

Handling Property Transactions

REAL AND PERSONAL PROPERTY



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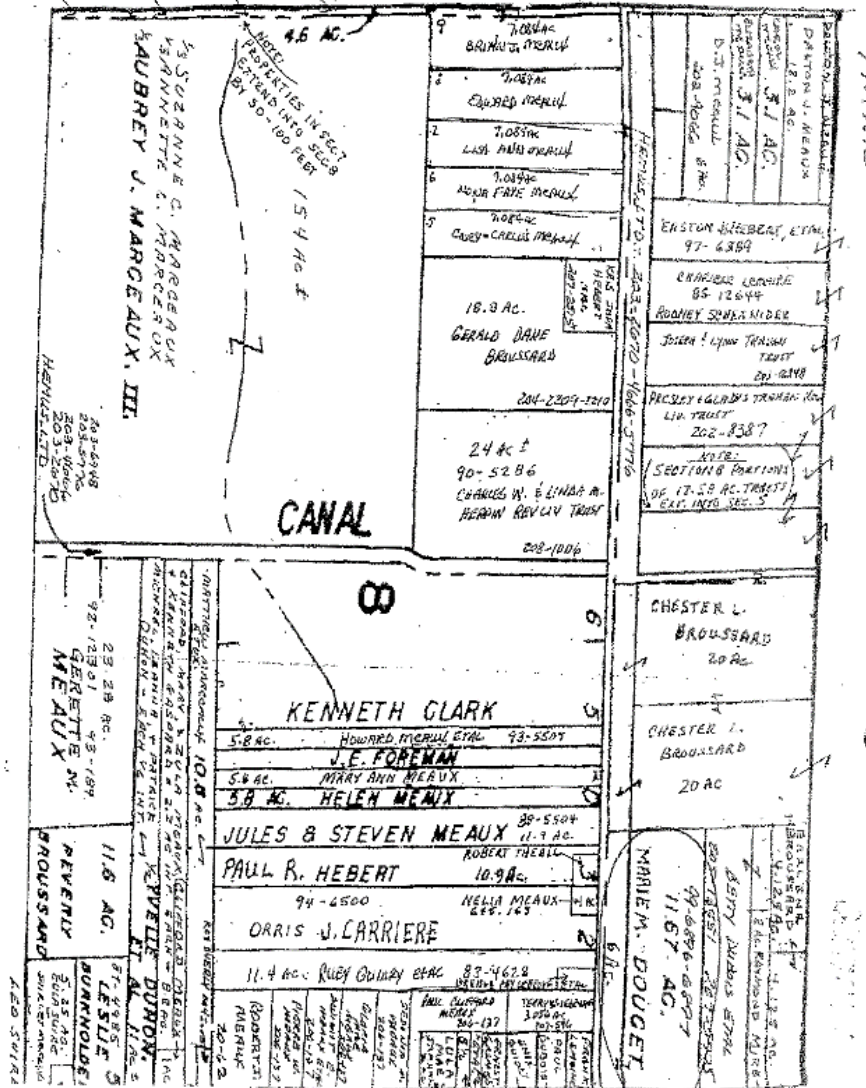
Representing
Harris County Guardianship Program

Objectives of this Presentation

1. Learn procedures for handling a ward's real and personal property (excluding cattle, crops, and investments), as allowed in the Texas Estates Code and the courts.

2. Learn about real property issues that need special handling including Tangled Title, foreclosure issues, with an emphasis on reverse mortgages, scams and squatters.

3. Learn how and why Harris County Guardianship Program (HCGP) may choose to abandon property in certain cases, and the procedure to do so under the Texas Estates Code and the Courts.



Find as much information as possible on your Ward, including real property/mortgage information, insurance policies, business information, household furnishings, jewelry, bank accounts, safety deposit boxes, etc. Inventory must list all real and personal property. Amend Inventory if property omitted, or need specifics about the property and property values. We use Kelly Blue Book for automobile values.

Steps for Sale/Abandonment of Personal Property



1. Review approved Inventory of the property. TEC. §1154.051
2. Create Application Authorizing Sale of Personal Property (and Order), stating values, add pictures if available, and give reasons for disposal. Pleadings include exhibit, verified by affidavit, of condition of estate, including claims if known, cash, real and personal property and total value of the estate. TEC §§1158.001 et seq; §1158.102 and §1158.251 (application)
3. Obtain Court Order to sell, but if unsaleable, ask to donate to charity or discard.
4. If property infested with bugs, pet feces, in flood, ask to abandon, explaining why. TEC §1151.102(c)(6)
5. If sell property file Report of Sale with the court providing details of the sale. TEC §1158.105



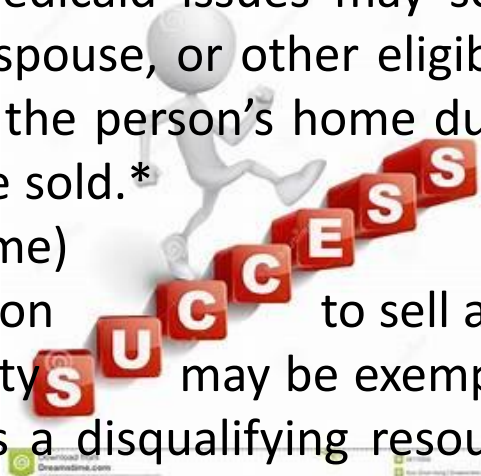
Steps for Sale of Real Property

1. Review approved Inventory listing property. Unimproved property, residential property, mineral rights, trailers and mobile homes permanently attached to real property are considered real property. County Appraisal districts appraise real property and are a good place to start the appraisal process; find on-line.
2. Prepare Application Authorizing Sale of Real Property and Order for the court. Plead facts, provide county appraisal and pictures, if available. Tex. Est. Code §1158.251 et seq. (§1158.252 application and §1158.253 citation posted to allow interested person to contact court about the sale of the property).
3. HCGP gets second appraisal if property value over \$100,000.00. Some appraisers want to be paid immediately; we pay at closing since our wards are indigent, so we request court to appoint appraiser who accepts payment at closing.
4. May need to open an estate if only guardian of the person. Special provision in Tex. Est. Code §1351.052 allows sale without estate if value does not exceed \$250,000.00.
5. If you need second appraisal, when you receive that appraisal can determine listing price with realtor. Sign listing agreement with realtor for services.

Steps Continued

6. Title may be an issue. You may look up property deeds in the real property records for the county where the property is located. Property is usually conveyed by a deed, however it may be inherited intestate. Property passed intestate may have Tangled Title – no deed, or legal document to show ownership of the property. Ward may only have $\frac{1}{2}$, $\frac{1}{3}$ or $\frac{1}{20}$ interest, or a life estate interest. May be problems with taxes (delinquent county, city, school, IRS), HOA fees, reverse mortgage or other liens on the property; city tickets for mowing lawn, cost for demolition of dilapidated house. May negotiate these costs with agencies, or buyer. Title Company will also do search to find these costs. (Find a good Title company to work with-extremely helpful). If you need to determine value of a Life Estate and Remainder Interest, see charts at Federal IRS Tables at 26 CFR20.2031-7, 49 Fed. Reg. Vol. 49 No. 93/5-11-84; and at URL:<http://policy.ssa.gov/poms.nsf/lnx/1050114012> chart for Life Estate Interest.
7. We have a realtor that markets properties; reviews offers; gets initial contract, then we put on County's contract form. A person under guardianship is exempt from certain disclosures under Texas law. See Tex. Prop. Code §§5.008 et seq.
8. After the contract is signed, prepare Report of Sale and Order for Court to Approve Sale. Court is given terms of the sale, including contract, appraisal (if obtained), and HUD Settlement Statement/Lender Disclosure Form from Title Company for its review. Report of Sale must be on file for 5 days before Court will sign. Tex. Est. Code §§1158.551 et seq.

MEDICAID TIPS



Medicaid issues may sometimes come into play with real property. If there is a spouse, or other eligible relative who is unable to support themselves outside of the person's home due to medical, social or other reasons, the house may not be sold.* (F-3112, Spouse or Dependent Relative Living in the Home)

authorization to sell and list property as soon as possible. The value of the property may be exempt from the date of the listing agreement and not counted as a disqualifying resource against the ward. The exemption continues from the date of the listing agreement until the proceeds of the sale are available to the person. * (F-3130 Home and Other Real Property Placed For Sale).

*Medicaid for the Elderly and People with Disabilities Handbook – Texas Health and Human Services Commission

Issues In Sale

1. Sales price is too far below appraisals - explain all the issues with the property—i.e. in a flood area, HOA in lawsuit over condo with mold, appraiser says property needs updating, interest rates increased substantially, provide pictures to show property was trashed. We were able to sell property after two previous proposed buyers walked – appraised for \$150,000.00 reduced by appraiser to \$125,000.00; sold for \$92,000.00.
2. May need to abandon property if cannot get high enough price to cover delinquent taxes, HOA fees, reverse mortgage pay-off and expenses, mowing or demolition liens, IRS taxes, solar power contracts, etc.
3. May not abandon the property but let others foreclose and then seek excess proceeds (good if you have tangled title issues, family fighting over a share of the property, trustee issues).
4. Family member(s) refuses to move from home. Can offer family members first right to buy property. (None have done so to date). May also sue to evict, but court may refuse to evict - had daughter come into court on crutches and claim she was disabled so judge over-turned eviction on appeal.
5. Tangled Title needs to be cleared up- need to get Heirship Affidavits from family and/or friends who knew the person/ family.

Issues Continued

6. Title Company requests that HCGP help clear title. House flippers file “Memorandum of Contract” against the property. Flippers claim right to purchase, but usually do not. HCGP has found false deeds in chain of title and need to fix those.
7. Buyers are agents for others and change contracts just before closing.
8. Buyers back out – may not have funding to pay for house, or do not want to pay delinquent taxes, liens; say closing must be quick and they found other property to buy. Ward gets escrow payment.
9. Reverse mortgages are an issue, especially if large amounts are owed.
10. Getting Squatters out of the house – civil eviction does not usually work. HCGP now asking probate courts for Show Cause hearings and Turnover Orders to obtain possession of the property. Tex. Est. Code §1151.101 (manage and possess property); Tex. Est. Code §1151.104 (suit for recovery of property) and §1151.105 (diligence to recover property).

TALES OF TANGLED TITLE, PROPERTY SCAMS AND SQUATTERS

1. The Foreclosed, Quit-Claimed Property

A ward came into the HCGP in 2019, allegedly owning a home she shared with numerous family members. She was moved from the home, and the HCGP wanted to sell it. Her family was asked about buying it, but did not. HCGP found a foreclosure deed to the property from the lender in 1958. In February 2006, ward's husband filed a Quit-Claim deed giving her his community half in a foreclosed property. He died in 2006. Taxes were not paid since 1989, so in 2009 tax entities filed a foreclosure suit naming the ward, the 1958 lender (dissolved in 1998), unknown shareholders and others. Then tax entities dismissed their suit! Heirship affidavits were filed in the deed records for the deceased spouse. Harris County Appraisal District still says the ward is the owner of the property. To untangle this title, HCGP hired a lawyer specializing in clearing title.



2. Tale of the Money-grubbing Grandson

A grandson of a ward was “selling” his grandmother’s house on the street corner for \$20,000.00 cash. A couple thought they had bought the house and came to talk with Harris County Guardianship Program (HCGP) about the ownership. They provided a Deed with ward’s alleged signature. HCGP explained the grandmother could not legally sign the deed as she was incapacitated. The buyers said they were working on the property. We told them we needed to go into court and have the judge declare the deed invalid and they could have problems in the future if they did not have a proper deed for the property. We did work with them to repurchase the property although they did pay more than \$20,000.00 for it.



3. Tale of the Dead Daughter- A drug addict

daughter lived in her 83-year-old mother's home in a nice neighborhood. The daughter invited her drug dealer and his brothel to move into the home. The HOA and neighbors continuously called law enforcement about the criminal activity. A report was made to APS about the elderly mother and a person in a wheel-chair living in the home. APS investigated, finding a tarp covering the dead daughter's body in the living room. When law enforcement arrived, they determined she had died from a drug overdose, but still refused to take any action saying the daughter, who had never owned the home, had invited the squatters to live there so *"the squatters now had homestead rights."* HPD refused to handle this matter as criminal trespass. (*Tatro v. State*, 580 S.W. 3d 740 (Tex. App.-Houston [14th Dist.] 2019, no pet.) They told HCGP to get a civil eviction. Things then got a lot worse! HCGP learned there were liens and fees of over \$130,000.00 against the property.



Dead Daughter Continued

Additionally there was a reverse mortgage on the property for about \$320,000.00. The realtor and appraiser working with HCGP also indicated the house would need extensive maintenance, in excess of \$50,000.00, before it could be put on the market, and the realtor's commission for selling the property would be about \$16,000.00. Needless to say, with costs over \$516,000.00, an indigent ward, an appraisal of the property at about \$435,000.00, HCGP decided to abandon the property and informed the reverse mortgage holder.

4. Tale of the Dead Notary

A U.S. Veteran signed some papers with a man he thought was giving him a loan, and was adamant he did not sell his home. APS looked at the situation finding the veteran was exploited, and could not care for himself or manage his finances. The Harris County Guardianship Program (HCGP) became his guardian. HCGP looked at a copy of the deed conveying the house to the scammer, and saw it was notarized. The investigator with HCGP looked for the notary to see if the veteran was at the sale where his signature was notarized. The Notary could not be found because he had been dead for several years. The HCGP took the forged deed to the DA's Office who agreed to take a forgery case. Not eager to spend time in the Harris County jail, the buyer agreed to probation, restitution of paying the appraised price for the property, and paid other costs and expenses.



5. Tale of the Dead Grantor



A relative of a ward in HCGP called recently to let the program know that the ward's property had been sold by a neighbor. The relative provided information about the property, and HCGP researched the deed. In looking at the deed, it is signed by the deceased mother of the Ward who passed away in 1996. Just as we did in the dead notary case, we went looking for the Notary to see how she notarized the signature of a dead person. We have currently filed a Lis Pendens against the property so that it should not be further conveyed, and are talking to the District Attorney about this case.

What is a Reverse Mortgage?

A Mortgage that gives you a loan of the equity in your home. (A traditional, or forward, mortgage requires payment when you get the loan).





Reverse Mortgage – Texas Law

“The Devil is in the Details”

Texas Constitution, Article 16, Sec. 50 (6) and (7); reverse mortgage provides for an extension of credit:

- A. is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner’s spouse ;**
- B. is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;**
- C. is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;**
- D. is secured by a lien that may be foreclosed upon only by a court order . . .**

Who is a good candidate for a Reverse Mortgage?

1. Someone who has income throughout their life, such as a pension, life Insurance, Social Security, annuities, stocks and bonds, deferred compensation accounts, to pay: local property taxes without deferrals or exemptions, insurances (homeowner, hazard/flood etc.), maintenance of the property, lawn service, PUD, MUD and other utility costs, HOA fees/assessments. If borrower can't pay these costs, there may be a foreclosure
2. Someone who does not have alzheimer's/dementia or other cognitive/memory issues in their family and can competently manage their financial affairs indefinitely into the future, or have a guardian who is willing to maintain their home.
3. Someone who will live in this home for the rest of their lives and be able to do so with home healthcare, or the help of a relative/trusted friend/guardian. **CAN BORROWER PHYSICALLY LIVE IN THE HOME FOR THE REST OF HIS/HER LIFE? Can he/she still go up and down stairs?**
4. Someone who has heirs who do not want, or expect to inherit the family home. No legacy to kids. **HEIRS WILL HAVE TO PAY DEBT ON THE PROPERTY TO OBTAIN IT FROM LENDER.**



REVERSE MORTGAGE INFORMATION

1. Borrower must be 62 or older, but a spouse may be younger.
2. Flexible payout of funds for Home Equity Conversion Mortgage (HECM) as a lump sum, or Home Equity Line of Credit (HELOC) as scheduled monthly/quarterly, or sporadic payments. Borrower with dementia, other health issues may not know if they receive all their funds.
3. No mortgage repayment until the home is sold, all borrowers cease occupying property for longer than 12 months without prior approval, borrower passes away, or defaults on the loan (non payment of taxes, insurance, or maintenance).
4. Borrower does not receive 100% of the equity in the home. New fed rules looking at age of borrower(s), interest rate and home equity to determine amount, plus Texas limit on 80% (May get 40-60% of equity now).
5. Closing costs can be financed into the cost of the loan, but such costs are deducted from the loan at mortgage closing so the “equity amount” is reduced to the borrower immediately.
6. Title remains in borrower’s name; this is a non-recourse loan, meaning only the property can be taken; no personal liability or deficiency judgment against the borrower(s).

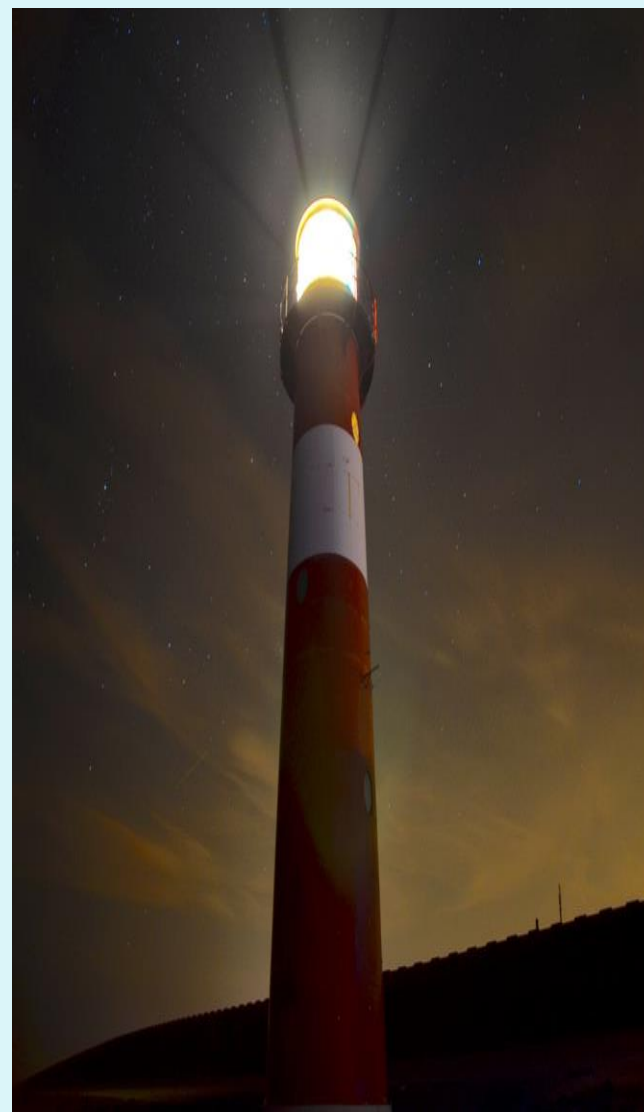
7. **Borrower cannot live “free” in the home.** No mortgage, but must pay taxes (without exemptions/deferrals), maintenance, insurances on the home (owners, flood, hazard, Mortgage Insurance Premiums). Depending on borrower’s health, may also need to pay for home health aide, homemaker services, or other assistance to stay in the home.
8. The loan is open-ended with interest and fees accruing monthly to be paid at the time borrower pays off the loan, dies, moves or foreclosure. Or the guardian pays off the loan if ward needs to be moved, or abandon property to lender.
9. If foreclosure occurs and loan provides for legal fees, court costs, no liens, -all will be deducted from the sales price of the house before any excess proceeds, if any, may given to borrower or heirs.
10. Equity money paid to the borrower is not income, but tax free loan proceeds; if borrower pays off the loan, interest paid may be a tax deduction.
11. Borrowers must go to counseling before receiving loan, so ask many questions, **UNDERSTAND THE OBLIGATIONS AND DECIDE IF BORROWER CAN FULFILL THEM;** including if borrower no longer desires to own the home or leave a legacy to his/her heirs. If borrower may have health problems that prohibit him/her from living in home.

REVIEW YOUR MONTHLY REVERSE MORTGAGE STATEMENT

LOAN ACTIVITY

1. Scheduled Payment to you \$501.90
 2. Interest accrued to pay you \$109.22
 3. Mortg. Insurance Premium \$ 49.20
 4. Monthly Service fee \$ 35.00
- (could be more additional costs) *

BORROWER PAYS \$193.42 MONTHLY TO RECEIVE \$501.90, which the above costs are about 38.5% in INTEREST AND FEES



BEFORE PUTTING A REVERSE MORTGAGE ON A HOME, A PERSON MAY WANT TO JUST SELL IT AND KEEP ALL THE MONEY FOR FUTURE EXPENSES! A PERSON MAY DOWNSIZE, MOVE TO ASSISTED LIVING, A NURSING HOME, MOVE IN WITH A TRUSTED RELATIVE. THERE ARE OPTIONS!



Abandoning Reverse Mortgage

421131
GUARDIANSHIP OF § IN PROBATE COURT
MW, § NUMBER FOUR OF
AN INCAPACITATED PERSON § HARRIS COUNTY, TEXAS

APPLICATION FOR ABANDONMENT OF REAL PROPERTY

The Harris County Guardianship Program (“HCGP” or “Guardian” herein), Guardian of the Person and Estate of MW, An Incapacitated Person, files this application for abandonment of real property and would show the Court as follows:

(1) This Court approved the “Inventory, Appraisement, and List of Claims” of this estate on March 24, 2014.

(2) The description of the real property conforms to that identified in the inventory. This abandonment includes the interest, if any, of the ward in the described real property. The interest in the real property to be abandoned is located at _____, Harris County, Texas, 77070 which is more particularly described as:

LOT 6 BLK 5 SEC 1 AMEND

aka: _____ Houston TX 77070

(3) On or about January 18, 2008, MW, a single woman, executed a Texas Home Equity Note and Deed of Trust with John’s Bank as beneficiary, mortgagee, up to the maximum principal amount of \$267,750.00, said note being a written contract secured by the real property described above. A copy of the pay-off for that Note is attached hereto as Exhibit A and incorporated herein, showing an amount of \$ 189,739.48 currently owed on the reverse mortgage.

(4) Subsequently, on September 20, 2016, this guardianship was established for MW. Presently the house is abandoned. The market value information shown on the Harris County Appraisal District Real Property records indicates the “market value” of the property in 2018 to be \$227,935.00. See Exhibit B attached hereto and incorporated herein. According to the court appointed appraiser, the market value of this property is \$173,000.00 as of April 27, 2016. However, HCGP has not received any offers matching the appraisal amount, or the pay-off amount. Attached hereto as Exhibit C are copies of the bids for the property showing the highest to be

Pleading Continued

\$155,000.00, which is about \$35,000.00 lower than the current mortgage pay-off. The property remains on the market with no activity, but taxes, mortgage payments and other costs continue to accumulate. Pictures of the outside of the property are attached hereto collectively as Exhibit D.

(5) It is in the best interest of the estate to abandon the ward's interest in the property, as permitted by Texas Estates Code §1151.102(c)(6). **The Guardian requests the Court's permission to abandon the above-described property of the ward and to authorize it to sign and send a letter to the lender under the home equity loan discussed above in a form substantially similar to that attached as Exhibit E.**

Therefore, HCGP as Guardian of the Person and Estate of MW, An Incapacitated Person, requests that this Court authorize it to abandon the herein-described interest in real property belonging to the ward, to send a letter advising the lender of the ward's surrender of the property, and all further relief to which it may be entitled.

Respectfully submitted,

HARRIS COUNTY GUARDIANSHIP PROGRAM,

Certified Guardian -#06-0615

2525 Murworth, Suite 103

Houston, Texas 77054

Phone: (713) 363-2376

Fax: (713) 363-2364

Assistant County Attorney

2525 Murworth, Suite 103

Houston, Texas 77054

Phone: (713) 274-5362

Fax: (713) 274-5374

Judge's Order

NO. 421131

GUARDIANSHIP OF
MW,
AN INCAPACITATED PERSON

§
§
§

IN PROBATE COURT
NUMBER FOUR OF
HARRIS COUNTY, TEXAS

ORDER AUTHORIZING ABANDONMENT OF THE WARD'S REAL PROPERTY

On this date came on to be considered the Harris County Guardianship Program's "Application for Abandonment of Real Property." After considering the evidence presented in support of this application, the Court finds that citation on this application and a hearing are not required; that the application meets the requirements of Texas Estates Code §1151.102(c)(6); that abandonment of the real property belonging to the ward's estate is in the best interests of the estate; and that the real property to be abandoned is located at _____ and the legal description is as follows:

LOT 6 BLK 5 SEC 1 AMEND
aka: Houston TX 77070

It is therefore ORDERED that the Harris County Guardianship Program, Guardian of the Person and Estate of MW, An Incapacitated Person, is hereby authorized to abandon the above-described real property of the estate and to execute documents necessary to surrender the property over to the lender described in the application.

SIGNED this _____ day of _____, 2024.

JUDGE PRESIDING

Letter to Mortgage Company

Guardianship Letterhead

Date

John's Bank

Certified Mail, Return Receipt Requested

P.O. Box 619093

Dallas, TX 75261-9093

RE: MW

Loan Number: 2264844

Property address: _____ Houston, Texas 77070

To whom it may concern:

The undersigned is the guardianship case manager with the Harris County Guardianship Program who presently serves as guardian of the person and estate of MW, incapacitated. A copy of the Harris County Guardianship Program's "Letters of Guardianship" are attached for your records.

Please be advised that MW no longer resides at the above-referenced real property. The Court signed an Order for abandonment of the real property located at _____, Houston Texas 77070. A copy of the Order is also attached for your records. The Harris County Guardianship Program in its capacity as guardian hereby turns over to the lender any interest MW may own in the above-referenced property.

Respectfully,

Authorized Agent CG- _____