEDING

[Your Name]

Index No. _____

Petitioner,

For the Appointment of a Guardian

for _____

[Name of Alleged Incapacitated Person (AIP)]

An Alleged Incapacitated Person.

-----X

NOTICE OF GUARDIANSHIP PROCEEDING

PLACE OF HEARING:

Date & Time: _____

Honorable _____

Supreme Court _____ County

[Address of Court In Your County]

[Address of Court In Your County]

NATURE OF PROCEEDING:

Article 81 Guardianship Proceeding Seeking
the Appointment of a Personal Needs and
Property Management Guardian of

[Name of Alleged Incapacitated Person (AIP)]

AIP or PING'S NAME & ADDRESS:

NAMES & ADDRESSES OF OTHER
INTERESTED PARTIES:

Party 1: _____

Party 2: _____

Party 3: _____

Party 4: _____

Party 5: _____

Party 6: _____

PETITIONER'S
NAME AND ADDRESS: _____

DATED: _____, New York
SIGNATURE: _____
[Your Signature]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
[Name of County]

_____ X
In the Matter of the Application of:

[Your Name]
Petitioner

For the Appointment of a Guardian of the
Person and/or Property of

[Name of Alleged Incapacitated Person (AIP)]
Person in Need of a Guardian/ Incapacitated Person
Respondent

_____ X

NOTICE OF SETTLEMENT

Index No:

PLEASE TAKE NOTICE that the Order and Judgment Appointing Guardian of which the within is a true copy will be presented for settlement to the

HON. _____, one of the Judge of the within named Court as the
[Name of Judge]

Supreme Courthouse, located at _____, IAS
[Address of Court in your county]

Part _____, on the _____.
[Part of Court] *[Date of Hearing]*

Dated: _____

From: _____
[Your Name]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
[Name of County]

In the Matter of the Application of: X

[Your Name]
Petitioner

Oath and Designation

Index No:

For the Appointment of a Guardian of the
Person and/or Property of

[Name of Alleged Incapacitated Person (AIP)]
An Incapacitated Person
Pursuant to Article 81
Of the Mental Hygiene Law,

Respondent
_____ X

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
[County]

_____, being duly sworn, deposes and says:
[Your name]

- OATH OF GUARDIAN:** I am a citizen of the United States, and I am over the age of eighteen years. I will well, faithfully and honestly discharge the trust reposed in me as a guardian for _____, an incapacitated person. I will obey all lawful
[Name of Incapacitated Person]
directions of any court of competent jurisdiction, and I will render a just and true account of all moneys and other property received by me and of my application of the same whenever required to do so by a court of competent jurisdiction pursuant to the aforementioned Order of this court.
- DESIGNATION OF CLERK FOR SERVICE OF PROCESS:** I have been appointed guardian for _____ of _____, New York, an
[Name of Incapacitated Person] *[County]*

incapacitated person, and I do hereby designate the Clerk of the Supreme Court,
_____ County and his or her successor in office, as the person on whom
[County]
service of any process issuing from said court in this proceeding, or in any other
proceeding, which shall affect the estate of _____, may be made
[Name of Incapacitated Person]
in like manner and with like effect as if it were served personally upon me whenever I
cannot be found and served within the State of New York after due diligence is used. I
further advise the said clerk that I am a resident of the State of New York and maintain
my home at _____, as appears in the Court Order
[Your Address]
appointing me guardian.

DATED: _____, New York
[County]

[Day Month, Year]

Signature

[Print Name of Guardian]

On the _____ day of _____, in the year _____,
[Day] [Month] [Year]

before me, the undersigned, a Notary Public in and for said State, personally appeared
_____, personally known to me or proved to me on the basis of
[Your Name]
satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within
instrument and acknowledged to me that he/she/their signature(s) on the instrument, the
individual(s), or the person upon behalf of whom the individual(s) acted, executed the
instrument.

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
[Name of County]

X

In the Matter of the Application of:

COMMISSION

[Your Name]

Petitioner

Index No:

For the Appointment of a Guardian of the
Person and/or Property of

[Name of Alleged Incapacitated Person (AIP)]

Person in Need of a Guardian/ Incapacitated Person

Respondent

X

THE PEOPLE OF THE STATE OF NEW YORK,
TO ALL TO WHOM THESE PRESENTS SHALL COME:

GREETINGS:

WHEREAS, by Order duly made on _____, and entered in the Office of the
[Date of Order]
Clerk of the County of _____ on _____, in a proceeding in the
[Your County] *[Date on Order]*
Supreme Court entitled, "In the Matter of the Application of _____,
[Your Name]
Petitioner, for the appointment of a Guardian of _____, an Alleged
[Name of Incapacitated Person or PING]
Incapacitated Person" it was found that the said _____ was duly
[Name of Incapacitated Person or PING]
adjudged to be an incapacitated person on _____, and an order having
[Date of Decision]
been signed by the Honorable _____ on _____; and
[Name of Judge] *[Date of Order]*

WHEREAS, _____, _____,
[Your Name] *[Your Address]*
was appointed guardian by said Order and was directed to file in the clerk's office of the County of
_____ a bond for the security required by law in the sum of \$ _____
[Your County] *[Amount of Bond]*
and on condition that said guardian will in all things faithfully discharge the duties and obey all lawful
directions of any court officer of competent jurisdiction pertaining to said trust and render a just and true
account of all moneys received and disbursed whenever required to do so by a court of competent
jurisdiction; and

WHEREAS, the authority of the guardian shall extend to all of the property of the incapacitated
person, both real and personal; and

WHEREAS, the bond has been duly executed and filed with the Clerk of this County; and

WHEREAS, the designation of the clerk of this court has been duly executed and filed in his or her office;

NOW, THEREFORE, KNOW YE, that we have granted, given and committed, and by these presents do give, grant and commit unto the said guardian, the possession, care and management of the estate, real as well as personal, of said incapacitated person;

AND, the Guardian of the Property may, without prior authorization of the court, make reasonable expenditures for the purpose of preserving the property of the incapacitated person;

AND, pursuant to Section 81.20 of the Mental Hygiene Law, the guardian shall:

- (a) exercise only those powers that the guardian is authorized to exercise by order of the court;
- (b) exercise utmost care and diligence when acting on behalf of the incapacitated person;
- (c) exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;
- (d) visit the incapacitated person not less than four times per year;
- (e) afford the incapacitated person the greatest amount of independence and self-determination with respect to property management and personal needs in light of that person's functional level, understanding and appreciation of [his or her] functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living;

AND, pursuant to Section 81.20 of the Mental Hygiene Law, the guardian shall:

- (a) preserve, protect and account for the incapacitated person's property and financial resources faithfully;
- (b) at the termination of the appointment, deliver the property to the person legally entitled to it; and
- (c) perform all other duties required by law;

AND, pursuant to Sections 81.21 and 81.22 of the Mental Hygiene Law, the guardian shall:

- (a) determine who shall provide personal care or assistance;
- (b) make decisions regarding social environment and other social aspects of life;
- (c) apply for government and private benefits, including Medicaid;
- (d) consent to or refuse generally accepted routine or major medical or dental treatment;
- (e) choose place of abode;
- (f) authorize access to or release of confidential records;

- (g) marshal income and assets;
- (h) manage income and assets, including paying bills and monthly expenses;
- (i) enter into contracts;
- (j) defend or maintain any civil judicial proceedings;
- (k) retain counsel, subject to court approval of fees;
- (l) retain accountants, investment counsel and similar professionals and pay same;
- (m) sign tax returns and deal with all federal, state and local tax authorities on all claims litigation, settlement and other matters; and
- (n) provide _____ with spending money;
[Name of IP or PING]

AND, the duration of the appointment of the guardian is indefinite;

AND, upon the death of the incapacitated person, the guardian shall have the authority to pay for the reasonable funeral expenses of the incapacitated person;

AND, upon the death of the incapacitated person, the guardian shall have authority to pay the bills of the incapacitated person which were incurred prior to the death of the incapacitated person, provided the guardian would otherwise have had the authority to pay such bills;

AND, all persons are hereby directed and commanded to deliver to the guardian, upon demand and presentation of a certified copy of the commission, the property of the incapacitated person of every kind and nature which may be in their possession or under their control.

WITNESS, the Honorable _____, one of the Justices of the
[Name of Judge]
 Supreme Court of the State of New York, at the Courthouse, in the County of _____,
 this _____,
[Your County] *[Today's Date]*

BY THE COURT

 CLERK OF THE COURT
 COUNTY OF _____
[Your County]

OTHER GUARDIANSHIP RESOURCES

OTHER FORMS

- **Request for Judicial Intervention (RJI):** <http://www.nycourts.gov/forms/rji/UCS-840-fillable.pdf>
- **Application to Proceed as a Poor Person:**
<http://www.nycourts.gov/courts/nyc/civil/forms/PoorPersonsRelief.pdf>

OTHER RESOURCES

- [New York State Bar Association](#) (provides sample forms)
- [Law help. org](#) (This is the direct link to law help matters in New York specific to seniors. All you have to do is enter your zip code)
- [Guardianship Assistance Network \(GAN\)](#) (provides training information and sample initial and annual reports)
- [www.seniorlaw.com](#) (award winning website with useful and accessible information)
- [Comprehensive Manual](#) prepared for the New York State Office of Children and Family Services.