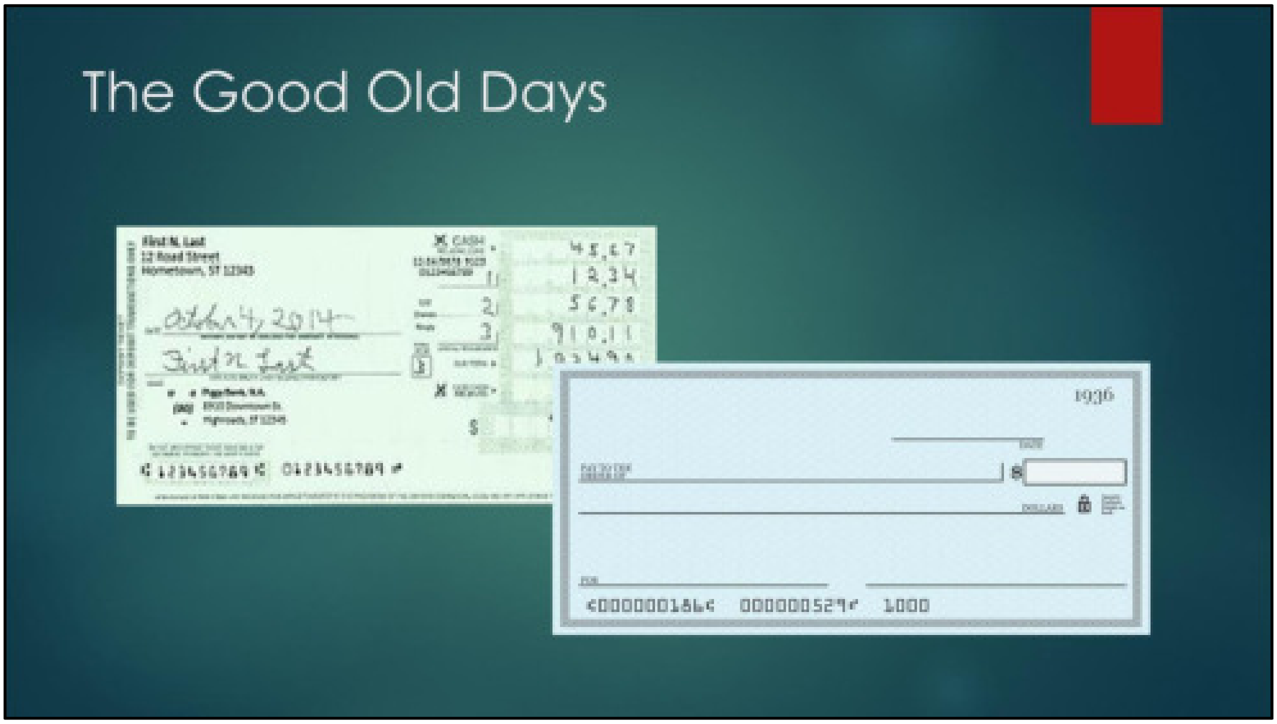
I want to talk with you today about fiduciary banking. About how things used to be, how things have changed in the past few years, and why those changes have reshaped what fiduciaries consider ethical in their practice.

Now we all know banking in general has changed a lot over the past decade. Even 10 years ago no one would have let you take a picture of a check, send money through some third party "entity" that didn't really use a bank, get your tax refund on a plastic card, or tell your watch to pay a bill.   But we do all that now.

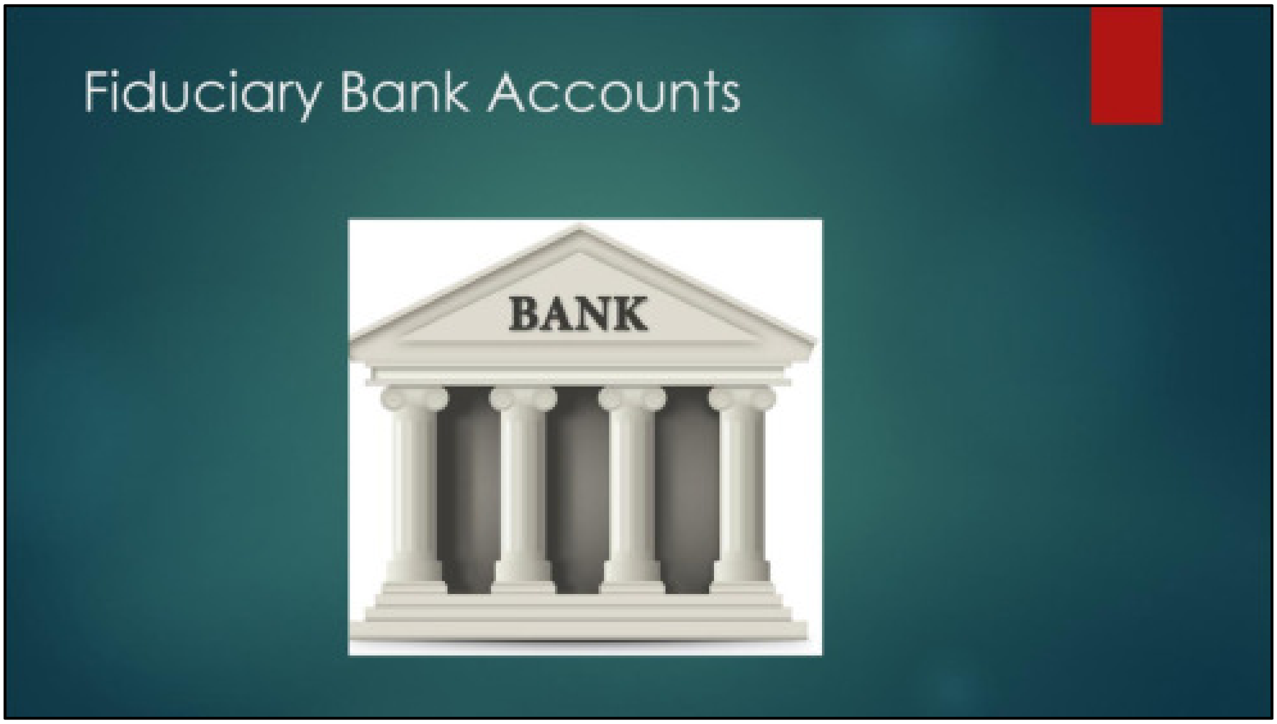
Fiduciary banking has also changed…



First, let's look at the good old days…way back when…

Guardians handling client's money had very few options. They collected income (usually checks received by mail) and paid bills by issuing checks. The big issue 20 years ago might have been using a computer-based check printing system or setting up direct deposit for someone's SSA income.

Individual guardians could structure their schedule to make a trip to the bank to make deposits or to set forth a few days each month to write all the checks to pay bills. Guardian agencies could put checks and balances in place whereby one staff person approved disbursements, another generated checks, and someone else reviewed and signed the checks before they were released.



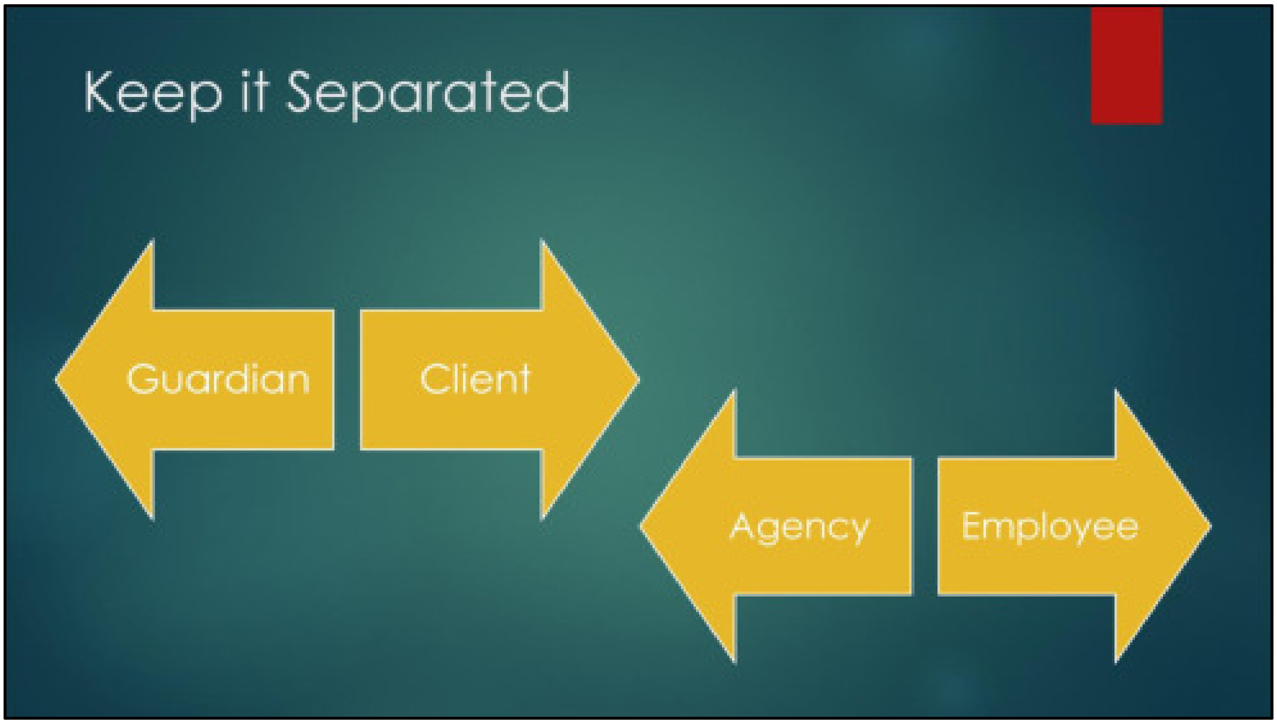
Banks had more rigid rules for fiduciary accounts as well…if you were around back then, you will remember that fiduciary accounts had limitations…precise titling on the account, no ATM or Debit cards, and paper statements came (with the original checks) every month.

You may also remember that the fiduciary's relationship with the bank was primarily with their local branch.   Most account tasks were done at the branch level with the manager having a large reference manual to check when they were faced with an unusual situation…including the establishments of a guardianship or the need to open or act on a fiduciary account.

So, if the Guardian could establish a good working relationship with one bank, banking for all their clients could be a little easier…

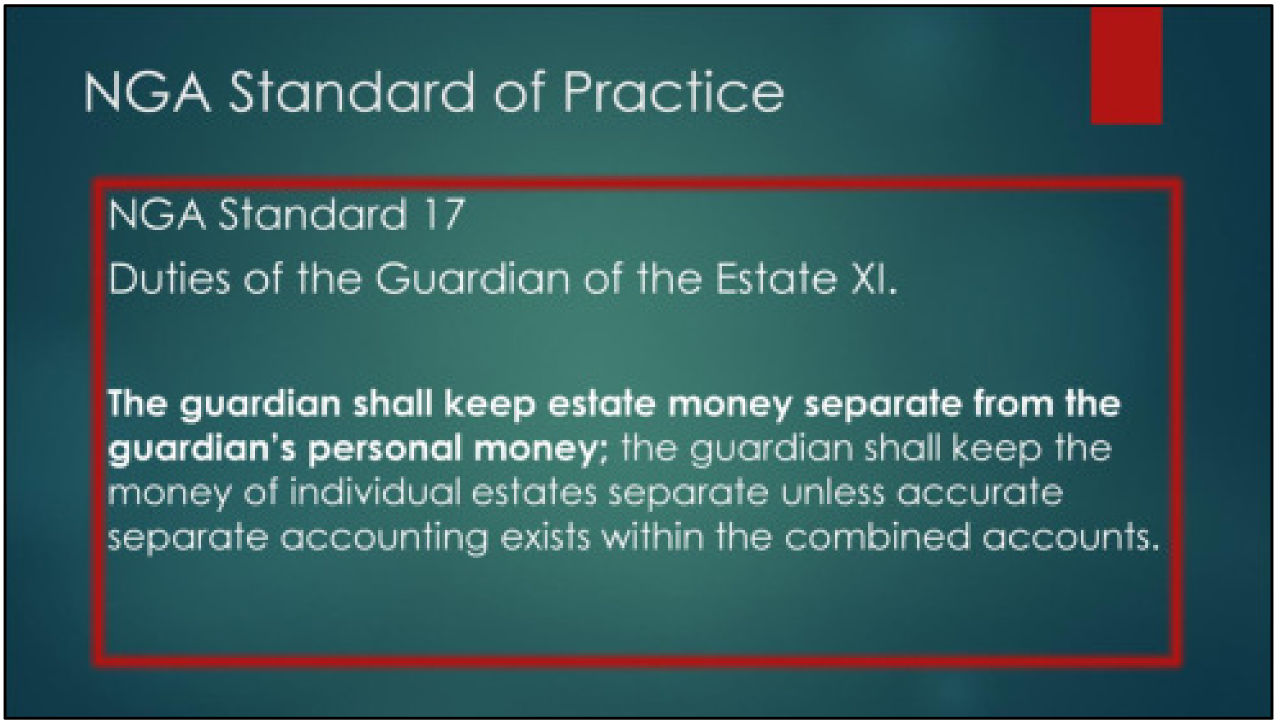
Some Guardians who have been at this for a long time might remember when you could breeze into the branch, present the papers for a new client, and be out of there with all their money in less than an hour☺   Or maybe it was hard…and you had to wait for the legal department to review the documents…so you just sat and waited for a short while

Underlying all this Guardians, the courts, and the banks all had a set of compliance guidelines they followed when handling bank accounts that involved a fiduciary.



These compliance guidelines were primarily focused on verifying, documenting, and functioning from the principle that that the relationship between the bank, the account, and the guardian was distinctly a fiduciary relationship and had NOTHING to do with the guardian personally.

If the Guardian was an agency with employees who routinely set up or handled client accounts, the agency went even further to ensure there was total separation between the agency as the fiduciary and the individual as the representative of the agency.



This separation allowed Guardians to easily meet their ethical duty under the NGA (and many states') Standards of Practice.

But things have changed…

Within a Guardianship practice there have been many changes that have allowed the banking work to become more computer based. Let’s just run a list of the many ways we now function that were not “allowed” before:

Near universal direct deposit (sometimes mandatory)
Online access to fiduciary accounts (including the ability to transfer funds and pay bills)
Allowing automatic payment of routine bills
Truelink and other debit Cards for “credit type” transactions
Sending money with a computer or phone using various apps.

There have also been significant changes in the banking industry that have impacted the ability and the manner in which guardians work with the banks on fiduciary accounts…yes, there are the good, the bad, and the ugly in these changes

Here's a list of some changes that I've seen…

Issuing debit cards for fiduciary accounts
Online banking for fiduciary accounts
Immediate Name and SSN matching
Paper statements not automatically sent out…and not for free
Documents are held on the system, not in paper files so they are accessible to all branches

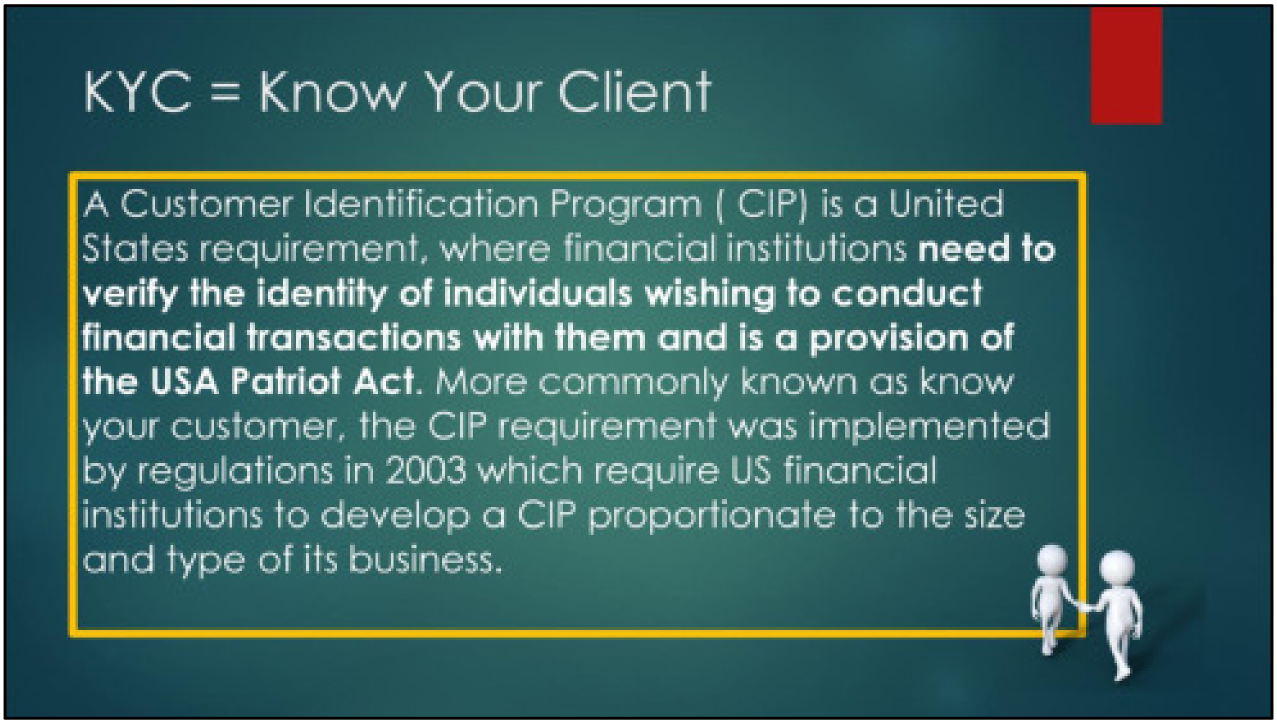
Less functionality at the branch level – they cannot even sign a VA form…
Longer time to allow access, close, or open accounts in guardianship situations
Stricter adherence to bank policy (some of which change without notice)
Back office changes to transactions (with notice a week or so later)

Monitoring of banking activity by outside parties (judgment creditors and financial scammers)

Complete uselessness of the telephone services center – let me tell you about a Key Bank phone call or the issue with Vanguard “security” screen

Refusal to guardianship accounts at all – Key Bank and OCCU (because of the inability to monitor LOGs without human involvement)

These are just some of the changes that impact how guardians experience everyday banking these days…but what might be the really ugly change is behind the scenes…



One of the new internal guidelines for banks (and also for some larger fiduciary agencies) is KYC - know your customer.

The know your customer or know your client guidelines in financial services requires that professionals make an effort to verify the identity, suitability, and risks involved with maintaining a business relationship. The term can also refer to the bank regulations and anti-money laundering regulations that govern these activities. KYC processes are also employed by companies of all sizes for the purpose of ensuring their proposed customers, agents, consultants, or distributors are anti-bribery compliant, and are actually who they claim to be. Banks, insurers, export creditors and other financial institutions are increasingly demanding that customers provide detailed due diligence information. Initially, these regulations were imposed only on the financial institutions but now the non-financial industry, fintech, virtual assets dealers, and even the non-profit organizations are liable to oblige.

So that’s the formal statement…but what does it really mean?

As a side note: If you want to search for more information on how these new rules came to be, you can check out these three regulations…

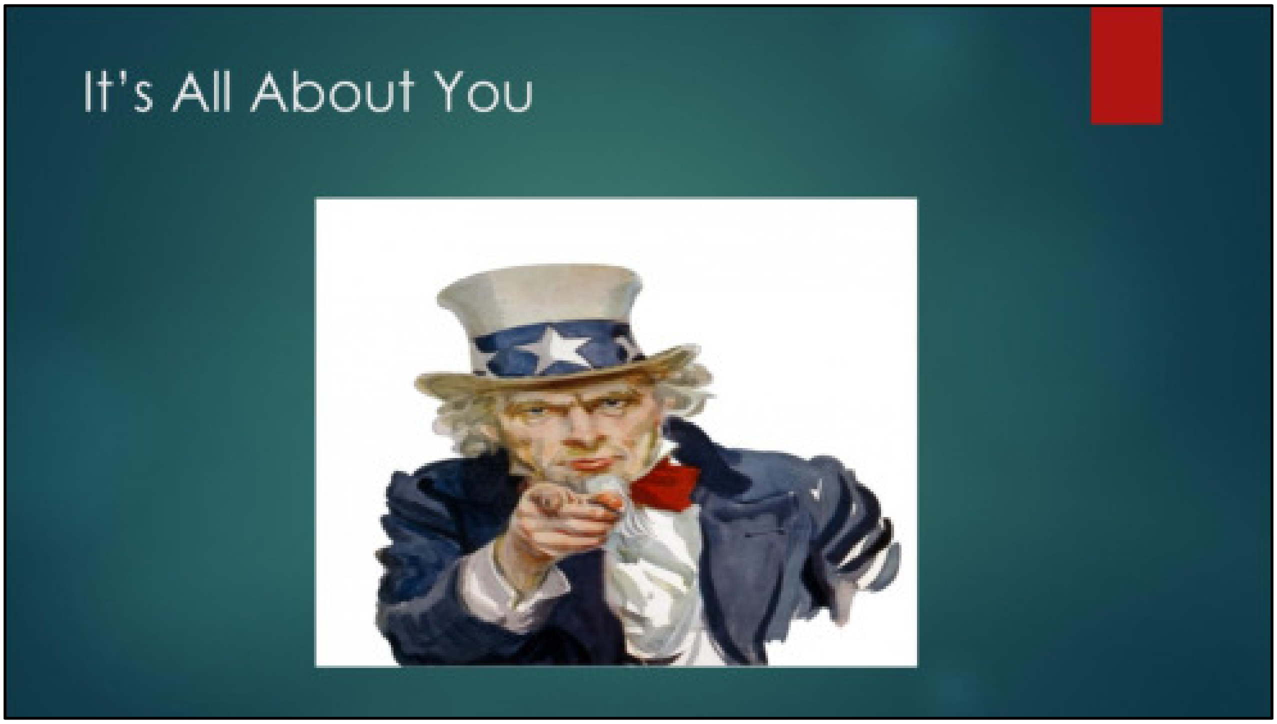
PATRIOT ACT - Section 326: Verification of Identification
Prescribes regulations establishing minimum standards for financial institutions and their customers regarding the identity of a customer that shall apply with the opening of an account at the financial institution.

A Customer Identification Program (CIP) is a United States requirement, where financial institutions **need to verify the identity of individuals wishing to conduct financial transactions with them and is a provision of the USA Patriot Act**. More commonly known as know your customer, the CIP requirement was implemented by regulations in 2003 which require US financial institutions to develop a CIP proportionate to the size and type of its business.

FINRA Rule 2090 requires broker-dealers and their representatives to retain "essential facts" concerning their customers; these facts include the information

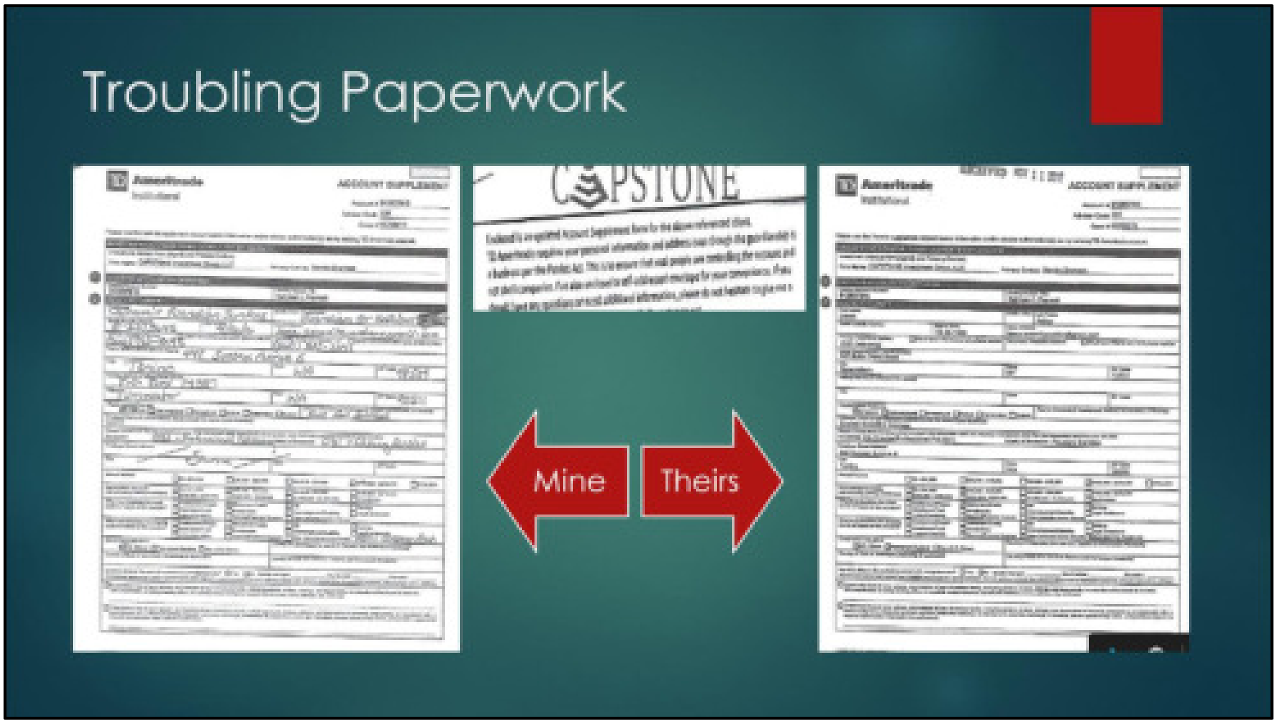
that allows representatives to:
Effectively service the customer’s account;
Act in accordance with any special handling instructions for the account;
Understand the authority of each person acting on behalf of the customer, and
Comply with applicable laws, regulations and rules.

Rule 405 NYSE codification of "know your customer" **rules**, which require that a customer's situation is suitable for any investment being made.



The real impact of the know your client rule has been that Guardian can no longer adhere to the strict separation between themselves and their clients when it comes to banking.

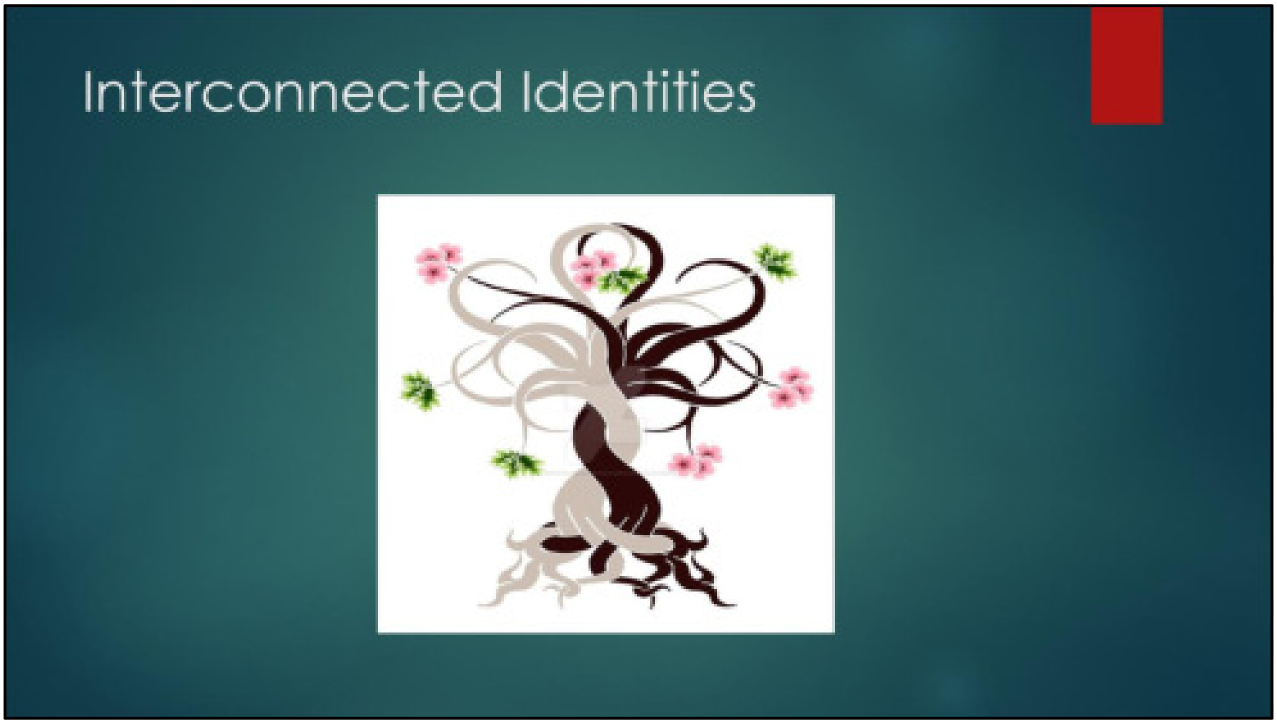
Under KYC, the bank will expect the Guardian to provide all of the GUARDIAN'S PERSONAL information in order to open the account. Even for agencies, the bank will ask the person designated as the account signer to also provide their personal name, address, date of birth and SSN. This information will be considered identifying information for the account…and yes, it means that when you ask the bank about the client's account and they ask for the last 4 of the SSN on the account…that will be the GUARDIAN's SSN.



It also means that paperwork generated for transactions on the account might show the Guardian personally as the "client".

It's difficult to read, but note the example on the slide:

A couple years ago, I was closing an IRA for a guardianship client. I completed the paperwork as I normally would – client name, by agency, guardian, with all the company information…4 months later it came back with a cover letter and the form completed by the broker managing the IRA…the form showed me as the owner at my home address. By this time, getting funds was critical; doing the way I thought would be correct became an argument we didn't have time for!



Another impact that combines banking changes and know your client is that all accounts are interconnected in the online sphere. If a client has other accounts at the bank you use for fiduciary accounts…those accounts are all going to show up under the online user profile you create…maybe under the online user profile they create too. It is on the bank to ensure a client cannot access a fiduciary account in error…but the system is not perfect. If a client calls to change "their" address...well, you can guess where the next statement went…

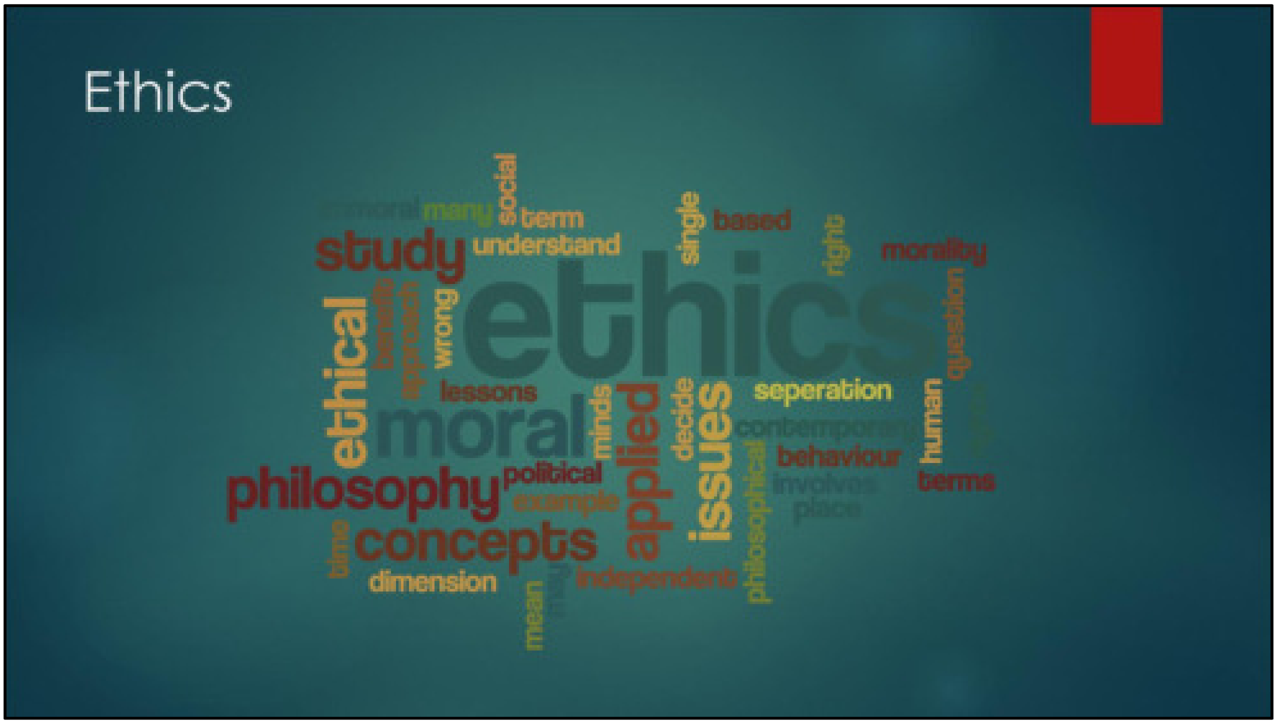
But, its not just the client that gets connected. Yup, that credit card you have at Chase Bank is going to show up right below your client's Chance Bank Checking account. As soon as the bank adds your identification information to an account, it becomes forever linked to the user profile that initially used that ID.

Now, in the fiduciary world, most Guardian's have their own finances in good order and would not intentionally do anything inappropriate through this connected online identity.

But imagine that something goes wrong, and the bank feels compelled to protect their interest…isn't it possible the bank could use the client's money to pay your overdue credit card payment?

I have only hypothesized on this aspect because I can gratefully say nothing like this has ever happened in my practice. But, it does concern me that there is no way to disconnect our personal financial identity from our client's financial affairs anymore.

But, this is where I think it brings up the ethics issues.



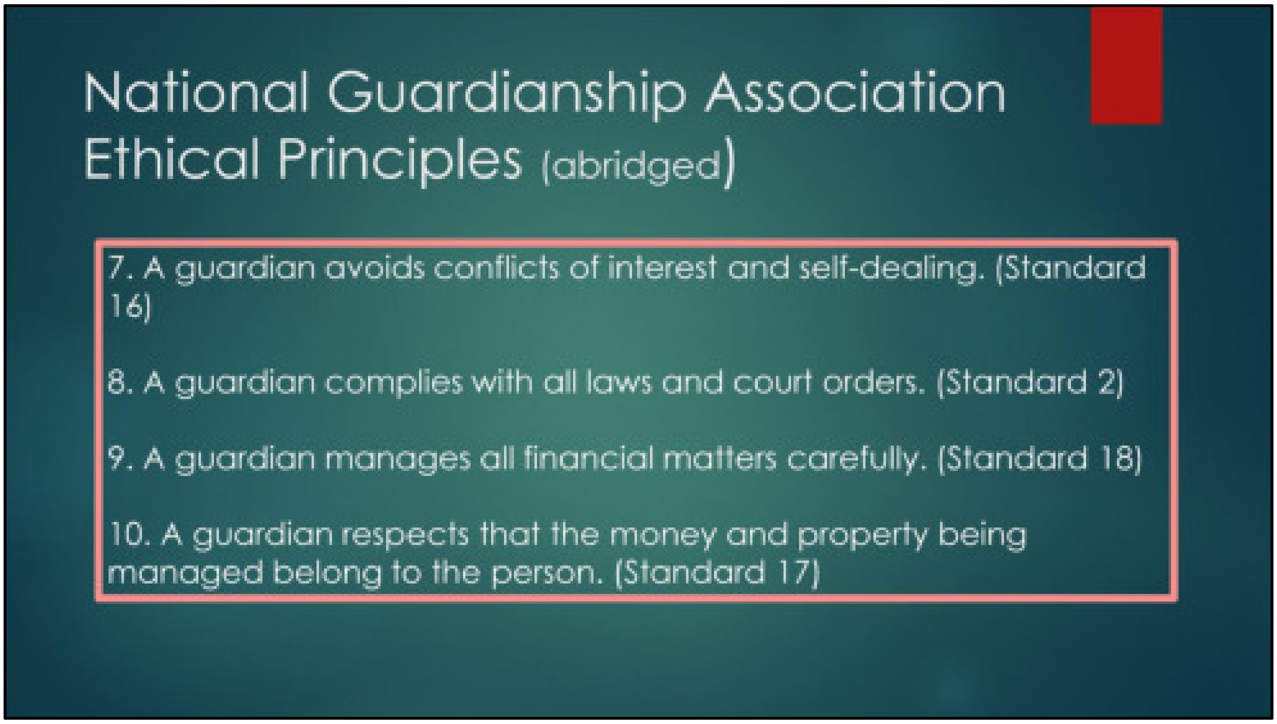
There are many definitions for the term ethics

Ethics in business can be defined as: norms, values, ethical, and unethical practices are the principles that guide a business.

Legal ethical standards are those company policies put in place that are based on laws, rules and regulations that come from government or regulatory bodies.

5 Ethical Standards of Fiduciary Duty
Transparency.
Integrity.
Conflict of Interest.
Due Diligence.
Ownership.

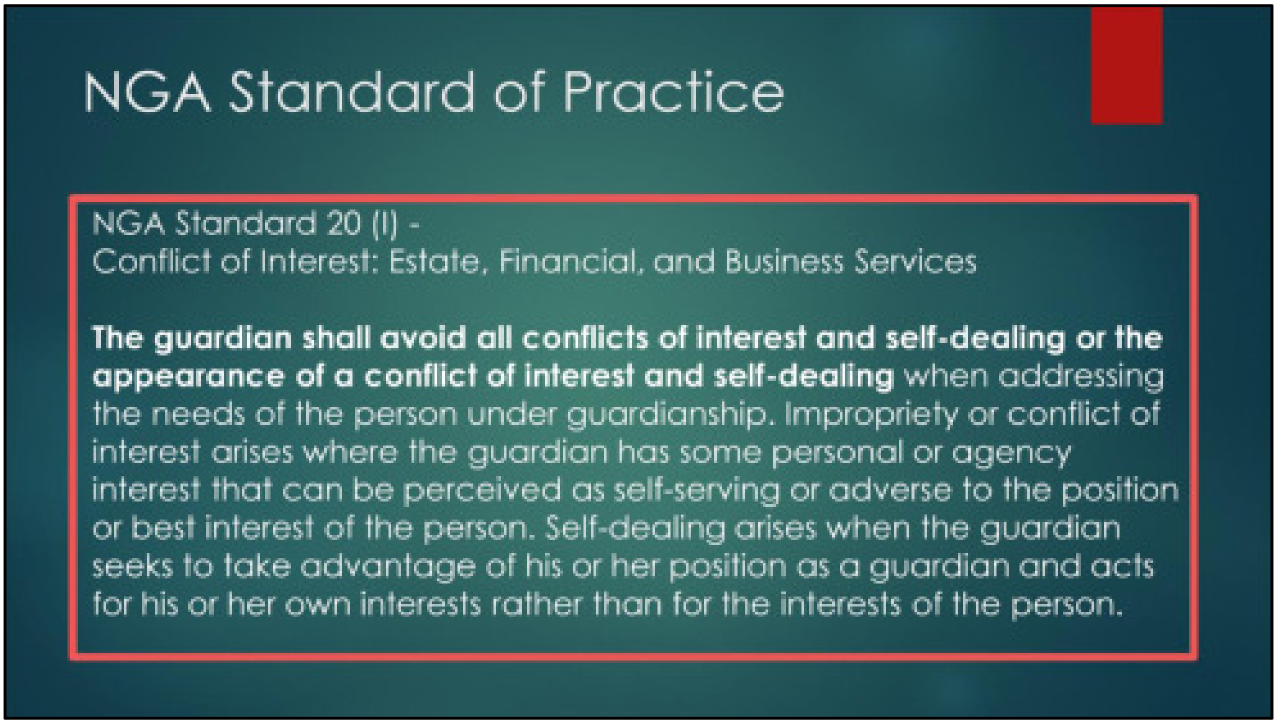
Ethics is proactive, rather than reactive as compliance is. Our personal values system, including our character, values and core principles, guide us when we make decisions.



In Guardianship practice ethics is ever present and guardians get their ethical guidance from the NGA and some states regulatory or associative organizations.

Here are the NGA's Ethical Principles as relate to financial actions by guardians…

Note one of those ethical principles is avoiding conflicts of interest

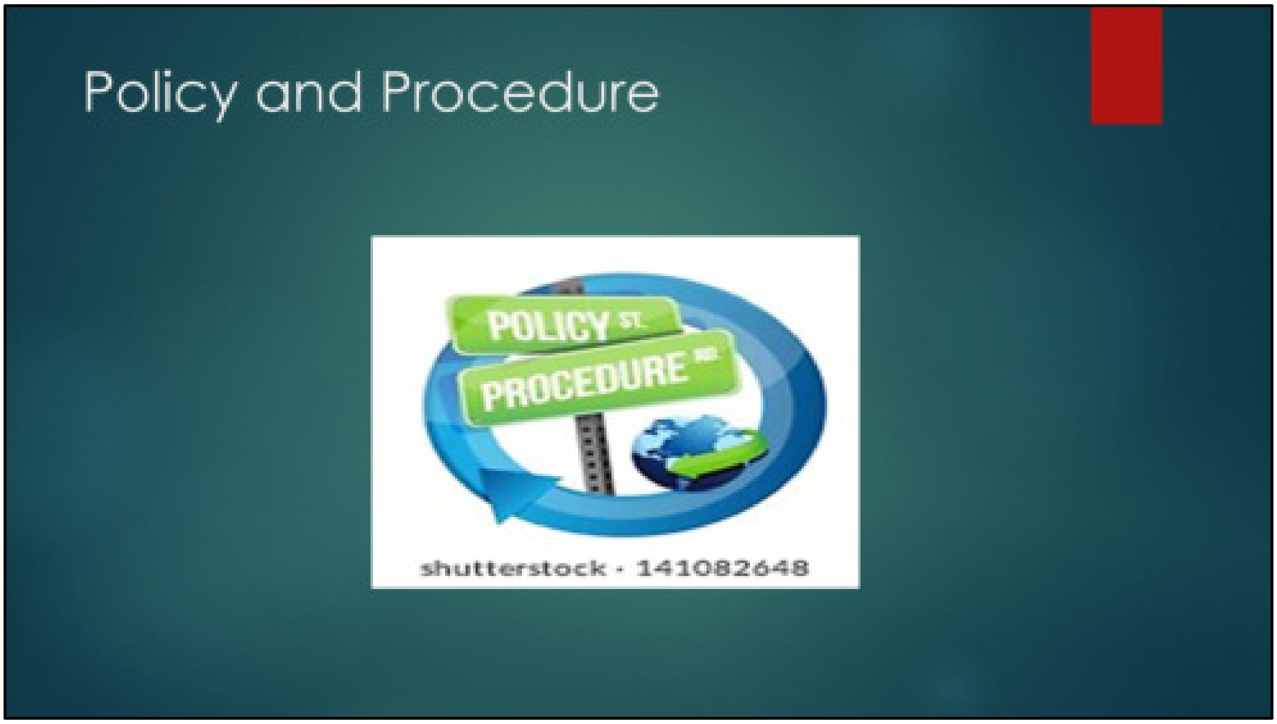


So here is the NGA Standard of Practice on Conflict of Interest

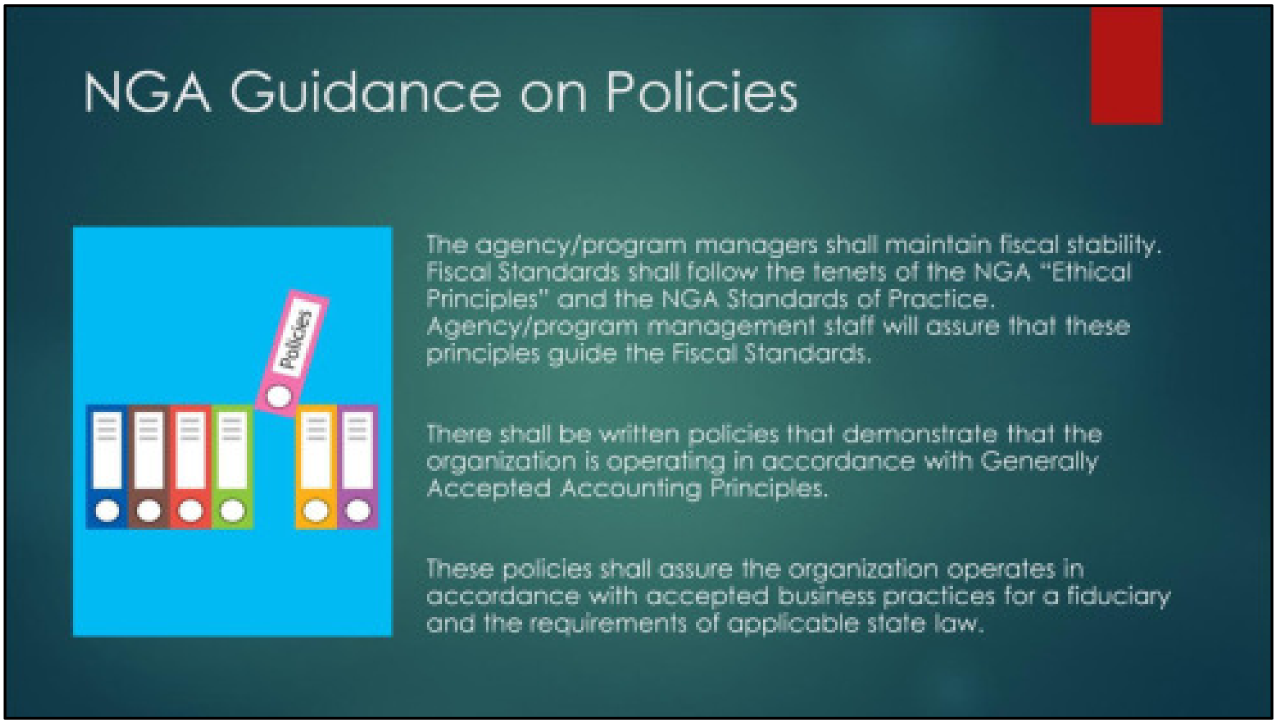
For Guardians these changes to the banking compliance rules have meant changes in practice that have bumped up against the need to comply with the ethics of the industry.

So what can a Guardian do???

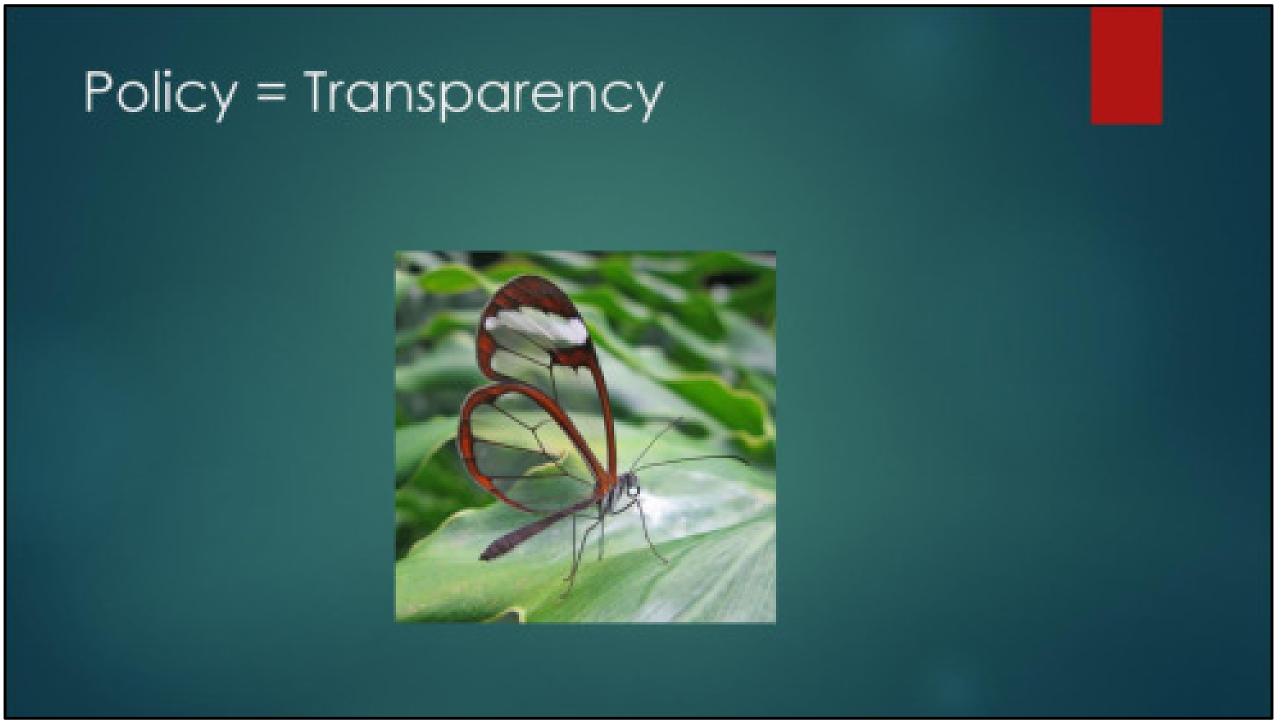
Adapt and embrace the change finding a way to work within the new norms.



The best way for a guardianship practice to do this is to create policies and procedures that acknowledge the new rules of compliance for outside entities and set guidelines for how the guardian and agency staff will act under those compliance rules. These policies and procedures will become the guardian's way of monitoring compliance and ensuring that the ethical concerns are addressed.



You can find NGA guidance on policies and procedures under the standards of practice section of the website.

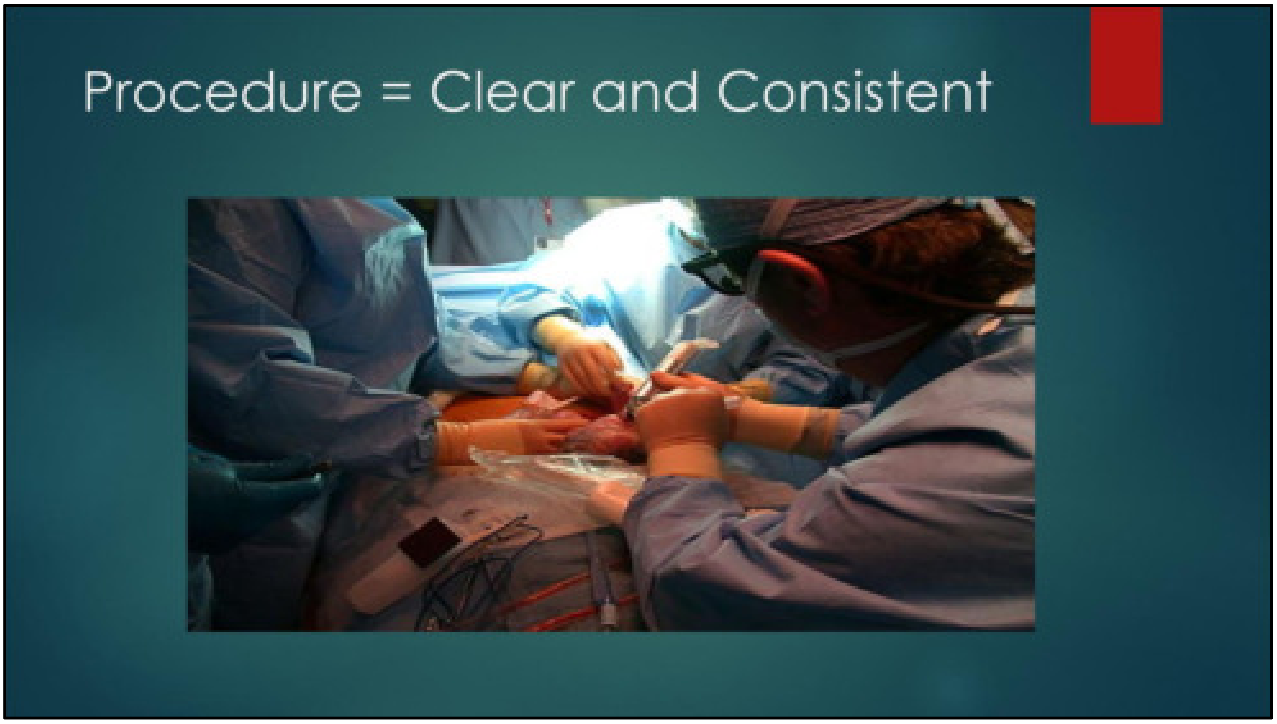


Start by developing a policy that guides your practice in the most general sense of this area.

Since the old days of total separation are over…a policy of complete transparency and full disclosure makes the most sense. This allows the Guardian to inform others that there will be documents and computer-based records in which the personal information of the Guardian is included or maybe even replaces that of the client and that the Guardian has no intention of concealing this, misrepresenting this, or taking advantage of this.

Among other things, the policy should address whose personal information will be used on the client accounts and how that person will ensure their personal finances do not impact the client's financial affairs. The policy can also include issues like opening and closing client accounts, online access to fiduciary accounts, and the use of debit cards, auto payments, and direct deposit to better facilitate client banking.

The policy can expressly state that the Guardian is doing this to comply with rules and regulations and that the Guardian has a procedure to ensure the policy is applied in a consistent manner for all clients.



No not this kind of procedure…

Create a procedure that you or your staff will follow when providing the customer identification information to financial institutions. The procedure can address issues like getting forms reviewed and signed by the person whose personal information is on the account and how the accounts, how financial forms and documents will be completed (and signed), and how to monitor each online presence for signs of problems.

The procedure will be simple or more complex and detailed depending on the size of your practice, the number of different people who might interact with financial institutions, and the additional banking tasks you included in your policy.

In either case, the procedure should be clear and easy to adhere to and the is should be applied consistently so that all financial accounts are handled in the same ethical manner and that the Guardian is always in compliance with the policy of transparency that has been established.

Yes, fiduciary banking these days is a challenge, maybe even a giant hassle. But, Guardians do have to do it and Guardians want to do it in the way that best serves the client without raising concerns with the court and other parties involved in the clients life. Once the Guardian can accept that these changes are the new normal, they can establish good practice with policies and procedures that address and satisfy the new ethics of banking.