

How Does a Guardian Make Financial Decisions?

FACT SHEET #11

The Guardianship Order granted by the court will state the specific areas of authority granted to you as the guardian. As a guardian, you have been granted the authority “to do anything that is necessary to preserve and protect the adult from financial damage or loss.”

The types of financial matters that may involve a guardian include:

- instructing any savings or financial institution where the incapable adult (“the adult”) has an account that no funds are to be withdrawn from the account until further notice;
- directing any source of the adult’s income to send the income to an account as instructed by the guardian; and
- stopping any sale of the adult’s real or personal property or directing that the proceeds be paid into court.

The Supreme Court may authorize a guardian to take any actions that the adult could do in connection with their financial affairs, including:

- settling the adult’s liabilities;
- making investments;
- granting or accepting leases of real or personal property on behalf of the adult; or
- carrying on the adult’s business.

The *Trustee Act* applies to a guardian who makes investments on behalf of an adult.

Responsibilities

Being a guardian is a responsible job. As guardian, you must take complete charge of another adult’s finances. However, you are also expected to consider and respect the wishes of the adult for whom you are acting as guardian. You have both wide powers and extensive responsibilities. You must manage the adult’s income, conduct all banking, pay all expenses, budget for the adult and (if applicable) his or her family, purchase clothing and other personal items and file all income tax returns.

If you feel that it is in the adult’s best interests for you to buy or sell property, or operate any existing businesses, the Guardianship Order should clearly authorize you to do so. If it does not, you will have to apply to the court to obtain a further court order before you can engage in these activities.

It is very important to set up proper record-keeping procedures as soon as you are appointed. Within six months of being appointed, you must submit a detailed accounting of the estate. Future reporting intervals may then be assigned by the court.

Duties and liabilities

Your responsibility as guardian is important. You are personally responsible for any funds or assets that are mismanaged, even if the person is your spouse.

The Guardianship Order that appoints you as guardian is your source of authority. It may set out certain areas of authority or certain restrictions on your power and may require you to post security, such as a bond.

Payment

As guardian, you may ask the court to order that you be:

- paid for the costs of your guardianship application out of the adult's income or assets;
- paid for expenses and disbursements from the adult's income and assets according to regulations set out in OIC 2005/78 under the *Decision Making, Support and Protection to Adults Act, Schedule A*; and
- reimbursed from the adult's income and assets for "reasonable expenses properly incurred in performing the duties or exercising the authority" given in your Guardianship Order.

Are there financial decisions that a guardian cannot make?

Without prior permission of the Supreme Court of Yukon, a guardian does not have the authority to:

- dispose of the adult's business or real property;
- grant or accept a lease of real or personal property on the adult's behalf for a period longer than 3 years;
- dispose of any of the adult's personal property that is worth more than the amount prescribed by the regulations; and
- invest the adult's assets in investments that a trustee is not authorized to make under the *Trustee Act*.

Some financial decisions are difficult. You may need to consult a lawyer or accountant or to ask community resources such as the Yukon Public Legal Education Association or the Law Society of Yukon's Lawyer Referral Service for help in this area.

This area of authority of a guardian is referred to in Sections 35(7)-(8), 38(2)-(4), 43(2)-(3), 45(1)(a)-(f) and 47 of the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*.

This fact sheet is one in a series to provide assistance and information regarding guardianship under the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*. This legislation can be found at <http://www.gov.yk.ca/legislation/acts/Aadpr.pdf>.

FOR MORE INFORMATION, CONTACT

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