§ 81.44 Proceedings upon the death of an incapacitated person.

(a) When used in this section:

1. "Statement of death" means a statement, in writing and acknowledged, containing the caption and index number of the guardianship proceeding, and the name and address of the last residence of the deceased incapacitated person, the date and place of death, and the names and last known addresses of all persons entitled to notice of further guardianship proceedings pursuant to paragraph three of subdivision (c) of section 81.16 of this article including the nominated and/or appointed personal representative, if any, of the deceased incapacitated person's estate.

2. "Personal representative" means a fiduciary as defined by subdivision twenty-one of section 103 of the surrogate's court procedure act to whom letters have been issued and who is authorized to marshal the assets of the decedent's estate.

3. "Public administrator" means a public administrator within or without the city of New York, as established by articles eleven and twelve of the surrogate's court procedure act, or the chief fiscal officer of a county eligible to be appointed an administrator, pursuant to section twelve hundred nineteen of the surrogate's court procedure act. The role of the public administrator under this section is that of a stake holder or escrowee only, and the public administrator shall not, by virtue of this section, have a substantive role in administering the estate.

4. "Statement of assets and notice of claim" means a written statement under oath containing the caption and index number of the guardianship proceeding, the name and address of the incapacitated person at the time of death, a description of the nature and approximate value of guardianship property at the time of the incapacitated person's death; with the approximate amount of any claims, debts or liens against the guardianship property, including but not limited to medicaid liens, tax liens and administrative costs, with an itemization and approximate amount of such costs and claims or liens.

(b) Unless otherwise directed by the court, all papers required to be served by this section shall be served by regular mail and by certified mail return receipt requested.

(c) Within twenty days of the death of an incapacitated person, the guardian shall:

1. serve a copy of the statement of death upon the court examiner, the duly appointed personal representative of the decedent's estate, or, if no personal representative has been appointed, then upon the personal representative named in the decedent's will or any trust instrument, if known, upon the local department of social services and upon the public administrator of the chief fiscal officer of the county in which the guardian was appointed, and

2. file the original statement of death together with proof of service upon the personal representative and/or public administrator or chief fiscal officer, as the case may be, with the court which issued letters of guardianship.

(d) Within one hundred fifty days of the death of the incapacitated person, the guardian shall serve upon the personal representative of the decedent's estate or where there is no personal representative, upon the public administrator or chief fiscal officer, a statement of assets and notice of claim, and, except for property retained to secure any known claim, lien or administrative costs of the guardianship pursuant to subdivision (e) of this section, shall deliver all guardianship property to:

1. the duly appointed personal representative of the deceased incapacitated person's estate, or

2. the public administrator or chief fiscal officer given notice of the filing of the statement of death, where there is no personal representative.

3. any dispute as to the size of the property retained shall be determined by the surrogate court having jurisdiction of the estate.

(e) Unless otherwise ordered by the court upon motion by the guardian

on notice to the person or entity to whom guardianship property is deliverable, and the court examiner, the guardian may retain, pending the settlement of the guardian's final account, guardianship property equal in value to the claim for administrative costs, liens and debts.

(f) Within one hundred fifty days of the incapacitated person's death, the guardian shall file his or her final report with the clerk of the court of the county in which annual reports are filed, and thereupon proceed to judicially settle the final report upon such notice as required by subdivision (c) of section 81.33 of this article, including notice to the person or entity to whom the guardianship property was delivered. There shall be no extension of the time to file a final report except by order of the court.

(g) Upon failure of the guardian to comply with subdivisions (d) or (f) of this section, any person entitled to notice of this proceeding may file a petition to compel the guardian to account, to suspend and/or remove the guardian, and to take and state the guardian's account.