

Considering Guardianship of an Adult

Office of the Yukon Public Guardian and Trustee

INTRODUCTION

This booklet is for persons who are considering applying to court to have a guardian appointed for an adult who they believe is incapable of handling all or part of their own affairs. It provides general information about making a decision to proceed with an application to the court for guardianship.

Part 3 of the *Adult Protection and Decision Making Act* sets out the necessary legal process for granting powers of decision-making to a guardian. A person 19 years of age or older may be the subject of a guardianship order under the Act.

Any person living in the Yukon over the age of 19 who meets the criteria set out in the Act can have a legal decision maker (guardian) appointed by the court.

The appointment of a guardian for an adult who is incapable of managing his or her own affairs must be in the best interest of that adult and result in a substantial benefit to him or her. The guardian is

accountable to the court for decisions made on behalf of the adult.

WHAT IS GUARDIANSHIP

Guardianship is a legal process which gives a person the legal authority and responsibility to manage the affairs of an adult on that adult's behalf and to care for, assist and protect that adult. 'Affairs' include activities of daily living and other personal matters, health care, legal matters and financial affairs.

The decision to apply for guardianship of an adult must be made carefully.

Before applying for guardianship, you should try to determine if a power of attorney, a directive, a supported decision-making agreement or a representation agreement is or was in place with respect to the proposed adult and what it says. The court needs to be satisfied that forms of support and assistance less intrusive than guardianship have been tried or carefully considered before appointing a guardian.

An adult may have a guardian appointed to handle all or only part of his or her affairs. For example, a guardian may be appointed to handle the financial affairs of an adult while that adult continues to make his or her own decisions with respect to daily living and other personal matters.

One guardian (principal guardian) can be appointed to handle both the personal and financial affairs of an

adult An alternate guardian, as well as associate guardians for specific areas of decision- making, may also be appointed by the court.

In urgent circumstances a temporary guardian may be appointed to deal with the financial affairs of an adult where the adult is incapable of handling such affairs and an order is necessary to protect the adult from financial damage or loss.

The *Act* provides for the appointment of the Public Guardian and Trustee in rare circumstances for those adults who do not have family members, friends or any other interested person who might apply to become a guardian. The Public Guardian and Trustee must follow the same application procedures as any other guardian.

IS A GUARDIAN NECESSARY? FACTORS WHEN CONSIDERING GUARDIANSHIP

The decision to apply for guardianship may be a difficult choice. It may be helpful to consider the following points when you discuss an adult's need for a guardian.

- Does the adult understand the consequences of decisions he or she makes?
- Can he or she make reasonable decisions?
- Is the adult's health care treatment or services appropriate to his or her needs?
- Is the adult at risk of being taken advantage of?

- Can the adult look after his or her day-to-day needs such as dress, diet, personal care, etc.?
- Is guardianship the most effective way of meeting the adult's needs?
- What are the adult's preferences?
- Is the adult's accommodation appropriate for him or her?
- Are the person's adult's contacts and activities appropriate?
- Is the adult able to work?
- Does he or she wish to work?
- Is the adult aware of his or her educational, vocational, or other training needs?
- Does the adult know his or her legal rights?
- Are the adult's values and beliefs being adequately represented?
- Has a directive, a power of attorney, a supported decision-making agreement or a representation agreement already been granted or entered into by the adult who appoints a decision maker and gives instructions about personal decisions to be made for him or her in the future?

WHO CAN APPLY TO BECOME A GUARDIAN?

A guardian is usually a person who is a relative or close friend of the adult who is the subject of the guardianship order. You do not have to be a lawyer or someone who has expertise in business or health matters to be a guardian.

Being a guardian means you are legally authorized to manage all or part of the affairs of an adult who has been found by the court to be incapable of managing his or her own affairs and in need of the care, protection and assistance of a guardian. You assist in making or you make decisions for that adult, monitor the services received, advocate for services needed and ensure that the adult's rights are protected.

The court may appoint you as an adult's guardian if you:

- are 19 years of age or over;
- agree to comply with the duties of a guardian as set out in the Act.

The duties of a guardian include:

- act honestly and in good faith;
- exercise care, diligence, and skill of a reasonably prudent person; act within the authority granted in the court order; and
- encourage and assist the adult to care for and, and make decisions about the adult and manage or participate in the adult's affairs;
- in the court's opinion, are suitable to act as the adult's guardian.

Choosing to become a guardian for an adult is a serious responsibility. Adults can be vulnerable as a result of a mental disability. You or your family may be concerned that you are in some way taking away the rights of the adult.

However, guardianship allows that adult's rights to be exercised by an accountable person (the guardian)

who can support the adult while at the same time ensuring that he or she receives the same legal entitlements as those enjoyed by each of us.

CHOOSING TO BE A GUARDIAN

You and your family may wish to consider the following when you are trying to decide who will be the most appropriate person to apply for guardianship.

- Who is able and willing to maintain regular contact with the adult?
- Who lives closest to the adult?
- Who does the adult trust?
- Who has a close relationship with the adult?

DECIDING APPROPRIATE AREAS OF GUARDIANSHIP

A guardianship order is made after a careful assessment of the needs and capabilities of the adult. The court must have as much information as possible in order to determine if guardianship is in an adult's best interest and will result in substantial benefit to him or her.

An assessor's report must be filed with an application for appointment of a guardian in which the assessor states that the adult is incapable of managing his or

her own affairs, the likelihood of change with respect to such incapability, that some or all of the adult's affairs need to be managed by a guardian and that the adult will benefit from the appointment of a guardian.

The court may order an adult who is the proposed subject of a guardianship application to submit to an examination by an assessor for the purposes of preparation of an assessor's report. A list of approved assessors is available through the Public Guardian and Trustee Office.

Specific information is needed about the adult's inability to handle his or her own affairs because the applicant needs to establish that the adult needs a guardian.

For example, family members or the adult's physician may notice that an elderly person seems to be having difficulty in certain areas, such as arranging or accepting support services in their home or getting to health care appointments. Guardianship could be granted to assist the person in these areas.

Another example, a developmentally disabled person who becomes 19 years of age and his or her parents are no longer in a legal position to make the kinds of decisions they have always made for him or her. The parents may specify the areas they feel they must continue to be responsible for.

MAKING DECISIONS IN THOSE AREAS

A Guardian is expected to exercise his or her power and authority in a manner that utilizes the least restrictive alternative when a choice must be made.

A guardianship order may authorize a guardian to make decisions with respect to many aspects of an adult's life including;

- where the adult will live;
- personal contacts;
- social activities;
- employment;
- education and training;
- licences and permits;
- legal matters excluding finances;
- health care;
- daily living routines;
- financial matters.

A guardian's responsibilities are based on the needs of the adult. As each adult's needs and capabilities differ, so too do the responsibilities of each guardian.

APPOINTING THE ALTERNATE GUARDIAN

The *Adult Protection and Decision Making Act* also allows for the appointment of an alternate guardian. For example, you may wish to seek the appointment of an alternate guardian to assume duties if you are on holidays, in the event of your death, or for any other reason you are unable to act.

An alternate guardian should be chosen carefully since both the guardian and the alternate guardian should be familiar with the adult's needs and circumstances. Both people need to be in a good position to make effective decisions.

If an alternate is not appointed and you die, become incapable, or for any other reason you are unable to act, the Public Guardian and Trustee may exercise the authority of the guardian until a new guardian is appointed pursuant to the Act.

APPOINTING ASSOCIATE GUARDIANS

Associate guardians may be appointed to work with the principal guardian and take on specific duties i.e. financial.

APPLYING FOR GUARDIANSHIP

If you have decided to apply for guardianship of an adult, there are two ways to proceed.

You can prepare the application yourself by using a free guide. Free guides are available from the Public Guardian and Trustee Office. This guide is not legal advice and is designed for use by people who wish to make an application for guardianship without hiring a lawyer. It is always wise to consult a lawyer.

The free guide includes a copy of an application form and the necessary related documents that are required by the Act to be filed with the Supreme Court when making a guardianship application as well as step-by-step instructions for their completion.

The alternative is to hire a lawyer to prepare the application on your behalf. If you do not have a lawyer and would like to have one, contact Legal Aid or the Yukon Law Society and they will provide you with the names of lawyers in your community who are interested in this area of practice.

In very special circumstances, an emergency temporary guardianship order can be obtained. A lawyer can also assist you with this process.

APPLYING FOR A GUARDIANSHIP ORDER AND THE COSTS

The application forms that must be prepared and the various documents required to be included in the application may have preparation costs.

An example is that an assessor is required to prepare an incapability assessment. A roster of trained assessors is available by fax and at the Public Guardian and Trustee Office. It is important to discuss the schedule of costs before the assessor proceeds.

There are also costs for obtaining medical reports, photocopying and filing documents with the court. It is important that you discuss costs with your lawyer before you proceed.

Costs of a guardianship application, including assessor fees, may be reimbursed from the adult's assets if a guardianship order is granted and the court so directs.

The costs associated with the preparation of the assessment report for guardianship can sometimes pose a severe hardship for individuals or families. Should this be the case, you may want to contact the Public Guardian and Trustee Office if you are having difficulties in this area.

The court may also order that the guardian be remunerated from the adult's assets for acting in that capacity and reimbursed for reasonable expenses

properly incurred in performing the duties or exercising the authority given under the Act.

PUBLIC GUARDIAN AND TRUSTEE OFFICE.

You may wish to make an appointment with the Public Guardian and Trustee Office to discuss your decision to make a guardianship application? Appointments with the PGT Office may be booked.

Contact Information

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