

SUFFOLK COUNTY SUPREME COURT
SPECIAL TERM PART VI (631)853-6214

MOTION PROCEDURE FOR FINAL ACCOUNTINGS
BY CONSERVATOR, COMMITTEE OR GUARDIAN DUE TO DEATH OR
DEPLETION, REMOVAL OF COMMITTEE, CONSERVATOR OR
GUARDIAN UNDER M. H. L. ART. 77, 78, 79 or 81

If you are a non-attorney guardian and you feel uncomfortable with this Motion procedure or if you are unable to do it yourself you will have to get an attorney to do it for you.

Step 1. “Order Directing Final Accounting” (Form 1 annexed), submitted with a “**verified petition**” (Form 2 annexed). This is an ex-parte order (requires no service on any other parties). The petition indicates the basis for the final accounting and identifies all parties who are essential to be served. If the basis for the Final accounting is depletion of assets, the Order must include a provision for the appointment of a Guardian- ad-Litem (an attorney who reviews the final accounting to protect the interests of the Incapacitated Person), who may or may not be appointed. **If the basis of the Final Account is the death of the Incapacitated Person, a copy of the death certificate must be annexed behind the petition.**

Step 2. After the above order is signed, the court will return a copy to the submitting party. The Committee, Conservator or Guardian then files the original “**Final Accounting**” (Form 3 annexed) with the Suffolk County Clerk's Office and prepares the “**Notice of Motion to settle Final Accounting**” (Form 4 annexed). A copy of the filed Final Accounting and a copy of the previously signed **Order Directing Final Accounting** must be annexed as exhibits. The “**Order Settling Final Account**” (Form 5 annexed) (with blank provisions for payment of commissions, fees and debts, etc. is also submitted at this time. The Motion must be made returnable at Special Term Part VI of the Supreme Court at 400 Carleton Avenue, Central Islip, New York 11722 at 9:30 am. of any Monday thru Friday (except holidays). The Notice of Motion and supporting papers must be served upon all the interested parties named in schedule F of the Final Accounting and an affidavit of service must accompany the motion papers which indicates that the Motion was served (by mail) upon all of the said interested parties at least 20 days prior to the return date of the Motion.

Step 3. Shortly after the submission date of the Notice of Motion, a Short Form Order will issue from the court directing an audit of the accounting by the clerk of the court, within 45 days. You will be sent a copy of this order. After the audit is completed, after the clerk's audit, if there are no problems, your Order settling Final Account will be re-submitted by the clerk to the Judge for his signature. If there are problems, you will be called and directed to revise the order and re-serve it in the same manner that the Notice of Motion was served, but on **10 days notice** to all of the essential parties originally served. If there are objections to the Final account by any of the interested parties, a hearing may be necessary to resolve the issues.

Step 4. After you make all of the payments directed by the court in the Order Settling Final Account, you will submit the “**Ex-Parte Order Discharging the Committee, Conservator or Guardian**” (Form 6 annexed), with receipts, copies of cancelled checks, vouchers, etc. evidencing compliance with the directives in the Order Settling Final Account.

NOTE: If Final Accounting, is submitted due to the death of the incapacitated person. You may consider the much simpler procedure of “Final Accounting by Decree” (which must be accompanied by consent affidavits from each essential party). See M. H. L. Articles 81.34

At a Special Term Part VI of The Supreme Court of the State of New York held in and for the County of Suffolk at the Courthouse, _____, New York on the ___ day of _____, 20__.

PRESENT: HON. _____
Justice

In the Matter of the Final Account of

ORDER PERMITTING
FINAL ACCOUNT

_____,
Guardian

Index No.:

of

_____,
an Incapacitated Person

On reading and filing the Petition of _____, Guardian of the Person and Property of _____, an Incapacitated Person duly verified on the _____ day of _____, 20__, from which it appears that the assets of the Incapacitated Person have been depleted /(the Incapacitated Person died on _____, and a final accounting should be had, and upon the proceedings heretofore had herein,

NOW on motion of _____ it is

ORDERED, that _____ account to this court regarding their proceedings as Guardian from _____ to the date of the filing of the final account, within

60 days, and it is further

ORDERED, that they cause said account to be judicially settled and that a Notice of Motion for the settlement thereof, or a decree be submitted pursuant to M.H.L. Article 77.32, 78.31 or 81.34, together with a copy of this Order, and of the papers upon which it was granted, be served either personally or by certified mail upon the parties named in the petition annexed hereto and upon the Guardian Ad Litem, if any, appointed hereinafter and if proceeding by Notice of Motion, service of said motion shall be made at least 20 days prior to the return date of the motion, and it is further

ORDERED, that _____ of _____, an Attorney at Law be and they are hereby appointed as _____ for the protection of the rights and interests of the Incapacitated Person with regard to such accounting.

E N T E R

J. S. C.

In the Matter of the Final Account of

VERIFIED

PETITION

_____,
Guardian

Index No. :

of

_____,
an Incapacitated Person

TO THE SUPREME COURT STATE OF NEW YORK COUNTY OF SUFFOLK:

The Petition of _____ respectfully alleges:

1. That your petitioner resides at _____

_____, was duly appointed Guardian of the Person and
Property of the above named incapacitated person by Order of this Court dated

_____ : that he/she most recently filed a surety bond in the amount of \$ _____

and has been qualified as Guardian since that time.

2. USE EITHER "A" or "B" TO MEET CIRCUMSTANCES

"A" That the said incapacitated person died intestate (testate) on

_____, (while a patient at _____ hospital), (while residing) at the
following address _____,

and left surviving him (her) the following distributees: (Name same persons entitled to notice under Mental
Hygiene Law sec. 81.03 the Court Examiner and the surety)

NOTE: if Incapacitated person, dies testate, attach a copy of certificate of Letters Testamentary (or Letters
of Administration), if any. The Incapacitated Person's last inventory showed

assets of \$ _____.

(Attach a copy of the Death Certificate)

“B” That the Incapacitated person’s assets have become depleted to the extent that there remains in the hands of the Guardian the sum of \$

_____, etc., and that it is proper that a final accounting should be had so that after payment of commissions and allowances, a burial and luxury fund may be established for the Incapacitated person.

3. That the interested parties are: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK if the Incapacitated person is or was ever hospitalized in a state hospital; VETERAN’S ADMINISTRATION (only if involved); the Court Examiner, surety company and the parties named in paragraph”2" herein above, all of whom are adults and competent, (name infants or incompetents, if any).

4. The petitioner is desirous of filing a final account of his (her) proceedings as such guardian, and having such account judicially settled.

5. No previous application for the within relief has been made.

WHEREFORE, petitioner respectfully asks that an order be made herein authorizing and directing him them to file a final account of their proceedings:

(non V.A. case) _____ from the date of his (her) appointment,

(V.A. case only) _____ from the end of the period covered in the last approved referee’s report to the date of the filing of the final account,

...and that he they cause said account to be judicially settled, and such other and further relief as the court may deem just and proper.

Dated

Guardian

VERIFICATION

_____ being duly sworn, deposes and says:

I am the Petitioner in the within action; 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 on information and belief, and as to those matters I believe them to be true.

Petitioner

Subscribed and sworn to before me
this ____ day of 20__.

Notary Public

-----X

FINAL ACCOUNTING OF

FINAL ACCOUNTING BY:

_____ for the Guardianship of

[] Guardian

_____ an Incapacitated Person

Index No. _____

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

The undersigned does hereby render the account of proceedings as follows:

Period of account from _____ to _____

On the ____ day of _____, 20____, I was duly appointed Guardian of the Person and Property of the above named Incapacitated Person by an Order of the Honorable _____ of one of the Justices of the Supreme Court of the State of New York.

By Order of Honorable _____ of one of the Justices of the Supreme Court of the State of New York, and duly entered in the office of the Clerk of Suffolk County on the ____ day of _____, 20____ I was directed to file a Final Accounting of my proceedings as Guardian.

[The instructions concerning the schedules need not be stated at the head of each schedule. It will be sufficient to set forth only the schedule letter and heading. For convenience of reference, the schedule letter should be shown at the bottom of each sheet of the account.]

TOTAL ADDITIONS TO PRINCIPAL \$ _____

Dated

Fiduciary

SCHEDULE A3

Statement of all income collected (exclusive of A1 and A2 above)

Must be chronological and sub-totaled each year. Note; in cases where the V.A. was the original petitioner, start your Final Accounting from the date following the last date covered in the last approved Annual Account.

Date	Asset/Income	Value

TOTAL INCOME RECEIVED \$ _____

Dated _____

Fiduciary _____

SCHEDULE B

DISBURSEMENTS:

By year, list all disbursements made from the date of appointment to the date of the accounting and the total for each year and the Grand Total. **Note; in cases where V.A. was original petitioner start from the date following the last date covered in the last approved Annual Account**

DETAIL

Date	Disbursement description	Amount

(add additional sheet(s) if necessary)

TOTAL DISBURSEMENTS \$ _____

Dated

Fiduciary

SCHEDULE C

Total assets from Schedule "A" (A1[+or-]A2[+]A3)	
(Minus) Disbursements from Schedule "B"	
Balance charged to Guardian	

ASSETS ON HAND

List manner in which the above assets are invested. For example, If the entire balance consists of one bank account, list as follows:

Name of Bank	\$	\$ _____
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DETAIL

Investment / Account	Value

TOTAL \$ _____

Dated

Fiduciary

Schedule "D"
(Commission Statement) see instructions

SCPA 2307 Commissions...

...on assets received;

Total assets per Schedule "A"	\$ _____
2 ½ % on all sums not exceeding \$100,000.00	\$ _____
2 % On the next \$200,000.00 received	\$ _____
1 ½ % on the next \$700,000.00 received	\$ _____
1 ¼ % on the next 4,000,000.00 receive	\$ _____
1% on all sums above \$5,000,000.00	\$ _____

TOTAL OF RECEIVING COMMISSIONS DUE \$ _____

Disbursements as per Schedule "B"	\$ _____
(Minus) commissions taken in prior accountings	\$ _____

COMMISSIONABLE DISBURSEMENTS \$ _____

...on assets disbursed

Total Disbursements per Schedule "B" minus commissions taken (see Commissionable Disbursements above).	\$ _____
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2 ½ % on all sums not exceeding \$100,000.00	\$ _____
2 % On the next \$200,000.00 received	\$ _____
1 ½ % on the next \$700,000.00 received	\$ _____
1 ¼ % on the next 4,000,000.00 received	\$ _____
1% on all sums above \$5,000,000.00	\$ _____

TOTAL OF DISBURSING COMMISSIONS DUE \$ _____

2307 COMMISSION SUMMARY

Total Receiving Commissions due	\$ _____
(Plus) Total Disbursing Commissions due	\$ _____

TOTAL COMMISSIONS DUE \$ _____

OR

SCPA 2309 Commissions

Commissions on principal

Where annual accountings have been submitted in past years, the Guardian originally chose whether commissions were to be taken based upon the principal existing at the beginning of the year or at the end of the year. Once that choice was made the guardian is committed to using the same beginning of year or end of year figure in all subsequent accountings. In the event that no annual accountings have been previously filed, the Guardian must now make the beginning of the year / end of the year choice at this time, and likewise use the same beginning of year or end of year figure in all subsequent years.

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Attach additional sheet (s) if necessary)

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Principal Amount; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Principal; year _____ \$ _____

\$10.50 per \$1,000.00 on the first \$400,000.00
of principal \$ _____

\$4.50 per \$1,000.00 on the next \$600,000.00
of principal \$ _____

\$3.00 per \$1,000.00 on all additional principal \$ _____

Commissions due for year \$ _____

Total of commissions due for all years \$ _____

Disbursements as per Schedule "B" \$ _____
 (Minus) commissions taken in prior accountings \$ _____

Commissionable Disbursements \$ _____

Final disbursement of assets

Total Disbursements per Schedule "B" minus commissions taken
 (see Commissionable Disbursements above). \$ _____

1 % of Commissionable disbursements \$ _____

Total of Disbursing Commissions due \$ _____

SUMMARY

Total Commissions due on principal \$ _____
 (Plus) Total Disbursing Commissions due \$ _____

TOTAL COMMISSIONS DUE \$ _____

 Dated

 Fiduciary

SCHEDULE "E" Claims
 Against the Estate

Date	To Whom	Reason	Amount

Dated

Fiduciary

SCHEDULE "F"
Interested Parties

Name

Address

Name	Address

Dated

Fiduciary

AFFIDAVIT OF ACCOUNTING PARTY

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

_____ being duly sworn, says: that the schedules of assets of the estate reported herein are true and complete and include all money and property of any kind, and all increment thereon, which have come into the hands of any of the accounting parties or have been received by any other persons for the use of any accounting party by order of authority of such accounting party, and include all indebtedness due by any accounting party to the estate whether discharged or not; that the moneys stated in the account as collected were all that could be collected; that all claims for credit for losses or decreases of value of assets are correctly reported; that the reported payments out of estate assets for funeral and administration expenses were actually made and made in the amounts scheduled; that the reported payments to creditors and beneficiaries were actually made at the dates and in the amounts scheduled; that no payments have been made by any accounting party on any fiduciary's claims against the estate except after prior approval and allowance by the Surrogate; that all receipts and disbursements are correctly and fully reported and scheduled; that the accounting parties do not know of any error in the account or in any schedule thereof or of any matter or thing relating to the estate omitted therefrom to the prejudice of rights of any creditor or of any person interested in the estate; and that the schedule of commissions has been computed in conformity with the statute regulating commissions and the Rules of the Surrogate's Court applicable thereto.

Sworn to before me on

_____, 20____

Signature

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Print Name

Signature of Attorney: _____

Tel. No.: _____

Address of Attorney: _____

INSTRUCTIONS

Schedule A1

Statement of Principal Received

This schedule must contain an itemized statement of all the moneys and other personal property constituting principal received at the time of the appointment, for which each accounting party is charged, together with the date of receipt or acquisition of such money or property.

Schedule A2

Statement of Increases (or Decreases) on Sales, Liquidation or Distribution

This schedule must contain a full and complete statement of all realized increases (or decreases) derived from principal assets whether due to sale, liquidation, or distribution or any other reason. It should also show realized increases (or decreases) on new investments or exchanges. In each instance, the date of realization of the increase (or decrease) must be shown and the property from which the increase (or decrease) was derived must be identified. If real property has been sold by the fiduciary, this schedule must set forth the proceeds of sale of such property, including a copy of the closing statement.

Schedule A3

Statement of All Income Collected

This schedule must contain a full and complete statement of all interest, dividends, rents and other income received, and the date of each receipt. Each receipt must be separately accounted for and identified, except that where a security had been held for an entire year, the interest or ordinary dividends may be reported on a calendar year basis.

Schedule B

Statement of Disbursements

This schedule must contain a full and complete statement of all realized decreases on principal assets whether due to sale, liquidation, collection or distribution, or any other reason. It should show decreases on new investments or exchanges and also sales, liquidations or distributions that result in neither gain nor loss. In each instance, the date of realization of the decrease must be shown and the property from which the decrease was incurred must be identified. It should also report any asset which the fiduciary intends to abandon as worthless, together with a full statement of the reasons for abandoning it.

Schedule C

Balance of assets held by Fiduciary

This is the difference between the assets received and the disbursements.

Schedule D

Statement of Commissions earned

This schedule calculates the commissions earned by the fiduciary over the course of the Guardianship,

Committeeship or Conservatorship. Guardianship commissions are generally calculated pursuant to SCPA 2309. Commissions for Committees and Conservators are calculated pursuant to SCPA 2307.

Schedule E

Statement of All Creditor's Claims

This schedule must contain an itemized statement of all creditor's claims subdivided to show:

1. List all claims against the Incompetent / Conservatee / Incapacitated Person, to whom, the reason and the amount. If there are none state NONE (Please submit bills for claims listed in the schedule)

Schedule F

Statement of Interested Parties

This schedule must contain the names of all persons entitled as beneficiary, legatee, devisee, trustee, surviving spouse, distributee, unpaid creditor or otherwise to a share of the estate or fund, with their post office addresses and the degree of relationship, if any, of each to the deceased, and a statement showing the nature of and the value or approximate value of the interest of each such person. Include Attorney General, Department of Social Services, Veteran's Administration and surety on fiduciary's bond if involved.

**SUPREME COURT STATE OF NEW YORK
COUNTY OF SUFFOLK:**

In the matter of the Final Account of

Guardian of the Person and Property ,

an Incapacitated Person

Index # _____

NOTICE OF MOTION
(Judicial settlement of Final
Accounting)

SIRS:

PLEASE TAKE NOTICE that upon the order of this court dated and filed herein the _____ day of _____, 20____, a copy of which is annexed hereto, the Final Accounting of _____ as Guardian of the Person and Property, Committee, Conservator of the above named Incapacitated Person, Incompetent, Conservatee, which was duly filed in the office of the Clerk of the County of Suffolk on the _____ day of _____, 20____, a copy of which is annexed hereto, the Petitioner herein will move this court before the Justice presiding at Special Term Part VI of the Supreme Court of the State of New York, County of Suffolk at the John P. Cohalan Courthouse, 400 Carleton Avenue, Central Islip, New York on the _____ day of _____, 20____ at 9:30 a.m of that day, or as soon thereafter as counsel can be heard for an Order judicially settling determining and allowing the account as filed, for the fixing of commissions, the compensation of the parties' attorneys and for payment of the outstanding bills and other claims made against the assets of the Incapacitated Person, Incompetent, Conservatee as more fully set forth in said accounting, and granting such other and further relief as the court may deem just and proper.

Yours, etc.

Attorney (Pro Se Petitioner)

(Address 1)

(Address 2)

PRESENT: HON. _____
A.J.S.C.

In the Matter of the Final Account of

ORDER SETTLING
FINAL ACCOUNT

_____,
Guardian

Index No.:

of

_____, an
Incapacitated Person

_____ Residing at _____

_____ as Guardian of the Person and Property of

_____, an Incapacitated Person, having presented and filed a petition dated and verified on the ____ day of _____, 20__, requesting leave to render and have judicially settled his (her) Final Accounting of proceedings as such Guardian of the Person and Property and the said Guardian having filed a final accounting of his (her) proceedings pursuant to the Order of this court made on the _____ day of _____, 20__, in the office of the Clerk of the County of Suffolk, and notice of these proceedings having been given

to _____

and upon reading and filing the aforesaid petition and Order of this Court, the final account dated and verified the __ day of _____, 20___, the notice of motion returnable the _ day of _____, 20___, the affidavit of __, sworn to the _ day of _____,20___, evidencing service of the foregoing papers, and _____, and according to the following summary statement thereof;

SUMMARY STATEMENT

Schedule A: Principal received on appointment	\$ _____
Schedule A-1: Increases / Decreases to principal	\$ _____
Schedule A-1: Income	\$ _____
Total receipts	\$ _____
Schedule B: Disbursements	\$ _____
Charge to fiduciary	\$ _____
Cash and property on hand	\$ _____

NOW, on motion of _____ as Guardian of _____, an Incapacitated Person, be and the same hereby is judicially settled, passed and allowed as rendered and filed, it is,

ORDERED, that the said Guardian be and he (she) is hereby allowed the sum of \$_____ as and for his (her) legal commissions as Guardian if the within Incapacitated Person, and it is further

ORDERED, that _____, Esq. be is and he (she) hereby is allowed the sum of \$_____ as and for a fee for legal services rendered and \$_____ as disbursements in the within proceeding, and it is further

ORDERED, that _____ the _____ herein be and hereby is allowed the sum of \$_____ as and for a fee for services rendered herein, and it is further

ORDERED, that _____ as guardian pay to _____

_____ Esq. (Court Examiner) the sum of \$ _____ to reimburse the said Court Examiner for expenses which sum represents fees due the Court Examiner for reviewing the annual accounting (s) for the period(s) ending _____ which accounting (s) had been reviewed by the Court Examiner but for which accounting (s) no order Confirming Court Examiner's report had been entered previously herein, which sum the Guardian shall pay from the funds of said Incapacitated Person in his (her) hands as Guardian; and it is further

ORDERED, that the Guardian is directed to pay to _____
_____ as and for _____; and it is further

ORDERED, that the balance remaining in the hands of the Guardian plus accrued interest, if any, be turned over to the official representative of the Estate of the deceased Incapacitated Person; and it is further

ORDERED, that if no official representative is appointed within 60 days, then any remaining funds shall be turned over the Comptroller of Suffolk County, and it is further

ORDERED, that upon filing receipts, releases or cancelled checks evidencing compliance with the provisions of this Order, an Ex-parte order may be entered discharging the Guardian and cancelling their bond.

E N T E R

A.J. S. C.

PRESENT: HON. _____
Justice

In the Matter of the Final Account of

Guardian of
_____, an
Incapacitated Person

EX PARTE ORDER
DISCHARGING
FIDUCIARY AND
SURETY AFTER FINAL
ACCOUNT

Index No.:

I _____ as
Guardian of _____ an Incapacitated Person having
complied with the prior order of this court dated the _____ day of
_____, _____, judicially settling his (her) final account, and having submitted all receipts,
vouchers, releases, cancelled checks, etc., showing compliance with the terms of the said order,

NOW, on motion of _____, it is

ORDERED, that _____ as Guardian of _____
_____ is hereby discharged
from all liability in connection with all matters embraced in the said account, and it is further

ORDERED, that _____, the surety on the bond of
Guardian is hereby discharged from all liability in connection with all matters embraced in the said
account.

E N T E R

J. S. C.