

# GUIDE TO APPLYING TO BE GUARDIAN FOR AN ADULT

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## Introduction

This Guide provides information and the Forms that are required, if you are applying to become the guardian of an adult who lives in Yukon.

Your reading of *Considering Guardianship of an Adult* booklet has prepared you to take the next step. If you have decided to apply for guardianship of an adult you will be required to go to Court in Yukon.

This Guide is designed for people who want to know more about the process and are applying for guardianship. You can prepare an application for guardianship yourself by using this Guide and the required forms, or you can hire a lawyer to prepare an application for you.

However, it may be wise to consult a lawyer. You can obtain this Guide and Forms from the Public Guardian and Trustee Office. There are two parts to each Guide. The first part describes the steps you need to follow. The second part contains the court forms that you will need to complete.

## Getting Organized

It is beneficial to have a file so that your documents and papers are kept together as you work through the process. Please type or print; ensuring documents are neat and legible. These are legal documents that will be reviewed by the courts. Therefore, it is important to ensure the documents appear tidy and professional.

You should print two copies of each document needed for the application process. Label one copy a working copy and use that copy to do a rough draft of the document. When you have all your information complete and written on the working copy, transfer it carefully and neatly to your final copy.

## **Filing with Court Registry**

Once you have your documents completed you will take them to the Court Registry Office. The Court Registry will require the original and a copy. The Court Registry in discussion with you will fill in the date of the Guardianship Hearing and stamp both the original and the copy with the date filed. The Court Registry office will keep the original and give you back the copy so that you can make copies to present to those people you have indicated to be served on your guardianship application.

## **Ready to Begin**

Read through the checklist below, the remainder of this Guide, and the attached forms. This will give you an overall view of the application for guardianship process.

Now you are ready for Part One.

# Part One

## Initial Application for Guardianship of an Adult Guide- Checklist

**P**rint this checklist to help you follow the steps in completing your guardianship application process. Please note that all documents must be sworn before A Notary Public.

### PHASE 1

- Complete Form 3- **Guardianship Application**. This is a summary that includes information about you as the proposed guardian, information about the adult, and guardianship duties being requested.
- Complete Form 4-**Applicant's Affidavit**. This states information that results in your view as the proposed guardian of the adult.
- Complete Form 5-**Statement of Proposed Guardian**. This states your suitability to be a guardian and your awareness of the duties and limitations surrounding your possible appointment.
- Form 6- **Incapacity Assessment Report**. This report is completed by an assessor. Information concerning assessors and incapacity assessments is available from the Public Guardian and Trustee Office.
- Complete Form 7-**Preliminary Guardianship Plan**- This is a more in depth report on the duties being sought as the proposed guardian, including whether these duties are for financial personal or both and the range and management of these duties.
- Form 8-Inventory, Account and Subsequent Guardianship Plan*. This must be filed within 6 months of your appointment as principal guardian unless otherwise directed by the court.

- File the original of the above documents (except for Form 8) with the Supreme Court Registry Office 1<sup>st</sup> floor Law Courts Andrew Philipsen law Centre, Whitehorse. The Court Registry will present you with some possible dates for the Hearing, you can accept one and this date will be included at the bottom of page one Form 3. Have a copy of the original with you so the Hearing date and the date filed can be included.
- Your Hearing date is now set.
- Arrange to serve the *Persons to be Served* as set out in the **Guardianship Application** Form 3 (item 4), at least seven days prior to the hearing of the application. These persons are served with the entire package of guardianship application documents. An Affidavit of Service, for you to complete, indicating how and when the persons were served is included in the forms.
- Attend court on set date and time of the Hearing.
- After the Hearing the court may make an order appointing a guardian(s).
- It is the responsibility of the guardianship applicant to produce an Order based on the court's decision and submit it to the Clerk of the Court for signature. Make the number of copies necessary to meet the needs of estate management and submit the original and copies to the Clerk of the Court.

## **Choose the Appropriate Guardianship Option**

**O**n Form 3 you need to decide which guardianship option you believe would work best for the adult. For instance, you might be the sole (principal guardian), you may be part of a joint guardianship arrangement, and you may designate (an) alternate guardian (s). You may wish to include other guardians for specific purposes and assign different powers to different guardians.

- **Guardianship with an Appointed 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.

- **Joint Guardianship**

Being a joint guardian means that you share the role with one or more persons and the Supreme Court will assign specific areas of authority to each guardian. The court will name the guardian who is the principal guardian and the spokesperson for the guardians and may also specify a method for resolving any disputes between or among the guardians.

- **Guardians and Powers**

Your application may request the assignment of different powers to different guardians, or involves other terms and conditions for the exercise of the powers of different guardians. You are required to give particulars for each guardian under Form 3 section 5 “Guardianship Powers being Sought.”

- **Temporary Guardianship**

In urgent circumstances a person may apply to the Supreme Court for an order appointing a temporary guardian where the applicant has reason to believe that the adult is incapable of managing all or part of their financial affairs, and 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 that 180 days and if it is more than 30 days the court shall give directions for compliance with the process for applying for guardianship. A Temporary Guardianship Form is available from the Public Guardian and Trustee Office.

## **Applying for a Guardianship Order and the Costs**

**T**he 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 with the assessor 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.

### **COMPLETE THE FORMS**

**M**ost of the documents have a space for a Supreme Court File Number, S.C. No., at the top of the page. The Clerk of the Court Registry will provide your Court File Number and write it on your Application and Affidavit Guardianship Forms. It is then up to you to write this same number on all of the other documents that have a space for a Court File Number.

## **Part Two**

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See Forms