BONDS, INVENTORIES & ACCOUNTINGS

22ND ANNUAL ESTATE PLANNING, GUARDIANSHIP
AND
ELDER LAW CONFERENCE

July 30-31, 2020
Moody Gardens
Galveston, Texas

STEVE M. KING
SENIOR PROBATE JUDGE
FORT WORTH, TEXAS
REVISION DATE – FEBRUARY 2020

BONDS, INVENTORIES & ACCOUNTINGS

TABLE OF CONTENTS

INTRODUCTION 1

I. BONDS AND OATHS 1
Note: Judicial Bonds 1
A. Nature 1
B. Purpose 1
C. Bonding Guidelines 2
D. Examples 2
1. SUPERVISED (GUARDIANSHIP AND DEPENDENT DECEDENT'S) ESTATES 2
2. DECEDENT'S ESTATE WITH PR AS SOLE DEVISEE OR HEIR 2
3. COURT-CREATED INDEPENDENT ADMINISTRATION 2
E. Safekeeping or "Freeze" Agreements 2
F. Types of Sureties 2
G. Advantages of Corporate Sureties over Personal Sureties 2
H. Filing 3
I. Oaths 3

II. THE INVENTORY 3
A. Filing the Inventory 3
1. TIME FOR FILING 3
2. DUTY TO PREPARE 3
3. PURPOSES OF THE INVENTORY 4
4. THE APPRAISEMENT 4
A. Purpose 4
B. Valuation 4
C. Date of Valuation 4
D. Gross Worth 4
E. Appraisers 4
5. CONTENTS OF THE INVENTORY 4
Note: Sensitive Data 4
A. What to Put In 4
B. What to Leave Out 5
Note: Digital Assets Act 2017 5
6. THE LIST OF CLAIMS 6
A. Duty to File 6
B. Contents 6
C. Claims Owed not Listed 6
7. AFFIDAVIT 6
8. APPROVAL OR DISAPPROVAL BY THE COURT 6
A. Order Entered 6
B. Effect of Court Approval 6
9. CHANGES, ADDITIONS, CORRECTIONS 7
A. Voluntarily 7
B. Involuntarily 7
C. Refusal to File Additional Inventory 7
10. FAILURE TO RETURN AN INVENTORY 7
12. USE OF INVENTORIES AS EVIDENCE 7
A. Prima Facie Evidence 7
B. Non-Conclusive Presumption 7
C. Evidentiary Function 7
13. SEALING THE INVENTORY 8

14. COMMON PROBLEMS ENCOUNTERED WITH INVENTORIES 8

II. ACCOUNTINGS 8
A. Supervised Estates (Decedent's Estates and Guardianships) 8
1. ANNUAL ACCOUNTS 8
A. Where Required 8
1. Administrators/ Guardians of the Estate 8
2. Initial Accounting Required by Trustees of Guardianship Management Trusts 8
3. Annual Accounts Required by Trustees of Guardianship Management Trusts 8
4. Guardians of the Person 8
5. Annual Report of Pooled Trust Subaccount 8
6. Continuing Duty 8
B. Contents of the Annual Account 8
1. Accounting Period 8
2. Opening Figures 9
3. Property Not Previously Inventoried 9
4. Changes 9
5. Receipts and Disbursements 9
PRACTICE POINTER - Disbursements with and without Court Approval 9
6. Property Currently Being Administered 10
7. Cash on Hand 10
8. Funds Held in Safekeeping 10
9. Claims; Debts and Obligations of the Estate 10
10. Reconciliation 10
11. Affidavit of PR 11
12. Exhibits 11
PRACTICE POINTER - Vouchers 11
C. Court Action on Annual Accounts 11
1. Filing 11
2. Action Only After Ten Days 11
3. Corrections 11
4. Action on Claims 11
D. Failure to File Annual Accountings or Guardian of the Person Report 12
E. Waiver of Accountings 12
F. Common Problems with Annual Accounts 12
2. ACCOUNT FOR FINAL SETTLEMENT 12
A. When Required 12
1. Decedent's Estates 12
2. Guardianships of the Estate 12
3. Accounting by Temporary Guardian Upon Expiration 13
4. Guardianship Management Trusts 13
5. Guardianships of the Person 13
B. CONTENTS OF THE ACCOUNT FOR FINAL SETTLEMENT 13
1. Estate property in PR's Hands. 13
2. Dispositions of Property 13
3. Debts 13
4. Inheritance Taxes 13
5. Assets Remaining on Hand 13
6. Distributees 13
7. Action Requested 13
8. Interim Account 14
9. Bond Premiums and Taxes 14
C. CITATION 14
D. TERMINATION OF GUARDIANSHIP OF THE PERSON 14

E. FINAL REPORT OF GUARDIAN OF THE PERSON 14
F. FAILURE TO FILE FINAL ACCOUNT OR REPORT 15
1. Compelled Final Account upon Complaint 15
2. Removal of Cause from Active Docket of Court 15
3. Payments Due after Discharge of Guardian 15
G. FAILURE TO DELIVER ASSETS 15
H. SIGNIFICANT GUARDIANSHIP ACCOUNTING PRINCIPLES 15
1. Tolling the Statute of Limitations for a Minor Ward 15
2. It Ain't Over Till It's Over: the *di Portanova* case 15
I. COMMON PROBLEMS WITH FINAL ACCOUNTS 15
B. Independent Administration 15
1. THE BENEFICIARY'S INITIATIVE: COMPELLED ACCOUNTINGS 15
A. After Fifteen Months 15
1. Demand 15
2. Suit to Compel 15
3. Notice & Hearing 15
4. Action on Accounting 15
B. After Twenty-Four Months 16
1. Institution of Suit 16
2. Accounting Compelled; Notice 16
3. Contents 16
4. Action on Accounting 16
5. Final Account and Closing 15
C. Compelled Closing Report 16
1. Distributee's Right 16
2. Who is a "Distributee?" 16
3. Citation and Hearing 16
D. Reliance Upon Order 16
2. THE EXECUTOR'S INITIATIVE: CLOSING AN INDEPENDENT ADMINISTRATION 17
A. Informal Closing 17
B. Presumption of Closing 17
C. Closing Report or Notice 18
1. When 18
2. Permissive 18
Note: When an Estate is Considered Closed at Common Law 18
3. Verified 18
4. Contents 18
5. Required Exhibits 18
6. Citation and Notice? 18
7. Court Action? 18
8. Effect of Filing Closing Report or Closing Notice 18
9. Bond 18
10. Dealing with Distributees 19
11. Facility of Payment 19
12. Advantages to Filing 19
13. Differences Between the Closing Report and the Closing Notice 19
D. Judicial Discharge 19
E. Letters Testamentary Available Until Closing 19
F. Rights and Remedies Cumulative 19
C. Trustees 20
1. COMMON LAW DUTY 20
2. TERMS OF INSTRUMENT CONTROL 20
3. STATUTORY ACCOUNTING 20
A. Demand 20

B. Who May Demand a Written Account? 20
C. Due Date; Necessity of Suit 20
D. Court Action – Accounting Compelled 20
E. Costs and Attorney's Fees; Individual Liability 21
F. Grounds for Removal; Denial of Compensation 21
G. Accounting Period 21
H. Contents 21
I. Allocation of Principal and Income 21
J. Vouchers 21
K. Subsequent Demands 21
L. Other Considerations 21
M. Tort Liability 21
D. Attorneys in Fact (Agent under Power of Attorney) 21
1. AGENT A FIDUCIARY; DUTY TO ACCOUNT & MAINTAIN RECORDS 22
2. DEMAND; SUIT TO COMPEL ACCOUNTING 22
3. STANDING 22
4. CONTENTS SPECIFIED IN STATUTE 22
5. ACCOUNTING COMPELLED BY COURT ORDER 22
6. ORDER ENFORCEABLE BY CONTEMPT 22
7. OTHER REMEDIES 22
6. REMOVAL OF AGENT IN GUARDIANSHIP 22
7. TERMINATION OF AGENT'S POWERS – QUALIFICATION OF GUARDIAN 23
E. Other Accountings and Quasi-Accountings 23
1. SALES OF REAL PROPERTY 23
2. WITHDRAWAL OF ESTATES FROM ADMINISTRATION 23
3. ADMINISTRATION OF COMMUNITY PROPERTY 23
4. GUARDIANSHIP TRANSFER 23
5. RECEIVER 23
6. RECEIVER FOR MISSING PERSON 23
7. FUNDS WITHDRAWN FROM THE COURT'S REGISTRY 23

III. CLOSING THOUGHTS 23

IV. APPENDICES
One: Oaths 24
Two: Safekeeping Agreement 25
Three: Inventory, Appraisement and List of Claims (and Order Approving) 26
Four: Initial Report - Guardian of the Person 29
Five: Annual Report - Guardian of the Person (and Order Approving) 32
Six: Guardian's Final Report (and Order Approving) 37
Seven: Account - Guardian of the Person 39
Eight: Annual Accounting 41
Nine: Verification of Funds on Deposit 45
Ten: Verification of Securities 46
Eleven: Confirmation of Safekeeping 47
Twelve: Order Approving Annual Accounting 48
Thirteen: Account for Final Settlement (and Order Approving) 49
Fourteen: Verified Closing Report, Receipts and Proof of Delivery 55
Fifteen: Verified Closing Notice, Receipts and Proof of Notice 58
Sixteen: Application for Judicial Discharge 61
Seventeen: Judgment of Judicial Discharge 62

BONDS, INVENTORIES & ACCOUNTINGS

INTRODUCTION

The qualification of the personal representative (the 'PR'), the return of an inventory and the accounting process are all integral parts of an ongoing process. They are the initial planning and periodic reports from the PR on the journey, keeping the court informed as to the whereabouts and progress of the travelers.

By keeping the court well informed as to the status of the estate, the clients will be better served, the ward, heirs or creditors will be better protected and, most importantly, the PR will have fewer headaches.

The administration of a guardianship must be considered in a different light from the administration of a decedent's estate. A guardianship must be viewed as more of an ongoing enterprise which is expected to continue for a lengthy period providing income for the maintenance and support of a person, while administration of a decedent's estate is intended to last only as long as necessary to wind up and distribute the estate.

Other fiduciaries uniformly have a duty to disclose, either under the common law or statute.

Note: Judicial Bonds

The judge of a statutory county court who hears guardianship or probate cases must execute a bond, payable to the county treasurer, of at least $100,000 if the county has a population of 125,000 or less; or $250,000 if the county has a population of more than 125,000 and conditioned that the judge will perform the duties required by the Estates Code. In lieu of this bond, a county may elect to obtain insurance against losses caused by the gross negligence of a county judge in performing the duties of office. The commissioners court of a county shall pay the premium for the insurance out of the general funds of the county.

If the judge of a statutory county court does not hear guardianship or probate cases, the bond is to be not less than $1,000 nor more than $10,000 and conditioned that the judge will faithfully perform all duties of office. The county judge's bond must be approved by the commissioners court. Tex. Govt Code § 25.006.

These provisions do not apply to

- a judge of a statutory county court who does not preside over guardianship proceedings,

- a judge of a statutory probate court who executes a bond, obtains insurance, or self-insures pursuant to Tex. Govt. Code § 25.00231 or

- a judge who presides over a county criminal court. Tex. Govt. Code § 25.006(a-4).

A constitutional county judge who hears guardianship or probate cases must execute a bond, payable to the county treasurer, of at least $100,000 if the county has a population of 125,000 or less; or $250,000 if the county has a population of more than 125,000 and conditioned that the judge will perform the duties required by the Estates Code. In lieu of this bond, a county may elect to obtain insurance against losses caused by the gross negligence of a county judge in performing the duties of office. The commissioners court of a county shall pay the premium for the insurance out of the general funds of the county.

If the constitutional county judge does not hear guardianship or probate cases, the bond is to be not less than $1,000 nor more than $10,000 and conditioned that the judge will faithfully perform all duties of office. The county judge's bond must be approved by the commissioners court. Tex. Govt Code § 26.001.

A judge affected by this act who is serving on September 1, 2017 must comply with these bond requirements not later than November 1, 2017. S. B. No.40 § 3.

I. BONDS AND OATHS - After appointment, the PR must **qualify** by 1) posting a **surety bond** (§§ 305.101, 1105.101 2) **approval** by the Court of the bond (§§ 305.002, 1105.002, and 3) taking and filing the proper **oath**. (§§ 305.051ff, 1105.051).

A. Nature - Unlike an **oath**, which is a promise to properly handle estate assets, the **bond** is a written pledge which allows the County Judge to recover an amount (the face amount or "penalty" of the bond) for damage to the estate caused by neglect or malfeasance of the PR. (§§ 351.003, 1155.152).

If the PR is found to be liable for a breach of duty or mismanagement of an estate, the surety can be called upon to satisfy any liability. The liability could include the damage to the estate resulting from the PR's wrongful acts, reasonable attorney's fees, costs incurred in removing the PR from his position and the expenses incurred in obtaining compliance with a neglected duty. (§§ 351.003, 1155.152).

B. Purpose - The whole reason for a bond is to protect the estate and its creditors. It is much easier for a successor PR to settle with a corporate surety than for a removed PR to come up with the funds to make good a defalcation. From the court's standpoint, there is no substitute for an adequate corporate surety bond for

protection of the estate assets and the benefit of the ward or estate distributees. Ad litems who argue with the court to set a low bond are seldom acting in their ward's best interest.

C. Bonding Guidelines: Before setting the bond, the court is to hear evidence as to:
1. the amount of all estate cash and personal property,
2. the amount estimated to be needed for expenses of administration (including the operation of any business owned by the estate) for one year,
3. the anticipated revenue to the estate for one year (anticipate upcoming sales!), and
4. the estimated amount of debts due and owing by the estate or ward.

D. Examples:
1. SUPERVISED (GUARDIANSHIP AND DEPENDENT DECEDENT'S) ESTATES - the bond should equal the value of all personal property *(realty doesn't usually disappear without some court input)* **plus** anticipated revenue for one (1) year

Cash on hand	**$ 55,000.00**
Automobiles	**18,500.00**
Stock	**34,500.00**
Household items	**5,000.00**
Total Bondable Property	**$113,000.00**
Plus anticipated Income or	**x 1.10**
potential compliance costs	**$124,300.00**
Set Bond at:	**$125,000.00**
(rounded up to next thousand)	

2. DECEDENT'S ESTATE WHERE THE PR IS SOLE DEVISEE OR HEIR - § 305.151(b) - the bond may be set in an amount equal to debts (plus ten per cent for ad litem's fees in case of a compliance action).

3. COURT-CREATED INDEPENDENT ADMINISTRATION - § 401.003 - here the PR will not be coming back into court, even to sell real property. If there are devisees or distributees that are unrelated to the PR or who live far away, it is better to protect all parties that a conservative bond be set. However, you may wish to bond only to protect creditors. If there are no known debts, and the family situation appears stable (no minors, everyone in close contact) you may choose to waive bond. The Judge is specifically exempted from personal liability considerations (otherwise applicable under § 351.354) for waiving bond under these circumstances by § 401.007.

E. Safekeeping or "Freeze" Agreements (§§ 305.154 & 1105.155 where the PR deposits estate cash or other assets in a state or national bank, trust company, savings and loan association, or other domestic corporate depository, to be held under an agreement that the depository will not allow withdrawal or transfer of the principal of the assets and/or interest on the deposit except on written court order. (Appendix Two)

The amount of the bond of the PR may then be reduced in proportion to the cash or other assets placed in safekeeping. This arrangement has several excellent benefits to the Estate:
1. Lower surety bond amount.
2. Reduces surety's exposure.
3. Increases security and stability of estate assets.
4. Decreases the court's concerns regarding adequacy of bond.
5. Secures estate funds without additional bond premiums.

> **Estate with $300,000 in cash. $100,000 is placed under safekeeping in each of three separate institutions, with each depository directed to pay all interest monthly to an interest-bearing account at a fourth institution. The interest account could be used as the operating account for the Estate, or could also itself be under a safekeeping agreement. The bond amount can be then kept to a minimum**

F. Types of Sureties §§ 305.201, 1105.160 - Personal sureties and corporate sureties are both authorized by the Code. With personal sureties (two or more required) each must satisfy the court they own non-exempt property of at least twice the amount of the bond and execute an affidavit to that effect (§§ 305.203, 1105.201) or deposit cash or other securities with a qualified corporate depository. §§ 305.156ff, 1105.157

It is much more common that the surety is an *authorized corporate surety*: "a domestic or foreign corporation authorized to do business in Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors, administrators and guardians" §§ 22.002, 1002.003

G. Advantages of Corporate Sureties over Personal Sureties:
1. Only one corporate surety is generally required rather than two individual sureties (court may require two corporate sureties if the bond is greater than $50,000 §§ 305.202, 1105.161.
2. The bond premium is payable by the Estate. §§ 305.202, 1105.161.

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Bonds, Inventories, and Accountings

Also available as part of the eCourse
Bonds, Inventories, and Accountings in Probate and Guardianship Proceedings

First appeared as part of the conference materials for the
22nd Annual Estate Planning, Guardianship and Elder Law Conference session
"Bonds, Inventories, and Accountings"