

What is Guardianship?

Guardianship is a legal Court order which gives an individual (the guardian) the legal authority and responsibility to make or assist in making decisions about (non-financial) personal matters on behalf of another adult. The decision to apply for guardianship is not an easy choice and should be made carefully and thoughtfully.

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?
- Whom does the adult trust?
- Who has a close relationship with the adult?
- Who is able to make informed decisions based on the adult's values, beliefs and best interests?

A proposed legal guardian needs to make an application to be appointed someone's guardian.

Who can be a guardian?

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

When determining whether it would be in the adult's best interests to appoint a guardian, the Court will consider whether the adult's lack of capacity to make decisions about personal matters is likely to expose that adult to harm and whether the benefits of appointing a guardian would outweigh any adverse consequences to the adult.

The Court may appoint you as the adult's guardian if you:

- are 18 years of age or over;
- consent to act as a guardian;
- will act in the adult's best interest;
- will encourage the adult to become, as much as possible, capable of making decisions for

themselves;

- will not allow your interests to conflict with the adult's interests;
- are suitable and able to act as a guardian and will respect the views and wishes of the adult; and
- have the ability to effectively exercise authority about personal matters referred to in the order.

There is no requirement under the *Adult Guardianship and Trusteeship Act (AGTA)* for the guardian to live in Alberta or Canada.

A guardian should be someone who is familiar with the adult's wishes, values, and beliefs. They should have knowledge and understanding of the adult's religious and cultural heritage, as well as preferences and opinions for lifestyle and health care. The guardian must also have a personal concern for the adult's well-being.

Before you apply for guardianship, you will need to know whether the adult has a personal directive and what it says. For most adults, a guardianship application will be unnecessary if there is a valid personal directive in place.

What does a guardian do?

As a guardian, you will be legally authorized to assist in making or to make decisions for the adult, monitor the services received, advocate for services needed and ensure that the adult's rights are protected.

Decision-making authority (the areas in which the private guardian can act) is outlined in the guardianship order. Areas of decision-making authority are:

- the adult's health care;
- where, with whom and under what conditions the adult is to live, either permanently or temporarily;
- with whom the adult may associate;
- the adult's participation in social activities;
- the adult's participation in any educational, vocational or other training;
- the adult's employment;
- the carrying on of any legal proceeding that does not



relate primarily to the financial matters of the adult;

- any other personal matters as the Court considers necessary.

If you do not have the authority to make decisions in a particular area, it means one of two things: either the adult has retained decision-making authority in that area and the matter needs to be referred to the adult for a decision; or another individual has decision-making authority in that area and the matter needs to be referred to the other guardian for the decision.

What if a guardian is no longer needed or a guardian is acting inappropriately?

If a adult or another interested party believes that an adult has regained mental capacity, or questions the actions of a guardian, they can apply to the Court for a review of the guardianship order.

The Court will review the application of guardianship and assess the adult's progress and needs, and the decisions made by the guardian.

The adult, or any other interested person, could also make a complaint under the AGTA by calling 1-888-357-9338.

What is the role of the Public Guardian?

The Public Guardian is a government official who can act as guardian under the AGTA. There are five Public Guardians in Alberta.

Guardianship matters are handled by the Office of the Public Guardian, which is part of Alberta Seniors and Community Supports. The office also assists Albertans in applying for guardianship and provides ongoing support to assist them in their role.

The Office of the Public Guardian has a number of functions under the AGTA including receiving Court applications to its review officers.

How is a guardian appointed and what does the Court consider when deciding whether or not to appoint a guardian?

The process of appointing a legal guardian begins with an application to the Court. This application is submitted by the proposed guardian to the Office of the Public Guardian Review Officer.

The following documents must be filed in support of an application for a guardianship order:

- a capacity assessment report respecting the adult who is the subject of the application;
- a guardianship plan; and
- a number of Court application forms including your

consent to act as guardian.

A notice of a guardianship application must be personally served to the adult who is the subject of the application. If the Court agrees that notification of an application for guardianship would be harmful to the adult, the Court may make an order dispensing with this service.

The Court may make an order appointing a guardian for an adult if the Court is satisfied that:

- the adult does not have the capacity to make decisions about the personal matters that are to be referred to in the order;
- less intrusive and less restrictive alternative measures than the appointment of a guardian have been considered or have been implemented and would not likely be or have not been effective to meet the needs of the adult; and
- it is in the adult's best interests to appoint a guardian.

How can someone obtain a Guardianship order in urgent cases?

An interested person who has reason to believe that an adult lacks the capacity to make a decision about a personal matter, and there is immediate danger of serious physical or mental harm to the adult, they may apply to the Court for an emergency guardianship order. The interested person may also demonstrate how a person appointed could prevent harm.

If the Court is satisfied that the urgency of the matter makes it appropriate to do so, it may dispense with or modify any requirement that would otherwise apply, including any requirement respecting:

- the documents to be filed in support of the application;
- service of notice of the application; and
- the evidence that may be considered on the application.

An emergency guardianship order expires after 90 days, unless it is extended by the Court for up to six months.

For more information

The Office of the Public Guardian welcomes the opportunity to speak with you!

Toll-free Help Line: 1-877-427-4525

Monday to Friday (8:15 a.m. – 4:30 p.m.)

Our website: www.seniors.alberta.ca/opg