OVERVIEW OF THE OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN

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The Cook County Public Guardian is funded by the Cook County Board. Cook County has approximately 5.23 million people. The Circuit Court of Cook County is the largest unified court system in the United States. Public Guardians in Illinois were established by the passage of the Public Guardian Statute in 1978. 755 ILCS 5/13-1 et seq. While most counties in the state have a Public Guardian, Cook County is the only county where the office functions as an agency. There are approximately 260 employees of the Office of the Public Guardian (“OPG”). The office has three divisions. The Juvenile Division represents children in abuse and neglect cases. The Domestic Relations Division represents children and visitation and custody disputes. The Adult Guardianship Division serves as the guardian for adults found to be disabled by the Probate Division of the Circuit Court of Cook County.

In the past year, the Office of the Public Guardian had approximately 726 active wards. There were 150 new wards of the office and the office was discharged in 135 cases. The office collected $3,268,578 in fees for the Cook County Treasurer. The office is divided into several departments including intake, legal, case management, home care, accounts, benefits, assets collection, financial services, and property. In addition, the legal department also has a unit that focuses on financial recovery. The Financial Recovery Unit has recovered a significant amount of asset for those wards who were victims of financial exploitation. The Public Guardian’s Intake Department takes calls every day. The intake investigators get referrals from many different sources including adult protective service agencies, judges, attorneys, law enforcement, family members, etc. In order to be eligible for the Public Guardian to serve as guardian, individuals must have at least $25,000 in assets. If the assets are below $25,000, the State of Illinois has a guardianship agency for indigent individuals, the Office of the State Guardian. The Office of the State Guardian is a state funded agency and it serves indigent adults with disabilities throughout the State of Illinois.
Pursuant to the Illinois Probate Act, in order for a court to appoint a guardian for an individual, the petitioner must prove that the individual is disabled. Pursuant to the Probate Act, disabled is defined as being incapable of making personal and financial decisions. Guardians of the person will make medical and placement decisions, with the exception of mental health related issues. The Illinois Mental Health Code creates special courts to address mental health issues such as involuntary hospitalization, or administration of psychotropic medications. Guardians of the estate in general take control of the financial and legal issues of the ward.

INVESTIGATION STAGE

When cases are referred to the Office of the Public Guardian, they are assigned to an intake investigator. The staff researches real estate records to determine property ownership and contacts banks to try to obtain asset information. The Office of the Public Guardian intake investigators seek information from local financial institutions in the area to ascertain if the person meets the asset threshold for the involvement of the Public Guardian. In Illinois financial institutions may provide information to the Office of the Public Guardian, particularly if they believe their customer to be a potential victim of financial exploitation. Potential litigation may also be the basis for finding an individual to be financially eligible for the services of the Public Guardian. If the individual has a potential cause of action in excess of $25,000, the OPG may pursue the action.

Once financial eligibility is established, the next step is to determine whether or not the person qualifies as disabled in accordance with the Illinois Probate Act. In Cook County, the court has a form report that must be completed by a medical doctor. The report must state a diagnosis supporting guardianship and an opinion that the individual is at least partially incapable of making personal and/or financial decisions. If the alleged disabled individual does not have a treating physician willing to complete the court report, the Public Guardian has limited funding to hire psychiatrists to assess
individuals in their current placements. If, for example, a person has hoarding tendencies, it is very helpful for the expert to see the person in his or her living environment.

In addition to a medical evaluation, one of the supervisors in the case management department will visit the individual at his or her placement in order to develop a potential care plan. The care plan will address whether or not the current placement is appropriate and what, if any, modifications, services, or care needs would need to be added to the current placement. The care plan must also take into account the individual's financial situation. The care plan, in accordance with the Illinois Probate Act, will attempt to maintain the individual in the least restrictive environment.

**COURT INVOLVEMENT**

Once a determination is made to proceed with guardianship, a Petition for Appointment of a Guardian for a Disabled Person is filed in the Probate Division of the Circuit Court of Cook County. Currently, five judges are assigned solely to adult guardianship matters. Once the matter is assigned to a judge, the judge appoints a Guardian Ad Litem to meet with the respondent, the subject of the guardianship proceeding. In Cook County, the Guardian Ad Litems are required to be attorneys. The Guardian Ad Litem is required to advise the respondent of the nature of the proceeding and of their rights to appear in court, retain counsel and to request a trial. If the respondent objects to guardianship, the Court may appoint an attorney to represent them in the matter. If the respondent requests a trial, it may be either a bench trial or a jury trial with 6 jurors. Due process must be followed and the court process takes into account the seriousness of the potential loss of rights.

When only one party is seeking guardianship, the sole issue at trial will be whether or not the alleged disabled person meets the definition of disability under the Illinois Probate Act. When there is more than one party seeking to become guardian, the trial will also determine which party will become the guardian. In order to prevail at trial, the petitioner must prove his or her case by clear and
convincing evidence. In situations where the issue of disability is contested, the moving party must generally have the doctor who completed the medical report testify in court so that the respondent or the counsel for the respondent may cross-examine the doctor. In some cases, the respondent will hire his or her own expert witness to challenge the opinion of the other doctor.

If the Court finds that a guardianship is appropriate, the guardianship may be temporary, limited or plenary. Temporary guardianships generally are appointed for up to sixty days and they are granted in emergency situations such as an alleged disabled individual residing in unsafe conditions or where financial exploitation is taking place. Limited guardianships are permanent guardianships in which a court makes a determination that an individual is only partially disabled in accordance with the Illinois Probate Act. The limited order will specify which authorities the guardian will have and which rights the ward will retain. Plenary guardianships are awarded when a court makes a finding by clear and convincing evidence that an individual is totally disabled under the Act. In these cases the ward will generally not retain any significant authority as to decisions impacting their estate or person. As a result of the adjudication, the ward will generally not be able to contract and may lose other rights such as driving privileges.

Once the Public Guardian is appointed to serve as the guardian for a ward, the staff implements the initial care plan. When establishing a care plan the plan must take into account the individual’s care needs, medical condition, the condition of the ward’s residence as well as the ward’s income and assets. The OPG always attempts to try to place the individual in the least restrictive environment. In many cases the lack of assets severely limits the placement options. The significant drop in the value of real estate has impacted some persons’ ability to remain in the community. For people without significant estates, reverse mortgages sometimes can be used to help defray the cost of 24 hour caregivers in the
The number of financial institutions offering reverse mortgages has been reduced. In addition, the lenders currently participating tend to lend less money.

The Office of the Public Guardian does not have funding to pay for the care of its wards and the agency is limited by the value of the estate of the individual ward. In Illinois, seniors and persons with disabilities can qualify for some funds to pay for care in the home. Unfortunately, the maximum amount of benefits will not provide sufficient funding to pay for 24 hour care. In order to keep as many people as possible in the community, the Office of the Public Guardian utilizes various strategies in order to try to maintain people in their homes. The attorneys establish special needs trusts which enable the wards to maximize eligibility for governmental benefits. The funds held in the trust can be used to supplement care needs not covered by insurance or other public benefits. In other cases, the OPG has successfully effectuated home-share situations where two or more wards live together in the home of one of the wards. Aside from offering opportunities for socialization, a home-share allows wards without substantial funds to be able to share expenses and thereby prolong the amount of time that they are able to remain in a community placement.

The assigned judge has an ongoing role in the guardianship matter until the point that the estate is closed out, which would occur subsequent to the death of a ward or in the event that a ward’s mental status improves so much that the guardianship is no longer necessary. The Court is viewed to have a parens patriae relationship to the ward. In order for a guardian of the estate to make substantial disbursements on behalf of a ward, the judge must approve the disbursement. If real property needs to be sold, the Court will need to approve the listing agreement and sales contract. The court also must approve estate planning to be done for a ward. The guardian of the estate will have other ongoing reporting requirements to the Court. Within sixty days after appointment, the guardian of the estate is required to file an inventory of the ward’s assets and inventory. The guardian must post a bond with an
insurance company for the value of one and one-half times the value of the estate. In addition, the guardian of the estate is required to file an annual accounting setting forth all revenue and expenditures and keeping the judge informed of the current value of the estate.

Personal guardians also may need to have major decisions approved by the Court. While the Public Guardian and State Guardians are exempted, all other guardians of the person are required to get court approval for changes in placement. A plenary guardian of the person will have a significant amount of decision making authority with respect to the ward. The one major exception concerns issues covered under the Illinois Mental Health Act. 405 ILCS 5/1-100 et seq. In Illinois a guardian of the person may not consent to treatment for mental health disorders or for the administration of psychotropic medications over an individual’s objection. Only a Mental Health Court judge may order involuntary hospitalizations or involuntary medications.

When the Public Guardian is appointed the guardian of the person of an individual, the OPG is required to make monthly visits to the ward and file annual reports on ward to the Court. In Illinois, guardians of the person are directed to use a substituted judgment standard, whereby decisions are made as closely as possible to what the ward would have wanted if he or she was competent. When substituted judgment cannot be ascertained, the guardian is directed to make decisions in the best interests of the ward. When the Public Guardian is making significant decisions, such as end of life decisions, as a matter of course, the staff members try to contact family members and close personal friends to ascertain the wishes of the ward.

The Office of the Public Guardian is one of the only Cook County agencies that generate fees. At the time of the annual accounting, a fee petition is presented to the Court. Standardized fees are set with the consent of the Chief Judge of the Probate Division of the Circuit Court of Cook County and the only variable fees concern the legal time expended per case. The hourly legal rate is considerably lower
than the rate of most private practitioners. The fees collected are turned over to the Cook County Treasurer.

**MEETING THE NEEDS IN THE FUTURE**

The increase in the number of geriatric care managers and private professional guardians is helping to serve a fair amount of individuals under guardianship. Geriatric care managers, registered nurses and social workers often serve as guardians of the person. Care managers also may work with family guardians when a ward's care needs are very complex. Banks and other corporate fiduciaries are often appointed as estate guardians. In both situations, however, the private, professional guardians are generally only a resource where a ward has substantial assets.

The Office of the Public Guardian and the Office of the State Guardian are not able to meet all the needs of a growing client base. Budget cuts and hiring freezes implemented by both the State and Cook County have posed significant barriers to both agencies. The caseloads of the attorneys and case managers continue to increase at a disproportionate amount to staff increases. In spite of this fact, the Public Guardian’s staff has continued to provide high level services to those individuals under their protection.
SECTIONS FROM THE ILLINOIS PROBATE ACT

(755 ILCS 5/11a-2) (from Ch. 110 1/2, par. 11a-2)

Sec. 11a-2. "Disabled person" defined.) "Disabled person" means a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects.

(Source: P.A. 95-561, eff. 1-1-08.)

(755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

Sec. 11a-3. Adjudication of disability; Power to appoint guardian.

(a) Upon the filing of a petition by a reputable person or by the alleged disabled person himself or on its own motion, the court may adjudge a person to be a disabled person, but only if it has been demonstrated by clear and convincing evidence that the person is a disabled person as defined in Section 11a-2. If the court adjudges a person to be a disabled person, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate.

(b) Guardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations.

(Source: P.A. 93-435, eff. 1-1-04.)
Sec. 11a-4. Temporary guardian.

(a) Prior to the appointment of a guardian under this Article, pending an appeal in relation to the appointment, or pending the completion of a citation proceeding brought pursuant to Section 23-3 of this Act, or upon a guardian's death, incapacity, or resignation, the court may appoint a temporary guardian upon a showing of the necessity therefore for the immediate welfare and protection of the alleged disabled person or his or her estate on such notice and subject to such conditions as the court may prescribe. In determining the necessity for temporary guardianship, the immediate welfare and protection of the alleged disabled person and his or her estate shall be of paramount concern, and the interests of the petitioner, any care provider, or any other party shall not outweigh the interests of the alleged disabled person. The temporary guardian shall have all of the powers and duties of a guardian of the person or of the estate which are specifically enumerated by court order. The court order shall state the actual harm identified by the court that necessitates temporary guardianship or any extension thereof.

(b) The temporary guardianship shall expire within 60 days after the appointment or whenever a guardian is regularly appointed, whichever occurs first. No extension shall be granted except:

(1) In a case where there has been an adjudication of disability, an extension shall be granted:

(i) pending the disposition on appeal of an adjudication of disability;
(ii) pending the completion of a citation proceeding brought pursuant to Section 23-3;

(iii) pending the appointment of a successor guardian in a case where the former guardian has resigned, has become incapacitated, or is deceased; or

(iv) where the guardian's powers have been suspended pursuant to a court order.

(2) In a case where there has not been an adjudication of disability, an extension shall be granted pending the disposition of a petition brought pursuant to Section 11a-8 so long as the court finds it is in the best interest of the alleged disabled person to extend the temporary guardianship so as to protect the alleged disabled person from any potential abuse, neglect, self-neglect, exploitation, or other harm and such extension lasts no more than 120 days from the date the temporary guardian was originally appointed.

The ward shall have the right any time after the appointment of a temporary guardian is made to petition the court to revoke the appointment of the temporary guardian.

(Source: P.A. 97-614, eff. 1-1-12.)
(755 ILCS 5/11a-5) (from Ch. 110 1/2, par. 11a-5)

Sec. 11a-5. Who may act as guardian.

(a) A person is qualified to act as guardian of the person and as guardian of the estate of a disabled person if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the disabled person and that the proposed guardian:

(1) has attained the age of 18 years;

(2) is a resident of the United States;

(3) is not of unsound mind;

(4) is not an adjudged disabled person as defined in this Act; and

(5) has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the disabled person's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a minor or an elderly or disabled person, including a felony sexual offense.

(b) Any public agency, or not-for-profit corporation found capable by the court of providing an active and suitable program of guardianship for the disabled person, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed guardian of the person or of the estate, or both, of the disabled person. The court shall not appoint as guardian an agency which is directly providing residential services to the ward. One person or agency may be appointed guardian of the person and another person or agency appointed guardian of the estate.

(c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a disabled person.

(Source: P.A. 98-120, eff. 1-1-14.)

Sec. 11a-8. Petition. The petition for adjudication of disability and for the appointment of a guardian of the estate or the person or both of an alleged disabled person must state, if known or reasonably ascertainable: (a) the relationship and interest of the petitioner to the respondent; (b) the name, date of birth, and place of residence of the respondent; (c) the reasons for the guardianship; (d) the name and post office address of the respondent's guardian, if any, or of the respondent's agent or agents appointed under the Illinois Power of Attorney Act, if any; (e) the name and post office addresses of the
nearest relatives of the respondent in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner; (f) the name and address of the person with whom or the facility in which the respondent is residing; (g) the approximate value of the personal and real estate; (h) the amount of the anticipated annual gross income and other receipts; (i) the name, post office address and in case of an individual, the age, relationship to the respondent and occupation of the proposed guardian. In addition, if the petition seeks the appointment of a previously appointed standby guardian as guardian of the disabled person, the petition must also state: (j) the facts concerning the standby guardian's previous appointment and (k) the date of death of the disabled person's guardian or the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian as guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person. A petition for adjudication of disability and the appointment of a guardian of the estate or the person or both of an alleged disabled person may not be dismissed or withdrawn without leave of the court.

(Source: P.A. 89-396, eff. 8-20-95; 90-796, eff. 12-15-98.)

Sec. 11a-8. Petition. The petition for adjudication of disability and for the appointment of a guardian of the estate or the person or both of an alleged disabled person must state, if known or reasonably ascertainable: (a) the relationship and interest of the petitioner to the respondent; (b) the name, date of birth, and place of residence of the respondent; (c) the reasons for the guardianship; (d) the name and post office address of the respondent's guardian, if any, or of the respondent's agent or agents appointed under the Illinois Power of Attorney Act, if any; (e) the name and post office addresses of the nearest relatives of the respondent in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner; (f) the name and address of the person with whom or the facility in which the respondent is residing; (g) the approximate value of the personal and real estate; (h) the amount of the anticipated annual gross income and other receipts; (i) the name, post office address and in case of an individual, the age, relationship to the respondent and occupation of the proposed guardian. In addition, if the petition seeks the appointment of a previously appointed standby guardian as guardian of the disabled person, the petition must also state: (j) the facts concerning the standby guardian's previous appointment and (k) the date of death of the disabled person's guardian or the facts concerning the consent of the disabled person's guardian to the appointment of the standby guardian as guardian, or the willingness and ability of the disabled person's guardian to make and carry out day-to-day care decisions concerning the disabled person. A petition for adjudication of disability and the appointment of a guardian of the estate or the person or both of an alleged disabled person may not be dismissed or withdrawn without leave of the court.

(Source: P.A. 89-396, eff. 8-20-95; 90-796, eff. 12-15-98.)

(755 ILCS 5/11a-11) (from Ch. 110 1/2, par. 11a-11)

Sec. 11a-11. Hearing.

(a) The respondent is entitled to be represented by counsel, to demand a jury of 6 persons, to present evidence, and to confront and cross-examine all witnesses. The hearing may be closed to the public on
request of the respondent, the guardian ad litem, or appointed or other counsel for the respondent. Unless excused by the court upon a showing that the respondent refuses to be present or will suffer harm if required to attend, the respondent shall be present at the hearing.

(b) (Blank)

(c) Upon oral or written motion by the respondent or the guardian ad litem or on the court’s own motion, the court shall appoint one or more independent experts to examine the respondent. Upon the filing with the court of a verified statement of services rendered by the expert or experts, the court shall determine a reasonable fee for the services performed. If the respondent is unable to pay the fee, the court may enter an order upon the petitioner to pay the entire fee or such amount as the respondent is unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act, no expert services fees shall be assessed against the Office of the State Guardian.

(d) In an uncontested proceeding for the appointment of a guardian the person who prepared the report required by Section 11a-9 will only be required to testify at trial upon order of court for cause shown.

(e) At the hearing the court shall inquire regarding: (1) the nature and extent of respondent’s general intellectual and physical functioning; (2) the extent of the impairment of his adaptive behavior if he is a person with a developmental disability, or the nature and severity of his mental illness if he is a person with mental illness; (3) the understanding and capacity of the respondent to make and communicate responsible decisions concerning his person; (4) the capacity of the respondent to manage his estate and his financial affairs; (5) the appropriateness of proposed and alternate living arrangements; (6) the impact of the disability upon the respondent’s functioning in the basic activities of daily living and the important decisions faced by the respondent or normally faced by adult members of the respondent’s community; and (7) any other area of inquiry deemed appropriate by the court.

(f) An authenticated transcript of the evidence taken in a judicial proceeding concerning the respondent under the Mental Health and Developmental Disabilities Code is admissible in evidence at the hearing.

(g) If the petition is for the appointment of a guardian for a disabled beneficiary of the Veterans Administration, a certificate of the Administrator of Veterans Affairs or his representative stating that the beneficiary has been determined to be incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration in effect upon the date of the issuance of the certificate and that the appointment of a guardian is a condition precedent to the payment of any money due the beneficiary by the Veterans Administration, is admissible in evidence at the hearing.

(Source: P.A. 88-32; 88-380; 88-670, eff. 12-2-94; 89-396, eff. 8-20-95.)
(755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

Sec. 11a-12. Order of appointment.)

(a) If basis for the appointment of a guardian as specified in Section 11a-3 is not found, the court shall dismiss the petition.

(b) If the respondent is adjudged to be disabled and to lack some but not all of the capacity as specified in Section 11a-3, and if the court finds that guardianship is necessary for the protection of the disabled person, his or her estate, or both, the court shall appoint a limited guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject.

(c) If the respondent is adjudged to be disabled and to be totally without capacity as specified in Section 11a-3, and if the court finds that limited guardianship will not provide sufficient protection for the disabled person, his or her estate, or both, the court shall appoint a plenary guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings.

(d) The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the disabled person as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment.

(Source: P.A. 97-1093, eff. 1-1-13.)

Sec. 11a-17. Duties of personal guardian.

(a) To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward and the ward's minor and adult dependent children and shall procure for them and shall make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate, but the ward's spouse may not be deprived of the custody and education of the ward's minor and adult dependent children, without the consent of the spouse, unless the court finds that the spouse is not a fit and competent person to have that custody and education. The guardian shall assist the ward in the development of maximum self-reliance and independence. The guardian of the person may petition the court for an order directing the guardian of the estate to pay an amount periodically for the provision of the services specified by the court order. If the ward's estate is insufficient to provide for education and the guardian of the ward's person fails to provide education, the court may award the custody of the ward to some other person for the purpose of providing education. If a person makes a settlement upon or provision for the support or education of a ward, the court may make an order for the visitation of the ward by the person making the settlement or provision as the court deems proper. A guardian of the person may not admit a ward to a mental health facility except at the ward's request as provided in Article IV of the Mental Health and Developmental Disabilities Code and unless the ward has the capacity to consent to such admission as provided in Article IV of the Mental Health and Developmental Disabilities Code.
(a-5) If the ward filed a petition for dissolution of marriage under the Illinois Marriage and Dissolution of Marriage Act before the ward was adjudicated a disabled person under this Article, the guardian of the ward's person and estate may maintain that action for dissolution of marriage on behalf of the ward.

(b) If the court directs, the guardian of the person shall file with the court at intervals indicated by the court, a report that shall state briefly: (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children; (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; (3) a summary of the medical, educational, vocational, and other professional services given to them; (4) a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; (5) a recommendation as to the need for continued guardianship; (6) any other information requested by the court or useful in the opinion of the guardian. The Office of the State Guardian shall assist the guardian in filing the report when requested by the guardian. The court may take such action as it deems appropriate pursuant to the report.

(c) Absent court order pursuant to the Illinois Power of Attorney Act directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian has no power, duty, or liability with respect to any personal or health care matters covered by the agency. This subsection (c) applies to all agencies, whenever and wherever executed.

(d) A guardian acting as a surrogate decision maker under the Health Care Surrogate Act shall have all the rights of a surrogate under that Act without court order including the right to make medical treatment decisions such as decisions to forgo or withdraw life-sustaining treatment. Any decisions by the guardian to forgo or withdraw life-sustaining treatment that are not authorized under the Health Care Surrogate Act shall require a court order. Nothing in this Section shall prevent an agent acting under a power of attorney for health care from exercising his or her authority under the Illinois Power of Attorney Act without further court order, unless a court has acted under Section 2-10 of the Illinois Power of Attorney Act. If a guardian is also a health care agent for the ward under a valid power of attorney for health care, the guardian acting as agent may execute his or her authority under that act without further court order.

(e) Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward. If the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward's best interests as determined by the guardian. In determining the ward's best interests, the guardian shall weigh the reason for and nature of the proposed action, the benefit or necessity of the action, the possible risks and other consequences of the proposed action, and any available alternatives and their risks, consequences and benefits, and shall take into account any other information, including the views of family and friends, that the guardian believes the ward would have considered if able to act for herself or himself.

(f) Upon petition by any interested person (including the standby or short-term guardian), with such notice to interested persons as the court directs and a finding by the court that it is in the best interest
of the disabled person, the court may terminate or limit the authority of a standby or short-term guardian or may enter such other orders as the court deems necessary to provide for the best interest of the disabled person. The petition for termination or limitation of the authority of a standby or short-term guardian may, but need not, be combined with a petition to have another guardian appointed for the disabled person.

(Source: P.A. 96-612, eff. 1-1-10.)

755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

Sec. 11a-18. Duties of the estate guardian.

(a) To the extent specified in the order establishing the guardianship, the guardian of the estate shall have the care, management and investment of the estate, shall manage the estate frugally and shall apply the income and principal of the estate so far as necessary for the comfort and suitable support and education of the ward, his minor and adult dependent children, and persons related by blood or marriage who are dependent upon or entitled to support from him, or for any other purpose which the court deems to be for the best interests of the ward, and the court may approve the making on behalf of the ward of such agreements as the court determines to be for the ward's best interests. The guardian may make disbursement of his ward's funds and estate directly to the ward or other distributee or in such other manner and in such amounts as the court directs. If the estate of a ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or other similar benefits made directly to the estate by the Veterans Administration, notice of the application for leave to invest or expend the ward's funds or estate, together with a copy of the petition and proposed order, shall be given to the Veterans' Administration Regional Office in this State at least 7 days before the hearing on the application.

(a-5) The probate court, upon petition of a guardian, other than the guardian of a minor, and after notice to all other persons interested as the court directs, may authorize the guardian to exercise any or all powers over the estate and business affairs of the ward that the ward could exercise if present and not under disability. The court may authorize the taking of an action or the application of funds not required for the ward's current and future maintenance and support in any manner approved by the court as being in keeping with the ward's wishes so far as they can be ascertained. The court must consider the permanence of the ward's disabling condition and the natural objects of the ward's bounty. In ascertaining and carrying out the ward's wishes the court may consider, but shall not be limited to, minimization of State or federal income, estate, or inheritance taxes; and providing gifts to charities, relatives, and friends that would be likely recipients of donations from the ward. The ward's wishes as best they can be ascertained shall be carried out, whether or not tax savings are involved. Actions or applications of funds may include, but shall not be limited to, the following:

(1) making gifts of income or principal, or both, of the estate, either outright or in trust;
(2) conveying, releasing, or disclaiming his or her contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(3) releasing or disclaiming his or her powers as trustee, personal representative, custodian for minors, or guardian;

(4) exercising, releasing, or disclaiming his or her powers as donee of a power of appointment;

(5) entering into contracts;

(6) creating for the benefit of the ward or others, revocable or irrevocable trusts of his or her property that may extend beyond his or her disability or life;

(7) exercising options of the ward to purchase or exchange securities or other property;

(8) exercising the rights of the ward to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any one or more of the following:

   (i) life insurance policies, plans, or benefits,

   (ii) annuity policies, plans, or benefits,

   (iii) mutual fund and other dividend investment plans,

   (iv) retirement, profit sharing, and employee welfare plans and benefits;

(9) exercising his or her right to claim or disclaim an elective share in the estate of his or her deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer;

(10) changing the ward's residence or domicile; or

(11) modifying by means of codicil or trust amendment the terms of the ward's will or any revocable trust created by the ward, as the court may consider advisable in light of changes in applicable tax laws.

(a) The guardian in his or her petition shall briefly outline the action or application of funds for which he or she seeks approval, the results expected to be accomplished thereby, and the tax savings, if any, expected to accrue. The proposed action or application of funds may include gifts of the ward's personal property or real estate, but transfers of real estate shall be subject to the requirements of Section 20 of this Act. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the ward or may be made to individuals or charities in which the ward is believed to have an interest. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the ward insofar as they can be ascertained, and if the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidents of various forms of taxation and the partial distribution of his or her estate as provided in this subsection. The guardian shall not, however, be required to include as a beneficiary or fiduciary any person who he has reason to believe would be excluded by the ward. A guardian shall be required to investigate and pursue a ward's eligibility for governmental benefits.
(b) Upon the direction of the court which issued his letters, a guardian may perform the contracts of his ward which were legally subsisting at the time of the commencement of the ward's disability. The court may authorize the guardian to execute and deliver any bill of sale, deed or other instrument.

(c) The guardian of the estate of a ward shall appear for and represent the ward in all legal proceedings unless another person is appointed for that purpose as guardian or next friend. This does not impair the power of any court to appoint a guardian ad litem or next friend to defend the interests of the ward in that court, or to appoint or allow any person as the next friend of a ward to commence, prosecute or defend any proceeding in his behalf. Without impairing the power of the court in any respect, if the guardian of the estate of a ward and another person as next friend shall appear for and represent the ward in a legal proceeding in which the compensation of the attorney or attorneys representing the guardian and next friend is solely determined under a contingent fee arrangement, the guardian of the estate of the ward shall not participate in or have any duty to review the prosecution of the action, to participate in or review the appropriateness of any settlement of the action, or to participate in or review any determination of the appropriateness of any fees awarded to the attorney or attorneys employed in the prosecution of the action.

(d) Adjudication of disability shall not revoke or otherwise terminate a trust which is revocable by the ward. A guardian of the estate shall have no authority to revoke a trust that is revocable by the ward, except that the court may authorize a guardian to revoke a Totten trust or similar deposit or withdrawable capital account in trust to the extent necessary to provide funds for the purposes specified in paragraph (a) of this Section. If the trustee of any trust for the benefit of the ward has discretionary power to apply income or principal for the ward's benefit, the trustee shall not be required to distribute any of the income or principal to the guardian of the ward's estate, but the guardian may bring an action on behalf of the ward to compel the trustee to exercise the trustee's discretion or to seek relief from an abuse of discretion. This paragraph shall not limit the right of a guardian of the estate to receive accountings from the trustee on behalf of the ward.

(e) Absent court order pursuant to the Illinois Power of Attorney Act directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian will have no power, duty or liability with respect to any property subject to the agency. This subsection (e) applies to all agencies, whenever and wherever executed.

(f) Upon petition by any interested person (including the standby or short-term guardian), with such notice to interested persons as the court directs and a finding by the court that it is in the best interest of the disabled person, the court may terminate or limit the authority of a standby or short-term guardian or may enter such other orders as the court deems necessary to provide for the best interest of the disabled person. The petition for termination or limitation of the authority of a standby or short-term guardian may, but need not, be combined with a petition to have another guardian appointed for the disabled person.

(Source: P.A. 95-331, eff. 8-21-07.)

(755 ILCS 5/11a-21) (from Ch. 110 1/2, par. 11a-21)

Sec. 11a-21. Hearing. (a) The court shall conduct a hearing on a petition filed under Section 11a-20. The ward is entitled to be represented by counsel, to demand a jury of 6 persons, to present evidence and to confront and cross-examine all witnesses. The court (1) may appoint counsel for the ward, if the court finds that the interests of the ward will be best served by the appointment and (2) shall appoint
counsel upon the ward's request or if the respondent takes a position adverse to that of the guardian ad litem. The court may allow the guardian ad litem and counsel for the ward reasonable compensation.

(b) If the ward is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court shall enter an order upon the State to pay, from funds appropriated by the General Assembly for that purpose, all such fees or such amounts as the ward is unable to pay.

(c) Upon conclusion of the hearing, the court shall enter an order setting forth the factual basis for its findings and may: (1) dismiss the petition; (2) terminate the adjudication of disability; (3) revoke the letters of guardianship of the estate or person, or both; (4) modify the duties of the guardian; and (5) make any other order which the court deems appropriate and in the interests of the ward.

(Source: P.A. 81-1509.)

(755 ILCS 5/Art. XVI heading)

ARTICLE XVI

RECOVERY OF PROPERTY AND DISCOVERY OF INFORMATION

(755 ILCS 5/16-1) (from Ch. 110 1/2, par. 16-1)

Sec. 16-1. Citation on behalf of estate.)

(a) Upon the filing of a petition therefor by the representative or by any other person interested in the estate or, in the case of an estate of a ward by any other person, the court shall order a citation to issue for the appearance before it of any person whom the petitioner believes (1) to have concealed, converted or embezzled or to have in his possession or control any personal property, books of account, papers or evidences of debt or title to lands which belonged to a person whose estate is being administered in that court or which belongs to his estate or to his representative or (2) to have information or knowledge withheld by the respondent from the representative and needed by the representative for the recovery of any property by suit or otherwise. The petition shall contain a request for the relief sought.

(b) The citation must be served not less than 10 days before the return day designated in the citation and must be served and returned in the manner provided for summons in civil cases. If there is a personal representative who is not the respondent, notice of the proceeding shall be given by mail or in person to the personal representative not less than 5 days before the return day designated in the citation.

(c) If the representative is the respondent, the court may appoint a special administrator to represent the estate. The court may permit the special administrator to prosecute or defend an appeal.
(d) The court may examine the respondent on oath whether or not the petitioner has proved the matters alleged in the petition, may hear the evidence offered by any party, may determine all questions of title, claims of adverse title and the right of property and may enter such orders and judgment as the case requires. If the respondent refuses to answer proper questions put to him or refuses to obey the court's order to deliver any personal property or, if converted, its proceeds or value, or books of account, papers or evidences of debt or title to lands, the court may commit him to jail until he complies with the order of the court or is discharged by due course of law and the court may enforce its order against the respondent's real and personal property in the manner in which judgments for the payment of money are enforced. The court may tax the costs of the proceeding against the respondent and enter judgment therefor against him.

(Source: P.A. 89-396, eff. 8-20-95.)

(755 ILCS 5/16-2) (from Ch. 110 1/2, par. 16-2)

Sec. 16-2. Personal property claimed by third party.) Upon the filing of a petition therefor by any person and upon such notice as the court may direct, the court may order a representative having in his possession or control any personal property, book of account, paper or evidence of title to land or of debt which belongs to the petitioner to deliver the same to the petitioner or his agent. The court may hear the evidence offered by any party, may determine all questions of title, claims of adverse title and the right of property and may enter such orders and judgment as the case requires.

(Source: P.A. 79-328.)

(755 ILCS 5/16-3) (from Ch. 110 1/2, par. 16-3)

Sec. 16-3. Trial by jury. Upon the demand of a party to a proceeding under Section 16-1 or 16-2, questions of title, claims of adverse title and the right of property shall be determined by a jury.

(Source: P.A. 91-357, eff. 7-29-99.)
(755 ILCS 5/13-1.1) (from Ch. 110 1/2, par. 13-1.1)
Sec. 13-1.1. Appointment and term of public guardian in counties having a population in excess of 1,000,000.) As soon as practicable after the effective date of this amendatory Act, the chief judge of the Circuit Court in each circuit shall appoint for each county in the circuit having a population in excess of 1,000,000 to the office of public guardian a duly licensed attorney who shall hold office, death or resignation not intervening, at the pleasure of the chief judge; and whenever a vacancy occurs in the office it shall be filled in a like manner.  
(Source: P.A. 81-1052.)

(755 ILCS 5/13-1.2)  
Sec. 13-1.2. Certification requirement. Each person appointed as a public guardian by the Governor shall be certified as a National Certified Guardian by the Center for Guardianship Certification within 6 months after his or her appointment. The Guardianship and Advocacy Commission shall provide public guardians with professional training opportunities and facilitate testing and certification opportunities at locations in Springfield and Chicago with the Center for Guardianship Certification. The cost of certification shall be considered an expense connected with the operation of the public guardian's office within the meaning of subsection (b) of Section 13-3.1 of this Article.  
(Source: P.A. 96-752, eff. 1-1-10.)

(755 ILCS 5/13-2) (from Ch. 110 1/2, par. 13-2)
Sec. 13-2. Bond and oath.) Before entering upon the performance of his duties, every public administrator and every public guardian shall take and file in the court an oath or affirmation that he will support the Constitution of the United States and the Constitution of the State of Illinois and will faithfully discharge the duties of his office and shall enter into a bond payable to the people of the State of Illinois in a sum of not less than $5,000 with security as provided by this Act and approved by the court of the county in which he is appointed, conditioned that he will faithfully discharge the duties of his office. The court may from time to time require additional security of the public administrator or guardian and may require him to give the usual bond required of representatives of estates of decedents, or disabled persons in other cases. In default of his giving bond within 60 days after receiving his commission or of his giving additional security within 60 days after being ordered by the court to do so, his office is deemed vacant and upon certificate of a judge of the court of that fact the Governor or the Circuit Court shall fill the vacancy.  
(Source: P.A. 81-1052.)

(755 ILCS 5/13-3.1) (from Ch. 110 1/2, par. 13-3.1)
(a) In counties having a population in excess of 1,000,000 the public guardian
shall be paid an annual salary, to be set by the County Board at a figure not to exceed the salary of the public defender for the county. All expenses connected with the operation of the office shall be subject to the approval of the County Board and shall be paid from the county treasury. All fees collected shall be paid into the county treasury.

(b) In counties having a population of 1,000,000 or less the public guardian shall receive all the fees of his office and bear the expenses connected with the operation of the office. A public guardian shall be entitled to reasonable and appropriate compensation for services related to guardianship duties but all fees must be reviewed and approved by the court. A public guardian may petition the court for the payment of reasonable and appropriate fees. In counties having a population of 1,000,000 or less, the public guardian shall do so on not less than a yearly basis, or sooner as approved by the court. Any fees or expenses charged by a public guardian shall be documented through billings and maintained by the guardian and supplied to the court for review. In considering the reasonableness of any fee petition brought by a public guardian under this Section, the court shall consider the following:

(1) the powers and duties assigned to the public guardian by the court;
(2) the necessity of any services provided;
(3) the time required, the degree of difficulty, and the experience needed to complete the task;
(4) the needs of the ward and the costs of alternatives; and
(5) other facts and circumstances material to the best interests of the ward or his or her estate.

(c) When the public guardian is appointed as the temporary guardian of a disabled adult pursuant to an emergency petition under circumstances when the court finds that the immediate establishment of a temporary guardianship is necessary to protect the disabled adult's health, welfare, or estate, the public guardian shall be entitled to reasonable and appropriate fees, as determined by the court, for the period of the temporary guardianship, including fees directly associated with establishing the temporary guardianship.

(Source: P.A. 96-752, eff. 1-1-10; 96-1000, eff. 7-2-10.)
Sec. 13-5. Powers and duties of public guardian.) The court may appoint the public guardian as the guardian of any disabled adult who is in need of a public guardian and whose estate exceeds $25,000. When a disabled adult who has a smaller estate is in need of guardianship services, the court shall appoint the State guardian pursuant to Section 30 of the Guardianship and Advocacy Act. If the public guardian is appointed guardian of a disabled adult and the estate of the disabled adult is thereafter reduced to less than $25,000, the court may, upon the petition of the public guardian and the approval by the court of a final accounting of the disabled adult's estate, discharge the public guardian and transfer the guardianship to the State guardian. The public guardian shall serve not less than 14 days' notice to the State guardian of the hearing date regarding the transfer. When appointed by the court, the public guardian has the same powers and duties as other guardians appointed under this Act, with the following additions and modifications:

(a) The public guardian shall monitor the ward and his care and progress on a continuous basis. Monitoring shall at minimum consist of monthly contact with the ward, and the receipt of periodic reports from all individuals and agencies, public or private, providing care or related services to the ward.

(b) Placement of a ward outside of the ward's home may be made only after the public guardian or his representative has visited the facility in which placement is proposed.

(c) The public guardian shall prepare an inventory of the ward's belongings and assets and shall maintain insurance on all of the ward's real and personal property, unless the court determines, and issues an order finding, that (1) the real or personal property lacks sufficient equity, (2) the estate lacks sufficient funds to pay for insurance, or (3) the property is otherwise uninsurable. No personal property shall be removed from the ward's possession except for storage pending final placement or for liquidation in accordance with this Act.

(d) The public guardian shall make no substantial distribution of the ward's estate without a court order.

(e) The public guardian may liquidate assets of the ward to pay for the costs of the ward's care and for storage of the ward's personal property only after notice of such pending action is given to all potential heirs at law, unless notice is waived by the court; provided, however, that a person who has been so notified may elect to pay for care or storage or to pay fair market value of the asset or assets sought to be sold in lieu of liquidation.

(f) Real property of the ward may be sold at fair market value after an appraisal of the property has been made by a licensed appraiser; provided, however, that the ward's residence may be sold only if the court finds that the ward is not likely to be able to return home at a future date.

(g) The public guardian shall, at such intervals as the court may direct, submit to the court an affidavit setting forth in detail the services he has provided for the benefit of the ward.

(h) Upon the death of the ward, the public guardian shall turn over to the court-appointed administrator all of the ward's assets and an account of his receipt and administration of the ward's property. A guardian ad litem shall be appointed for an accounting when the estate exceeds the amount set in Section 25-1 of this Act for administration of small estates.
(i)(1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain the public guardian from performing specified acts of administration, disbursement or distribution, or from exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the public guardian might otherwise take some action contrary to the best interests of the ward. Persons with whom the public guardian may transact business may be made parties.

(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree or unless for good cause shown the court determines that additional time is required. Notice as the court directs shall be given to the public guardian and his attorney of record, if any, and to any other parties named defendant in the petition.

(j) On petition of the public guardian, the court in its discretion may for good cause shown transfer guardianship to the State guardian.

(k) No later than January 31 of each year, the public guardian shall file an annual report with the clerk of the Circuit Court, indicating, with respect to the period covered by the report, the number of cases which he has handled, the date on which each case was assigned, the date of termination of each case which has been closed during the period, the disposition of each terminated case, and the total amount of fees collected during the period from each ward.

(l) (Blank).

(Source: P.A. 96-752, eff. 1-1-10; 97-1094, eff. 8-24-12.)