

Tips For Newly Appointed Trustees

Office Of The
Public Guardian
and Trustee

Being appointed trustee is no small task and you should be commended for your commitment to helping others in time of need. Now that you are a trustee, there are many rules you will need to follow. The Office of the Public Guardian and Trustee has developed this booklet to help you through your first days of being a trustee...and every day after that.

Copies Of The Court Order

As a trustee, you may be asked for proof of your authority to act on behalf of a represented adult. The Court Order is your proof of authority. Institutions like banks and the Land Titles Office require copies of the Order which have been certified by the Clerk of the Court. It is a good idea to make several copies of the Order, of which at least two copies are Court certified.

Familiarize Yourself With The Order And The Approved Trusteeship Plan

Subject to any limitations or restrictions set out in the Order, the approved Trusteeship Plan, the *Adult Guardianship and Trusteeship Act*, and its Regulations, a trustee has the authority to take possession and control of the represented adult's real and personal property (except for real property located outside Alberta), to do anything that the represented adult could have done with respect to financial matters, and to sign all documents and do all things necessary to exercise this authority.

A trustee must comply with the Order and the Trusteeship Plan approved by the Court. Therefore, it is very important that trustees familiarize themselves with the Trusteeship Order and the approved Trusteeship Plan. The Order will indicate any requirement to have the Order reviewed by the Court or any requirement for you to present your accounts to the Court for examination and approval.

Get To Know The *Adult Guardianship and Trusteeship Act*, Its Regulations, The Surrogate Rules And The *Trustee Act*

The legislation and rules which guide your actions as a trustee can be difficult to understand. When reading legislation, the first section often provides definitions of words you may not be familiar with.

Adult Guardianship and Trusteeship Act

The Act Is Divided Into Five Parts

Part 1 (Sections 1-2) deal with principles and definitions.

Part 2 deals with Supported and Co-decision-making, Guardianship and Trusteeship.

Division 1 (Sections 3-10) Supported Decision-making

Division 2 (Sections 11-23) Co-decision-making

Division 3 (Sections 24-42) Guardianship

Division 4 (Sections 43-72) Trusteeship

Division 5 (Section 73) Foreign Orders

Division 6 (Sections 74-79) Protective Measures

Division 7 (Sections 80-86) General

Part 3 deals with Specific Decisions and Emergency Health Care.

The remainder of the Act deals with issues that are administrative in nature and not relevant to your situation.

The *Trustee Act*

Unless a different method is approved in your Trusteeship Plan, a trustee must invest a represented adult's assets in accordance with the prudent investor provisions contained in Sections 2 through 8 of the *Trustee Act*.

The legislations are available from the Queen's Printer website at www.qp.alberta.ca/Laws_Online.cfm or at:

The Queen's Printer: Phone: (780) 427-4952
Main Floor, Park Plaza Building Fax: (780) 452-0668
10611 – 98 Avenue
Edmonton, Alberta T5K 2P7

Your local library may also have copies of the legislation and Surrogate Rules. The Court House libraries located throughout the province will have copies.

Let People Know About Your Appointment

The *Adult Guardianship and Trusteeship Act* requires that the same people who were provided with notice of your application must be provided with a copy of the Court Order appointing you as trustee. If your Order was granted on a desk application, the Clerk of the Court will send a copy of the Order to these people. If the Order was granted after a hearing, you are responsible for providing these persons with a copy of the Order.

You Should Also Notify:

- Financial institutions regarding bank accounts, loans, guaranteed investment certificates, safety deposit boxes, etc.
- Government departments providing benefits to the represented adult
 - Assured Income for the Severely Handicapped (AISH)
 - Employment and Immigration (Income Support)
 - Old Age Security (OAS)
 - Canada Pension Plan (CPP)
 - Veterans Affairs
 - Alberta Seniors Benefits
- Other parties providing benefits
 - Workers' Compensation Board
 - Employment Insurance Commission
 - Private pension sources
 - Private long term disability insurers, etc.
- The institution or other place of residence in which the represented adult may live
- All parties providing medical coverage
 - Alberta Health Care
 - Alberta Blue Cross
 - Private medical insurance
- Municipal taxing authorities
- Utility companies including cable television and telephone companies
- Canada Revenue Agency

Make Banking Arrangements

Keep your money separate from the represented adult's money. Open a trust account for the represented adult where you can direct income to and pay bills from on their behalf. An account which the represented adult can access directly can only be established if it is specifically authorized by the Trusteeship Order.

Bookkeeping

You may be required to account for your handling of the repre-

sented adult's estate. The requirement to present your accounts to the Court for examination and approval may be part of your Order but could also arise at the request of an interested party or the Court. You may wish to retain the services of a professional bookkeeper or accountant to assist you in maintaining your accounts or you may wish to maintain them yourself using the regulated forms or some other bookkeeping method. Regardless of how you maintain your books, always keep your receipts and cancelled cheques available and organized, as you may be required to produce them.

Compensation and Expenses

In your approved Trusteeship Plan, you specified whether or not you wished to be compensated and, if so, how you wished to be compensated. If you elected to be compensated in accordance with the schedule in the regulations, you may only take compensation when authorized to do so by the Court. A trustee is, however, able to take reimbursement of direct expenses and disbursements made on the represented adult's behalf directly from the represented adult's estate without prior Court approval.

Gifts and Donations

A trustee, without prior Court approval, may make gifts and donations on behalf of a represented adult with a total value not exceeding 5% of the represented adult's taxable income for the previous year if certain conditions are met. First, you can only make gifts out of property that is not required for the support of the adult or the adult's dependants as described in Section 56(3) of the Act. Second, you can make a gift only if you have reasonable grounds for believing, based on the actions of the represented adult while they had capacity, that the represented adult would make the gift if they still had capacity. Third, in deciding whether to make a gift, you must consider any current wishes expressed by the adult. Fourth, you cannot make a gift to yourself unless the proposed gift was disclosed in your Trusteeship Plan that was approved by the Court.

Death of a Represented Adult

When a represented adult dies, a trustee is required to account to the personal representative of the deceased person's estate. You are only required to account to the Court if the personal representative makes application to have your accounts examined and approved. Be sure to notify the Clerk of the Court in writing of the date of death of the represented adult.

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For More Information:

While your best source for advice is your lawyer, guidance can also be found in support groups formed to assist individuals suffering from disabilities. As well, the Alberta Law Society operates the Dial-A-Law service with recorded messages about the Dependent Adults Act and other legal topics. You can access this information by calling 1-800-332-1091 toll-free.

Or, visit: www.humanservices.alberta.ca/opgt

Or, call toll-free: 310-0000 then dial

780-427-2744 for Edmonton, or

403-297-6541 for Calgary.

This publication was prepared as a public service to Albertans by the Office of the Public Guardian and Trustee with the assistance of the Court Services Division of Alberta Justice and is intended to give information about trusteeship under the *Adult Guardianship and Trusteeship Act*. It is not intended to give legal advice for which a lawyer should be retained. The *Adult Guardianship and Trusteeship Act* and its Regulations should also be consulted. The Public Trustee does not warrant the outcome or result of using the information in this publication. This publication is current to May 29, 2014.