

Frequently Asked Questions About Adult Guardianship

Adult Guardianship Self-Help Guide



Public Guardian and Trustee of Yukon

Information Resources – Whitehorse, Yukon

Seniors' Services/Adult Protection

867-456-3946; toll free (in Yukon) 1-800-661-0408, local 3946

Email: hss@gov.yk.ca

Web site: www.hss.gov.yk.ca/seniorservices.php

Location: 100–204 Black Street

Office of the Public Guardian and Trustee

867-667-5366; toll free (in Yukon) 1-800-661-0408, local 5366

Email: publicguardianandtrustee@gov.yk.ca

Web site: www.publicguardianandtrustee.gov.yk.ca

Location: Third Floor Andrew A. Philipsen Law Centre, 2134–2nd Avenue

Yukon Public Law Library

867-667-3086; toll free (in Yukon) 1-800-661-0408, local 3086

Email: yukon.law.library@gov.yk.ca

Web site: www.justice.gov.yk.ca/prog/cs/library.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Registry of the Supreme Court of Yukon

867-667-5937; toll free (in Yukon) 1-800-661-0408, local 5937

Email: courtservices@gov.yk.ca

Web site: www.yukoncourts.ca/courts/supreme.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Non - Government

Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: ypleyt@gmail.com

Web site: www.yplea.com

Law Society of Yukon (Lawyer Referral Service)

867-668-4231; toll free (in Yukon) 1-800-661-0408, local 5937

Email: info@lawsocietyyukon.com

Web site: www.lawsocietyyukon.com

Lawyer Referral Service – half-hour consultation with a lawyer – \$30 incl. GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the **List of Key Words Used in Adult Guardianship** for definitions of any unfamiliar terms used in this guide.

FREQUENTLY ASKED QUESTIONS ABOUT ADULT GUARDIANSHIP

Guardianship allows a family member or close personal support person to look after the affairs of an incapable adult (the "adult") who may require assistance with some or all parts of daily life. A guardianship order under the *Decision Making, Support and Protection to Adults Act* allows the person who becomes a guardian to act on behalf of the adult by making decisions for them in legal, health, financial and personal matters.

The intent of guardianship legislation is to support and empower trusted friends and family members in their attempts to take care of one another, as opposed to having government intervene in family matters. All adults should receive the most effective, but least restrictive and intrusive form of support, assistance, or protection when they are unable to care for themselves or manage their affairs.

Although the purpose of guardianship is focused on meeting the needs of an adult, the role of a guardian can be very fulfilling and rewarding for both the guardian and the adult.

What is an adult guardian?

A guardian under Yukon's *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3* (the "Act") is a person responsible for helping an incapable adult make decisions. The adult may be incapable of managing all or part of their affairs including activities of daily living and other personal matters, health care, legal matters and financial affairs.

Who can be appointed as a guardian?

A person who is 19 years of age or older and who agrees to comply with the duties of a guardian can apply to be appointed. The court looks at whether the applicant is suitable and whether the adult considered the applicant to be in a position of trust before they became incapable. For example, the

applicant may have been named as a representative in a representation agreement or as an executor in the will, been married to the adult for some time, or have a history of joint asset holdings with the adult.

How do I apply to become a guardian?

You will have to make an application to the Supreme Court of Yukon to be appointed as a guardian. For more in-depth information, please read the guides **What You Should Know About Applying to Be a Guardian for an Adult** and **How to Apply for Adult Guardianship**. While you can represent yourself, it is recommended that you hire a lawyer to prepare the application and to represent you in court. A judge will hear your application after you have arranged for a hearing date and filed the required forms with the Supreme Court. If you include various cost and expenses in your application, the judge can decide if they should be paid from the adult's estate.

Can I apply to be a guardian if I live outside Yukon?

Yes. As guardianship may be more difficult when you don't live in the same place as the adult, your guardianship plan should show how you would be able to carry out your duties from a distance.

Am I entitled to a fee for my services as guardian?

If a request for fees is made in the guardianship application, the court will decide if any fees for services can be paid from the adult's estate.

Fees for guardians are permitted by Section 47 of the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*. The fees are set out in Section 17 of the *Adult Protection and Decision-Making Regulation, OIC 2005/78*. Private guardians may charge a maximum of 2.5% on money received, 2.5% on disbursements and 0.5% annually for management fees.

If your role as guardian allows you to obtain legal services for the adult and to instruct counsel on their behalf, legal costs may also be paid from the adult's finances.

Who should I talk to when making a decision on behalf of the adult?

When you are asked to make a decision or provide consent on behalf of an adult, it is appropriate to discuss the issue with the adult, family members, caregivers and any other people who may have significant involvement with the adult. It is recommended that you ask for their views and opinions to determine what is best for the adult. However, you must also keep in mind the need to protect the adult's privacy. Professional advice may also be helpful in some areas of decision making.

What are the limits to making decisions as a guardian?

There are a number of situations which may arise later where a guardian's authority may not be clear. Examples might include: sterilization, end of life decisions or major medical intervention including experimental treatments. In some of these situations the Act allows the guardian to seek advice and direction from the court. The appointment of a guardian is expected to provide "substantial benefit" to an adult. As guardians are accountable to the Supreme Court, a review of the Guardianship Order can occur to deal with any concerns that the court, any interested person or you may have.

Can the person for whom I am guardian make a will?

Can I make or change a will on his or her behalf?

If the adult has what is called "testamentary capacity" – the capability to understand what a will is and what its contents mean, they may be able to make or change a will. A doctor can help determine this capacity, but you should also obtain legal advice. Guardians do not have the authority to make estate planning decisions or to take any action that would alter the distribution of the adult's estate.

Does a Guardianship Order cancel a will made by the adult before the date of the Guardianship Order?

No. If the adult had previously made a valid will, it is not revoked by the appointment of a guardian. This also applies to other arrangements that are intended to take effect on death, such as beneficiary designations under a life insurance policy, pension plan or retirement savings plan.

How is a person deemed capable after being declared incapable?

First, consult with a doctor to confirm that the adult is in fact capable of managing their affairs and/or person. If the doctor determines that they are capable of making their own decisions, you and the adult should speak to a lawyer. A lawyer can make the necessary application to the court to have the adult declared capable.

What happens if the guardian is unable to act?

If a guardian dies, becomes incapable or is for any other reason unable to act, and if there is no alternate guardian who is willing and able to act, the Public Guardian and Trustee may exercise the authority of the guardian until another person is appointed. *It is always a good decision to have an alternate guardian named in the guardianship application.*

What happens when the person for whom I am guardian dies?

The guardian's authority continues until an executor or administrator of the adult's estate is appointed. A guardian will not necessarily be appointed as an executor or administrator. For more information, please see the guides **Your Role as Executor of an Estate** and/or **Duties of an Estate Administrator**.

Where can I get more information?

The Office of the Public Guardian and Trustee and the Yukon Public Legal Education Association (Law Line) can provide legal information only. For legal advice, consult a lawyer.

Legislation about guardianship can be found on the Yukon Government web site:

- *Decision Making, Support and Protection to Adults Act* - <http://www.gov.yk.ca/legislation/acts/dmspa.pdf>
 - *Schedule A, Adult Protection and Decision Making Act* - <http://www.gov.yk.ca/legislation/acts/Aadpr.pdf>
 - *Adult Protection and Decision-Making Regulation, OIC 2005/78* - http://www.gov.yk.ca/legislation/regs/oic2005_078.pdf

The Public Guardian and Trustee web site at www.publicguardianandtrustee.gov.yk.ca contains information and documents on adult guardianship and estates.

NOTES

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Public Guardian and Trustee

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Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca