

How to Apply for Temporary Guardianship of an Adult

Adult Guardianship Self-Help Guide



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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.

HOW TO APPLY FOR TEMPORARY GUARDIANSHIP OF AN ADULT

The Supreme Court will only grant an order appointing a temporary guardian in urgent circumstances where:

- the applicant has reason to believe that the adult is incapable of managing all or part of their financial affairs;
- an order is necessary to protect the adult from financial damage; and
- a delay would not be in the best interests of the adult.

A temporary guardian may not be appointed for more than 180 days. If the appointment is for more than 30 days, the law states that "the court shall give directions for compliance with the process for applying for guardianship."

If you are unsure about which type of guardianship might apply, please see the guide **What You Should Know About Applying to be a Guardian for an Adult** and the chart that compares Temporary Guardianship Orders and Guardianship Orders.

There are two ways to proceed if you have decided to apply for temporary guardianship of an adult.

1. You can prepare the application yourself by using this guide. It is designed to assist people who wish to make an application for guardianship on their own. It is always recommended that you consult a lawyer.
2. You can hire a lawyer to prepare the application on your behalf. If you do not have a lawyer and would like to obtain one, contact Legal Aid or the Yukon Law Society and they will provide you with the names of lawyers in your community who specialize in this area of practice.

This guide provides information on the documents that are required to be filed with the Supreme Court when making a **Temporary Guardianship Application** as well as instructions for their completion.

Applying for a Temporary Guardianship Order and costs

The application form that must be prepared and the various documents required to be included in the application may have preparation costs. You can ask the court to have these costs reimbursed from the adult's assets.

For example, the Supreme Court requires that a written opinion from a medical practitioner (doctor) or registered nurse be included with the application. If there is a charge for preparing the opinion, you may include it in the cost of preparing your application.

There may also be costs for photocopying documents. These costs may be reimbursed from the adult's assets if a Temporary Guardianship Order is granted and the court directs that you be reimbursed. You must ask for reimbursement of costs on your application and at the court hearing.

The court may also order that the guardian be reimbursed from the adult's assets for reasonable expenses incurred in performing the duties or exercising the authority under the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act*. Be sure to include a request for reimbursement of expenses on your application and at the court hearing.

Getting organized

Keep all your documents and papers in a file as you work through the process. Please type or print documents and ensure they are neat and legible. As these are legal documents that will be reviewed by the court, it is important to ensure the documents appear tidy and professional.

Complete the forms

First of all, you will need to fill out the **Temporary Guardianship Application** (Form 3T) as well as Forms 4T and 5T. You will also need to include the medical opinion with the application form.

You can obtain the forms from the Public Guardian and Trustee (PGT) Office or the PGT adult guardianship web page at <http://www.publicguardianandtrustee.gov.yk.ca/adultguardianship.html>.

You can fill the forms out on the computer, but be sure to save each document needed for the application process and print two copies of each document. The clerk may ask you to revise the wording on your forms before filing them in court. If you have any questions about what kind of information is required and in what format, it is a good idea to check with the clerk before you present your documents for filing in court.

Filing with the court registry

Once you have completed the forms, contact the Trial Coordinator in Whitehorse at 867-667-3442 (toll-free from within Yukon 1-800-661-0408 extension 3442) to obtain a hearing date and time. Enter this information in the space provided on the front page of Form 3T.

Make copies of the completed **Temporary Guardianship Application** (Form 3T) and Forms 4T and 5T. Copy the medical opinion and enclose the original with the application. If there are any documents in which the adult has stated their wishes about the choice of a guardian, they should be enclosed with Form 3T and also copied. Please see instructions in the next section below about the number of copies required.

Take all your original documents and copies to the court registry in Whitehorse for filing with the Supreme Court of Yukon. (If you live outside Whitehorse, contact the clerk about sending in your documents by mail or fax.) The court registry will stamp all of the documents and copies with the date of filing. You will be charged a filing fee that you can ask the court to have reimbursed from the adult's assets.

The documents have a space for a Supreme Court file number (S.C. No.) at the top of the page. The clerk will assign and stamp the file number on your guardianship forms. It is up to you to write this same file number on all future documents.

The clerk will file the originals and give the copies back to you so that you can keep one set for your records and serve copies on the adult, the PGT Office and the Adult Protection Unit in the Department of Health and Social Services.

Copies and Affidavits of Service

You will need to make a copy of **each** document for your records, one copy for each person you are serving, and one copy will need to be attached as an exhibit for each Affidavit of Service (Form 9T). You can find the Affidavit of Service on the PGT web site.

Wherever possible, you should serve the documents in person on all parties at least seven days before the date set for the hearing. Requirements for service are set out in Supreme Court Practice Direction #55, found at http://www.yukoncourts.ca/pdf/pd_55_temporary_guardianship_application.pdf and also at the end of this guide.

After you have served all the parties you are required to serve, complete and swear an Affidavit of Service by stating who you served, where and when, and with what documents. If you serve the documents yourself, you will only need one Affidavit of Service. You will need the original and five copies of each document to serve the adult, the PGT Office and the Adult Protection Unit in the Department of Health and Social Services:

- original for the court (clerk places on the court file)
- one copy for your records
- three copies (one copy to give to each person or office served)
- one copy for the Affidavit of Service for all the people you serve

If you ask the Sheriff or some other office or person to serve the documents, you will need the original and seven copies of each document to serve the adult, the PGT Office and the Adult Protection Unit in the Department of Health and Social Services:

- original for the court (clerk places on the court file)
- one copy for your records
- three copies (one copy to give to each person served)
- three copies (one copy for each Affidavit of Service for all the people served)

File the affidavit(s) and supporting documents with the Supreme Court before the date of the hearing so that the court knows that you have complied with the requirements for service.

Ready to begin

Read the rest of this guide carefully before you start working on your application. The checklist contains the steps you must perform to prepare your documents, appear at the hearing and prepare an order based on the court's direction.

INITIAL APPLICATION FOR TEMPORARY GUARDIANSHIP OF AN ADULT - CHECKLIST

Print this checklist to help you follow the steps in completing your guardianship application process. Please note that many of these documents must be sworn before a Notary Public.

PHASE I – Complete Temporary Guardianship Forms	
<input type="checkbox"/>	Complete Form 3T – Temporary Guardianship Application . This is a summary that includes information about you as the proposed guardian, information about the adult, and the guardianship duties being requested. You must also enclose a written opinion about the adult from a medical practitioner (doctor) or registered nurse.
<input type="checkbox"/>	Complete Form 4T - Applicant’s Affidavit . This is a statement sworn by you (the proposed guardian) which states that the adult requires a guardian.
<input type="checkbox"/>	Complete Form 5T - Statement of Proposed Temporary Guardian . This provides details about your suitability to be a guardian and your awareness of the duties and limitations surrounding your possible appointment.
PHASE II – Obtain a Court Date and File Your Application	
<input type="checkbox"/>	Call the Trial Coordinator about available hearing dates for the application. (If you live outside Whitehorse you can ask to have the application heard by phone.) Print the hearing date on Form 3T and make enough copies for yourself and for serving the adult, the PGT Office and the Adult Protection Unit of the Department of Health and Social Services.
<input type="checkbox"/>	Speak to the clerk before the date of the hearing about what you need to do if you would like to appear by phone.
<input type="checkbox"/>	Take or send the original and copies of the required forms to the court registry on the ground floor of the Law Courts building in Whitehorse. The clerk will stamp both the original forms and the copies with the file number and date of filing and will return the copies to you. There is a fee to open a file in the Supreme Court.
<input type="checkbox"/>	Your application is now filed and your hearing date is now set.

PHASE III – Serve Documents Before the Hearing

- If possible, at least seven days prior to the hearing of the application, serve the documents yourself or arrange to serve copies of the filed Temporary Guardianship Application (Form 3T) and the filed Forms 4T and 5T on:
- the adult who is the subject of the application;
 - the Public Guardian and Trustee; and
 - the Adult Protection Unit of the Department of Health and Social Services.

- Complete and swear an Affidavit of Service for all the parties you serve if you serve them yourself, and file the affidavit and supporting documents with the Supreme Court before the hearing date. If you have someone else serve the documents, you must provide them with a blank Affidavit of Service and supporting documents for each person they serve. You can obtain the Affidavit of Service (Form 9T) from the PGT web site. Requirements for service follow this checklist.

PHASE IV – Court Hearing and Follow-up

- On your hearing date, go to the court registry if you are appearing in person. Check with the clerk to find out the courtroom where your application will be heard. Arrive at least 15 minutes early to ensure your materials are organized and that you are prepared to speak to the judge. The judge in Supreme Court is referred to as “Your Honour”.

- If you are appearing by phone, call the phone number the clerk gave you at the appropriate time.

- At the end of the hearing, the court may grant your application for a Temporary Guardianship Order or make any order that the judge believes is fair.

- Produce an order based on the court’s direction and submit the original and copies to the court registry for approval. The clerk will return all copies to you. Use Form 44 from the Supreme Court web site at www.yukoncourts.ca.

- If the court orders that you be appointed for more than 30 days, you may also be directed to comply with the same process that is used to apply for permanent guardianship of an adult. You can obtain the necessary forms from the PGT Office or from the PGT web site. You will need to complete Forms 3 to 5 and Form 7. You will need to hire a qualified assessor to complete Form 6. (Refer to the guide **How to Apply for Adult Guardianship**.)

REQUIREMENTS FOR SERVICE OF DOCUMENTS (SUPREME COURT PRACTICE DIRECTION #55)

Parties to be served

There are no requirements set out in legislation for service of an application for temporary guardianship. However, Supreme Court Practice Direction #55 contains provisions about service of such applications:

Temporary guardianship applications for incapable adults may be made pursuant to s. 35 of the *Adult Protection and Decision Making Act*. Under s. 35(2), the applicant is not required to file the assessment required under s. 30(1) and, under s. 35(3), the application is not required to be served on any person. Under s. 35(10), where the temporary guardianship is for more than 30 days, the court shall give directions for compliance with s. 30.

As a temporary guardianship order is a serious intrusion on the financial independence of an adult, it will be the practice of this court to require service of a temporary guardianship application upon the adult who is the subject of the application as well as the Public Guardian and Trustee and the Adult Protection Unit of the Government of Yukon.

The temporary guardianship application should always include a written opinion from a medical practitioner or registered nurse.

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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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Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca