

## Guardianship Myths and Misconceptions

Part of our practice, at Berwitz & DiTata LLP, is to represent Guardians who have been appointed under Article 81 of the Mental Hygiene Law. It is surprising how many well-intentioned Guardians are ignorant of their responsibilities. This can be really problematic. Here are some misconceptions that Guardians frequently have:

**It is OK to combine my ward's money with my own:** Absolutely not. As the Guardian collects the assets of the ward, they must be deposited into a separate account. The Order and Judgment usually specifies the title of the account.

**If my ward and I owned a joint bank account before the guardianship proceeding, I can keep that account:** No, segregate the account. Determine what was contributed by each of you and divide it accordingly. Deposit the ward's money into the guardianship account.

**If necessary, it is OK to borrow from the guardianship account provided that I return the money within a reasonable time:** The Guardian may NOT borrow from the guardianship account. Do not use the ward's funds for your own purposes.

**I can hire and pay professionals to assist me as Guardian:** Not without Court approval. You may certainly require the services of lawyers, accountants, financial advisers and others in fulfilling your duties to your ward but you must seek Court approval *before* you pay these professionals.

**Once my ward has a Guardian it is too late to sign a Will or other estate planning documents:** Surprisingly, this is also untrue. Even those who are incapacitated may have periods of lucidity. Please read the article about capacity in this issue of *A Step Ahead*. What is very important is that you not destroy a Will, power of attorney, or other contract that was made by your ward before you were appointed.

**One of my jobs is to sell my ward's house if they can no longer live in it:** Do not transfer or sell real property owned by your ward without the permission of the Court.

**I can pay for my ward's necessities from my money and reimburse myself later:** No, as Guardian, you should marshal your ward's assets into the guardianship account and then use that account to pay for your ward's needs. If you are shopping for your ward at the same time that you shop for yourself, do not put all the items on the same receipt. Segregate spending! You will be required to account for your expenditures on behalf of your ward, so it is important to keep accurate records -- and keep receipts!