

Self Help Kit

Review of Co-Decision Making Order via Desk Application



ADULT GUARDIANSHIP AND TRUSTEESHIP ACT

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Overview

Review of Co-Decision Making Order

This kit provides information and documentation on applying for a review of a co-decision making order for a proposed represented adult who lives in Alberta. You do not need to live in the province of Alberta to be a co-decision maker.

Before making your application for review of the order to the Court for co-decision making, you might find the following information helpful:

- If the adult's ability to make personal decisions is significantly impaired but they can still make decisions with good support, a co-decision making order may be an alternative to guardianship. This is a decision making option that is new to the *Adult Guardianship and Trusteeship Act*. A **co-decision-maker** is a person appointed by court order to assist in making decisions jointly with the assisted adult. The decisions are made in the best interest of the assisted adult. The adult must agree to the arrangement and the person who is appointed as their co-decision-maker. A co-decision-making order is appropriate for family and close friends.
- A **guardian** is a person appointed by court order with legal authority and responsibility to make (or assist in making) decisions about non financial personal matters on behalf of an adult who has been found to lack the mental capacity to make personal decisions. There may be one or more guardians for one adult and one or more alternate guardians as well.
- A **trustee** is a person appointed by court order with legal authority and responsibility to make property decisions on behalf of an adult who has been found to lack the metal capacity to make financial decisions. There may be one or more trustees for one adult and one or more alternate trustee as well.
- A **joint guardian and trustee** is a person appointed by court order to make both personal and financial decisions on behalf of an adult who has been found to lack capacity.

Before starting the review process you must determine if co-decision making is the most appropriate and least intrusive means of substitute decision making for the proposed represented adult (hereafter the adult).

It is strongly suggested that you arrange to have a capacity assessment report completed before you start the application process. The person completing the capacity assessment will make recommendations as to the adult's needs and will suggest the type of substitute decision making required to assist the adult at the current time.

Call the Office of the Public Guardian for a list of capacity assessors or see the adult's physician or psychologist. Also, feel free to visit the Public Guardian's website at www.seniors.alberta.ca/opg/ for further information. There is information about trusteeship on the website for the Office of the Public Trustee at www.justice.gov.ab.ca/public_trustee/default.aspx.

Once the capacity assessment report has been completed you may use the self-help kit/court application forms to guide you through the review process to have the Court appoint a co-decision maker. You may wish to consult a lawyer with respect to making an application. If you choose to proceed on your own, the self-help kit/court application forms are designed to guide you through the review process and the forms required for your specific situation.

An application for a review a pre-existing Court order consists of many documents. You will find a checklist on page 6 of this document to ensure you have the right forms for your application.

You may complete the application forms in two ways:

1. Download them to your computer, fill them out electronically, print them, and then sign in front of a witness where indicated or a commissioner for oaths where indicated.
2. Print out all the forms and complete them by hand. If you need additional space in particular sections, you would add pieces of paper with the information.

Please note:

- that a witness to your signing should not be anyone else connected with your application or the proposed represented adult.
- that all lawyers in Alberta are commissioners for oaths. Some students-at-law (articling students) are also commissioners for oaths. Some real estate offices, financial institutions and some Registry offices may also have commissioners for oaths on staff. There may be a cost so be sure to ask about any charges before having your documents commissioned.

It is a good idea to use blue ink to fill out all forms

The Self-Help Kit/court application forms use documents that are in .pdf format. It is suggested that you use Adobe Acrobat Reader 9 to open the forms. Adobe Acrobat Reader 9 is available free of charge at the following link:

<http://get.adobe.com/reader/>

If you encounter an error in opening the forms, try saving the form to your desktop, opening your Adobe Reader and using the file>open sequence to open the file from your desktop.

Court Filing Process for a Review of Co-Decision Making Order via Desk Application

When you have completed all of the forms and have a complete package required for a review of a Co-Decision Making Order, please contact the Office of the Public Guardian (OPG) nearest you. The OPG will provide information on which OPG office the application should be sent to so that the Review Officer can complete the application process and file the documents with the appropriate Judicial Centre.

Edmonton Region	
Edmonton Office	(780) 427-0017
North Region	
Grande Prairie Office	(780) 833-4319
St.Paul Office	(780) 645-6278
Lloydminster Office	(780) 871-6418
Central Region	
Red Deer Office	(403) 340-5165
Calgary Region	
Calgary Office	(403) 297-3364
South Region	
Lethbridge Office	(403) 381-5648
Medicine Hat Office	(403) 529-3744

Review of Co-Decision-Making Order Checklist

Desk Application

The following is a list of the items and forms you will need to proceed with a Review of a Co-decision-making order via a desk application:

- Application- [Form 6](#)
- Affidavit of Applicant- [Form 7](#)
- Capacity Assessment Report if:
 - required by co-decision making order
 - capacity is at issue
 - applicant is requesting termination of the order
 - if believed a significant change in capacity has occurred
- For continuation, amendment or replacement of co-decision making order:
 - Consent- each proposed co-decision maker (includes consent regarding criminal records check)- [Form 12](#)
 - Consent—assisted person- [Form 11](#)
- For proposed new co-decision maker
 - 2 personal references for each newly appointed proposed co-decision maker – [Form 30](#)
- Draft Order to which the assisted person has consented- [Form 10](#)

Form 6: Application for Review of Co-decision-making Order

Use this application if you already have an Order for co-decision-making and you are asking for the Order to be reviewed.

Enter the Court file number and Judicial Centre that is on your existing Order.

Fill in the name of the represented Adult the Order is about.

1. INFORMATION ABOUT THE APPLICATION AND APPLICANT

- 1.1 Be sure to enter the date(s) the Order(s) was granted on and the most recent date they were reviewed. If this is your first review, enter “not reviewed before”.
 - 1.2 Check only one of the boxes – you may only proceed by Desk application or by Hearing, not both. Please note the description of each type of process to determine which is best for your situation.
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2. INFORMATION ABOUT THE REPRESENTED ADULT (ADULT)

- 2.1 Complete all the information about the represented Adult including checking off their marital status.

Adult interdependent partner is a term to describe a relationship of interdependence between two people. This may include heterosexual or same sex common law couples, as well as two non-conjugal persons who live together in a relationship of interdependence. In some circumstances it could even include two members of the same family, or two friends who live together.

- 2.2 Enter the usual residence address for the adult whether it is a home address or a residential facility such as a nursing home or assisted living place.

- 2.3 If the Adult is currently away from their usual residence (e.g. Hospitalized or living elsewhere with a relative or in a second residence) please provide that information. If not, check “same as above”.
-

3. INFORMATION ABOUT CO-DECISION-MAKERS AND AGENTS

- 3.1 Provide the following information for each person who is CURRENTLY a Co-decision-maker of the Adult who is PROPOSED for any of these positions. Indicate both the current and proposed position, if any, for each person. If more boxes are needed please click “add more” to the form or if you are completing in writing attach an additional piece of paper with section 3.1 clearly indicated.
- 3.2 Check either yes or no, but not both. Complete the information for each agent. If you need more space for additional names, please click “add more” or if you are completing in writing attach an additional piece of paper with the section 3.2 clearly indicated.

Please note it is possible for a person to have a personal directive but not to have an agent named.

4. INFORMATION ABOUT FAMILY MEMBERS AND OTHER INTERESTED PERSONS

- 4.1 You must provide the names and contact information for all family members of the Adult living in Canada who fits the categories listed. If you require additional space please click “add more”. If you are not completing the application online, then add a piece of paper – clearly identify the section (4.1).
- 4.2 Be sure to include this information if the Adult ordinarily lives on a reserve. If the person is not living on a reserve leave this section blank or insert n/a.
- 4.3 If there are any other interested persons who are 18 years of age or older who you think should be given notice of this application, please provide their contact information and their relationship to the adult. This may include close friends or other relatives who are especially close to the Adult and should receive notification of this application. If you require additional space for more names, please click “add more” or if completing in writing attach an additional piece of paper with the section number clearly identified (4.3).

5. INFORMATION ABOUT ORDER REQUESTED ON REVIEW

Complete this item if you are applying for review of a Co-decision-making Order.

Check the boxes that apply.

- 5.1 In this section you can either request continuation of the Order (with or without amendments), termination of the Order, replacement of the Order or discharge of the Order. If you discharge a co-decision-maker, you must indicate their name. You may not request more than one.
- 5.2 In the “Now” column, check off the areas that are identified in your current Order. In the “Proposed” column check off the areas that have been identified in the Capacity Assessment.

You may increase or decrease your authority from the current Order. If you wish to increase or decrease your authority you must examine your reasons why. Refer to the Capacity Assessment Report; the assessor will have identified the authority the co-decision-maker will need to assist the Adult.

Note: “Any other personal matters...” – Only check this box if you require authority in a specific area, for example, a specific diet that is not health related, such as a vegetarian diet or a religion based diet or refusal of a blood transfusion on religious grounds.

- 5.3 Section 16(1) of the Adult Guardianship and Trusteeship Act states that the Court may appoint one or more co-decision-makers for an adult. This section also states that where the Court appoints two or more co-decision-makers for an adult, the Court may provide that the co-decision-makers are to act jointly, separately or successively in respect of specified personal matters of the adult. For example, if you and your sister are both applying to be appointed co-decision-makers for your mother who has dementia, and your sister lives out of the country, it may be in your mother’s best interest for you to be able to make some decisions independently. Check the box that pertains to your review, if you choose separately or successively, provide a description.
- 5.4 The Court may specify in a co-decision-making order that a contract respecting a personal matter is void if it is not in writing and signed by the assisted adult and the co-decision-maker. If you are requesting this, select yes.
- 5.5 Refer to the Capacity Assessment Report.

The assessor may have suggested for a review period. If so and you agree with the time frame, for example, 6 years, then propose this time frame.

If the assessor has not mentioned a review period but you feel that a review is needed then identify a review period, for example, 6 years.

If you do not feel that a review is necessary then check off the last box – the Court may still assign a review period.

6. OTHER DOCUMENTS SUBMITTED WITH APPLICATION

6.1 You must include with your application the documents that apply.

If the matter is going to a hearing include the notice of application and hearing document.

If the Adult has any documents relating to current decision making arrangements and you have copies of these documents then include them with the review application.

*The capacity assessment report must be dated not more than 6 months before you start the application unless you are specifically requesting the Court to accept an older report. (You may make a request by completing 8.2 below.)

6.2 You must supply the names of two personal references.

7. REQUEST TO DISPENSE NOTICE

7. You may request to dispense with notice upon any person (other than the adult); however you must provide reasons why you are making the request. For example, the Court will consider requests such as the whereabouts of this person cannot be established with ordinary diligence (you will need to prove to the Court that you have attempted to locate this person), or the person has had no contact with the applicant for many years, or the person is incapacitated themselves.

You may check either yes or no, but not both. If you check yes, and you need more spaces for the names, please click “add more” or attach an additional piece of paper with the information AND with Section 7.1 clearly indicated.

If your request is not supported by the Capacity Assessment Report then you must provide your own reasons as to why you feel the service upon the adult would be harmful.

NOTE: On a desk application the review officer will NOT send notice of the application to a person to whom you request the Court to dispense with notice. If you make such a request but the Court decides not to dispense with notice, a decision on your application will be delayed until the person is notified and given an opportunity to respond.

8. COSTS AND OTHER MATTERS

8.1 Costs associated with a straightforward application include (but are not limited to):

\$200 filing fee (one time only)

Capacity Assessment Report charge - Maximum \$500 if the capacity assessment is related exclusively to the adult's capacity to make decisions about personal matters. If you are applying for a Co-decision-making and Trusteeship order jointly a maximum fee of \$700 may be charged.

Legal fees: If you choose to use a lawyer to do your application it is important that you thoroughly discuss and understand the likely costs- including legal fees and disbursements- before you hire the lawyer. You should also understand who will be responsible for paying the legal fees and disbursements. Disbursements are items such as photocopying, courier, mail. Legal fees may vary between lawyers and depending on the complexity of the application.

Costs may be managed by using this kit (with or without the assistance of the Community Involvement Program). There will still be the filing fee and some out of pocket expenses but you may not have to pay a legal fee. You will still have to pay for the capacity assessment report.

In hardship situations the Crown may agree to a costs contribution. If the adult's estate is less than \$7,000 in liquid assets and it would be a hardship to the applicant(s) to pay the costs the Crown may pay for all or some of the costs. The applicant does not have to disclose their specific financial circumstances but if you are requesting costs from the Crown you must make a written statement of hardship in the sworn affidavit.

If the Crown agrees to a cost contribution the filing fee will be waived.

If the Crown agrees to a cost contribution and you choose to go to a lawyer then you will need to inform the lawyer that it is a hardship for you and the estate to pay the costs. It is important that you provide this information to the lawyer right away.

- 8.2 Click either no or yes, not both. If you check yes, please provide a detailed explanation of your request.

The applicant or their lawyer must sign and date the form.

Form 7: Affidavit of Applicant – Review of Co-Decision-making Order

Use this affidavit to support your application.

The contents of this affidavit must be adjusted as necessary to ensure that your affidavit accurately reflects the circumstances of your application.

Court file number: Enter the court file number from the existing order. Do not write anything in the court stamp box.

Judicial Centre: Enter the Judicial Centre that is on the existing order.

Adult’s Full Name: fill in full legal name of the proposed assisted adult (here after referred to as the adult). Do not use nicknames or abbreviations. Use the same name all the way through the documents.

Applicant’s name: fill in full legal name of the person making the application; do not use nicknames or abbreviations. Use the same name throughout the documents.

1. Insert the full legal name of the adult in which this application is for. Use the adult’s name as noted on the existing order.

2. An affidavit is a sworn or affirmed document. The affidavit should reflect accurately the information previously provided in Form 6.

3. Section 6 of the review application form (Form 6) relates to other documents submitted with application, e.g. capacity assessment report, consents etc.

Please read carefully as you will be required to swear or affirm this statement.

4. Read this section carefully as you will either swear or affirm it after completing this document and taking it to a commissioner for oaths.

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5. Please read carefully as you will be required to swear or affirm this statement.

Describe alternate measures, including a supported decision making authorization, that have been implemented or considered and indicate why they have not been effective in meeting the adult's needs or are unlikely to be effective to meet the adult's needs. Indicate the source of your information and belief.

If you are completing the application electronically you have the ability to add more boxes to provide the information required. If you are completing the application on paper then you can add separate pages or put in more space to provide the information required. This is applicable to any description field.

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6. Describe any additional information you have for concluding it would be in the best interests of the adult for the Court to continue the Co-decision-making order, indicating the source of your information and belief. You should consider the matters set out in section 13 (5) of the Act, because they must be considered by the court. If you have no additional information, say "None".

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7. Provide any information you have that will assist the Court in deciding whether the proposed co-decision-maker will act in the adult's best interests and be a suitable guardian for the adult. You should consider the matters set out in section 14 (1) of the Act, because they must be considered by the Court.

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8. Review period: provide reasons why you have selected the requested time frame for a review – use the capacity assessment report as a reference. If you are not requesting a review period you will need to provide reasons as to why not, e.g. the "adult" has a developmental disability and his/her capacity is stable and not likely to improve.

Complete the following section only if you have requested (in the application Form 6, Section 7) to dispense with notice upon any party.

9. Name the person you do not wish to have a copy of the application and provide the reasons why. See Application Instructions in this area.

The adult has a legal right to be served with the application and unless it would be harmful in some way to the adult then the adult should be served. The adult also has a legal right to object to your application. Ultimately it will be the Judge who decides if the adult should be served or not. Lack of understanding of the legal documents or believing that the adult may get upset or angry if served with the documents should not be considered as reasons to dispense with service upon the adult.

You may request to dispense with notice upon any party; however you must provide reasons why you are making the request. The court will consider requests like the whereabouts of this person are unknown to you (you will need to prove to the court that you have attempted to locate this person), or the person has had no contact with the applicant for many years, or the person is incapacitated themselves. If you believe that a person may have an objection to your appointment then they must be served, unless the court feels it would be detrimental to the adult. For example, if a family member is violent and could cause harm to the adult if they became aware of the application, the Court may determine it would be detrimental to the “adult”

Complete only if you are requesting costs from the crown.

Refer to the Application form (Form 6) instructions.

10. Provide all financial information to the best of your knowledge. If you do not know the financial resources and obligations of the adult then type in “unknown”. This does not mean the Crown will refuse to pay the costs, it means that the value of the Estate will need to be determined after an Order is granted. If the estate proves to be in a hardship situation then the Crown may agree to a contribution.

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11. & 12. Read this section carefully as you will either swear or affirm it after completing this document and taking it to a commissioner for oaths. See application (Form 6, Section 8.0) instructions for more information regarding hardship to applicants.

Do not sign the document until you are in the presence of the commissioner of oaths.

The commissioner of oaths will complete the last section when you swear or affirm the document.

Capacity Assessment Report

- “Capacity” means in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision.
- An adult has the right to refuse to undergo or to continue with a capacity assessment and has the right to have a person present to assist in feeling comfortable during the capacity assessment.
- **Persons designated** as capacity assessors are:
 - Registered Medical Practitioners
 - Regulated member of the College of Alberta Psychologists.
- **Other health professions** may be designated as capacity assessors if the person:
 1. Is a regulated member of a college of a health profession (registered nurses, registered psychiatric and mental deficiency nurses, occupational therapists, and social workers).
 2. Has successfully completed a course for capacity assessors.
 3. Meets any other requirements set by the Minister.
- **Date of capacity assessment form.** Unless an application contains a request for the Court to accept a capacity assessment report that was conducted earlier, a capacity assessment report submitted in respect of an application must be dated not more than 6 months before the date the application is started.
- **Fees:** A capacity assessor may charge a fee for a capacity assessment including the capacity assessment report up to a maximum of:
 1. \$500 if the capacity assessment relates exclusively to the adult’s capacity to make decisions about either personal matters or financial matters. Ex. Applying for Co-Decision Maker only.
 2. \$700 if the capacity assessment relates to the adult’s capacity to make decisions about personal matters and financial matters. Ex. Applying for Co-Decision Making and Trusteeship.
 3. The Court may, on application, allow a higher fee for a capacity assessment on the basis of the complexity.
 4. The applicant may request the Crown to pay the fees for a capacity assessment. The Public Guardian must be satisfied that it would be a financial hardship for the applicant and the adult and would recommend to the Minister that the Crown pay the fees. The Minister may pay the fees for only one capacity assessment of an adult in a calendar year.

Form 12: Consent of Proposed Co-decision-maker

This document tells the Court that you consent to being a co-decision maker. You are also authorizing the review officer to conduct a criminal record check on yourself if it is needed for the review officer's report.

Court file number: leave blank. The Review Officer will complete this section.

Judicial Centre: Leave blank. The Review Officer will complete this section. The application will be made in the appropriate judicial centre having regard to where the assisted adult (hereafter referred to as the adult) resides.

Adult's Full Name: fill in full legal name of the adult. Do not use nicknames or abbreviations. Use the same name all the way through the documents.

Applicant's name: fill in full legal name of the person making the application; do not use nicknames or abbreviations. Use the same name throughout the documents.

Please read all the sections carefully.

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1. Enter the proposed Co-decision-maker(s) name(s) in the first blank and the adult's name in the second blank.
 2. You are confirming that you are over the age of 18.
 3. You are confirming that you believe yourself to be a suitable person to act as co-decision-maker to the adult.
 4. Check the appropriate box depending on your situation. You are confirming that you are unaware of any conflict of interest that exists or could potentially come into existence if you are appointed co-decision-maker **OR** you are disclosing an existing conflict of interest or potential conflict of interest. If you check the second box, please explain the situation.
 5. & 6. Please read all sections carefully.

The Proposed Co-decision-maker must date and sign the document in the presence of a witness and have the witness sign the document and print their name.

Form 11: Consent of Proposed Assisted Adult

This document tells the Court that the Adult is consenting to the appointment of a person(s) as their co-decision-maker.

Please read all the sections carefully.

Court file number: leave blank. The Review Officer will complete this section.

Judicial Centre: Leave blank. The Review Officer will complete this section. The application will be made in the appropriate judicial centre having regard to where the assisted adult (hereafter referred to as the adult) resides.

Adult’s Full Name: fill in full legal name of the adult. Do not use nicknames or abbreviations. Use the same name all the way through the documents.

Applicant’s name: fill in full legal name of the person making the application; do not use nicknames or abbreviations. Use the same name throughout the documents.

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1. Enter the adult’s name. The adult will be signing this form at the bottom.
 2. Enter the complete name(s) of the co-decision-maker(s).
 3. Please refer to the capacity assessment report when completing this list as the assessor will have identified areas in which he/she believes that the adult needs a Co-decision maker. The Court can only grant authority in areas where it considers a Co-decision maker necessary. Your choices should also match your application Form 1 or Form 6 (if you are completing a review).

If you are selecting the last box (“any other personal matters”) you will need to write in the decision that you feel needs to be made and make sure that it does not fit in an area already identified, e.g. attending church services would not need to go into this section because it would be covered under social activities.

4. & 5. Please read all sections carefully.

The Adult is to date and sign the document in the presence of a witness and have the witness sign the document and print their name. The witness can be anyone over the age of 18 other than the/any Co-decision-maker(s) for the adult.

Form 30: Personal References

Each person applying to be a newly appointed co-decision maker must complete a separate form and provide the names of two people who will provide personal references.

In the first box, enter your name and the name of the adult.

In the second big box, indicate for which appointment your references will provide information.

In the fourth big box, provide the names and day and evening phone numbers of your two references.

You must then sign and date the form in front of a witness and have the witness sign and print their name. Please note the witness cannot be the adult for whom the application is being made.

Form 10: Order - Review of Co-decision-making Order

This draft order contains many parts that may not apply to your situation.

Include only those provisions that are appropriate for the application presented to the Court. Standard provisions should be modified as appropriate to the context, e.g. to refer to multiple co-decision-makers.

Court file number: leave blank. A court file number will be assigned when the documents are filed. Do not write anything in the court stamp box.

Judicial Centre: The application will be made in the appropriate judicial centre having regard to where the assisted adult (hereafter called the adult) resides.

Adult's Full Name: fill in full legal name of the proposed assisted adult. Do not use nicknames or abbreviations. Use the same name all the way through the documents. The adult must sign to consent to the following order.

Applicant's name: fill in full legal name of the person making the application; do not use nicknames or abbreviations. Use the same name throughout the documents.

1.1 Include in all cases. Enter the name of the Co-decision-maker(s) and the adult.

2.0 Include in all cases unless the application requests termination of the co-decision-making order. Check off the appropriate box(es) that pertain to the situation. If you check the last box "any other personal matter", please provide details. Your selections must match your application.

2.1 Include only if requested in application.

2.2 Include only if requested in application; enter the name of the co-decision-maker who is to be discharged if applicable.

2.3 Include only if requested in application; if not requested in section 5.4 of the application, cross this statement out.

- 2.4 Include only if requested in application; indicate what personal matters should be decided jointly. If not requested, leave blank.
 - 2.5 Include only if requested in application; enter the names of the Co-decision-makers in sequence. Indicate what personal matters should be decided successively. If not requested, leave blank.
 - 2.6 Include in all cases. Leave this section blank- this section will be completed if the Court feels conditions, limits or requirements other than those put in the application are needed.
 - 2.7 List the name(s) of the Co-decision-maker(s) and check off the appropriate box regarding the review of the order. If you check the first box, be sure to enter the number of years after which you will apply to have the order reviewed.
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3. COSTS OF APPLICATION

- 3.1 Check off the appropriate boxes. Legal fees “to be taxed” means you are going through a process to question the fees being charged by your lawyer. You may only check off one of the 3 main boxes. If you check the first box you must check one of the sub boxes but not both. Be sure to enter the name of the person or source who will pay costs or disbursements eg. Estate of the Adult or the applicant. If you check the third box you are advising the Court that you are not requesting to have the adult pay for any of the legal fees or disbursements that may have been incurred in putting the application together.
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4. OTHER MATTERS

- 4.1 If there are people you do not want notified of your application, check off the box, and enter the person(s) name(s) and relationship to the adult. Use the “add more” button if you need additional space or remove this section if it is not applicable. If the Court disagrees, the names will be struck out.
 - 4.2 Check only one of the boxes. If you check the second box, be sure to enter the name of the person to be served and the method of service e.g. mail, registered mail, personal service.
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Justice signature line and information: Leave this blank - the Court will complete the information.