WEST VIRGINIA CODE: §44A-1-9

§44A-1-9. Posting of bonds; actions on bond.

(a) The court has the discretion to determine whether the posting of a bond by a guardian, once appointed, is necessary. No bond is required of any sheriff or representative of the Department of Human Services appointed as conservator or guardian, respectively.

(b) The court shall order the posting of a bond by a conservator prior to appointment except where the conservator is excused from posting bond under the provisions of section eighteen, article four, chapter thirty-one-a of this code. In determining the amount or type of a conservator's bond, the court or mental hygiene commissioner shall consider:

(1) The value of the personal estate and annual gross income and other receipts within the conservator's control;

(2) The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;

(3) Whether an order has been entered waiving the requirement that accountings be filed and presented or permitting accountings to be presented less frequently than annually;

(4) The extent to which the income and receipts are payable directly to a facility responsible for or which has assumed responsibility for the care or custody of the protected person;

(5) The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;

(6) Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and

(7) Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

(c) Any required bond may be with a surety and in an amount and form as the court may order and the court may order additional bond or reduce the bond whenever the court finds that a modification is in the best interests of the protected person or of the estate. The court may allow a property bond in lieu of a cash bond. Proof of bonding must be submitted to the court within thirty days of entry of the order regarding bond.

(d) In case of a breach of any condition placed on the bond of any guardian or conservator, an action may be instituted by any interested person for the use and benefit of the protected person, for the estate of the protected person or for the beneficiaries of the estate.

(e) The following requirements and provisions apply to any bond which the court may

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require under this section:

(1) Sureties are jointly and severally liable with the guardian or conservator and with each other;

(2) By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address of the surety listed with the court in which the bond is filed. If the party initiating a proceeding possesses information regarding the address of a surety which would appear to be more current than the address listed with the court, notice shall also be mailed by registered or certified mail to the last address of the surety known to the party initiating the proceeding;

(3) On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the preceding guardian or conservator; and

(4) The bond of the guardian or conservator is not void after any recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the guardian or conservator is barred by adjudication or limitation.

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