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COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
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Joseph A. Barsanti
Deputy Commissioner

NOTICE TO GUARDIANS FOR MINORS

IMPORTANT (Please read immediately)

You have been appointed legal guardian in this matter. Please be advised of the following important matters for the proper handling of guardianship funds:

1. Use of income and principal. Since July 1, 1999, there has been a different set of rules for guardians for minors depending on whether or not the minor has a living parent.

a). Where both parents are deceased. Where both parents of the minor are deceased, the Guardian may make reasonable disbursements on behalf of the minor using both income and principal without prior Court approval; and

b). Where one or both parents are living. Under Virginia law, parents of minors have a duty to support their minor (under 18 years of age) children. Therefore, if the minor for whom you are serving as guardian has a living parent, (whether or not the guardian is the parent) the guardian is not authorized to make any distributions of income or principal to or for the minor unless that distribution is authorized by the Court, or the Commissioner of Accounts as discussed below, on a finding that the parent is either:

- i). Unable to completely fulfill the parental duty of supporting the child; or
- ii). The parent, for a legal reason, does not have the duty of support; or
- iii). The proposed distribution is beyond the scope of the parental duty of support in the circumstances of that specific case.

If the amount of the total distribution (income and, if necessary, principal) in any one year will not exceed \$3,000.00, then the Commissioner of Accounts may approve the expenditure if one of the above stated criteria is established at a hearing before the Commissioner. Expenditures exceeding \$3,000.00 must be approved after a hearing by the Court.

c). Filing a petition with the Court or requesting the Commissioner of Accounts for permission to make disbursements for the minor who has a parent living.

- i). Permission from the Court. Permission for the expenditure of guardianship funds from the Court must be obtained by filing a Petition with the Court and following proper Court procedures as required by law.
- ii). Permission from the Commissioner of Accounts. Such permission from the Commissioner of Accounts must be obtained by a written request for a hearing filed with the Commissioner of Accounts.

2. Titling guardianship accounts. Frequently we find that banks or brokerage firms set up accounts for guardians of minors as custodial accounts under the Uniform Transfers to Minors Act. This is not correct.

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You have been appointed legal guardian by the Court, are under Court supervision and the account must show that you hold the funds as a guardian and not as custodian.

In setting up the bank or brokerage accounts for the assets you hold for the minor, you should use the child's social security number and the account should be titled substantially as follows:

**“(Your name), Guardian for
(Child's name), a minor”**

We would suggest that you take a copy of the letters of Appointment, which you received from the Court, and this letter with you when you go to the bank or brokerage firm to open the guardianship account.

3. Titling investments through the Virginia Educational Savings Trust (VEST), Virginia Prepaid Education Program (VPEP) and Section 529 Plans.

The same titling rules should be followed as described in paragraph 2, above. Remember that the funds being invested belong to the child, they are just under your control until the child reaches 18.

We are aware that some organizations which offer Section 529 Plans do not allow an applicant to fill in the designation guardian etc. If this is the case then you can not invest the assets which you hold as guardian for the child with that firm.

The application forms are somewhat different, most include a block for “other” and this block should be checked and the words “guardian”, “legal guardian” or “Court appointed guardian” should be written in the space provided.

The VEST and VPEP plans will allow you to fill in the designation guardian under “other”.

4. Child's Social Security Number. The assets being invested belong to the minor child and it is his or her social security number which goes on the account. Any interest or dividends are included in the child's taxable income.

5. More than one person appointed as guardian. If the Court appointed more than one person as guardian then the names of all guardians must appear on all guardianship accounts and any documents evidencing ownership of other guardianship assets.

6. Legal guardian for more than one child. If you have been appointed as guardian for more than one child, the assets of each child must be inventoried and accounted for separately even though such assets may have come from a share of a lump sum payment or fund. Only one Inventory form and accounting form need to be filed with the Commissioner of Accounts, but the assets, or share of the assets, of each child must be inventoried, or accounted for, separately on that form. You should set up separate guardianship bank and/or brokerage accounts for each child using the child's individual social security number for his or her accounts.

Please refer to the instructions, which were given to you when you qualified as guardian for other details.

Very truly yours,

John H. Rust, Jr.
Commissioner of Accounts

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