

# Guardianship

## *What You Need to Know*

### Who Needs a Guardian?

- Any adult (over the age of majority) who does not have capacity to make their own personal decisions (called a “Represented Adult”)
- In this document, the term “adult” refers to the Represented Adult who is the subject matter of a guardianship application

### Who is Eligible to be a Guardian?

A Guardian must meet all of these conditions:

- An adult over the age of 18;
- Must consent to acting as a guardian to the adult; and
- Has the ability to act as a guardian to the adult (meaning they have capacity themselves)

### Timing of Application

- When the adult has lost capacity (as determined by Capacity Assessment Report)
- In the case of a minor child who will not have capacity once they reach the age of majority, an application can be made once the child has turned 17 (desk applications can take upwards of 1 year)

### Types of Applications

- Desk
  - Uncontested basis
  - No Court attendance required
  - Can take several months up to 1 years for Order to be granted
- Hearing
  - Order can be granted much faster, but generally higher legal costs due to Court appearance(s)
  - Requires min. one Court attendance (possibly more, depending on circumstances)
  - Ordinary
    - Requires a minimum of 30 days’ notice to interested parties

- Urgent
  - Must establish there is risk of serious harm to Adult or others
  - Can proceed on minimum of 2 days' notice
  - Requires a minimum of 2 Court appearances:
    - First appearance - obtain temporary order that has maximum period of 90 days
    - Second appearance – Court can make permanent order
- If anyone objects to application, even if initially filed as desk procedure, the matter must proceed to Hearing for Court to determine what is in the adult's best interests

## **What's Involved**

### **Powers of Guardians**

- Health care
- Accommodations
- Where, with whom and under what conditions the adult may live (temporarily or permanently)
- Participation in social, educational, and/or employment activities (if appropriate)
- Any legal matters that do not relate primarily to the adult's finances or property

### **Responsibilities**

- Acting in best interests of adult and in good faith at all times
- Knowing and acting in accordance with the adult's beliefs, values and wishes
- Involving the adult in decision-making to the extent they are able to, including encouraging the adult to become capable of caring for themselves
- Informing the adult of decisions made on their behalf in a way they can understand
- Respecting the adult's dignity and privacy to the extent possible
- Keeping good records of all decisions made on behalf of the adult
- Complying with the terms of the Guardianship order

## **Getting Started**

- An application to the Court is required
  - The first step is to have a Capacity Assessment Report completed by the adult's physician, psychologist or a qualified assessor
  - Complete all of the Court forms
  - Complete Background check forms

- Pay the filing fee of \$250.00 to the Government of Alberta
- A copy of the application must be submitted to the Office of the Public Guardian and Trustee
- A Review Officer will meet with adult to go over the application with them to explain it and provide a report to the Court that the application is in the best interests of the adult
- In order to grant a Guardianship Order, the Court must be satisfied that:
  - The adult does not have the capacity to make personal decisions for themselves
  - Less intrusive and less restrictive measures would not be successful in assisting the adult
  - It is in the best interests of the adult to have a guardian (and that the person applying to be appointed as the guardian will act in the best interests of the adult)

### **Review of Guardianship**

- A Guardianship order will specify whether the order must be reviewed by a specific date or after a specific period of time has passed, or only if there is a change in the adult's circumstances in the future
- A Guardianship order can also be reviewed if the Guardian's ability or suitability to act in this capacity changes in the future
- The Adult, guardian, or another interested person may apply to the Court to review the Guardianship Order at any time upon a minimum of one (1) month's notice

### **Ending Guardianship**

- The Guardianship Order stays in place until it is terminated by the Court, or the adult dies
- The Court can cancel or terminate a Guardianship Order if:
  - The adult no longer needs a guardian (has regained capacity sufficiently to make their own personal decisions), or
  - The guardian needs to be replaced
- A guardian might need to be replaced if
  - They no longer wish to be a guardian
  - They are not following the Order
  - They are not properly carrying out their duties and responsibilities to the adult
  - They have acted improperly or in a manner that has or might endanger the adult's well-being
  - They are no longer suitable to be a guardian (possibly the guardian has lost capacity, or has died)
  - The relationship between the adult and the guardian has broken down
  - It is in the adult's best interests to name a new guardian

## **Things to Remember**

- If you are appointed as a guardian, keep good records of your decisions for the adult, including current contact information of all third parties who may provide care or other services to the adult. A record of decisions is required for any application to review or terminate a Guardianship Order
- If anything happens to you while you are acting a guardian to someone else, an authorized person might need to bring a review application on your behalf to review the period of time you acted as a guardian to the adult and then have you removed as a guardian
- If there is more than one guardian appointed, there is a need to ensure both guardians are informed and consulted at all times, even if appointed as joint and separate guardians
- If one guardian dies, but there is a joint guardian or an alternate guardian appointed in the Order, a review application is not necessary. In that instance, a letter must be sent to the Court and to the Office of the Public Guardian and Trustee, advising of the change of circumstances
- Guardians are not entitled to any compensation for performing their duties
- However, Guardians are entitled to be reimbursed for their out-of-pocket expenses incurred in the course of carrying out their duties, including for mileage if they run errands or take the adult to appointments, etc.