

Guide for Private Guardians

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT



Foreword

Dear Guardian,

It is my pleasure to write to you in your capacity as guardian. Being a guardian for someone can bring a new dimension to your relationship but will also bring a unique and rewarding opportunity to make an important difference in his or her life. You have taken on an important role and I would like to thank you.

You may be wondering where to start or how to proceed. This guide is designed to assist you in your role and provides information and advice about your authority and responsibilities as guardian.

Your authority as guardian comes from the *Adult Guardianship and Trusteeship Act* (AGTA). The Act describes the person for whom you are guardian as the “represented adult” and uses the terms **diligence, good faith, best interest** and **least restrictive** in relation to your decisions and actions on his or her behalf. These terms also appear in this guide as they are the guiding principles of the legislation and our interaction with represented adults.

The value of the commitment of family members and friends who are willing to accept the role of guardian for someone they care about cannot be overstated. I hope that your experience as a guardian, with its many challenges, can also bring with it many rewards. As you fulfill your role as guardian, be assured that you have the full support of the Office of the Public Guardian (OPG). Please do not hesitate to contact us if you have any questions or concerns: by phone at 1-877-427-4525, online at www.seniors.alberta.ca/opg, or your nearest OPG regional office.

Please also note that we have included a change of address form to help ensure our records reflect your current address and contact information. Feel free to fill out this form and forward it to us as appropriate.

Sincerely,

Public Guardian, Regional Office

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1. What is a Private Guardian?

A private guardian is a person who has been given the legal authority and responsibility to make, or help make, decisions about non-financial personal matters for a represented adult who is unable, due to a temporary or permanent lack of capacity, to make his or her own decisions.

Decisions made by guardians can be in one or more designated areas of authority (outlined below) and do not include financial matters. Decisions regarding financial matters are made by the attorney (trustee) and this person may be the same person as the guardian or may be a different person.

Guardians are appointed by the Court of Queen's Bench of Alberta and must consent to act as a guardian and agree to:

- act in the best interests of the represented adult,
- encourage the represented adult to be as independent as possible
- act in the least intrusive and least restrictive way possible
- act diligently and in good faith

2. Who is a Represented Adult?

Represented adults are people 18 years of age or older who do not have the capacity to make decisions about personal matters and for whom less restrictive alternatives would not meet their needs. This inability may be a result of a mental disability, for example, a developmental disability or chronic mental illness, acquired brain injury, or dementia.

The represented adult must reside in Alberta. When it is thought necessary to apply for guardianship for a dependent child, an application may be submitted up to 12 months prior to the child's 18th birthday. If approved by the Court, the guardianship order would go into effect when the child turned 18.

3. Guiding Principles of the Adult Guardianship and Trusteeship Act (AGTA)

There are four guiding principles of the AGTA:

1. An adult is presumed to have capacity to make decisions until the contrary is determined.
2. An adult is entitled to communicate by any means that enables the adult to be understood and the means by which said adult communicates is not relevant to the determination of whether the adult has the capacity to make a decision.
3. Where an adult requires assistance to make a decision or does not have the capacity to make a decision, the adult's autonomy must be preserved by ensuring that the least intrusive form of assisted or substitute decision-making that is likely to be effective is provided.
4. In determining whether a decision is in the adult's best interest, consideration must be given to the following:
 - a. any wishes known to have been expressed by the adult while the adult had capacity, and
 - b. any values and beliefs known to have been held by the adult while the adult had capacity.

4. What Are My Roles and Responsibilities as a Private Guardian?

4.1 Areas of Authority

Decision-making authority – that is: the areas in which the private guardian can act – is outlined in the Guardianship Order. Areas of decision-making authority are:

- a. the adult's health care;
- b. where, with whom and under what conditions the adult is to live, either permanently or temporarily;
- c. with whom the adult may associate;
- d. the adult's participation in social activities;
- e. the adult's participation in any educational, vocational or other training;

REMEMBER!

You can take your time to make a decision, very little needs to be decided immediately. You can ask as many questions of the person requesting a decision, and for as much information, as you need to feel comfortable. You can change your mind.

- f. the adult's employment;
- g. the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult;
- h. 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 represented adult has retained decision-making authority in that area and the matter needs to be referred to the represented 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.

4.2 Decision-making

When making decisions for a represented adult, the known wishes, values, and beliefs of the represented adult guide the decision-making process. It is important that the decisions made by the private guardian reflect the decisions that the represented adult would most likely have made in a situation. Making good decisions also includes the private guardian accepting an element of risk.

4.3 Informed Consents

Consent is the act of agreeing with or giving permission to another person to carry out an action which will, or may, have an impact on you. It is generally accepted that every adult has the right to determine what shall be done with and to his person (unless otherwise specified in law).

In Alberta, no one, including family, has the right to give consents on behalf of another adult. The only exceptions to this are when there is a guardianship order in place or a personal directive has been activated. Consequently, other adults, including service providers, have no authority to do anything to or for another adult without a valid consent. For represented adults, the guardian must provide consent after consulting, to the extent possible, with the represented adult.

With regard to personal decisions, informed consent implies an individual has been given an explanation that adequately presented the facts and foreseeable outcomes of making a decision about an action or course of action, as well as any reasonable alternatives to the suggested action, and has made a decision based on an understanding of these. Furthermore, the individual understands the implications and reasonably foreseeable consequences of providing consent and refusing to provide consent for an action.

Guardians have a responsibility to be able to give informed consent when making decisions on behalf of the represented adult.

Informed consent must be voluntary – if you feel coerced, you are not giving informed consent. Additionally, informed consent must be given by a capable adult.

4.3.1 Consents – What to look for when asked for Consent

Before signing a consent form for the represented adult, there are a number of things to look for:

- Do you have authority in the area consent is being requested?
- Is the represented adult clearly identified by name?
- Does the consent form clearly identify who is requesting the consent and who is responsible for ensuring the matter for which consent is needed will be carried out as agreed?
- Is the duration of consent clearly identified?
- Are the actions and procedures for which the consent is being requested clearly outlined?
- Has a full explanation of the anticipated outcomes, and pros and cons, of the procedures been provided?
- Do you understand the explanation of the procedure, the anticipated outcomes and the benefits and risks of such the procedure?
- Have alternate options, and the pros and cons, been clearly presented?
- Are there any restrictions or conditions on which the consent is contingent and are these identified?
- Does the consent form clearly state that the giving of consent does not limit the liability of the agency, its staff, or the program for acts of negligence?
- Are the obligations of the service provider clearly outlined?
- Does the consent form contain a statement indicating that consent can be withdrawn at any time, for any reason, and the procedure for doing so?
- If the consent is for an action that only occurs if certain circumstances arise, are the circumstances clearly described in the consent form?

REMEMBER!

Private guardians are not legally able to make decisions regarding organ donation or sterilization for their represented adult.

There are also a number of things that private guardians cannot make decisions on and/or sign. You may not make decisions on anything that is outside the areas of authority you are responsible for.

Anything related to financial decisions, such as leases, and waivers cannot be signed by private guardians.

Private Guardians should not sign:

- for matters relating to areas of decision-making authority not included in the Order Appointing Guardian,
- waivers of liability,
- for matters relating to financial matters or property issues,
- releases of information that do not specify to whom and/or for what purpose the information is being released,
- consents that are matters prohibited by the AGTA (refer to AGTA)
- documents from service providers implicating the guardian is responsible for the actions of the represented adult,
- any request to restrict the freedom and liberty of the represented adult without just cause, e.g., for the use of restraints (i.e., mechanical, or chemical) for the purpose of providing ease of care for a service provider,
- documents delegating the private guardian's decision-making authority to others, unless an alternate guardian is indicated in the Order Appointing Guardian

4.4 How to Include the Represented Adult in the Decision-Making Process

Every person has the right to be involved in their life and in the decision-making processes that guide how their life develops, regardless of the level of ability or cognitive impairment. Of course, the level of ability of a represented adult to meaningfully participate in the process will impact how much input they may have as decisions are made, as will the type of decision being made. There may be times when a represented adult is more able to provide input in a needed decision and there are times when they may not be able to contribute as much.

REMEMBER!

You can change a decision if the outcome is unexpected or ineffective, if the represented adult wants to change the decision and you believe this is in the best interests of the represented adult, or if an alternative becomes available later that you think would be of more benefit to or more in line with the wishes, values, and beliefs of the represented adult.

There are some questions you can ask yourself when considering whether you have included the represented adult in the decision-making process to the degree that they are capable of being involved. Some examples are:

- Have I asked the represented adult's opinion?
- Am I aware of areas the represented adult is making good decisions?
- Are my decisions reflective of the decisions the represented adult has made in the past?
- Am I considering the represented adult's choices?
- Am I considering the represented adult's wishes, beliefs, and values?
- What is an acceptable level of risk?
- How are disagreements about decisions handled?
- Am I asking the represented adult how certain decisions, that I as private guardian have made, are working out?
- Am I monitoring the outcomes of the represented adult's decisions and how the represented adult feels about the decisions he or she has made?

4.5 Why is Keeping a Record of Decisions I Have Made Important?

It is important to keep a record of the major or important decisions you have made so you have a history for the represented adult. The private guardian is accountable to the represented adult and the Court for the decisions made. A record of decisions made is required by the legislation and is presented with your application for review to the Court. This record ensures that you are able to demonstrate how you were involved in the life of the represented adult and that the decisions made on their behalf were in their best interests.

4.5.1 Keeping records

- All private guardians have a duty to keep records of the decisions made for the represented adult and for the work done in making those decisions.
- Keeping records allows private guardians to track the decisions that have been made over time, ensuring treatment is consistent and the best interests of the represented adult are still the priority
- Any discussions that have occurred with the represented adult should also be noted so any changes in the values, beliefs, or wishes of the adult are reflected and up-to-date

- Record decisions and rationale for decisions in the Record of Decisions Made at the back of this guide
- Record instances in which the represented adult disagrees with the decision and the rationale for proceeding with the decision despite the represented adult's disagreement with it

4.6 My Responsibilities as a Private Guardian

- a. Review the Order Appointing Guardian to ensure you are familiar with the area or areas of decision-making in which you have been granted authority
- b. Become familiar with the Guiding Principles of the AGTA
- c. Meet with the represented adult and ensure he or she is aware of your appointment as guardian and the areas of decision-making in which you have authority
 - Even though the represented adult has been served with a copy of the Order appointing a guardian, he or she may not have fully comprehended the implications of the Order
 - During this discussion, identify the represented adult's wishes, values and beliefs
 - You may also wish to meet with other persons (e.g., family, friends, service providers) to confirm and/or verify the represented adult's wishes, values and beliefs
- d. Educate yourself regarding the disability (or disabilities) of the represented adult. For example, limitations of the disability, potential for future growth and development, etc
- e. Identify current service providers (e.g., physician, residential facility, community agencies) and establish contact
- f. Notify service providers of the Order Appointing Guardian and of the areas of decision-making in which you have authority
 - Contact service providers to advise them of any areas of decision-making authority in which the represented adult is competent and to ensure that decisions in those areas made by the represented adult are respected by service providers. You may also provide a copy of the guardianship order to service providers for their reference.
- g. Consult with the represented adult, to the extent which he or she is capable, regarding all decisions that affect him or her

- h. Provide current contact information (e.g., contact telephone number(s), mailing address, e-mail, etc.) to service providers. This information is necessary so service providers are able to obtain decisions and consents as required
- i. Ensure accurate records are maintained pertaining to decisions made and consents provided (e.g., keep a record of rationales for each decision made, situation(s) where the represented adult is objecting as well as the reason for the objection and a rationale for proceeding with the decision despite the represented adult's objection(s))
- j. Review and implement a Guardianship Plan (Form 32) with a focus on the specific areas of decision-making authority that have been granted to the guardian and ensuring that the Guardianship Plan is consistent with the represented adult's wishes, values and beliefs
- k. Become familiar with protocols and dispute resolution processes of service providers and funding sources. The importance of following protocols can reduce or prevent conflicts with service providers and allow for the issue or concern to be addressed as close to the source in as timely a fashion as possible
- l. Provide consent(s) for confidential information (protecting confidentiality). Some common examples might be:
 - Service providers needing information for service delivery
 - Accessing or applying for services
 - Ensuring the represented adult's personal information is shared only with individuals who require such information for the personal benefit for the represented adult, e.g., Individual Service Agreements, medical treatment, etc.
 - Not providing open-ended consents (ensuring there is a fixed length of time indicated as to how long the consent remains in place). Consents should be for a maximum of one year, as circumstances may change and/or the needs of the represented adult may change
 - Ensuring a balance between family members and friends' need for information and the rights of the represented adult for confidentiality and privacy (e.g., relationship and contact history of the family member with the represented adult, general information about the represented adult's well-being)

- m. Obtaining current information regarding current services the represented adult is receiving (e.g., medical treatment, training programs, social groups). There are several ways of obtaining this information (e.g., you may request to meet with the represented adult’s physician or request a team meeting with the service provider, etc)
- n. Ensuring any current services are reviewed with the service provider regarding decisions and/or consents currently in place

5. “Best Practice” – What is it?

Being a guardian requires honesty and transparency with the represented adult. There should be a willingness to accept that there are risks that we all face and the represented adult should be able to experience these, as much as they are able, as part of a full and fulfilling life. As a guardian, you should ensure the represented adult, as much as they are able, is included in the decision-making process.

It is helpful to remember that although the represented adult might have limited input into one type of decision – for example, health care – because they do not understand the information, in other areas of decision-making – for example, social activities – they may have more decision-making abilities and/or experiences to draw on that they can contribute and that can influence the final decision.

5.1 Best Practice Guidelines

When discharging your duties as a private guardian, having a clear understanding of your role and how best to undertake your duties is necessary. In all cases, the provisions of the *Adult Guardianship and Trusteeship Act* prevail over the guidelines of this document.

There are a number of tools available to assist private guardians in their role. The Office of the Public Guardian has information and public education sessions available to private guardians and the regional offices are available to answer questions.

Using the guiding principles of the Act – autonomy, presumed capacity, least intrusive and the consideration of the values, wishes, and beliefs of the represented adult – to influence the decisions made by the private guardian is the foundation of best practice.

The following are additional actions that can be taken to fulfill the role of private guardian most effectively.

REMEMBER!

Your decisions should be made in the best interests of the represented adult and should be guided by their wishes, values, and beliefs.

Know the person and what they would do if they were making the decision.

5.1.1 Prepare a Guardianship Plan

- a guardianship plan is Form 32 in the AGTA regulations.
- this plan outlines the major decisions that the guardian thinks will be required for the represented adult for the next year and for the next five years in the areas of authority
- the guardianship plan also asks the guardian to outline how they will include the represented adult in the decision-making and how the represented adult will be informed of decisions when they are not able to participate
- the guardian is encouraged to think about the wishes, values, and beliefs of the represented adult and how these will impact the decisions made
- the guardian is encouraged to think about how to make decisions that embody these values and beliefs and also how to act in the best interest of the represented adult when acting as a decision-maker
- Form 32, the Guardianship Plan, and Form 33, the Annual Record of Decisions, work together.

5.1.2 Establish lines of communication with stakeholders, e.g., Represented Adult, service providers, family, etc.

- Notification of your role, to the represented adult, service providers, family, and other appropriate individuals
- Identify protocols for consents, conflict resolution
- Provide and obtain contact information to and from stakeholders
- Develop relationships with stakeholders, e.g., encourage and promote a team concept, ensure accessibility to the represented adult and to service providers

5.1.3 Gather and share confidential information

- Share information on a need-to-know basis versus sharing it as general purpose information, e.g., family requests for information
- Ensure there is a rationale for the request and that the information shared is for the specific benefit of the represented adult
- Confidentiality of the represented adult's information must be respected
- Obtain current information about the represented adult's needs and wishes for current and future planning

- Become familiar with the represented adult’s disability (or disabilities) and the limitations, potential for future growth and development issues that may coincide with it

5.1.4 Provide consents

- Consents should have a maximum one year limitation, e.g., the represented adult’s needs/circumstances may change and/or current issues may be resolved within a year
- Use informed decision-making processes, e.g., risks, benefits, options, alternatives

5.1.5 Managing Risk

There will always be some element of risk in the day-to-day decisions that a person makes, however most can be managed or accepted as part of a fulfilling life. Ask yourself what level of risk is the represented adult willing to take and if it is reasonable.

The represented adult should be provided with dignity of risk and this can be done by employing various methods, such as:

- a. informed decision-making, which includes understanding options, benefits and risks
- b. a risk assessment, for example, using the PDD Risk Assessment Tool to explain why some decisions won’t work
- c. mobilizing resources that will aid in reducing risk, for example, medical alert technology, companion services, safety devices and/or equipment, etc.

REMEMBER!

The Guardian cannot be held liable for decisions made in good faith. Section 42 of the AGTA states:

“No action lies against a guardian for anything done or omitted to be done in good faith while exercising the authority or carrying out the duties and responsibilities of the guardian in accordance with this Act.”

In practice, this means a private guardian who makes a decision based on the information at hand that a reasonable person could have made and which results in unforeseen results or consequences has not done anything wrong. As well, guardians are not liable for the actions made by a represented adult.

5.2 Joint Guardianship

The Court of Queen’s Bench of Alberta (the Court) may appoint more than one guardian for a represented adult. In these instances, the Court may grant one guardian exclusive authority to act and make decisions for the represented adult or the Court may determine the guardians should act jointly or separately in any one or more personal matters of the represented adult.

If the Court does not specify how the joint guardians are to act then the guardians may act independently. In this situation, the consent or decision of only one guardian is needed. If the two (or more) guardians are in dispute, then the issue should be presented to Court. Decisions made by one guardian may be revoked if there is just cause to warrant such an action.

It would be helpful for guardians in this situation to ask “how will we work together” when developing the guardianship plan. If you are a guardian who is acting jointly, you may request for the Court to provide direction on how you may act.

5.3 Succession Planning

There may be times when it is necessary to take steps to ensure that decisions can be made on behalf of a represented adult and the guardian is not available. For example if you take an extended vacation and you are unable to make decisions or provide consents in a timely manner, it may be necessary to have an alternate guardian named to act as decision-maker for the represented adult.

5.3.1 Alternate Guardians

The Court can appoint an alternate guardian to act for a represented adult if the person proposed as alternate agrees to the appointment, the person for whom the alternate is being appointed was notified in a timely manner, and that the person being proposed as the alternate guardian satisfies the requirements of a guardian.

Alternate guardians have the same authority as they would if they were the original guardian.

Alternate guardians can act without any additional proceedings, and would have the same authority as they would if they were the original guardian, in the following instances:

- a. the death of the original guardian
- b. the appointment of a guardian or trustee for the original guardian
- c. the original guardian, due to a lack of capacity, has their personal directive or enduring power of attorney come into effect.

Additionally, the alternate guardian can act if authorized in writing by the original guardian. This authorization must include the dates for which the alternate guardian will act. This authorization will terminate on the date set out in the authorization or upon the death of the original guardian, whichever happens first.

6. Understanding the Order Appointing Guardian

When you first receive the Order Appointing Guardian, it can be a bit overwhelming. There is a lot of information contained:

- the areas of decision-making for which the guardian is responsible
- whether or not there is a scheduled review and the date
- whether there are additional guardians and who they are, if any, and how the guardians are to work together
- whether there is an alternate guardian and who they are

In the back of this guide (Appendix), we have supplied a sample order with information outlining what each section contains. Storing your order with this guide (and perhaps a couple of photocopies that you may need to give to service providers for their records) will ensure that you will always have a ready reference available.

REMEMBER!

The areas of authority that may be granted to private guardians are:

- a. the adult's health care
- b. where, with whom and under what conditions the adult is to live, either permanently or temporarily
- c. with whom the adult may associate
- d. the adult's participation in social activities
- e. the adult's participation in any educational, vocational or other training
- f. the adult's employment
- g. the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult
- h. any other personal matters as the Court considers necessary

Additionally, the documentation included in this guide, as well as anything you add to it over the course of acting as guardian, will be needed when applying to Court for the review.

7. Guardianship Reviews – What Are They?

7.1 What is a Guardianship Review?

The purpose of a guardianship review is to ensure the guardian(s) are accountable to the Court and to the represented adult for decisions made. The review allows the guardian(s) to report to the Court and consider if the Order Appointing Guardian is still needed or if the Order needs to be amended, for example, to include additional areas of decision-making authority.

7.2 Why Are Guardianship Reviews Necessary?

Reviews are scheduled to ensure that the needs of the represented adult are being met, that the Order Appointing Guardian is still necessary and appropriate, and that the guardian(s) is still willing and able to act.

Review dates are unique to the represented adult and situation. In some cases, the review date may be a number of years in the future and in others, there may be no review date, for example, for those individuals with dementia. There is also the possibility of an early review.

An early review may be completed if the situation changes for the represented adult or the guardian(s). For example, a review would be necessary if:

- the represented adult's ability to make decisions has changed (improved or declined),
- the guardian(s) is no longer able or willing to act as guardian.

7.3 What Documents are needed for a Guardianship Review?

There are a number of documents needed for a Guardianship Review. The documents listed below as well as any appropriate forms are necessary to ensure that a guardianship order is still in the adult's best interests, that the guardian has authority in the appropriate areas, and the guardian is still willing and able to act as guardian for the represented adult.

Capacity Assessment Report

The Capacity Assessment Report (CAR) will evaluate the represented adult's ability to make decisions in a variety of areas and will support the request for an Order Appointing Guardian, as well as the specific areas of authority being requested in the guardianship review. The Capacity Assessment will be completed by a qualified assessor. The Capacity Assessment must be less than 6 months old from the time the application is given to the OPG.

Record of Decisions Made

The guardian(s) will provide information about the type of decisions made, and the involvement and ability of the represented adult to make decisions. This will support the request for specific areas of authority in the new order. Form 33 (included at the back of this guide) will need to be completed, with the major decisions and their date listed. If no major decisions were required when acting as guardian, this can be noted on Form 33.

7.3.1 Additional Documents Needed for a Guardianship Review

- **Current Guardianship Order** (copy)
- **Guardianship Plan (Form 32)** – The guardian(s) will use their existing or a new guardianship plan to consider the decisions and goal setting for the represented adult's future

7.4 What happens if a Guardianship Review is missed?

We all get busy and sometimes deadlines and other important things are missed. A guardianship review is no exception. Your authority does not end if you miss your review however when acting as a private guardian one of your responsibilities is to ensure that your order is up-to-date.

There are possible repercussions to the missing a review. The Court may terminate an Order Appointing Guardian or may appoint a new guardian(s) if the guardian(s) has failed to complete a review. The Court would consider if the represented adult requires a guardian(s), if the guardian(s) is acting in accordance to the Order Appointing Guardian, if the guardian(s) is still able and willing to act, and if the Order Appointing Guardian is in the best interest of the represented adult.

Additionally, if the order is not up-to-date, that is, if the review has been missed, it may be more difficult for guardians to access the services necessary for the represented adult as service providers may want or need an up-to-date order.

REMEMBER!

You will be keeping a record of the decisions you make when you are acting as a private guardian for the represented adult. You will have developed a guardianship plan when you were first granted the guardianship order and will have made changes to the plan as necessary when acting as guardian.

This information will form the bulk of your Guardianship Review application.

7.5 Resources

Available in the Resource Section of this guide

7.6 What are my Responsibilities to the Court as a Private Guardian?

The guardianship order review is the responsibility of the guardian(s). The guardian(s) is accountable to the Court for decisions made and must prepare the review information for the Court. The guardian(s) is also responsible to complete an early review if circumstances change.

If a guardian(s) requires assistance to prepare for the review, a guardian(s) can contact an Agency for support to Substitute Decision Makers – ASDM (formerly, CIP - Community Involvement Program) closest to the guardian. These agencies are contracted by The Office of the Public Guardian and are trained to support guardian(s) with the Court processes. The services of these agencies are user-friendly and any costs the guardian(s) or represented adult may incur will be minimal, for example, postage or photocopying.

Guardians also have the choice to access a lawyer to complete the review process. The cost of a lawyer will vary depending on the represented adult needs, the guardianship review, and the lawyer's fee schedule. It is recommended that guardians discuss the fees for service prior to accessing the lawyer's service.

Once this review package is completed, all original documents must be signed and mailed or delivered to the regional Office of the Public Guardian, who will then visit the represented adult and complete the Court process. The cost of the review will be the responsibility of the represented adult or guardian(s).

Please Note: If costs are a hardship, that is, if either the represented adult or the applicant is unable to cover the costs of the guardianship review, the applicant must indicate this in the application. OPG may request that the costs associated with the guardianship review be covered by the Court (e.g., Costs Against the Crown in Right of Alberta).

7.7 Outcome of a Review

Once the Court process has been completed the new guardianship order may remain the same, may have changes, or may be terminated. The Court will ensure that the new order or the terminated order will be communicated to the represented adult, guardian(s), and family members. It would be the responsibility of the guardian(s) to provide copies of the order to service providers and physicians.

The guardian(s) should review the order and confirm:

- This is a new guardianship order or has the order been terminated?
- Who is the guardian(s)? Is there an alternate guardian(s)?
- What are the areas of authority granted?
- When is the next review?
- Are there any other changes or additions?

8. Protective Measures

Under the AGTA, there are now procedures in place to safeguard the interests of assisted and represented adults. An assisted adult is a person in respect of whom a co-decision-making order is in effect. Any interested person can send a written and signed complaint to the Complaints Officer when they believe a co-decision-maker (a person who assists an adult who needs decision-making support), trustee, or guardian is not discharging their duties appropriately and the actions of the co-decision-maker, trustee, or private guardian may result in harm to the assisted/represented adult or financial loss to their property.

Complaints involving private trustees and financial matters will be referred by the complaints officer to the Public Trustee for investigation. If the complaint is about the Public Guardian, the Minister will appoint an independent investigator.

In the event a complaint is made about a guardian, the complaint is evaluated by the complaints officer as to whether the complaint warrants an investigation or not. If there is no investigation, a letter will be sent to the complainant outlining why the complaint was not investigated and the options available (for example, mediation).

If the complaint warrants investigation, it is referred to an investigator. The guardian, the represented adult, and any other people who have decision-making authority for the adult are informed an investigation is being conducted and the nature of the complaint.

REMEMBER!

Protective measures have been developed to protect vulnerable Albertans.

These measures will be implemented in a neutral manner and the process is rigorous to ensure the best possible outcome for all individuals involved.

If the complaint is referred for investigation, an investigator will be assigned and have the authority to:

- Interview the adult and other parties about the investigation
- Require production of relevant records from guardians, trustees, co-decision-makers, and service providers
- Apply for Court orders permitting entry to premises where the adult resides and access to relevant records if guardian refuses to allow access
- Refer the complaint/investigation to the police for criminal matters or other investigative bodies (e.g., Protection for Persons in Care, PDD Abuse Protocol).

If the investigator determines that the complaint is founded, the investigator will notify the complainant and other parties of their decision.

After this determination, the investigator may then attempt to resolve the complaint, through education or refer the complainant, the co-decision-maker, guardian or trustee to an alternative dispute resolution process. The investigator may also recommend that the Public Guardian or Public Trustee apply to Court for a guardianship or trusteeship order, or any other appropriate order.

9. The Guardianship Self Help Kit

The self-help kit is available to assist you. The forms with the new legislation have been revamped and are now electronic. There are very good instructions available on-line to assist you in completing the review application. Additionally, you can always contact one of the agencies contracted by the OPG to assist individuals in completing their application. Under the AGTA, the review dates are going to be driven by the needs of the represented adult and the self-help kit has been developed with this in mind.

Selected Acronyms

A

AADL	Alberta Aids to Daily Living
ACCD	Alberta Committee of Citizens with Disabilities
ACDS	Alberta Council of Disability Services
AGTA	Adult Guardianship and Trusteeship Act
AISH	Assured Income for the Severely Handicapped
ASB	Alberta Seniors Benefit
ATIA	Association of Translators and Interpreters of Alberta
AVLIC	Association of Visual Language Interpreters of Canada

B

BI	Brain Injury
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C

CAR	Capacity Assessment Report
CASLPA	Canadian Association of Speech-Language Pathologists and Audiologists
CCB	Canadian Council for the Blind
CDBRA	Canadian Deaf-Blind and Rubella Association
CDM	Co-Decision Making Order
CET	Creating Excellence Together
CMHA	Canadian Mental Health Association
CNIB	Canadian National Institute for the Blind
COP	Community Options Program
CPP	Canada Pension Plan
CSC	Community Supports Coordinator
CSS	Catholic Social Services
CTTIC	Canadian Translators, Terminologists and Interpreters Council

D

DD	Dual Diagnosis
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E

EI	Employment Insurance
EPSS	Employment Placement Support Services

F

FASD	Fetal Alcohol Spectrum Disorder
FCSS	Family Community Support Services
FMS	Family Managed Supports
FOIP	Freedom of Information and Protection of Privacy
FSCD	Family Support for Children with Disabilities

G

GIS	Guaranteed Income Supplement
GOA	Government of Alberta
GSP	General Service Plan

I

ID	Intellectual Disability
IDPD	International Day for Persons with Disabilities
IF	Individual Funding
IPP	Individual Program Plan
IPSE	Inclusive Post Secondary Education
ISA	Individual Service Agreement
ISP	Individual Service Plan

O

ODI	Office of Disability Issues
OPG	Office of the Public Guardian
OPT	Office of the Public Trustee

P

PCP	Person Centered Planning
PD	Personal Directive
PDD	Persons with Developmental Disabilities
PGR	Public Guardian Representative
PHN	Personal Health Number
PPCA	Protection of Persons in Care Act
PPIC	Protection of Persons in Care
PSS	Program Support Services

Q

QOL	Quality of Life
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R

RA Represented Adult

S

SA Self Advocate
SCS Seniors and Community Supports
SDMA Supported Decision Making Authorization
SFI Supports For Independence
SIL Supported Independent Living
SIN Social Insurance Number
SIS Supports Intensity Scale
SW Social Worker

T

TGO Temporary Guardianship Order
TVP Transitional Vocational Program

Glossary of Terms

Refer to *Adult Guardianship and Trusteeship Act*

Agent: as in the *Personal Directives Act*, a person designated in a personal directive to make personal decisions on behalf of the maker

Assisted adult: a person in respect of whom a co-decision-making order is in effect

Assisted person: an assisted adult; a person who is the subject of a co-decision-making order that has not taken effect under section 11(2)(b)

Capacity: with 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. a decision, and
- b. a failure to make a decision

Capacity assessment: an assessment conducted under AGTA, Part 4 of an adult's capacity to make decisions respecting personal matters or financial matters

Capacity assessment report: a report completed under AGTA, section 102

Capacity assessor: a member of a health profession designated in the regulations as being qualified to conduct capacity assessments who is designated as a capacity assessor under the regulations

Co-decision-maker: a person named as a co-decision-maker in a co-decision-making order

Co-decision-making order: an order of the Court appointing a co-decision-maker for an adult under this Act

Complaints officer: a person designated as a complaints officer to investigate complaints made about co-decision-makers, and private guardians and trustees under section 82 of the AGTA

Court: the Court of Queen's Bench

Custodian: adapted from the *Health Information Act*, a person or body with a duty of care for people as its basic function, for example the operator of a nursing home or an ambulance driver, or a pharmacist.

Enduring power of attorney: adapted from the *Powers of Attorney Act*. A power of attorney is an enduring power of attorney if:

- a. the donor is an individual who is an adult at the time of executing the power of attorney, and the power of attorney meets at least the following requirements:
 - it is in writing, is dated and is signed by the donor (or the donor's representative, who is not the witness) in the presence of a witness

An enduring power of attorney needs to also contain a statement indicating either:

- a. it is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney
- b. or is to take effect on the mental incapacity or infirmity of the donor.

Financial information: information about the property or financial matters of an identifiable individual

Financial matter: any matter relating to the acquisition, disposition, management or protection of property and any matter prescribed by the regulations

Guardian: a person named as a guardian in a guardianship order or a person who becomes a guardian by virtue of the operation of this Act

Guardianship order: an order of the Court made or continued under this Act appointing a guardian

Health care includes

- a. any examination, diagnosis, procedure or treatment undertaken to prevent or manage any disease, illness, ailment or health condition
- b. any procedure undertaken for the purpose of an examination or a diagnosis
- c. any medical, surgical, obstetrical or dental treatment
- d. anything done that is ancillary to any examination, diagnosis, procedure or treatment
- e. any procedure undertaken for the purpose of preventing pregnancy, except sterilization that is not medically necessary to protect health
- f. palliative care
- g. a treatment plan

Health care provider: a member of a health profession designated in the regulations who provides health care to an adult

Health information: any or all of the following about an identifiable individual (adapted from the *Health Information Act*):

- a. diagnostic, treatment and care information
- b. health services provider information
- c. registration information

Interested person: any person who is 18 years of age or older and who is concerned for the welfare of a person in respect of whom a co-decision-making order, guardianship order or trusteeship order is sought or has been obtained. Also, the public guardian or public trustee.

Investigator: a person designated to investigate complaints made about a co-decision-maker or a private guardian or trustee under section 83 of the AGTA;

Minister: the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

Nearest relative: with respect to any person, the relative of that person first listed in the following subclauses, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any subclause being preferred to the other of those relatives regardless of sex:

- a. spouse or adult interdependent partner
- b. adult son or daughter
- c. father or mother
- d. adult brother or sister
- e. grandfather or grandmother
- f. adult grandson or granddaughter
- g. adult uncle or aunt
- h. adult nephew or niece

Organization: adapted from the *Personal Information Protection Act*. Organization includes:

- a. a corporation
- b. an unincorporated association
- c. a trade union as defined in the *Labour Relations Code*
- d. a partnership as defined in the *Partnership Act*
- e. an individual acting in a commercial capacity

Organization does not include an individual acting in a personal or domestic capacity.

Personal directive: adapted from the *Personal Directives Act*. a document created by an individual with capacity regarding future decisions that may need to be made for them. This document should be in writing, dated and signed by the maker (or their representative who is not named as agent) and a witness (who is not named as agent and is not the representative of the maker).

Personal information: information, including health information and financial information, about an identifiable individual

Personal matter: subject to the regulations, any matter, except a financial matter, relating to the person of an adult, including, without limitation,

- a. the adult's health care
- b. where, with whom and under what conditions the adult is to live, either permanently or temporarily
- c. with whom the adult may associate
- d. the adult's participation in social activities
- e. the adult's participation in any educational, vocational or other training
- f. the adult's employment
- g. the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult
- h. any matters prescribed by the regulations;

Property: includes, without limitation,

- a. things and rights or interests in things
- b. anything regarded in law or equity as property or an interest in property
- c. any right or interest that may be transferred for value from one person to another
- d. any right, including a contingent or future right, to be paid money or to receive any other kind of property
- e. any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;

Public body: adapted from the *Freedom of Information and Protection of Privacy Act*. A Public body includes:

- a. a department, branch or office of the Government of Alberta
- b. an agency, board, commission, corporation, office or other body designated as a public body in the regulations
- c. the Executive Council Office
- d. the office of a member of the Executive Council
- e. the Legislative Assembly Office, the office of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner or the Information and Privacy Commissioner
- f. a local public body,

A public body does not include:

- a. the office of the Speaker of the Legislative Assembly and the office of a Member of the Legislative Assembly
- b. the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta;

Public Guardian: a person appointed as a Public Guardian pursuant to section 107;

Public Trustee: the Public Trustee under the *Public Trustee Act*

Registry: the registry established under the AGTA, section 106. This registry is the repository of information including certificates of incapacity, co-decision-making, guardianship, or trusteeship orders, as well as contact information for the assisted or represented adult, and the co-decision-maker, guardian, and/or trustee.

Represented adult: an adult in respect of whom

- a. a guardianship order is in effect
- b. a trusteeship order is in effect
- c. both a guardianship order and a trusteeship order are in effect;

Represented person: a represented adult, and a person who is the subject of a guardianship order or trusteeship order that has not taken effect under the AGTA section 24(2)(b) or 43(3)(b).

Residential facility: is a nursing home as defined in the *Nursing Homes Act*, a place of care for adults who are aged or infirm or who require special care that is licensed under the *Social Care Facilities Licensing Act*, an approved hospital or auxiliary hospital as defined in the *Hospitals Act*, and a premises, other than a private residence, in which 4 or more adults who are not related to the operator of the premises are provided with living accommodation, care and supervision.

Review officer: a person designated as a review officer under the AGTA section 81 who meets with the proposed represented or assisted adult to determine their views on the proposed order and the person(s) who may act as a co-decision-maker or guardian or trustee. The Review Officer also checks the Co-Decision-Maker or Guardianship or Trusteeship applications.

Significantly impaired: in respect of an adult's capacity to make decisions, means that the adult's cognitive and adaptive abilities are substantially limited as the result of an impairment, including, without limitation, a developmental disability, an organic, degenerative or neurological disease or disorder, an acquired brain injury or a chronic mental illness, and are not so substantially limited that the adult would not have the capacity to make decisions with appropriate guidance and support;

Specific decision maker: a person who acts as a specific decision maker for one-time decisions about health care or temporary admission to or discharge from a residential facility for an individual who lacks capacity and does not have a personal directive and is not under a guardianship order

Supported adult: an adult who has appointed a supporter in a supported decision-making authorization;

Supported decision-making authorization: an authorization made pursuant to the AGTA, section 4 in which an adult with capacity can name up to three people to support them in making decisions and the activities, for example, information gathering, needed to make said decisions. This is a regulated form.

Supporter: a person named as a supporter in a supported decision-making authorization;

Treatment plan: a plan that is developed by a health care provider for the provision of health care to or the withholding or withdrawal of health care from an adult with respect to a disease, illness, ailment or health condition that the adult has or may have in the future;

Trustee: a person named as a trustee in a trusteeship order or a person who becomes a trustee by virtue of the operation of this Act;

Trusteeship order: an order of the Court made or continued under the AGTA appointing a trustee.

Frequently Asked Questions

What is the *Adult Guardianship and Trusteeship Act* (AGTA)?

The *Adult Guardianship and Trusteeship Act* (AGTA) is new legislation that will replace the 30 year old *Dependent Adults Act* (DAA).

The AGTA is mainly about providing decision-making options when an adult needs assistance or requires a substitute for personal and financial decisions.

The AGTA received Royal Assent in December 2008 and will be proclaimed in September 2009.

Why is the new Act needed?

The *Dependent Adults Act* (DAA) was passed in 1978. Since then, the needs of Albertans have changed and legislation in this area needed to be developed to reflect these changes.

How does the AGTA respond to the concerns of Albertans?

A legislative review of the *Dependent Adults Act* and the *Personal Directives Act* began in 2005. The review involved extensive public consultations including a public survey, community meetings, focus groups with key stakeholders and dependent adults, and consultation with other jurisdictions.

Over 4,300 Albertans, from regular citizens to experts in the field, provided their personal stories, feedback, and recommendations about guardianship and trusteeship, and personal directive legislation in Alberta. The AGTA reflects what Albertans said they wanted and needed in this area to help themselves and each other when the ability to make decisions is lost. The Final Report and Recommendations from the review was released in January 2007.

What is the AGTA based on?

It is built on four guiding principles:

- The adult is presumed to have capacity and able to make decisions until the contrary is determined;
- The ability to communicate verbally is not a determination of capacity, the adult is entitled to communicate by any means that enables them to be understood;
- Focus on autonomy with a less intrusive and less restrictive approach; and
- Decision making that focuses on the best interests of the adult and how the adult would have made the decision if capable.

What are the key elements of the AGTA?

The AGTA clarifies and standardizes issues surrounding capacity assessment and allows for a range of supportive and substitute decision-making options. These options address the reality that adults have different levels of decision-making ability and that an adult's capacity may change over time.

Under the AGTA, an application for a co-decision-making order or a guardianship order can be made for an individual who has not yet reached the age of majority, but will within the following 12-month period. In practice, this means that parents can apply for a co-decision-making order or guardianship order for their dependent child that will take effect once the child reaches 18 years of age. This provision will assist individuals as they transition to adulthood.

The new AGTA continuum avoids an “all or nothing” approach to mental capacity and substitute decision-making in relation to personal matters. The continuum allows adults to receive assistance according to their needs and to maintain as much autonomy as possible.

The continuum includes the following options (from least to most intrusive):

Supported decision-making authorizations

These authorizations will be a regulated form and allow an adult with capacity to designate up to three people to act as a “supporter”, assisting the supported adult to access or obtain necessary information, make decisions in personal matters, and enact those decisions.

The authorization will allow the supporter to access personal and health information to assist the adult in making the decision. The adult can terminate the authorization at any time. This provision will benefit many people including those with disabilities.

Co-decision-making orders for personal matters

Co-decision making orders are appropriate if an adult is assessed as having a significant impairment, but can still make decisions with assistance. A co-decision making order is a Court order and the adult must agree to it.

Before granting a co-decision-making order, the Court must consider whether less intrusive options could meet the adult's needs. This provision will be useful for families where there is a trusting relationship; for example, a wife assisting her husband who is in the early stages of dementia.

Specific decision-making provisions

When an adult has no personal directive or guardian and a health professional believes an adult cannot provide informed consent on a decision related to health care or temporary admission to or discharge from a residential facility, a specific decision-maker can be selected.

In these circumstances a health professional can select a relative of the adult to make the decision or, as a last resort, the Office of the Public Guardian. Until the introduction of the AGTA, there was no legal mechanism to cover situations where an adult temporarily lacked capacity to make these types of decisions and the only option available to families and health professionals was guardianship.

Temporary guardianship and trusteeship orders

These provisions apply to situations where an adult is believed to lack capacity and is in imminent danger of death, serious harm or financial loss if someone does not make a decision to prevent the death, harm or financial loss. A temporary Court order is required. The Court order can only last 90 days.

Guardianship and trusteeship orders

These options are available for adults assessed as incapable and the application process under the AGTA allows for improved screening and information provision for prospective guardians and trustees. The new process also ensures the adult's views, whenever possible, are included in a report to the Court.

The AGTA also provides the Court with additional guidance when granting an order. For example, the Court must consider whether less intrusive options could meet the person's needs.

What changes are there to trusteeship?

Appointment of Public Trustee: Under the DAA, two physicians who have concluded that a resident of certain designated facilities lacks the capacity to handle their own financial affairs may issue a *certificate of incapacity*. This automatically makes the Public Trustee the person's trustee. No new certificates of incapacity will be issued after the AGTA comes into force. Certificates of incapacity that are already in force will be gradually converted into Court Order trusteeships.

Non-resident trustees. Under the DAA an individual who resides outside Alberta cannot be appointed trustee. A non-resident individual may be appointed trustee under the AGTA. They will be required to provide a bond or other form of security unless the Court is satisfied it would be in the adult's best interest to waive this requirement.

Private trustees' general authority. Under the DAA, private trustees have only the specific powers given to them by the Act or by the Court Order. The Public Trustee as trustee has the same power to deal with a dependent adult's property as the adult would have if they had capacity. Under the AGTA the authority of private trustees would be more similar to that of the Public Trustee. Subject to certain exceptions, private trustees will have authority to do anything in relation to financial matters of the represented adult that the adult could do if capable. One exception is that specific Court authority will be required to sell a represented adult's house or other real property.

Investment by private trustees. Under the DAA private trustees are required to invest in the so-called legal list of authorized trustee investments unless the trusteeship order gives broader investment powers. Under the AGTA private trustees will be directed to invest in accordance with the prudent-investor rule as set out in the *Trustee Act*. The prudent investor rule directs trustees to invest with a view to earning a reasonable return while avoiding undue risk. The application of the prudent-investor rule would be subject to any specific directions in the trusteeship order or in a trusteeship plan approved by the Court.

Gifts by private trustees. Under the DAA private trustees require specific Court authority to make even modest gifts or charitable contributions from the dependent adult's property. The AGTA authorizes a private trustee, subject to any restrictions in the regulations or trusteeship order, to make gifts out of the represented adult's property. The gifted property must not be required to meet the represented adult's needs and the trustee must have reasonable grounds to believe, based on the adult's actions when capable, that the adult would have made the gift if they still had capacity.

Compensation of private trustees. Under the DAA private trustee compensation must be approved by the Court on a case-by-case basis without legislative guidance. Under the AGTA a private trustee may elect to be compensated in accordance with a prescribed fee schedule, although the Court could reduce or eliminate compensation for a trustee who has not adequately discharged their duties.

Accounting by trustees. The DAA's provisions regarding accounting by private trustees are quite complex. The AGTA seeks to simplify accounting requirements as much as possible. Regulations will prescribe accounting forms trustees may use for keeping trusteeship accounts. The Court will have discretion whether to require trustees to submit their accounts periodically for examination and approval. The AGTA allows the Court to examine and approve a trustee's accounts without the necessity of a hearing unless the represented adult or another interested party requests a hearing.

How does the AGTA address abuse of the elderly and persons with disabilities?

Abuse of vulnerable people is a significant concern and the AGTA makes considerable improvements in the area of protection in two ways:

- When someone applies to be a co-decision maker, guardian or trustee, they are screened as part of the application process. A proposed guardian or trustee must submit a guardianship or trusteeship plan for the Court's approval. As well, the proposed assisted or represented adult will be interviewed to gain their views about the potential decision maker.
- When a co-decision making, guardianship, or trusteeship order is in place, the AGTA allows the Minister of Seniors and Community Supports to designate one or more individuals to receive and investigate complaints that an assisted or represented adult is being harmed by their co-decision maker, guardian, or trustee.

Where a complaint concerns the Public Guardian or Public Trustee, the Minister may appoint an independent complaints officer and investigator outside the Office of the Public Guardian (OPG) and Office of the Public Trustee (OPT) to handle concerns about the Public Guardian and Public Trustee.

How will the Office of the Public Guardian and Office of the Public Trustee handle investigations?

Office of the Public Guardian staff will include a complaints officer who will receive written complaints that a private guardian, trustee, or co-decision-maker is not complying with their duties and the represented or assisted adult's person or property may be harmed as a result of this failure.

Complaints involving private trustees and financial matters will be referred by the complaints officer to the Public Trustee for investigation. If the complaint is about the Public Guardian, the Minister will appoint an independent investigator.

The complaints officer will review written complaints to determine whether an investigation of the complaint is necessary. Upon referring the matter for investigation, the complaints officer will make every reasonable effort to notify the following people of the complaint:

- the assisted or represented adult
- the co-decision-maker or guardian or trustee who is the subject of the complaint
- any other co-decision-maker, guardian, or trustee appointed in the order

If the complaint is referred for investigation, an investigator will be assigned and have the authority to:

- Interview the adult and other parties about the investigation
- Require production of relevant records from guardians, trustees, co-decision-makers, and service providers
- Apply for Court orders permitting entry to premises where the adult resides and access to relevant records if guardian refuses to allow access

If the investigator determines that the complaint is founded, the investigator will notify the complainant and other parties specified in the regulations of their decision.

After this determination, the investigator may then attempt to resolve the complaint, through education or refer the complainant, the co-decision-maker, guardian or trustee to an alternative dispute resolution process. The investigator may also recommend that the Public Guardian or Public Trustee apply to Court for a guardianship or trusteeship order, or any other appropriate order.

If a complaint is not referred for investigation, written reasons and options (such as mediation services or contacting the Office of the Public Guardian) will be provided to the complainant. Once a complaint is referred for investigation, if an investigator determines a complaint is unfounded, written reasons will be provided to the complainant.

Is applying for guardianship and trusteeship confusing and expensive? How does the AGTA address these concerns?

Family members have consistently stepped forward to take on the responsibility of acting as a guardian or trustee for a loved one. There are currently over 9,000 private guardians and trustees in the province fulfilling this important role.

In consultations for the AGTA, Albertans told us they want to be informed and supported in their role as guardian or trustee.

Under the AGTA, the role of Review Officer has been created and undertaken by the Office of the Public Guardian. The review officer will provide information to the public and assist applicants with service requirements for Court applications. The Review Officer will also provide the Court with a written report of the adult's views and the suitability of proposed co-decision makers, guardians, or trustees.

These functions will assist the public at the time of application by providing a “one stop shop” for issues related to the loss of mental capacity and substitute decision-making.

If costs are a hardship, the applicant can request the costs be ordered by the Court.

How will the AGTA affect me if I am currently a Guardian or Trustee?

The new AGTA offers Albertans more choices for receiving the support they need – when they need it – to make decisions about their physical, financial, and mental well-being.

New safeguards protect those who no longer have the capacity to make decisions through screening processes and complaints investigation. The Court order that granted you authority is still in effect after the AGTA is proclaimed and your next review will occur under the AGTA.

The AGTA balances protecting Albertans who are unable to make decisions for themselves while respecting their desire to be as independent as possible for as long as possible.

For more information, please contact Office of the Public Guardian at 1-877-427-4525 or go online to: www.seniors.alberta.ca/opg.

Additional Resources and Contacts

Office of the Public Guardian

www.seniors.ab.ca/opg

The Office of the Public Guardian (OPG) provides decision-making mechanisms for individuals who are unable to make personal non-financial decisions for themselves. The OPG does this through the *Adult Guardianship and Trusteeship Act* (formerly the *Dependent Adults Act*), the *Personal Directives Act* and the *Mental Health Act*.

Regional Offices

Provincial Office

3rd Flr, Standard Life Centre
10405 Jasper Avenue
Edmonton, AB T5J 4R7
Phone: (780) 422-1868
Fax: (780) 422-6051

Calgary Office

9th Flr, Century Park Place
855 – 8th Avenue SW
Calgary, AB T2P 3P1
Phone: (403) 297-3364
Fax: (403) 297-3427

Edmonton Office

4th Flr, 108 Street Building
9942 – 108 Street
Edmonton, AB T5K 2J5
Phone: (780) 427-0017
Fax: (780) 422-9138

Lethbridge Office

500 Professional Building
740 – 4 Avenue South
Lethbridge, AB T1J 0N9
Phone: (403) 381-5648
Fax: (403) 381-5774

Grande Prairie Office

1501 Provincial Building
10320 – 99 Street
Grande Prairie, AB T8V 6J4
Phone: (780) 833-4319
Fax: (780) 538-5308

Medicine Hat Sub-Office

306 Provincial Building
346 – 3 Street SE
Medicine Hat, AB T1A 0G7
Phone: (403) 529-3744
Fax: (403) 528-5246

St. Paul Sub-Office

Box 409
110, 5025 – 49 Avenue
St. Paul, AB T0A 3A4
Phone: (780) 645-6278
Fax: (780) 645-6260

Red Deer Office

203 Provincial Building
920 – 51 Street
Red Deer, AB T4N 6K8
Phone: (403) 340-5165
Fax: (403) 340-7131

Office of the Public Guardian

General Information Line

(Toll free within North America)
1-877-427-4525

Government of Alberta

General Information Line

(Toll free within Alberta)
310-0000

Additional Resources and Contacts

Alberta Court of Queen's Bench – Surrogate Court

Regional Court Houses

Calgary Court House

701 N, 601 – 5 Street SW
Calgary, AB T2P 5P7
Phone: (403) 297-7281
Fax: (403) 297-6906

Drumheller Court House

511 – 3 Avenue West
Drumheller, AB T0J 0Y0
Phone: (403) 820-7300
Fax: (403) 823-6073

Edmonton Court House

Law Court Building
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: (780) 422-2435
Fax: (780) 422-6689

Grande Prairie Court House

10260 – 99 Street
Grande Prairie, AB T8V 2H4
Phone: (780) 538-5340
Fax: (780) 538-5493

Wetaskiwin Court House

4605 – 51 Street
Wetaskiwin, AB T9A 1K7
Phone: (780) 361-1258
Fax: (780) 361-1319

Lethbridge / MacLeod Court House

320 – 4 Street South
Lethbridge, AB T1J 1Z8
Phone: (403) 381-5196
Fax: (403) 381-5128

Medicine Hat Court House

460 – 1st Street SE
Medicine Hat, AB T1A 0A8
Phone: (403) 529-8710
Fax: (403) 529-8607

Peace River Court House

Bag 900-34, 9905 – 97 Avenue
Peace River, AB T8S 1T4
Phone: (780) 624-6256
Fax: (780) 624-7101

Fort McMurray Court House

Provincial Building
9700 Franklin Avenue
Fort McMurray, AB T9H 4W3
Phone: (780) 743-7136
Fax: (780) 743-7315

St. Paul Court House

PO Box 1900, 4704 – 50 Street
St. Paul, AB T0A 3A0
Phone: (780) 645-6324
Fax: (780) 645-6273

Red Deer Court House

4909 – 48 Avenue
Red Deer, AB T4N 3T5
Phone: (403) 340-5223
Fax: (403) 340-7984

Additional Resources and Contacts

Office of the Public Trustee

Regions served by Calgary Office of the Public Trustee include Red Deer and all cities South of Red Deer. Regions served by Edmonton Office of the Public Trustee include all cities north of Red Deer.

Regional Offices

Office of the Public Trustee

Edmonton

4th Floor, J.E. Brownlee Building

10365 – 97 Street

Edmonton, AB T5J 3Z8

Phone: (780) 427-2744

Fax: (780) 422-9136

Office of the Public Trustee

Calgary

2100 Telus Tower

411 – 1st Street SE

Calgary, AB T2G 4Y5

Phone: (403) 297-6541

Fax: (403) 297-2823

Sample Order Appointing Guardian

COURT FILE NUMBER ← File number of Application (needed for future reviews)

COURT **Court of Queen's Bench of Alberta (Surrogate Matter)**

JUDICIAL DISTRICT ← District where Application is being filed

PERSON IN RESPECT OF WHOM THE APPLICATION IS BEING MADE ← Name of Represented Adult

DOCUMENT **ORDER Appointing Guardian or Trustee**

NAME OF APPLICANT ← Name of Guardian appointed in the Order

CONSIDERED BY THE HONOURABLE JUSTICE _____

ON _____ (year/month/day) ← Date Order for Guardianship was granted (needed for future reviews)

THE COURT: ← Outlines the conditions the Court feels justify guardianship on the adult’s behalf

- has reviewed the Affidavit and other documents filed in this application;
- has considered the application in the absence of the applicant and any other person, being satisfied that:
 - no person entitled to do so has requested a hearing in accordance with the regulations, and
 - it is unnecessary to hold a hearing,
- has determined that:
 - [the adult is 18 years of age or over];
 - [the adult will attain the age of 18 within 2 months of the date of this application]
 - **[for guardianship order:** the conditions for appointment if a guardian are satisfied, namely,
 - the adult does not have capacity to make decisions about the personal matters with respect to which the guardian is given authority by this 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;
 - it is in the adult’s best interests for a guardian to be appointed;]
 - **[for trusteeship order:** the conditions for appointment of a trustee are satisfied, namely,
 - the adult does not have the capacity to make decisions respecting any or all financial matters;

- less intrusive and less restrictive alternate measures than the appointment of a trustee would not adequately protect the adult’s interests in respect of financial matters;
- it is in the adult’s best interests for a trustee to be appointed;
- **[for trusteeship order - s. 54(4)a:** has considered whether it would be in the adult’s best interests to impose any limits or conditions on the trustee’s authority.]

AND THE COURT ORDERS:

Appointment of the Guardian

Outlines name(s) of appointed Guardian(s), name of the Represented Adult and areas over which the Guardian(s) have been given decision-making authority

1.1 [Include all cases]

<Name of Guardian(s)> is (are) appointed as guardian of
<Name of Adult> with authority to act and make decisions with respect to:

- 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;
- the following personal matter(s) of the adult that the Court considers necessary, namely;

1.2 [Include only if requested in Application]

<Name of one of two or more Guardian(s)> has exclusive authority to act and make decisions respecting the following personal matters of the adult:
<specified matters>

1.3 [Include only if requested in Application]

The guardians must act jointly with respect to the following personal matters of the adult:
<specified matters>

1.4 **[Include only if requested in Application]**

<Name of one of two or more Guardian(s)> _____ is appointed or continues as alternate guardian of the adult with authority to act as guardian without further proceeding upon an event referred to in section 32(3) of the Act.

1.5 **[Include all cases]**

The guardianship plan is approved

Indicates that the Guardianship Plan submitted with the Application had been approved by the Court

1.6 **[Include all cases]**

Outlines any special conditions, limits or requirements upon which the Order is granted

The authority of the guardian is subject to the following conditions, limits or requirements:

<reserved for conditions, limits or requirements considered appropriate by the Court>

1.7 **[Include only if requested in Application]**

Outlines whether a prior Personal Directive has been wholly terminated or whether specific areas of authority are terminated in the Personal Directive

The authority of _____ <Name of Agent> _____ under the Personal Directive dated _____ (year/month/day)

is wholly terminated

is terminated for the following areas of authority but otherwise remains in effect:

<areas of authority terminated>

1.8 **[Include in all cases]**

<Name(s) of Guardian(s)> _____ must apply for a review of this Guardianship Order within _____ years. _____ years from the date of this Order

Outlines when a review should be completed and additional conditions for when a review should be completed

AND in any event

- if there has been a significant change in the needs, circumstances or capacity of the represented person that the guardian considers would make a variation or termination of the order in the represented adult’s best interests, OR
- if there has been a change in circumstance that affects the guardian’s ability or suitability to be a guardian for the adult.

1.9 [Include if the adult was the subject of a co-decision-making order]

The co-decision making order dated _____ is terminated.
(year/month/day)

Costs of Application

2.1 The following order is made regarding costs (legal fees and disbursements) of this application;

- legal fees for this application
- in the amount of
- to be taxed
- plus reasonable disbursements
- reasonable disbursements only shall be paid by
-

Outlines if the Court has identified the legal costs of the application and who is to cover the costs

Outlines that the Court is satisfied that the listed individuals have been served a copy of the application in an appropriate manner and gives direction as to how the Order is to be served

Other Matters

3.1

All requirements of the Act and regulations regarding service or sending of notice of this application are deemed to have been satisfied including requirements as to:

- the persons to be notified of this application;
- the documents to be served or sent to such persons;
- the manner of and time for serving or sending documents

Notice of this application to the following person is dispensed with:

3.2 The following direction is given regarding service of this order:

Except as otherwise provided below, a copy of this order must be sent by ordinary mail to the adult, the review officer, and every other person who was notified of this application.

A copy of this order must be served by the following method of service:

3.3 [Include if application is made under section 24(1) and/or section 43(2) of the Act]

This order does not come into effect until the person in respect of whom it is made attains the age of majority.

Identifies the date the order takes effect if the person for whom the application is made is under the age of 18

Identifies the Justice who granted the order and related contact information for the Court of Queen’s Bench where the application was filed and heard

(Justice of the Court of Queen’s Bench of Alberta)

(year/month/day)

ENTERED at

(city/town/municipality)

on

(year/month/day)

(Clerk of the Court)

Filed by

(name)

(address)

(address)

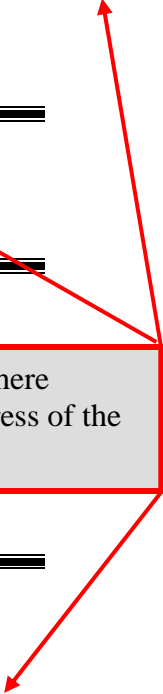
(phone number)

Court Action No.

In The Court of Queen's Bench of
Alberta (Surrogate Matter)
Judicial District of <City>

File number of the application, city where application is filed and name and address of the person completing the application

Filed By:



Report of Decisions Made Template

Represented Adult (RA)

Name: _____

Private Guardian

Name: _____

**Date Guardianship
Order Granted:**

**Date of Review
(if applicable):**

Granted Areas of Authority:

- Adult’s Health Care
- Where or with whom to live
- With whom to associate
- Social Activities
- Education/Vocation/Training
- Employment
- Legal
- Other

This section of the guide is for you, as private guardian, to record your areas of authority and the decisions you make over the course of the year. At the end of the year, the decisions recorded here should be transferred to the Annual Record of Decisions (Form 33) in preparation for your review.

Decision Date: _____	Area of Authority: _____
Consent Provided to: _____	Duration of Consent: _____
Method of contact used to provide Consent: <input type="checkbox"/> Telephone <input type="checkbox"/> In person <input type="checkbox"/> Email <input type="checkbox"/> Fax	
Reason for Decision: _____ _____ _____ _____	
Method of Contact (with RA): <input type="checkbox"/> In person <input type="checkbox"/> Telephone <input type="checkbox"/> Other: _____	
RA’s View on Decision: <input type="checkbox"/> Agreed <input type="checkbox"/> Disagreed	
If not in agreement (explain): _____	

Decision Date: _____	Area of Authority: _____
Consent Provided to: _____	Duration of Consent: _____
Method of contact used to provide Consent: <input type="checkbox"/> Telephone <input type="checkbox"/> In person <input type="checkbox"/> Email <input type="checkbox"/> Fax	
Reason for Decision: _____ _____ _____ _____	
Method of Contact (with RA): <input type="checkbox"/> In person <input type="checkbox"/> Telephone <input type="checkbox"/> Other: _____	
RA's View on Decision: <input type="checkbox"/> Agreed <input type="checkbox"/> Disagreed	
If not in agreement (explain): _____ _____ _____	

Decision Date: _____	Area of Authority: _____
Consent Provided to: _____	Duration of Consent: _____
Method of contact used to provide Consent: <input type="checkbox"/> Telephone <input type="checkbox"/> In person <input type="checkbox"/> Email <input type="checkbox"/> Fax	
Reason for Decision: _____ _____ _____ _____	
Method of Contact (with RA): <input type="checkbox"/> In person <input type="checkbox"/> Telephone <input type="checkbox"/> Other: _____	
RA's View on Decision: <input type="checkbox"/> Agreed <input type="checkbox"/> Disagreed	
If not in agreement (explain): _____ _____ _____	

Tips For Newly Appointed Trustees

Office Of The
Public Trustee

**Government
of Alberta** ■
Justice

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 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)
 - Human Resources and Employment (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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Calgary, AB T2G 4Y5
Phone: 403-297-6541
Fax: 403-297-2823

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.justice.gov.ab.ca/public_trustee/, or call the Office of the Public Trustee toll-free: 310-0000 and 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 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 September 1, 2009.

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 does not make funeral arrangements, but 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.

Options For Assistance

Court-ordered trusteeship is just one option to help represented adults deal with their finances. Other options include informal trusteeship and enduring powers of attorney. Each has its advantages and disadvantages. Brochures dealing with these and other topics are available from the Office of the Public Trustee or at: www.justice.gov.ab.ca/public_trustee/.

Assisting Represented Adults With Finances

Office Of The Public Trustee

Edmonton

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Office Of The Public Trustee

For More Information:

Visit: www.justice.gov.ab.ca/public_trustee/
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780-427-2744 for the Edmonton office, or
403-297-6541 for the Calgary office

Updated: September 2009



The Public Trustee is appointed by the Alberta Government under the *Public Trustee Act* to protect and manage the financial interests of vulnerable Albertans. Trust administrators, lawyers, taxation officers, auditors and support staff in the Office of the Public Trustee act on behalf of people with mental disabilities, administer the estates of deceased persons and protect the property interests of minors.

Assisting Mentally Disabled Adults With Finances

When a person with a mental disability has an estate to manage, it may be necessary for a trustee to be appointed under the *Adult Guardianship and Trusteeship Act*. The trustee can 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 (a) the adult does not have the capacity to make decisions respecting any or all financial matters, (b) less intrusive and less restrictive alternative measures would not adequately protect the adult's interests in respect of financial matters, and (c) 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 Is Appointed

When the Public Trustee is notified (a) of the death of a trustee, (b) of the appointment of a guardian or trustee for a trustee, or (c) 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.

How The Public Trustee Manages An Estate

Once appointed, the Public Trustee takes control of a 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 as a benefit to clients. If the adult's income exceeds their expenses, the Public Trustee puts the remaining amount in a trust account which pays interest. 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 are charged by the Public Trustee to 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 May 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 their 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, or until the represented adult dies.

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 trustee, control of the estate is returned to the former represented adult or to a Court-appointed private trustee, once an accounting has been reviewed and approved.

Informal Trusteeship

Office Of The
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Justice

People who suffer from a mental disability may need help managing their finances. The amount of assistance they need depends on their disability, what needs to be managed and who is willing and able to assist them.

If the disabled person has minimal assets and only needs help managing a monthly government cheque, trusteeship can be arranged with the government department issuing the cheque. This type of trusteeship is commonly called informal trusteeship and it has several advantages.

There are no Court costs involved and the informal trustee is only accountable to the department that issues the cheque and not the Court.

The informal trustee may have to account to the department from time to time for all of the money received and bills paid. The informal trustee's authority ends when the person-in-need dies. All funds held by the informal trustee become part of the deceased person's estate.

Keep Your Money Separate

Open a trust account for the disabled person where you can direct income to and pay bills from on their behalf.

The Following Government Departments Offer Informal Trusteeship Programs:

- Assured Income for the Severely Handicapped (AISH)
- Human Resources and Employment (Income Support)
- Canada Pension Plan
- Old Age Security
- Alberta Seniors Benefit
- Department of Veterans Affairs

Explore All The Options

While Informal Trusteeship seems like an easy way to do things, it may not be your best choice.

Enduring Power of Attorney

Depending on the situation, the disabled person may have the capacity to sign an Enduring Power of Attorney. Hiring a lawyer to help with this process is strongly recommended. The Public Trustee has developed a separate brochure about Enduring Powers of Attorney.

A Trustee Under The *Adult Guardianship and Trusteeship Act*

Having a trustee appointed for the disabled person under the *Adult Guardianship and Trusteeship Act* provides greater protection for the represented adult. When a person becomes a trustee under this Act, the trustee normally assumes control and responsibility over all of the property of the represented adult and the trustee is required to act in the best interests of the represented adult and in accordance with the Trusteeship Plan that must be filed by the trustee and approved by the Court. The trustee must review the Trusteeship Order and submit accounts for the Court's examination and approval at the time specified by the Court.

The Court might not appoint a trustee if it is satisfied less intrusive and less restrictive alternative measures, than the appointment of a trustee, would adequately protect the adult's interest in respect of financial matters.

Government of Canada

The appropriate papers are available at www.servicecanada.gc.ca/eng/audiences/seniors/benefits or can be mailed to the applicant by phoning 1-800-277-9914. Operators are available to answer any questions you may have.

Informal trustee provisions are available through the Income Securities Programs and Veterans Affairs.

Income Securities Programs

The Income Securities Programs include:

1. Old Age Security Pension
2. Guaranteed Income Supplement
3. Spouse's Allowance
4. Allowance for the Survivor
5. Canada Pension Plan

Income Security Programs Offices

CALGARY	EDMONTON
2 nd Floor, Suite 270	Main Floor, Canada Place
Harry Hays Building	9700 Jasper Avenue
220 Fourth Ave, S.E.	Edmonton, Alberta
Calgary, Alberta	T5J 4C1
T2G 4X3	

LETHBRIDGE	RED DEER
Provincial Building	2 nd Floor,
200 - 5 th Avenue S	4911 - 51 Street
Lethbridge, Alberta	Red Deer, Alberta
T1J 4L1	T4N 6A1

Veterans Affairs Canada

This department encourages Court appointed trusteeship. However, an individual (usually a family member) can ask to be an informal trustee/administrator.

Veterans Affairs Canada Offices

1-866-522-2122
www.vac-acc.gc.ca/general

940 Canada Place	Room 104, Sam Livingston Building
9700 Jasper Avenue	510 - 12 Avenue S.W.
Edmonton, Alberta	Calgary, Alberta
T5L 4C3	T2R 0X5

Important Note

A veteran is likely to be entitled to benefits from more than one department. This may require separate informal trustee arrangements.

Provincial Government

Assured Income For The Severely Handicapped (AISH)

An informal trustee can be appointed under the Assured Income for the *Severely Handicapped Act*, and is referred to as a "financial administrator."

AISH payments may be redirected after a financial administrator is appointed.

Information regarding the AISH program is available at www.seniors.gov.ab.ca/aish or by calling the AISH Information Line at 1-866-477-8589 toll-free, or 780-644-1364 in the Edmonton area. You can also call 310-0000 to be connected to the AISH office nearest you.

Income Support

Informal trustee provisions are also found in the *Income and Employment Supports Act*. A financial administrator can be appointed to manage the benefit.

Income support payments may be redirected after a financial administrator is appointed.

For more information, contact the recipient's caseworker at the nearest Human Resources and Employment District office. You can also contact the 24-hour Income Support Contact Centre in Edmonton at 780-644-5134, outside of Edmonton toll-free at 1-866-644-5135, or by e-mail at ISCC@gov.ab.ca.

Alberta Seniors Benefit

An informal trustee may be appointed under the Alberta Seniors Benefit program. For more information, call 1-800-642-3853, or visit www.seniors.gov.ab.ca.

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