

---

# The Public Trustee's Role in Assisting Represented Adults with Finances

## Office of the Public Guardian and Trustee

### Assisting adults who do not have capacity with finances

It may be necessary for a trustee to be appointed under the *Adult Guardianship and Trusteeship Act* when a person who does not have capacity has an estate to manage. An estate refers to funds and property owned by the adult.

The trustee has to be an individual 18 years of age or older, a trust company, or the Public Trustee.

The Court may appoint a trustee for an adult if it is satisfied that:

- the adult does not have the capacity to make decisions respecting any or all financial matters; and
- less intrusive and less restrictive alternative measures would not adequately protect the adult's interests in respect to financial matters; and
- it is in the adult's best interests for a trustee to be appointed.

The Public Trustee will not be appointed unless the Court is satisfied there are assets in need of protection and ongoing management, and there is no other suitable person willing and able to act as trustee.

### Other ways the Public Trustee may act

When the Public Trustee is notified:

- of the death of a trustee
- of the appointment of a guardian or trustee for a trustee,
- of the coming into effect, because of the incapacity of a trustee, of an enduring power of attorney or personal directive made by the trustee,

then, if there is no other trustee who has the authority to act with respect to the property subject to the trusteeship, the Public Trustee may take possession and control of the property until another trustee is appointed.

### How the Public Trustee manages an estate

Once appointed, the Public Trustee takes control of the represented adult's property, which may include land, vehicles, investments and personal property. Arrangements are made to collect the represented adult's income and to pay their expenses.

Any payments made by the Public Trustee must come out of the represented adult's assets or income. The Public Trustee does not have funds to provide a benefit to clients. The Public Trustee manages a client's finances using a trust account, which earns interest on the balance for the client.

By assuming control of a represented adult's property, the Public Trustee does not seize or confiscate the assets or income. The Public Trustee merely manages the property for the benefit of the represented adult.

### Fees charged for managing a represented adult's estate

Fees may be charged by the Public Trustee to partially cover the cost of managing the represented adult's estate. These fees may be reviewed by the Court and could include such things as legal fees, court costs, postage, photocopies and travel expenses. The Public Trustee may also hire agents such as property managers, lawyers, appraisers, realtors, accountants and auctioneers to assist in administering the estate. These agents are paid from the represented adult's estate.

### A represented adult might be able to prepare a will

A person may have the legal capacity to make a valid will even though a trustee or a guardian has been appointed.

### A trusteeship order does not cancel a valid will

The appointment of a trustee or guardian does not cancel or change a will or affect beneficiary designations under a life insurance policy, pension or retirement savings plan. If the Public Trustee knows a represented adult client has made a will, the Public Trustee strives to administer the represented adult's property in a manner that respects the wishes expressed in the will.

### When the Public Trustee's authority ends

The Public Trustee will manage a represented adult's estate until discharged or replaced by the Court. When a represented adult passes away the Public Trustee's authority ends except as needed to preserve property until it

can be transferred to the personal representative of the estate.

### **Discharging the Public Trustee**

If the Public Trustee acts under a Court Order, any interested party, including the represented adult or the Public Trustee, may apply to the Court to have the trusteeship terminated and the Public Trustee discharged. If the Public Trustee is discharged as a trustee, control of the estate is returned to the former represented adult or to a Court-appointed private trustee. The Public trustee will then provide an accounting to the represented adult or Court appointed private trustee.

### **When a represented adult dies**

The Public Trustee continues to protect assets under its control until the Court appoints a personal representative (executor or administrator) of the estate. The Public Trustee will advance funds from the estate to cover reasonable funeral expenses. To finalize the estate, it will be necessary for someone to be appointed personal representative of the estate. The Public Trustee will turn over control of the estate to the personal representative after being provided with a release, or after accounts are reviewed and approved by the Court.

## **Where can I get more information?**

### **About the OPGT**

[www.alberta.ca/office-public-guardian-trustee.aspx](http://www.alberta.ca/office-public-guardian-trustee.aspx)

### **Edmonton Office**

Office of the Public Guardian and Trustee  
4<sup>th</sup> Floor, John E Brownlee Building  
10365 97 St NW  
Edmonton AB T5J 3Z8

Phone: 780-427-2744

### **Calgary Office**

Office of the Public Guardian and Trustee  
9<sup>th</sup> Floor, Barclay Centre  
444 7 Ave SW  
Calgary AB T2P 0X0

Phone: 403-297-6541