

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X

In the Matter of the Application of

\_\_\_\_\_

Index No. \_\_\_\_\_

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

VERIFIED PETITION  
(With Request for Temporary  
Restraining Order and  
Injunction)

\_\_\_\_\_

A Person Alleged To Be Incapacitated.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_:

The petition of \_\_\_\_\_, respectfully shows upon information and belief:

1. Your Petitioner, resides at \_\_\_\_\_, \_\_\_\_\_, New York  
\_\_\_\_\_, telephone \_\_\_\_\_. Petitioner is a friend concerned with the welfare of  
\_\_\_\_\_, an alleged incapacitated person, and commences these proceedings  
pursuant to Article 81 of Mental Hygiene Law for the appointment of \_\_\_\_\_  
as Guardian of the person and property of \_\_\_\_\_.

2. \_\_\_\_\_, the person alleged to be incapacitated, is a widow; she is \_\_\_ years  
of age; her date of birth is \_\_\_\_\_; and she has no issue and no brothers or sisters. Upon  
information and belief she has a first cousin, to wit, \_\_\_\_\_, who is the son of her  
deceased mother's brother, and who resides at [Address], but who is unable to become involved.  
Her husband, \_\_\_\_\_, died on [date]. \_\_\_\_\_ had resided with her husband in  
one of the apartments in a three-family house located at [Address], telephone \_\_\_\_\_.  
\_\_\_\_\_ is presently living alone in the aforesaid apartment and she requires the  
assistance of a home health aide for 12 hours per day.

**[NOTE; In order to hear a case the court must have jurisdiction pursuant to Mental  
Hygiene Law sec. 81.17. This means that New York must be the AIP's home state, or it must be a  
significant connection state, or the home state and all significant connection states must have  
declined jurisdiction, or there must be a basis for special jurisdiction. The term "home state" is  
defined in Mental Hygiene Law sec. 83.03(e). The term "significant connection state" is defined in**

**Mental Hygiene Law sec. 83.03(m) and as supplemented by Mental Hygiene Law sec 83.13. Six alternate jurisdictional paragraphs are set forth below. Use the appropriate allegation based on the facts of the case.]**

3. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17 (a) and Mental Hygiene Law sec. 83.03(e). New York is the home state of the AIP because, the AIP has been physically present in New York for at least six months immediately prior to the filing of this petition.

**[NOTE: If the AIP has had a temporary absence from New York during the six month period, New York is still the home state but the temporary absence should be alleged and explained.]**

3. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(a) and Mental Hygiene Law sec. 83.03(e). New York is the home state of the AIP because there is not a state in which the AIP has been physically present (including any period of temporary absence) for at least six months prior to the filing of this petition and the AIP has been physically present in New York (including any period of temporary absence) for at least six months ending in the six months prior to the filing of this petition.

3. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(b)(1) and Mental Hygiene Law sec. 83.13. The AIP does not have a home state (or the AIP has a home state but the courts of the home state have declined to exercise jurisdiction because New York is a more appropriate forum) and New York is a significant connection state. There is substantial evidence concerning the AIP that is available in New York and the AIP has significant connections to New York other than mere physical presence. The connections of the AIP to New York include the following (include the following allegations to the extent that they are applicable). The family members and other individuals who are required to be notified of this proceeding and who are present in New York are as follows \_\_\_\_\_ . The AIP has been physically present in New York for \_\_\_\_\_ months.

[Alternative: The AIP was physically present in New York for \_\_\_\_\_ (state length of time) and has been absent for \_\_\_\_\_ (state length of time)]. The location of the property of

the AIP is as follows \_\_\_\_\_. The AIP has the following ties to New York (discuss voting registration, where state and local tax returns have been filed, vehicle registration, driver's license, social relationships and receipt of services).

3. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(b)(2) and Mental Hygiene Law sec. 83.13. The home state of the AIP is \_\_\_\_\_. However, no petition for the appointment of a guardian is pending in the home state of the AIP or in any other significant connection state. New York is a significant connection state. There is substantial evidence concerning the AIP that is available in New York and the AIP has significant connections to New York other than mere physical presence. The connections of the AIP to New York include the following (include the following allegations to the extent that they are applicable). The family members and other individuals who are required to be notified of this proceeding and who are present in New York are as follows

\_\_\_\_\_. The AIP has been physically present in New York for \_\_\_\_\_ months. [Alternative: The AIP was physically present in New York for \_\_\_\_\_ (state length of time) and has been absent for \_\_\_\_\_ (state length of time)]. The location of the property of the AIP is as follows

\_\_\_\_\_. The AIP has the following ties to New York (discuss voting registration, where state and local tax returns have been filed, vehicle registration, driver's license, social relationships and receipt of services). [NOTE: If the court proceeds on this jurisdictional basis it will subsequently lose jurisdiction if before the court makes an appointment or issues an order, a petition for an appointment is filed in the AIP's home state or an objection is filed to the proceeding in New York. In addition, before making an appointment or issuing an order the court must conclude that New York is an appropriate forum pursuant to Mental Hygiene Law sec. 83.23]

3. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.1 7(c). New York is not the home state or a significant connection state of the AIP but the home state of the AIP and all significant connection states of the AIP have declined to exercise jurisdiction, and, consistent with

Mental Hygiene Law sec. 83.23, New York is the most appropriate forum to hear the case, and jurisdiction is consistent with the Constitutions of the United States and the State of New York.

3. New York is not the home state or a significant connection state of the AIP but the court has special jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.19. The following emergency exists \_\_\_\_\_. **[NOTE: If the court is exercising special jurisdiction because of an emergency it can: appoint a guardian of the person for a person physically present in New York for a period not to exceed 90 days, or; issue a protective order with regard to real or tangible personal property located in New York. If a proceeding for the appointment of a guardian of the person in an emergency is brought in New York and New York was not the home state of the AIP, that proceeding must be dismissed at the request of the courts of the home state of the AIP, even if a guardian has already been appointed.]**

4. \_\_\_\_\_ is able to walk short distances in her apartment with the assistance of a cane or walker, but cannot leave her home unless she is seated in a wheelchair. By reason of her said infirmity, she cannot shop or prepare food and requires assistance with her personal hygiene and all activities of daily living. She is confused at times and is unable to consistently articulate the nature or amount of her assets and income, nor is she able to consistently articulate her liabilities. She is unable to supervise the home attendants who care for her.

5. It is respectfully submitted to the Court that \_\_\_\_\_ is unable to provide for her personal needs and property management and cannot adequately understand or appreciate the nature and consequences of such inability. Her functional level requires assistance with all activities of daily living, including collection of her assets and income, paying bills, banking, shopping, cooking, toileting, bathing, grooming, meals and socializing.

6. It is respectfully submitted to the Court that by reason of her physical and other infirmities, \_\_\_\_\_ is likely to suffer harm because of her inability to provide for her own personal needs and to provide for the management of her property and her inability to adequately understand and appreciate the nature and consequences of her said inability. It would be in her best interests that a Guardian be appointed for her, and it is respectfully submitted that the said appointment is the least restrictive form of intervention appropriate to \_\_\_\_\_.

7. On or about [date], your Petitioner received a call from \_\_\_\_\_ seeking assistance in settling the estate of her husband. I met with her at her home, wherein she advised me that \_\_\_\_\_, who is the nephew of \_\_\_\_\_, the deceased husband of the alleged incapacitated person and the nominated Executor under the Last Will and Testament of \_\_\_\_\_, and his attorney, \_\_\_\_\_, had told her that all of her bank

accounts had been frozen. \_\_\_\_\_ stated to me that she had no access to any cash to purchase food, medicine and to pay her home care attendants. In addition \_\_\_\_\_ told your Petitioner that \_\_\_\_\_ and \_\_\_\_\_ had rummaged through her apartment without her permission and removed various papers and records from her apartment. \_\_\_\_\_ expressly stated that \_\_\_\_\_ and \_\_\_\_\_ had frightened her and that she felt threatened by them.

8. \_\_\_\_\_ called your Petitioner numerous times requesting help for various physical problems she was having. Your Petitioner respectfully submits that in his opinion, \_\_\_\_\_ is both physically and mentally infirm and is in grave need of assistance. \_\_\_\_\_ appears to have no family or friends that could give her the assistance that she requires.

9. As aforesaid, \_\_\_\_\_'s husband, \_\_\_\_\_, left a Last Will and Testament on his death. Annexed hereto and made a part hereof, marked Exhibit A, is a photocopy of said Will. \_\_\_\_\_ stated to me that she was unaware of the existence of the said Will and she is unable to comprehend the terms of the said Will.

10. \_\_\_\_\_ was granted Preliminary Letters Testamentary in respect of the said estate by the Surrogate's Court of the County of \_\_\_\_\_ on [date]. Annexed hereto and made a part hereof, marked Exhibit B, is a photocopy of said Letters granted to him. \_\_\_\_\_ failed to disclose \_\_\_\_\_'s disability to the Surrogate's Court in his Petition for the probate of her deceased husband's Will; however, in his Petition for the issuance to him of Preliminary Letters Testamentary he alleges, *inter alia*, that \_\_\_\_\_ is in a "state of ill health" and is "elderly and disabled" and that she "has been expending unusual and extraordinary sums of money from the account of the decedent." Photocopies of the said Petitions are annexed hereto and made a part hereof, marked Exhibits C and D, respectively.

11. It is respectfully submitted that unless a guardian is appointed to represent \_\_\_\_\_, she will be severely disadvantaged in the settlement of her husband's estate and may sustain injury to her own estate.

12. Upon information and belief, \_\_\_\_\_ is in possession and control of property of \_\_\_\_\_ without any legal authority therefor, including paying to his attorney, \_\_\_\_\_, Esq., the sum of \$ \_\_\_\_\_ to dispose of obligations of \_\_\_\_\_. The details of the same are more fully set forth in the Affirmation of \_\_\_\_\_, annexed hereto and made a part hereof.

13. Moreover, apparently on or about [date], without the knowledge or consent of \_\_\_\_\_, \_\_\_\_\_ caused certain sums contained in the joint bank accounts numbered \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_ Bank held in the names of \_\_\_\_\_ and \_\_\_\_\_ to be transferred to joint accounts numbered \_\_\_\_\_ (checking) and \_\_\_\_\_ (savings) in the names of \_\_\_\_\_ and \_\_\_\_\_, and caused checking and savings accounts numbered \_\_\_\_\_ and \_\_\_\_\_, respectively, to be opened in the name of \_\_\_\_\_ individually. \_\_\_\_\_ stated that she had no knowledge of these transactions and further stated

that \_\_\_\_\_ did not provide her with any checks so that she could access the funds held in either of the said checking accounts.

14. I met with \_\_\_\_\_ at her home on [date], at which time she stated to me that she had no money to pay her home attendants and since she was not in possession of the checkbooks for either her new individual checking account or the joint account with \_\_\_\_\_, she was unable to pay her bills. \_\_\_\_\_ was present at the said meeting and commenced her investigation herein and on [date], \_\_\_\_\_ was able to recover certain of \_\_\_\_\_'s funds held at \_\_\_\_\_ Bank and transferred the same to \_\_\_\_\_ Savings Bank in accounts held solely in the name of \_\_\_\_\_. The details of the same are more fully set forth in \_\_\_\_\_'s aforesaid Affirmation.

15. By reason of the foregoing actions of \_\_\_\_\_, it appears that \_\_\_\_\_'s welfare is endangered and her property is at risk of dissipation since he may persist in his said actions of withdrawing sums from the accounts which are property of \_\_\_\_\_. It is respectfully requested that the Court grant a temporary restraining Order, pursuant to Mental Hygiene Law section 81.23(b) and a preliminary injunction enjoining \_\_\_\_\_ individually and as Preliminary Executor of the Estate of \_\_\_\_\_, and \_\_\_\_\_ from obtaining, receiving, selling, assigning or disposing of property of \_\_\_\_\_ in their possession and restraining \_\_\_\_\_ Bank from releasing the proceeds of account number \_\_\_\_\_ held in the names of \_\_\_\_\_ and \_\_\_\_\_ during the pendency of these proceedings and until the final determination thereof.

16. It is the plan of your Petitioner to have \_\_\_\_\_ remain in her apartment with the assistance of home attendants on a twelve-hour basis since her familiarity with the surroundings will be beneficial to her. While \_\_\_\_\_ was bequeathed a life estate in the said apartment under her husband's will, the nature and extent of her interest in the said estate is more particularly unknown, and her ability to expend sufficient sums to provide her with 24-hour care has not as yet been determined.

17. The approximate value and description of the remaining financial resources of \_\_\_\_\_ are as follows:

ASSET/INCOME	VALUE
Monthly Social Security Benefits	\$ _____.
Monthly Pension Benefits — Storeworkers Retirement Plan	_____.
Medicare refund	_____.
_____ Bank Account #: _____	_____.
_____	_____.
_____	_____.

Safe-Deposit Box # \_\_\_\_\_ .\_\_\_\_\_  
\_\_\_\_\_ Bank—held in the names of  
\_\_\_\_\_ and \_\_\_\_\_

Estate of \_\_\_\_\_  
Life estate in premises \_\_\_\_\_,  
\_\_\_\_\_, New York \_\_\_\_\_  
1/2 residuary interest \_\_\_\_\_  
interest under the testamentary trust \_\_\_\_\_

18. To the best of Petitioner's knowledge, \_\_\_\_\_ is not a recipient of public assistance or Medicaid; she has not given a power of attorney to any individual; she has not executed a Health Declarations Document or a Living Will; and she has no Last Will and Testament.

19. To the best of the Petitioner's knowledge, the nature and amount of any claim, debt, or obligations of \_\_\_\_\_ are as follows:

ITEM	AMOUNT
Home attendants' salaries	\$ _____
Blue Cross/Blue Shield Supplemental Medical Insurance Premiums	_____
Utilities	_____

20. The following powers in respect of the personal needs of \_\_\_\_\_ are being sought for the guardian to be appointed herein:

- (1) determine who shall provide personal care or assistance;
- (2) make decisions regarding social environment and other social aspects of her life;
- (3) determine whether she should travel;
- (4) authorize access to or release of confidential records;
- (5) apply for government and private benefits;
- (6) for decisions in hospitals as defined by Subdivision 18 of Section 2994-a of the Public Health Law, act as the patient's surrogate pursuant to and subject to Article 29-CC of the Public Health Law, and in all other circumstances, to consent to or refuse generally accepted routine or major medical or dental treatment subject to the decision-making standard in Subdivision 4 of Section 2994-d of the Public Health Law, and
- (7) choose her place of abode.

21. The following powers in respect of the property management needs of \_\_\_\_\_ are being sought for the guardian to be appointed herein:

(1) Marshall the income and assets of \_\_\_\_\_ and establish bank, brokerage and other similar accounts in the name of the Guardian for \_\_\_\_\_ and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of \_\_\_\_\_, including, but not limited to, government entitlement checks; invest funds with the same authority as a Trustee, pursuant to New York EPTL § 11-2.2; inventory personal belongings and store or dispose, as appropriate;

(2) Provide for the maintenance and support of \_\_\_\_\_;

(3) Authorize access to or release of confidential records;

(4) Apply for, obtain and settle claims for government benefits;

(5) Close or retitle in the Guardian's name bank time deposits prior to maturity, upon the findings by the Court that, for the purposes of § 9-1 and § 238 of the Banking Law, the Order appointing a Guardian shall be deemed a declaration of incompetence and no banking or savings institution shall impose any penalty upon the transaction;

(6) Obtain access to safe deposit boxes/vaults/safes in the presence of a bank officer and a representative of the surety on the Guardian's bond (unless the surety waives being present in writing) for inventory purposes, and send a copy of the inventory to the Court Examiner;

(7) Direct the U.S. Postal Service to transfer mail to the Guardian's address;

(8) Arrange and pay for health care services, health care aides and household help;

(9) Lease a primary residence for up to 3 years;

(10) Defend or maintain civil proceedings on behalf of \_\_\_\_\_;

(11) Retain attorneys, accountants and similar professionals, with payment subject to the approval of the Court;

(12) Sign and file income tax returns and all other tax documents for any and all tax obligations, and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other related matters;

(13) Deal with all pension, retirement, incentive, IRA/Keogh/SEP and similar plans, programs and annuities;

(14) Deal with Medicare and Medicaid claims, litigation and settlements.

(15) Establish an irrevocable prepaid funeral plan in accordance with Medicaid regulations;

(16) Pay reasonable funeral expenses out of any funds remaining in the guardianship account at death, to the extent that a prepaid funeral plan, if any, is insufficient to do so; and

(17) Pay bills after death if such debts were incurred before death, and if authority to pay such bills would otherwise have existed.

(18) Exercise any power granted to committees, conservators or guardians by other statutes, subject to the limitations, conditions, and responsibilities of the exercise thereof, unless the granting of such power requires the prior approval of the court.

22. The relationship of these powers to the functional level and needs of \_\_\_\_\_ is as follows: Since she is unable to provide for her personal needs or to manage her property, it is respectfully submitted that she will suffer harm to her person and waste will be committed to her estate if the Guardian to be appointed herein is not authorized to fully provide for her personal needs and to manage her property.

23. These powers are sought for an indefinite period given \_\_\_\_\_'s physical incapacities.

24. The names, addresses and telephone numbers of the interested parties herein are as follows:

25. Your Petitioner respectfully requests that the Court appoint \_\_\_\_\_ as Guardian of \_\_\_\_\_.

26. No previous application has been made for the relief requested herein.

WHEREFORE, your petitioner prays that the Court grant an Order:

- a. Declaring that \_\_\_\_\_ is incapacitated as that term is defined in section 81.02(b) of Mental Hygiene Law since she is unable to provide for her personal needs or for the management of her property;
- b. Restraining and enjoining \_\_\_\_\_, individually and as Preliminary Executor of the Estate of \_\_\_\_\_ and \_\_\_\_\_ from selling, assigning, obtaining, receiving or disposing of property of \_\_\_\_\_ in their possession during the pendency of this proceeding and until the final determination thereof;
- c. Restraining and enjoining \_\_\_\_\_ Bank from releasing the proceeds of account number \_\_\_\_\_;
- d. Appointing \_\_\_\_\_ as Guardian of the person and property of \_\_\_\_\_ with the powers requested herein;

e. Fixing a fee to be paid from the proceeds of \_\_\_\_\_'s estate to \_\_\_\_\_, Esq., for her legal services rendered herein and directing the reimbursement to her of her necessary disbursements advanced;

f. Granting such other and further relief as to the Court seems just and proper.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Name of Petitioner]

Sample

Sample

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF \_\_\_\_\_        )

\_\_\_\_\_, Esq., being duly sworn, deposes and says:

That I am the Petitioner in the within proceeding; that I have read the foregoing PETITION and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

\_\_\_\_\_  
[Name of Petitioner]

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public