

## Title Tips - “Guardian Conveying Property”

November 3, 2009

**Question: If a guardian for an incapacitated person or a minor is making a conveyance of property, do I need a court order authorizing the guardian to sell the property in order to insure the transaction?**

Answer: Maybe. We recommend that the guardian act pursuant to a court order, but it may not be necessary.

The guardian of a minor or an incapacitated person [the “ward”] is a fiduciary as defined by law. Under the Fiduciary Powers Act [N.J.S.A. 3B:14-23], a guardian enjoys broad powers over real estate owned by the ward. These powers include the ability to mortgage or sell property on behalf on the ward, without the necessity for a court order authorizing the exercise of these powers.

However, the broad powers of a guardian must be exercised in a manner that is in the best interest of the ward. If the transaction you are asked to insure bears any sign that the guardian may be self-dealing, or that the transaction itself may not be in the ward’s best interest, we ask that you contact this office to discuss the matter further.

Please be reminded that a deed signed by a guardian must recite the particulars of the guardian’s appointment, and recite that it is being made pursuant to the provisions of N.J.S.A. 3B:14-23. We recommend that copies of the court order appointing the guardian, and any subsequent court order authorizing the conveyance, be attached as exhibits to the deed to be insured. **It is particularly important to attach copies of the relevant court orders as exhibits, in light of new Court Rule 1:38-3, adopted 7/16/09 and effective 9/1/09, which provides that all guardianship records and reports maintained by the Surrogate shall not be open to public access, except to the spouse or family members to the third degree of consanguinity of the minor or incapacitated person.**

Please feel free to contact our Underwriting staff if you have any questions.

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