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*Funded by:*  
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*Prepared by:*  
Ruth Dafoe and Lisa McKee

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## Introduction

In July of 2001, *The Dependent Adults Act* was repealed and *The Adult Guardianship and Co-decision-making Act* was proclaimed. This Act provides a means of protection and assistance for adults who are not able to make sound decisions independently and, as a result, may be vulnerable to personal or financial harm.

The information in this booklet may assist in determining whether an application should be made under *The Adult Guardianship and Co-decision-making Act*, how to make the application and what to do after being appointed. It also contains a simplified version of the Act and Regulations. The forms that are required to make an application and instructions for completing the forms are also included. This booklet was prepared to provide information. It is not intended to replace legal advice.

It should be noted that amendments to the legislation and decisions made over time by the courts may cause these materials to be out of date. Material in this package is summarized to assist with understanding the legislation and the process of making an application. For an accurate statement of the law, it is always necessary to refer to the current Act and Regulations, available from Queen's Printer, Saskatchewan Justice or online at [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca).

For more information about adult guardianship, contact the Public Trustee's office or visit the Public Trustee's website at [www.publictrustee.gov.sk.ca](http://www.publictrustee.gov.sk.ca).

# Adult Guardianship in Saskatchewan

## 1. General Information

*The Adult Guardianship and Co-decision-making Act* came into force on July 15, 2001 and replaces *The Dependent Adults Act*.

An adult who does not have the capacity to make decisions may be exploited by others or may endanger his or her own financial or personal welfare. The purpose of this legislation is to provide a means of protection for adults who are unable to make decisions for themselves.

The basic principle guiding the administration of this Act is that the best interests of the adult must always be given primary consideration. Adults are considered to be able to make decisions for themselves unless it is proven otherwise. In addition, adults have the right to live as they please and make their own decisions, unless there is a danger that they may harm themselves or others and as long as they have the capacity to make those decisions.

When an adult needs decision-making assistance, it must be given in the least interfering way possible and the adult must be involved in decision-making as much as possible.

The inability to make decisions may be temporary or it may be permanent. Only certain types of decision-making may be affected, such as decisions about property, health care or living arrangements. In some cases, an adult may be able to participate in decision-making, but cannot manage on his or her own.

Under the provisions of this Act, an adult is someone who is sixteen or older.

## 2. New Provisions

If an adult does not have full capacity to make decisions, but can still participate in the decision making process, a co-decision-maker can now be appointed to assist the adult. In these circumstances, decisions are made jointly.

If an adult's inability to make decisions is only temporary, the Act allows for the appointment of a guardian on a temporary basis (up to six months) to deal with emergency situations when there is an immediate serious risk to the personal or financial welfare of the adult.

Provision has been made for the involvement of advocacy groups in the process of appointing a decision-maker. The process of objecting to the appointment of a decision-maker has been made easier.

More extensive information about the applicant is required and provision has been made to ensure that a person who has a conflict of interest (ie. paid health care or personal care provider) is not appointed as a decision-maker, unless they are the most appropriate person to be appointed.

When the decision-making is related to financial matters, there are stricter requirements for providing bonds and sureties and for providing accountings to the court and to the Public Trustee. The Public Trustee must now review all applications regarding financial matters.

### **3. Understanding Adult Guardianship**

#### ***Why would an adult need a decision-maker?***

An adult who does not have the capacity to make decisions can be at risk, and may need a decision-maker. The possible causes of this lack of capacity can vary greatly. Sometimes it results from conditions arising from birth, such as a severe intellectual impairment or autism. A brain injury from an accident or a stroke can also affect an adult's ability to make decisions, either temporarily or permanently.

Brain diseases such as bipolar affective disorder or schizophrenia may alter perception and understanding of reality so the person affected is unable to make realistic decisions. This may be a temporary problem during an acute episode, or for those more severely affected, it may be permanent.

There are a number of conditions that may cause deterioration of the brain, and may suddenly or gradually affect an adult's ability to think well enough to make decisions. These conditions include some brain tumors, chronic alcohol poisoning of the brain, the clogging of blood vessels in the brain, and Alzheimer's Disease, which causes gradual memory loss.

#### ***What is a decision-maker?***

The term "decision-maker" is used to describe someone who has been given the authority by the court to make or assist in making decisions for an adult.

The term is used to describe a personal guardian, a property guardian, a personal co-decision-maker, a property co-decision-maker, a temporary personal guardian or a temporary property guardian. A decision-maker can be one person or more than one person.

#### ***What is a guardian?***

A guardian is someone who has the authority to make decisions for an adult. A personal guardian makes decisions about an adult's personal welfare and a property guardian makes decisions about an adult's finances and property.

***What is a co-decision-maker?***

A co-decision-maker is someone who has the authority to assist an adult in making decisions and to make joint decisions with the adult.

A personal co-decision-maker makes decisions with the adult about personal matters and a property co-decision-maker makes decisions with the adult about finances and property.

A co-decision-maker must ensure that the adult has and understands all the information needed to make a decision, and knows the alternatives and likely results of any choice.

***What is a temporary guardian?***

A temporary personal or property guardian is someone who has the authority to make decisions for an adult in emergency situations for a limited time, to a maximum of six months. The authority of a temporary guardian is limited to doing what is necessary to protect the adult or the adult's property from serious harm from an immediate danger.

A temporary guardian can be appointed for an adult that is in immediate danger of serious personal or financial harm. The adult must be unable to make reasonable decisions, at least temporarily, because he or she cannot understand the information needed to make a decision or the probable consequences.

***Who can be appointed a decision-maker?***

Anyone who is eighteen or older who has an interest in the personal or financial welfare of an adult may apply to the court to be appointed as a decision-maker for the adult. Someone who is a paid care provider or in some other conflict of interest situation may not be eligible for appointment, unless the court considers the applicant to be the most appropriate person to be the decision-maker.

The court will determine whether the applicant is suitable to be the decision-maker. Among other things, the court will consider the applicant's relationship with the adult and, whenever possible, the applicant should have a long-term caring relationship with the adult.

The Public Trustee may be appointed as a property decision-maker for an adult if there is no suitable person available for this responsibility.

***How do I become a decision-maker?***

An application must be made to the court to be appointed as a decision-maker. The application will contain information to show the court that the adult needs a decision-maker. Two or more assessments of the adult's ability to make decisions must accompany the application, and at least two of the assessors must be qualified professionals.

The application also contains information to demonstrate the suitability of the person asking for decision-making authority.

***What are the duties and responsibilities of a decision-maker?***

The court determines what matters come under the authority of a personal decision-maker. A property decision-maker has authority for all financial and property matters except for any limitations or conditions indicated in the court order.

A temporary guardian may only do what is necessary to protect the adult from immediate harm or damage to the estate.

***Can a decision-maker be paid?***

The court may order that a decision-maker be reimbursed for expenses or paid a fee for services from the adult's funds. It may be a one-time payment or a fixed fee paid on a regular basis.

***What if circumstances change after the appointment of a decision-maker?***

When an appointment is made, the court may order a future review and set a date for the review. If there are indications in the assessment of the adult that his or her capacity to make decisions may improve, a review must be ordered. Any interested person, including the adult, the nearest relatives, any appointed decision-maker for the adult, and the Public Trustee, may request the court to review an appointment.

If a person who has been appointed as a decision-maker is unable or unwilling to continue this responsibility and the adult still needs help, someone else may apply to be appointed.

***What if an appointed decision-maker dies?***

A person who has been appointed as a decision-maker may name someone in his or her will to continue this responsibility after his or her death. After the death of the decision-maker, the person named in the will takes over immediately. Within six months of the former decision-maker's death, the person nominated in the will must apply to the court to have the nomination confirmed.

#### **4. The Role of the Public Trustee**

The Public Trustee reviews all applications with respect to property decision-making. The Public Trustee may investigate the matter and may contact the applicant or anyone objecting to the application for further information and clarification.

The adult who is the subject of the application may also be contacted to determine whether he or she has representation or wants to be represented. The Public Trustee may provide information to the court and may obtain a lawyer to act for the adult.

If the adult is involved with a designated advocacy group, the Public Trustee will inform this group about the application. The advocacy group will also be informed about the application if the adult has asked that they be involved or if the Public Trustee considers that they should be involved.

The Public Trustee may inform any health care or other agency providing services to the adult about the application. The Public Trustee may contact any relatives who did not receive a copy of the application to inform them about it. The Public Trustee has broad powers to do anything that is considered to be appropriate concerning the application.

When a property decision-maker is appointed, the decision-maker must provide the Public Trustee with an annual accounting and inventory of the adult's property. The Public Trustee reviews and may investigate an annual accounting or inventory.

If a property decision-maker fails to provide an inventory or annual accounting, the Public Trustee may ask the court to review the appointment.

If the court decides that an adult needs a property decision-maker, but the applicant is not a suitable person for the appointment, and no one else applies, the Public Trustee may be appointed.

The Public Trustee is provided with a copy of all appointments of property decision-makers and or personal decision-makers.

## Before Making an Application

Before an application is made, these questions should be considered:

- ! Is a court appointed decision-maker necessary?
- ! What type of decision-making authority is required?
- ! Who should make the application?

In order to determine whether a court appointed decision-maker is necessary, the following questions should be considered:

- ! What kinds of decisions need to be made to meet the adult's personal and financial needs?
- ! Is the adult able to understand the information needed to make decisions?
- ! Does the adult understand the consequences of decisions that he or she makes?
- ! Does the adult consistently make decisions that result in harm to his or her personal or financial welfare?
- ! Is the adult at risk of being taken advantage of?
- ! Can the adult look after his or her day to day needs such as dress, diet and personal care?
- ! Are the adult's living arrangements suitable for his or her needs?
- ! Is the adult able to give informed consent for health care treatment?
- ! What support does the adult have to assist in making appropriate decisions?
- ! What property does the adult have?
- ! What is the adult's source of income and can that income be managed in some other way? (ie. can payments from Saskatchewan Social Services, Old Age Security or Guaranteed Income Supplement be paid to a trustee?)

The capacity of the adult should be assessed. If an application is made to the court, at least two assessments will be required. Two assessments must be performed by qualified professionals such as a nurse, doctor, occupational or physical therapist, social worker, speech therapist or psychologist.

If the adult is receiving services from an agency such as Home Care, Mental Health Services, Crisis Management, Social Services, Community Living Division or in a long term care residence, you may be able to have someone from that agency make an assessment.

The information in the assessments should be considered to determine what type of decision-making authority is required. These questions must be considered:

- ! Is assistance required only for personal matters, only for financial matters, or both?
- ! Should someone be appointed to make decisions for the adult or with the adult?

When considering who should apply for decision-making authority, these questions should be considered:

- ! Who is able and willing to maintain regular contact with the adult?
- ! Who lives closest to the adult?
- ! Who has a close relationship with the adult?
- ! Who does the adult trust?
- ! Who does the family trust?
- ! Who is able to make sound financial decisions on behalf of the adult?

If the adult has written a will, given someone a power of attorney, provided a Health Care Directive, or named someone as a proxy to make health care decisions on his or her behalf, this should be investigated before the application is made. A Health Care Directive is a statement of a person's wishes for health care in the event of the person being unable to speak for her or himself. A proxy is someone named under a Health Care Directive to carry out those wishes and to consent to health care for the person.

If an application is to be made for an appointment as a decision-maker for financial matters, a bond must be filed and it will be necessary to determine the value of the adult's assets before the application is made.

An application to be appointed as a decision-maker is usually made by a relative or a close friend of the adult. If you are appointed as a decision-maker, you will have the legal authority to assist in making or make decisions for the adult. This responsibility and its implications should be carefully considered before an application is made.

## Making an Application

### 1. Determine what type of decision-making authority you will request

If an adult is not able to make decisions and needs someone to make decisions for him or her, a guardian should be appointed. If the adult is not able to make decisions about personal matters, a **personal guardian** should be appointed. If the adult is not able to make decisions about financial matters, a **property guardian** should be appointed.

If the adult needs someone to assist with making decisions, a co-decision-maker should be appointed. If the adult needs assistance to make decisions about personal matters, a **personal co-decision-maker** should be appointed. If the adult needs assistance to make decisions about financial matters, a **property co-decision-maker** should be appointed.

If the adult is in immediate danger of serious harm, a temporary guardian should be appointed. If the danger is related to personal matters, a **temporary personal guardian** should be appointed. If the danger is related to financial matters, a **temporary property guardian** should be appointed.

If you have been named in a will to take over the duties of a decision-maker that has died, you may act in that capacity immediately. You will have the same authority as the previous decision-maker but, within six months, you must make an application to the court for **confirmation of the testamentary nomination**.

### 2. Determine which forms must be completed

To make an application to be appointed as a **personal guardian** or **personal co-decision-maker**, you will need **Form A**, **Form B**, and **Form J**. You may also provide consents from the nearest relatives, on **Form E** and **Form F**.

To make an application to be appointed as a **property guardian** or **property co-decision-maker**, you will need **Form A**, **Form B**, **Form J**, **Form K** and **Form M**. If the adult owns real property, you will also need **Form O**. You may also provide consents from the nearest relatives, on **Form E** and **Form F**.

To make an application to be appointed as a **temporary personal guardian** or a **temporary property guardian**, you will need **Form H** and **Form I**.

To make an application for **confirmation of a testamentary nomination** as a **personal guardian** or **personal co-decision-maker**, you will need **Form C** and **Form D**. You may also provide consents from the nearest relatives, on **Form E** and **Form F**.

To make an application for **confirmation of a testamentary nomination** as a **property guardian** or **property co-decision-maker**, you will need **Form C**, **Form D** and **Form M**.

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### **3. Completing the forms**

You may be able to complete the forms yourself, or you may need a lawyer to assist you. If you do not have a family lawyer, try to find one who understands your situation and has experience in making adult guardianship applications.

### **4. Service of documents**

Depending on the type of application that is being made, you will have to provide copies to, or "serve", a number of people. Copies must be given to the adult, the adult's nearest relatives, anyone in a position of trust with the adult, such as a power of attorney or proxy for health care decisions. If the application asks for property decision-making authority, a copy must also be provided to the Public Trustee.

If you are making an application to be appointed as a temporary personal guardian you are only required to serve the adult. If you are making an application to be appointed as a temporary property guardian, you are only required to serve the adult and the Public Trustee

To serve someone with the application, you may give it to them personally, you may give it to someone else to deliver, you may take it to a court to have it delivered by a sheriff or you may send it by registered mail. In any case, you will need proof of delivery. This proof can be provided in the form of a sworn affidavit from someone who personally delivered the application or a receipt from the post office.

### **5. What if someone objects to the application?**

Everyone who receives a copy of an application for guardianship may notify the court that they object to the application. The notification must include the reasons for the objection.

Anyone who has an interest in the welfare of the adult or the adult's estate, even if they have not received a copy of the application, may also send an objection to the court.

### **6. Providing your application to the court**

Your application and all of the supporting documentation must be filed at a Court of Queen's Bench for Saskatchewan. You may be able to provide your application to the court yourself, or you may need a lawyer to assist you. The original application and supporting documentation must be provided to the court along with proof that you have provided copies to all of the people listed in the Act.

You will have to pay a court fee to file your application.

## **7. Court decision**

The court may consider your application and issue an order based on the material you have submitted, or it may decide that a hearing is necessary. The court then sets a date, time and place for the hearing, and will notify everyone concerned, at least ten days before the hearing.

If the court, before or after a hearing, decides to provide the requested decision-making authority, a court order will be issued. Because this court order is the document that provides your authority, it should be kept in a safe place.

If the order provides for personal decision-making authority, the specific types of authority will be stated. A property decision-maker has authority for all financial and property matters except for any limitations or conditions that are indicated in the order.

The court order may indicate that service of the application and/or the order is not required for certain persons. It also may indicate that the order is to be reviewed within a certain time period and it may provide the authority for funds to be paid from the adult's assets for services.

## After You Are Appointed a Decision-Maker

As a decision-maker, you will face a number of issues and will have to make a number of decisions. You will be accountable to the court and, for financial matters, you will also be accountable to the Public Trustee for decisions that you make.

Your decisions must always consider the best interests of the adult. If the adult can understand some or all of the information about a decision, you should discuss it with him or her. Your decisions must encourage independence and represent the least restrictive alternative available.

If you have been given decision-making authority for financial matters, the funds under your control are a trust and may only be used for and on behalf of the adult. You will have to provide an annual inventory and accounting of the adult's assets to the court and to the Public Trustee. This accounting must include a list of all funds received and all funds spent on behalf of the adult and it is important to keep accurate records.

If you have been given decision-making authority for financial matters and the adult has an interest in real property, you must notify Land Titles of your authority.

If you have been given personal decision-making authority, your authority is limited to the specific matters listed in the court order. Review the order thoroughly so that you know your areas of authority. Make sure you are aware of any Health Care Directive issued by the adult and whether a proxy has been named in the directive to make health care decisions. Any such directive or proxy will have priority over your authority.

A personal decision-maker does not have the authority to:

- ! consent to the withdrawal of life-support systems for the adult;
- ! consent to live organ donations by the adult;
- ! consent to the sterilization of the adult, unless it is part of a medically necessary procedure;
- ! consent for the adult to have an abortion, unless the continued pregnancy would threaten the life or health of the adult;
- ! consent to the termination of the parental rights of the adult;
- ! commence divorce proceedings on behalf of the adult;
- ! interfere with the adult's religious practices, unless they threaten the health or safety of the adult.

You may want to appoint someone in your will to take over your duties after your death.

## Appendix

Completing the Forms

Adult Guardianship and Co-decision-making Act: A Simplified Version

## Completing the Forms

### **FORM A    Application for Appointment of a Decision-maker other than a Temporary Personal Guardian or Temporary Property Guardian**

Enter your name and the city and province where you live. Check off the type of appointment(s) that you are requesting. If you are asking for an appointment as a property guardian or property co-decision-maker, indicate whether you are providing a bond and, if so, the amount of the bond.

Stroke out whichever paragraph in 2(a) is not appropriate (ie. if you are applying to be a personal guardian, stroke out the first paragraph and if you are applying to be a personal co-decision-maker, stroke out the second paragraph). If you are applying for decision-making authority only for matters related to finances, stroke out both and do not check off any of the boxes.)

Check off the boxes that describe the type of authority you are requesting. In Paragraph 2(b), list any limitations, conditions or requirements that should apply to the appointment.

Stroke out whichever paragraph in 3(a) is not appropriate (ie. if you are applying to be a property guardian, stroke out the first paragraph and if you are applying to be a property co-decision-maker, stroke out the second paragraph). If you are applying for decision-making authority only for personal matters, stroke out both.

In Paragraph 3(b), list any limitations, conditions or requirements that should apply to the appointment. If you are providing a bond, check off the first box in Paragraph 3(c) and fill in the amount of the bond. If you are asking to be appointed without a bond, check off the second box.

In Paragraph 4(a), check off the boxes to indicate who has been provided with copies of the application. You must include addresses for everyone that is listed, except for the Public Trustee and the Minister of Social Services. Refer to section 7 and section 31 of the Act to determine who must be provided with a copy. Refer to section 5 of the Act to determine the nearest relatives.

If there are people that should be served, but you are requesting that the court waive this requirement, list these people in Paragraph 4(b).

In Paragraph 5, check off the appropriate boxes to indicate any requests that you have with respect to a review of the appointment, payment of fees for services or any other requests.

A number of documents must be attached to the application. You must attach:

- ! Proof that everyone that is supposed to be provided with a copy of the application has received it.
- ! Form B, which is the statement that is sworn by you and supports your application.
- ! Two or more assessments of the adult (Form J).

If you are requesting an appointment as a property guardian or property co-decision-maker, you will also need to provide the inventory of the adult's assets (Form K) and a bond (Form M). You may also provide consents to the appointment from the nearest relatives (Form E and Form F).

**FORM B    Affidavit in Support of an Application for Appointment of a Decision-Maker other than a Temporary Personal Guardian or Temporary Property Guardian**

Enter your name and the city and province where you live. In Paragraphs 1 to 7, provide the requested information.

In Paragraph 8, indicate what type of decision-making assistance is required (ie. guardian or co-decision maker) and why.

In Paragraph 9, indicate what type of decision-making assistance is required and whether the assistance is required for personal matters, for property matters, or both.

In Paragraphs 10, 11 and 12, provide the requested information. If possible, provide a written, signed statement from the adult that describes the adult's wishes.

In Paragraphs 13 to 19, check off the appropriate boxes and provide the requested information to demonstrate your suitability to be appointed as a decision-maker. Paragraph 16 asks that you provide a copy of a criminal record check completed by your local police service.

In Paragraph 20, describe your general plan for the adult or for his or her finances.

If the application is for a property decision-maker, state the estimated value of the adult's property in Paragraph 21 and in Paragraph 22, describe how the property is currently managed. If you are asking to be appointed without a bond, provide the reasons in Paragraph 23.

If you are asking for permission to not provide someone with a copy of the application, provide the name of the person, their relationship to the adult, and your reasons, in Paragraph 24.

In Paragraph 25, check off the boxes to indicate which documents you are attaching to the form.

In Paragraph 26, list any other applications that you are aware of with respect to decision-making for the adult.

In Paragraph 29, fill in the type of appointment you are requesting and the name of the adult.

This form must be sworn, which means that it must be signed before a Commissioner for Oaths.

### **FORM C    Application for Confirmation of a Testamentary Nomination (Appointment by Will)**

Enter your name and the city and province where you live. Check off the type of decision-making authority that you were given in the will and insert the name of the adult.

If you are providing a bond, check off the first box in Paragraph 2 and fill in the amount of the bond. If you are asking to be appointed without a bond, check off the second box.

In Paragraph 3(a), check off the boxes to indicate who has been provided with copies of the application. Be sure to include addresses for everyone that is listed, except for the Public Trustee and the Minister of Social Services. Refer to section 7 and section 31 of the Act to determine who must be provided with a copy. Refer to Section 5 of the Act to determine the nearest relatives.

If there are people that should be served, but you are requesting that the court waive this requirement, list these people in Paragraph 3(b).

In Paragraph 4, check off the appropriate boxes to indicate any requests that you have with respect to a review of the appointment, payment of fees for services or any other requests.

A number of documents must be attached to the application. You must attach:

- ! A copy of the last will and testament of the previous decision-maker. This copy must be a court certified copy or a notarial copy
- ! A court certified copy of the order appointing the previous decision-maker
- ! Proof that everyone that is supposed to be provided with a copy of the application has received it.
- ! Form D, which is the statement that is sworn by you and supports your application.

If you are requesting confirmation of a nomination as property guardian or property co-decision-maker, you will also need to provide a bond (Form M). You may also provide consents to the confirmation from the nearest relatives (Form E and Form F).

**FORM D    Affidavit in Support of an Application for Confirmation of a Testamentary Nomination (Appointment by Will)**

Enter your name and the city and province where you live. In Paragraphs 2 to 9, provide the requested information.

Complete Paragraph 10 and, if possible, provide a written, signed statement from the adult that describes the adult's wishes.

In Paragraphs 11 to 17, check off the appropriate boxes and provide the requested information to demonstrate your suitability to be appointed as a decision-maker. Paragraph 14 asks that you provide a copy of a criminal record check completed by your local police service.

In Paragraph 18, describe your general plan for the adult or for his or her finances.

If you are asking to be appointed without a bond, provide the reasons in Paragraph 19.

If you are asking for permission to not provide someone with a copy of the application, provide the name of the person, their relationship to the adult, and your reasons, in Paragraph 20.

In Paragraph 21, check off the boxes to indicate which documents you are attaching to the form.

In Paragraph 22, list any other applications that you are aware of with respect to decision-making for the adult.

In Paragraph 25, fill in the type of appointment you are requesting and the name of the adult. This form must be sworn, which means that it must be signed before a Commissioner for Oaths.

**FORM E    Consent to Appointment of a Co-decision-maker or Guardian or to Confirmation of a Testamentary Nomination (Appointment by Will)**

This form is not completed by the person making the application. If you are providing the consent of the nearest relatives, the consent is provided on this Form.

The person consenting should fill out the form, date it, and sign it before a witness. The witness should then complete Form F, which is an affidavit of execution.

## **FORM F    Affidavit of Execution**

This Form is attached to Form E. The person that witnessed the nearest relative sign the form completes this form. The witness should enter their name and the city and province where they live. In Paragraph 1, the name of the nearest relative that signed Form E should be inserted.

In Paragraph 2, the city and province where the consent was signed should be entered.

In Paragraph 3, the name of the nearest relative is entered again.

The words under the signature line indicate that the form is to be signed by the applicant. This is a printing error. The form must be signed by the witness. The witness must swear this Form, which means that it must be signed in front of a Commissioner for Oaths.

Form F must be attached to Form E.

## **FORM G    Statement of Objection**

This form is not completed by the person making the application. When the person making the application provides copies to the people listed in Section 7 and/or 31 of the Act, this form will be included.

If the person that receives the copy of the application objects, that person will complete this form and provide it to the court.

If a person has not received a copy of the application, but has an interest in the personal or financial welfare of the adult, he or she can obtain a copy of this form from Queen's Printer, complete the form and provide it to the court.

## **FORM H    Application for Appointment of a Temporary Personal Guardian or Temporary Property Guardian**

In Paragraph 1, enter your name and the city and province where you live. Check off the type of appointment you are requesting and fill in the requested length of the appointment.

If you are asking for personal decision-making authority, check off the boxes in Paragraph 2 that describe the type of authority you are requesting. In 2(b), list any limitations, conditions or requirements that should apply to the appointment.

If you are asking for property decision-making authority, indicate in Paragraph 3(b) any specific authorities that you are requesting. In Paragraph 3(c) list any limitations, conditions or requirements that should apply to the appointment.

In Paragraph 4, check off the boxes to indicate who has been provided with copies of the application. Refer to section 19 and 44 of the Act to determine who must be provided with a copy.

In Paragraph 5, check off the appropriate boxes to indicate any requests that you have with respect to payment of fees for services or any other requests.

A number of documents must be attached to the application. You must attach:

- ! Proof that everyone that is supposed to be provided with a copy of the application has received it.
- ! Form I, which is the statement that is sworn by you and supports your application.

### **FORM I     Affidavit in Support of an Application of a Temporary Personal Guardian or Temporary Property Guardian**

Enter your name and the city and province where you live. In Paragraphs 2 to 7, provide the requested information.

In Paragraph 8, indicate what type of temporary guardianship is required (ie. for personal matters, for property matters, or both) and why. In Paragraphs 9, 10 and 11, provide the requested information.

In Paragraph 12, list any other applications that you are aware of with respect to temporary guardianship for the adult.

In Paragraph 15, indicate whether you are seeking a personal or a property order and fill in the name of the adult.

This form must be sworn, which means that it must be signed before a Commissioner for Oaths.

### **FORM J     Affidavit re. Assessment of Adult's Capacity**

An application to be appointed as a guardian or co-decision-maker for an adult must include at least two assessments of the adult's capacity. A qualified professional such as a doctor, a nurse, a social worker, a psychologist, an occupational therapist or a speech/language pathologist must make each assessment.

Each assessor should complete Form J.

The assessor should enter his or her name and the city and province where he or she lives. In Paragraph 1, the assessor should fill in his or her occupation and the name of the adult.

Paragraphs 3 to 13 should be completed by the assessor to demonstrate his or her qualifications, the details of the assessment and the opinion of the assessor with respect to the adult's capacity and need for a personal or property decision-maker.

This assessment must be sworn, which means that it must be signed by the assessor in front of a Commissioner for Oaths.

**FORM K Statement of Inventory re Application for Appointment of a Property Co-decision-maker or Property Guardian**

This form accompanies an application for appointment as a property decision-maker. Enter your name and the city and province where you live, the name of the adult and the date.

This form must be sworn, which means that you must sign it in front of a Commissioner for Oaths.

In Paragraphs A to K, under the heading "Assets of the Adult", list all of the adult's assets. In Paragraph L, list the adult's monthly income and in Paragraph M, list any funds held in a discretionary trust for the adult.

In Paragraphs A to D, under the heading "Debts of the Adult", list all of the adult's debts.

**FORM L Annual Accounting by Property Co-decision-maker or Property Guardian**

If you are appointed as property guardian or property co-decision-maker, you must provide an annual accounting to the court and to the Public Trustee. The accounting is provided on this form.

Enter your name and the city and province where you live.

In Paragraph 1, indicate whether you are property guardian or property co-decision-maker and the name of the adult. In Paragraph 2, indicate the period that the accounting covers.

This form must be sworn, which means that you must sign it in front of a Commissioner for Oaths.

In Paragraph A, list all of the funds received and in Paragraph B, list all of the funds spent. Attach the current inventory (Form K).

## **FORM M Bond**

An application for an appointment as a property guardian or property co-decision-maker must include a bond. The bond is provided on this form.

Enter your name and the city and province where you live. Enter the name of the surety and the city and province where the surety lives. Enter the amount of the bond. The bond will have to be equal to the value of the adult's assets, unless the nearest relatives and the public trustee have consented to the appointment without a bond. The court may order that the bond be higher or lower.

The bond indicates that a sum of money will be paid to the court if you do not do the following:

- ! make an accurate inventory of all the adult's property and provide the inventory to the court and to Public Trustee;
- ! make an annual accounting of all the adult's property and provide the accounting to the court and to the Public Trustee; and
- ! administer the adult's property according to the law.

This bond must be dated and signed by you and by the surety. The surety is the person or financial agency guaranteeing your bond.

## **FORM N Order Appointing a Decision-maker**

This is the Order providing authority to the decision-maker. It is completed by the applicant and submitted to the court with the application. If the court decides to grant the requested decision-making authority, the court will date, sign and seal this document.

Fill in your name and the name of the adult. In Paragraphs (a) to (f), check of the paragraph(s) that apply to the adult.

In Paragraph 1, fill in your name, the type(s) decision-making authority that the order is to provide, the name of the adult and the applicable section of the Act. If the order is to provide temporary authority, fill the length of time for which authority is requested.

If the order is to provide personal decision-making authority, in Paragraph 2, fill in the type of authority and check off the specific types of decisions for which authority is requested. List any limitations, conditions or requirements that will apply to the order.

If the order is to provide property decision-making authority, in Paragraph 3, list any limitations, conditions or requirements that will apply to the order.

In Paragraph 4, fill in the amount of the bond or indicate that no bond is to be filed.

If the order is to provide permission to waive the requirement to provide a copy of the application or the order to someone, complete Paragraph 5.

If the order is to be reviewed, completed Paragraph 6.

If the order is to provide authority for payment as a fee for service, complete Paragraph 7.

### **FORM O Notice of Authority of Property Decision-Maker**

If you are appointed as property guardian or property co-decision-maker for an adult that owns real property (ie. a residence, farm land or mines and minerals), you must notify Land Titles of your appointment. Form O is used to provide this notification to Land Titles.

The form is sent to the Registrar of the Land Registration District where the property is located. Indicate which Land Registration District it is to be sent to in the first Paragraph. Enter the name of the adult. List all of the land in that Land Registration District that the adult has an interest in and date and sign the form.

A court-certified copy of the order that appoints you as property guardian or property co-decision maker must be attached to the Form.

### **FORM P Withdrawal of Notice**

If a Notice of Authority of Property Decision-Maker has been sent to Land Titles and it no longer applies, Form P should be sent to the Registrar of the applicable Land Registration District. This may need to be done if a different property decision-maker is appointed, or if the adult no longer has an interest in the real property.

### **FORM Q Amended Notice**

If a Notice of Authority of Property Decision-Maker has been sent to Land Titles and it must be amended, Form Q should be sent to the Registrar of the applicable Land Registration District. This may need to be done if an error has been made in a Notice of Authority.

## **FORM R    Application for Review**

This form is used to request that a decision-making appointment be reviewed. A review can be requested by the adult, by the personal decision-maker, by the property decision-maker, by the Public Trustee or by anyone that the court considers has sufficient interest in the personal or financial welfare of the adult.

To complete this form, fill in your name and the city and province where you live in Paragraph 1. Check off the appropriate box and fill in the name of the decision-maker, the type of authority that the decision-maker has, and the name of the adult.

In Paragraph 2, fill in the date that the order issued and provide the details of the order.

In Paragraph 3, indicate what you are requesting from the court.

In Paragraph 4(a), indicate who has been served with a copy of the Application for Review. Refer to Section 66 of the Act to determine who must be provided with a copy. If there are people that should be served, but you are requesting that the court waive this requirement, list these people in paragraph 4(b).

In Paragraph 5, provide the reasons for the request to review the appointment.

In Paragraph 6, check off the boxes that describe the documents that are attached to the Application for Review.

The Adult Guardianship and  
Co-decision-making Act

and

Regulations

A Simplified Version

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## THE ADULT GUARDIANSHIP AND CO-DECISION-MAKING ACT

### PART I PRELIMINARY MATTERS

#### 1. Short Title

The title of this Act is *The Adult Guardianship and Co-decision-making Act*.

#### 2. Interpretation

This section provides definitions for the following terms used in the Act:

- ! *adult* - an individual sixteen years of age or older for whom an application is being made for some form of decision making assistance.
- ! *applicant* - a person or agency who is applying to become a guardian or co-decision-maker for someone.
- ! *capacity* - the ability to understand information needed to make a decision, and to appreciate the reasonably foreseeable consequences of making or not making a decision.
- ! *Court* - Court of Queen's Bench for Saskatchewan.
- ! *decision-maker* - someone appointed under this Act who makes decisions or helps to make decisions about the property or personal matters of an adult.
- ! *estate* - all the real property, such as land or a house that cannot be moved, and personal property of an adult.
- ! *Minister* - a member of the provincial cabinet who is responsible for the administration of this Act.
- ! *personal co-decision-maker* - a person appointed by the court to assist an adult to make decisions about personal matters.
- ! *personal decision-maker* - this term may mean either a personal co-decision-maker, a personal guardian, or a temporary personal guardian.
- ! *personal guardian* - a person appointed by the court to make personal decisions for an
- ! *prescribed* - instructed in the regulations.

- ! *property co-decision-maker* - a person appointed by the court to assist an adult to make decisions about finances or property.
- ! *property decision-maker* - this term may mean either a property co-decision-maker, a property guardian, or a temporary property guardian.
- ! *property guardian* - a person appointed by the court to make decisions about finances or property for an adult.
- ! *public trustee* - the Public Trustee for Saskatchewan.
- ! *temporary personal guardian* - a person appointed by the court on a temporary basis to make decisions for an adult about personal matters.
- ! *temporary property guardian* - a person appointed by the court on a temporary basis to make decisions for an adult about finances and property.

### **3. Principles**

These principles guide the interpretation and administration of this Act:

- ! The best interests of the adult must be given primary consideration;
- ! Adults are considered to be able to make their own decisions unless there is evidence to show that they cannot;
- ! Adults have the right to live as they please and to accept or refuse support, assistance or protection as long as they do not harm themselves or others and as long as they have full capacity to make those decisions;
- ! When they are unable to care for themselves or their property, adults have the right to receive the most useful, but also least interfering, form of support, assistance or protection;
- ! Adults who have physical or mental disabilities that make it hard for them to understand others or let others know their wishes, have the right to communicate in any way they can in order to be understood;
- ! Adults have the right to be given all the information needed to make decisions and to take part as much as possible in making all decisions that affect them.

### **4. Crown Bound**

The province of Saskatchewan is bound by this Act.

## **PART II PERSONAL CO-DECISION-MAKERS AND PERSONAL GUARDIANS**

### **5. Interpretation**

In Part II and Part III of this Act, "nearest relative" refers to the relatives of the adult who is the subject of the application.

Nearest relatives of the adult are all of the persons who are eighteen or older in the first of the following groups having living relatives in it:

- ! spouse and sons and daughters (a spouse includes a person who has had a spousal relationship of some permanence with the adult);
- ! parents (or legal guardians before the adult turned sixteen, except if the adult was a ward of Social Services Department just before turning sixteen);
- ! brothers and sisters;
- ! grandparents;
- ! grandchildren;
- ! uncles and aunts;
- ! nephews and nieces;
- ! next of kin as determined by *The Intestate Succession Act*.

In this section, "relatives" includes adopted relatives, and "spouse or person who has had a spousal relationship of some permanence with the adult" includes a person who is under the age of eighteen.

### **6. Who may make application**

Applications may be made by:

- ! any person that is eighteen or older who the court believes has enough interest in the personal welfare of the adult, or
- ! an individual, corporation or agency that has been given that right by the minister responsible for the Act.

There are forms in the regulations to use when making an application to be appointed as a personal co-decision-maker or personal guardian.

## **7. Service of application**

Any person or agency who makes an application must provide a copy to:

- ! the adult who is the subject of the application;
- ! the nearest relatives, unless they have provided written consent to the appointment (There is a form in the regulations to use to consent to the appointment.);
- ! the Minister of Social Services if the adult is receiving services from that department.
- ! the personal decision-maker or proposed personal decision-maker;
- ! the property decision-maker or proposed property decision-maker.

It is not necessary to conduct a search for anyone listed below but, if known, they must also be provided with a copy of the application:

- ! anyone who has been given power of attorney by the adult;
- ! anyone who has been given the authority under a health care directive by the adult to make decisions or give consent about health care matters;
- ! any supporter named by the adult while residing in a personal care home;
- ! any person who acts as a trustee for any financial benefits for the adult.

## **8. Statement of Objection**

Any person who is given a copy of the application or claims to have an interest in the personal welfare of the adult may provide the court with a statement of objection, indicating the reason for objecting, within ten days after all the copies of the application have been delivered.

There is a form in the regulations to use to object to an application.

Anyone who files an objection to the application must provide a copy to the applicant, to everyone that received a copy of the application and to everyone who consented to the application.

## **9. Hearing**

If the court considers that a hearing is necessary, the court will set a date, time and place for the hearing. At least ten days before the hearing, the court must provide notification of the date, time and place of the hearing to the applicant, to everyone that received a copy of the application, to everyone who consented to the application and to everyone who objected to the application.

At the hearing, it is up to the applicant to prove that the adult in question needs someone to make decisions or to assist in decision-making regarding personal matters.

The court can decide on the procedures for the hearing and whether evidence is to be provided by affidavit or in person.

## **10. No Hearing Necessary**

The court may decide that a hearing is not necessary and may consider the application without any of the participants being present, even if someone objects to the application.

If there is no hearing and the court appoints a decision-maker for the adult regarding personal matters, a copy of the appointment is sent to the applicant and to anyone who objected.

## **11. Powers of the Court**

If considered appropriate, the court may rule that it is not necessary to provide copies of the application to any or all of the persons listed in section 7.

A copy of the application must be sent to the adult who is the subject of the application unless the court has considered medical evidence and determined that special circumstances exist and that it would be harmful to the adult and not in the best interests of the adult.

If considered appropriate, the court may change the time period for making an objection, change the notice required for a hearing, or order that any other person be notified of the application.

## **12. Assessment Required**

The court may not appoint a personal guardian or co-decision-maker until it receives an assessment of the ability of the adult to make decisions concerning personal matters, and the likelihood of change in that ability.

The assessment must be made according to the directions in the regulations.

The court may require further examinations of the adult by other health professionals at any time.

## **13. Court's Inquiry**

In deciding whether an adult needs a personal decision-maker, the court must consider a number of factors, including:

- ! the information in the assessment;
- ! the types of decisions that the adult has to make;
- ! the support that is available to assist the adult in making decisions;
- ! the wishes of the adult, as much as possible;
- ! any other relevant information that has been given to the court.

The court must also consider the suitability of the applicant, including the relationship between the applicant and the adult and whether the applicant:

- ! has been appointed to be a decision-maker for anyone else and, if so, the fees that are paid for these services;
- ! is or has been a trustee or had power of attorney for anyone;
- ! has ever been convicted of an act of violence, intimidation, harassment, uttering threats, theft or fraud;
- ! has ever been a respondent under The Victims of Domestic Violence Act or if the Crown has tried to secure a peace bond against him;
- ! has ever applied for or been petitioned into bankruptcy and the outcome;
- ! has the ability to carry out the duties of a personal co-decision-maker or guardian in a satisfactory manner.

Before making an appointment, the court must be satisfied that the adult needs a personal guardian or personal co-decision-maker. The applicant may have to provide further information to the court for that purpose.

#### **14. Order Appointing Personal Co-decision-maker or Personal Guardian**

The court may appoint one or more persons as a personal co-decision-maker if it is satisfied that the adult's capacity to make reasonable decisions is impaired and assistance is needed to make decisions about personal matters, and that it is in the best interests of the adult.

The court may appoint one or more persons as a personal guardian if it is satisfied that the adult's capacity to make reasonable decisions is impaired and that he or she cannot make reasonable decisions about personal matters, and that it is in the best interests of the adult.

The court will not appoint a personal guardian or personal co-decision-maker unless other less interfering ways of providing the needed decision-making support have been tried or carefully considered.

The court will not give the personal decision-maker or personal guardian authority over all matters if the adult only needs assistance with certain matters.

Wherever possible, the court will appoint a person who has a long-standing, caring relationship with the adult as a personal co-decision-maker or personal guardian.

If a personal guardian or personal co-decision-maker is appointed, the court may decide that the appointment should be reviewed, and state when the review is to be made. If the assessment indicates that the capacity of the adult is likely to improve, the court must order a review.

## **15. Extent of Authority**

When an appointment is made, the court must specify which of the following matters will come under the authority of the personal co-decision-maker or personal guardian:

- ! living arrangements;
- ! social contacts and who may have access to the adult;
- ! social activities;
- ! employment;
- ! education or vocational training;
- ! the application for a license, permit or consent required by law that does not involve the adult's finances;
- ! legal proceedings that do not involve the adult's finances;
- ! health care, including decisions about admission to a health care facility and treatment (Note: if the adult has made a Health Care Directive, the personal co-decision-maker or personal guardian must comply with the stated wishes of the adult);
- ! restraint of the adult;
- ! matters of daily living such as diet, dress, grooming, and hygiene;
- ! any other matters considered by the court to be in the best interests of the adult.

## **16. Signing of Documents**

When a co-decision-maker has been appointed, any decisions which require a signature must be signed by both that person and the adult and any document that is not co-signed is voidable.

The signature of the co-decision-maker on a co-signed document is not a guarantee for a loan or other document.

## **17. Personal Co-decision-maker's Authority**

The personal co-decision-maker may advise the adult about any matters which come under the authority given by the court and make joint decisions, along with the adult.

The personal co-decision-maker may co-sign any documents and do what is necessary to put the decision into effect.

If the personal co-decision-maker does not agree with a decision of the adult, he or she cannot withhold consent, as long as it will not be harmful to the adult, and it is a reasonable decision.

## **18. Personal Guardian's Authority**

The personal guardian may make decisions for the adult about any matters over which the court has given the authority and the adult no longer has the authority to make decisions about those matters.

The personal guardian may sign any documents and do what is necessary to put the decision into effect.

The court may impose certain limitations or conditions on the authority of the personal guardian.

## **19. Appointment of Temporary Personal Guardian**

Any person interested in the personal welfare of an adult may apply to the court to be appointed temporary personal guardian, if that person believes that the adult's capacity is impaired to the extent that he or she requires assistance in decision making or is unable to make reasonable decisions about personal matters and he or she needs immediate protection from serious physical or mental harm.

If the court believes that this is the case, and that it would not be in the adult's best interests to wait until an application is made for the appointment of a personal guardian or personal co-decision-maker, the court may appoint one or more persons to be a temporary personal guardian for a specific time period (up to six months).

There are forms in the regulations to use to make an application to be appointed as a temporary personal guardian. A copy of the application must be given to the adult. It is not necessary to give copies of the application to anyone else.

The court will give authority to the temporary personal guardian only for those matters that are needed to protect the adult from harm.

The court may require that the adult be examined by one or more health professionals.

## **20. Right to be Informed**

As soon as a person has been appointed as a personal co-decision maker, a personal guardian or a temporary personal guardian, that person must tell the adult about it in a way that the adult can understand.

The adult must also be informed about what matters are under the authority of the appointed decision-maker and whether there are any limitations on the authority.

The court may require that the appointed decision-maker provide an affidavit stating when and how the adult was informed.

## **21. Limitations on Appointment**

No one can be appointed a personal decision-maker without his or her consent and unless he or she is at least eighteen years of age.

A person who is a paid health care or personal care provider for the adult or who may be in a conflict of interest with the adult can only be appointed if the court considers them to be the most appropriate person.

## **22. Conditions or Requirements**

In appointing a personal decision-maker, the court may set any conditions or limitations and may require that the appointment be reviewed within a stated period. If a review is required, the procedures that are set out in the Act must be followed.

The personal decision-maker must comply with all limitations, conditions or requirements set by the court.

The personal decision-maker does not have the authority to:

- ! consent to the withdrawal of life-support systems for the adult;
- ! consent to live organ donations by the adult;
- ! consent to the sterilization of the adult, unless it is part of a medically necessary procedure;
- ! consent for the adult to have an abortion, unless the continued pregnancy would threaten the life or health of the adult;
- ! consent to the termination of the parental rights of the adult;
- ! commence divorce proceedings on behalf of the adult;
- ! interfere with the adult's religious practices, unless they threaten the health or safety of the adult.

A personal decision-maker may apply to the court for an order regarding any of these restricted matters.

### **23. Effect of Decision by Personal Co-decision-maker**

Any decision made, or action taken, regarding matters over which the personal co-decision-maker and the adult have joint authority, is considered to have been made by the adult.

A contract that is co-signed by the adult and the personal co-decision-maker is binding on the adult, even if the appointment of the personal co-decision-maker is withdrawn.

### **24. Effect of Decision by Personal Guardian or Temporary Personal Guardian**

Any decision made, or action taken, by a personal guardian or temporary personal guardian regarding matters over which the guardian has authority, is considered to have been made by the adult.

A contract made by the personal guardian is binding on the adult, even if the guardianship appointment is terminated.

### **25. Duties of Personal Decision-maker**

A personal decision-maker must use the powers given by the court carefully and carry out the duties in the best interests of the adult, interfering as little as possible in the life of the adult.

The duties and powers must be carried out in such a way that the rights of the adult are protected and that the adult is encouraged to be involved as much as possible in all decisions and make decisions for himself or herself whenever possible.

### **26. Order Regarding Fees**

The court may order that a personal decision-maker receive money from the adult's assets for the purpose of sheltering, supporting and caring for the adult.

The court may make this order without the consent of the adult or the adult's property decision-maker, if there is one.

### **27. Orders for Access**

Someone who is not the personal decision-maker may apply to the court to be allowed access to the adult.

If the court is satisfied that it would be in the best interests of the adult, an order may be made to allow the requested access.

## **28. Limitations on Orders**

This Act does not change any authority given by any other Act regarding the adult. The court is always the final authority concerning the adult's personal matters.

## **29. Application for Direction**

A personal decision-maker may apply to the court for advice or directions.

## **PART III PROPERTY CO-DECISION-MAKERS AND PROPERTY GUARDIANS**

### **30. Who may make application**

Applications may be made by:

- ! any person that is eighteen or older who the court believes has enough interest in the financial welfare of the adult,
- ! the public trustee, or
- ! an individual, corporation or agency that has been given that right by the minister responsible for the Act.

There are forms in the regulations to use when making an application to be appointed as a property co-decision-maker or property guardian.

### **31. Service of Application**

Any person or agency who makes an application must provide a copy to:

- ! the adult who is the subject of the application;
- ! the nearest relatives, unless they have provided written consent to the appointment
- ! the Minister of Social Services if the adult is receiving certain services from that department.
- ! the personal decision-maker or proposed personal decision-maker;
- ! the public trustee.

It is not necessary to conduct a search for anyone listed below but, if known, they must also be provided with a copy of the application:

- ! anyone who has been given the authority under a health care directive by the adult to
- ! any supporter named by the adult while residing in a personal care home;
- ! any person who acts as a trustee for any financial benefits for the adult.

### **32. Statement of Objection**

Any person who is given a copy of the application or claims to have an interest in the financial welfare of the adult may provide the court with a statement of objection, indicating the reason for objecting, within ten days after all the copies of the application have been delivered.

There is a form in the regulations to use to object to an application.

Anyone who files an objection to the application must provide a copy to the applicant, to everyone that received a copy of the application and to everyone who consented to the application.

### **33. Hearing**

If the court considers that a hearing is necessary, the court will set a date, time and place for the hearing. At least ten days before the hearing, the court must provide notification of the date, time and place of the hearing to the applicant, to everyone that received a copy of the application, to everyone who consented to the application and to everyone who objected to the application.

At the hearing, it is up to the applicant to prove that the adult in question needs someone to make decisions or to assist in decision-making regarding financial or property matters.

The court can decide on the procedures for the hearing and whether evidence is to be provided by affidavit or in person.

### **34. No Hearing Necessary**

The court may decide that a hearing is not necessary and may consider the application without any of the participants being present, even if someone objects to the application.

If there is no hearing and the court appoints a decision-maker for the adult regarding financial or property matters, a copy of the appointment is sent to the applicant and to anyone who objected.

### **35. Powers of the Court**

If considered appropriate, the court may rule that it is not necessary to provide copies of the application to any or all of the persons listed in section 31, except for the public trustee.

A copy of the application must be sent to the adult who is the subject of the application unless the court has considered medical evidence and determined that special circumstances exist and that it would be harmful to the adult and not in the best interests of the adult.

If considered appropriate, the court may change the time period for making an objection, change the notice required for a hearing, or order that any other person be notified of the application.

### **36. Responsibility of the Public Trustee**

When an application is received, the public trustee must review the matter and provide information about it to any advocacy group listed in regulations:

- ! that is presently involved with the adult; or
- ! that the adult asks to be involved; or
- ! that the public trustee considers should be involved.

### **37. Powers of the Public Trustee**

When an application, a statement of objection, or a notice of a hearing is received, the public trustee may:

- ! contact the adult and find out whether he or she would like to be represented;
- ! contact the applicant or anyone filing an objection to discuss the application or state
- ! inform any relatives that have not received a copy of the application about it, about any objections or about a hearing if there is one;
- ! give information about the application to any agency that provides health care or other services for the adult;
- ! obtain a lawyer to represent the adult;
- ! give information to the court or make representations to the court;
- ! investigate whether or not the adult has a trustee;
- ! do anything else considered appropriate by the public trustee.

### **38. Assessment Required**

The court may not appoint a property guardian or co-decision-maker until it receives an assessment of the ability of the adult to make decisions concerning property matters, and the likelihood of change in that ability.

The assessment must be made according to the directions in the regulations.

The court may require further examinations of the adult by other health professionals at any time.

### **39. Court's Inquiry**

In deciding whether an adult needs a property decision-maker, the court must consider a number of factors, including:

- ! the information in the assessment;
- ! the types of decisions that the adult has to make;
- ! the support that is available to assist the adult in making decisions;
- ! the wishes of the adult, as much as possible;
- ! the extent, nature and complexity of the assets of the adult;
- ! any other relevant information that has been given to the court.

The court must also consider the suitability of the applicant, including the relationship between the applicant and the adult and whether the applicant:

- ! has been appointed to be a decision-maker for anyone else and, if so, the fees that are paid for these services;
- ! is or has been a trustee or had power of attorney for anyone;
- ! has ever been convicted of an act of violence, intimidation, harassment, uttering threats, theft or fraud;
- ! has ever been a respondent under *The Victims of Domestic Violence Act* or if the Crown has tried to secure a peace bond against him;
- ! has ever applied for or been petitioned into bankruptcy and the outcome;
- ! has the ability to carry out the duties of a property co-decision-maker or guardian in a satisfactory manner.

Before making an appointment, the court must be satisfied that the adult needs a property guardian or property co-decision-maker. The applicant may have to provide further information to the court for that purpose.

#### **40. Order Appointing Property Co-decision-maker or Property Guardian**

The court may appoint one or more persons as a property co-decision-maker if it is satisfied that the adult's capacity to make reasonable decisions is impaired and assistance is needed to make decisions about financial matters, and that it is in the best interests of the adult.

The court may appoint one or more persons as a property guardian if it is satisfied that the adult's capacity to make reasonable decisions is impaired and that he or she cannot make reasonable decisions about financial matters, and that it is in the best interests of the adult.

The court will not appoint a property guardian or property co-decision-maker unless other less interfering ways of providing the needed decision-making support have been tried or carefully considered.

The court will not appoint a property guardian or property co-decision-maker without considering whether there should be any limitations, conditions or requirements, including limiting decisions to those involving more than a certain dollar amount.

Wherever possible, the court will appoint a person who has a long-standing, caring relationship with the adult as a property co-decision-maker or property guardian.

If a property guardian or property co-decision-maker is appointed, the court may decide that the appointment should be reviewed, and state when the review is to be made. If the assessment indicates that the capacity of the adult is likely to improve, the court must order a review.

#### **41. Signing of Documents**

When a co-decision-maker has been appointed, any decisions which require a signature must be signed by both that person and the adult and any document that is not co-signed is voidable.

The signature of a property-co-decision-maker on a co-signed document is not a guarantee for a loan or other document.

#### **42. Property Co-decision-maker's Authority**

The property co-decision-maker may advise the adult about any matter concerning the adult's property and must share the authority to make decisions with the adult.

If the property co-decision-maker does not agree with a decision of the adult, the property co-decision-maker cannot withhold consent, as long as no financial loss is likely and it is a reasonable decision.

#### **43. Property Guardian's Authority**

The property guardian has the authority to do anything with respect to the adult's assets and finances that the adult could do if he or she had the capacity, except make a will.

The adult no longer has any authority over matters for which the property guardian has been given authority.

The property guardian may sign documents and do whatever is necessary to carry out decisions concerning the adult's finances.

#### **44. Appointment of Temporary Property Guardian**

Any person interested in the financial welfare of an adult may apply to the court to be appointed temporary property guardian, if that person believes that the adult's capacity is impaired to the extent that he or she requires assistance in decision making or is unable to make reasonable decisions about financial matters and he or she is in immediate danger of serious financial damage or loss.

If the court believes that this is the case, and that it would not be in the adult's best interests to wait until an application is made for the appointment of a property guardian or property co-decision-maker, the court may appoint one or more persons to be a temporary property guardian for a specific time period (up to six months).

There are forms in the regulations to use to make an application to be appointed as a temporary property guardian. A copy of the application must be given to the adult and to the public trustee. It is not necessary to give copies of the application to anyone else.

The court will give authority to the temporary property guardian only for those matters that are needed to protect the adult from serious financial damage or loss and to provide the necessities of life.

The court may authorize the temporary property guardian to freeze bank accounts, have income sent to a frozen bank account or stop any transaction regarding the assets of the adult.

The court may require that the adult be examined by one or more health professionals.

#### **45. Right to be Informed**

As soon as a person has been appointed as a property co-decision maker, a property guardian or a temporary property guardian, that person must tell the adult about it in a way that the adult can understand.

The adult must also be informed about what matters are under the authority of the appointed decision-maker and whether there are any limitations on the authority.

The court may require that the appointed decision-maker provide an affidavit stating when and how the adult was informed.

#### **46. Limitations on Appointment**

No one can be appointed a property decision-maker without his or her consent and unless he or she is at least eighteen years of age.

A person who is a paid health care or personal care provider for the adult or who may be in a conflict of interest with the adult can only be appointed if the court considers them to be the most appropriate person.

#### **47. Conditions or Requirements**

In appointing a property decision-maker, the court may set any conditions or limitations and may require that the appointment be reviewed within a stated period. If a review is required, the procedures that are set out in the Act must be followed.

The property decision-maker must comply with all limitations, conditions or requirements set by the court.

#### **48. Effect of Decision by Property Co-decision-maker**

Any decision made, or action taken, regarding matters over which the property co-decision-maker and the adult have joint authority, is considered to have been made by the adult.

A contract that is co-signed by the adult and the property co-decision-maker is binding on the adult, even if the appointment of the property co-decision-maker is withdrawn.

#### **49. Effect of Decision by Property Guardian or Temporary Property Guardian**

Any decision made, or action taken, by a property guardian or temporary property guardian regarding matters over which the guardian has authority, is considered to have been made by the adult.

A contract made by the property guardian is binding on the adult, even if the guardianship appointment is terminated.

#### **50. Duties of Property Decision-maker**

A property decision-maker must use the powers given by the court carefully and carry out the duties in the best interests of the adult, interfering as little as possible in the life of the adult.

The duties and powers must be carried out in such a way that the rights of the adult are protected and that the adult is encouraged to be involved as much as possible in all decisions and make decisions for him or herself whenever possible.

#### **51. Order Regarding Fees**

The court may order that fees for services provided be paid to the property decision-maker from the adult's property.

#### **52. Order Prevails**

The authority of the property decision-maker overrides any power of attorney given by the adult, unless the court orders otherwise.

#### **53. Inventory of Estate**

As soon as a property co-decision-maker or guardian has been appointed, he or she must make a list of all known property belonging to the adult, including income and profits and the assets, debts and money owing to the adult and swear that the information is true. There is a form in the regulations to use for the inventory.

Within six months of the appointment, this list must be sent to the court and to the public trustee.

If, after this information is sent to the court, other property belonging to the adult is discovered, the property co-decision-maker or guardian must provide the court and public trustee with updated information. The public trustee may investigate to be sure that the inventory list is accurate.

If the property co-decision-maker or guardian does not provide the list of property within six months, the public trustee may ask the court to review the appointment.

The only people who can get a copy of the inventory list are:

- ! someone applying to be appointed a property co-decision-maker or guardian;
- ! anyone who received a copy of the application;
- ! anyone who consents to the application;
- ! anyone who objects to the application;
- ! any other person directed by the court.

#### **54. Annual Accounting**

Every property co-decision-maker or guardian must provide the court and public trustee with an annual account of the adult's property and swear that the accounting is accurate. There is a form in the regulations to use for the annual accounting.

The regulations may set a minimum value of property for which an annual account is necessary, or change the time period for accounting to the court.

The public trustee may investigate to ensure that the annual account is accurate. If an annual account is not provided, the public trustee may ask the court to review the appointment.

The only people who can get a copy of the annual account are:

- ! someone applying to be appointed a property co-decision-maker or guardian;
- ! anyone who receives a copy of the application;
- ! anyone who objects to the application;
- ! any other person directed by the court.

#### **55. Undertaking Required**

Anyone who is appointed property co-decision-maker or guardian, except the public trustee, must give the court a bond which must be equal to or greater than the total value of the estate. The court may order more than one bond, in order to limit the liability of any one person. There is a form in the regulations to use when a bond is required.

The court may decide that a bond is not necessary depending on the size of the estate, or where the public trustee and nearest relatives agree in writing, or under any other circumstance considered appropriate by the court.

## **56. Application for Direction**

A property decision-maker may apply to the court for advice or directions.

## **57. Filing of Appointment**

If the adult owns or has an interest in any land, the property decision-maker must give the land titles office a notice of his or her authority and a certified copy of the appointment. There is a form in the regulations to use when giving notice to the land titles office.

The land titles registrar must register this notice with the titles of all land described in the notice and cannot register any instrument regarding this land unless it is signed by the property decision-maker or authorized by the property decision-maker in writing, except for the following:

- ! court order
- ! writ of execution or withdrawal of writ of execution
- ! caveat or withdrawal of caveat
- ! builder's lien
- ! certificate of pending litigation or an order vacating a certificate of pending litigation
- ! tax enforcement proceeding
- ! application for transmission.

## **58. Withdrawal or Amended Notice**

The property decision-maker must file a withdrawal of notice or amended notice with the land titles office when:

- ! there is any change to the appointment of the property decision-maker;
- ! the adult does not have an interest in the land;
- ! there was a mistake in the original notice.

There are forms in the regulations to use to withdraw or amend a notice to the land titles office.

When land owned by the adult is transferred by the property decision-maker, the notice is considered to be removed from the title of that property.

## **59. Death of Adult**

After the death of an adult who has a property decision-maker and who owns land, the notice on the title is withdrawn when the land titles office receives:

- ! a notarized copy of the death certificate, or
- ! a copy of letters probate (which has been certified by the court), or
- ! a copy of letters of administration (which has been certified by the court)

## **60. Will of the Adult**

When appointed, a property co-decision-maker or guardian must try to determine whether or not the adult has a will. If the adult has a will, the property guardian should review the will and take into account the provisions of the will when making decisions. A property co-decision-maker may only review the will with the adult's consent.

## **61. Interest in the Disposition of Property**

If there is any sale, mortgage, or other disposition of the adult's property, the adult's heirs and next of kin have the same interest in the proceeds as they would have had in the property.

The court may direct that the proceeds from the disposal of property be kept in a separate account by the property guardian.

## **62. Act is Indemnity**

Any person acting under the Act or an order under the Act concerning the adult's property is cleared of any liability and exempt from penalties resulting from the action.

## **63. Notice of Action or Proceeding**

Once a property decision-maker has been appointed, and until that appointment is terminated, thirty days written notice must be given to the property decision-maker before any legal action can be taken against the adult or that affects the adult's property. The notice must give all the particulars of the proposed legal action.

The requirement for the thirty day notice may be waived by the property decision-maker.

The court may set aside the decision in any legal action that proceeds without the thirty day notice, even if the person taking the action did not know there was a property decision-maker.

## **PART IV DEATH OF DECISION-MAKER**

### **64. Testamentary Nomination**

A decision-maker may name someone in a will to take over this responsibility after his or her death. This does not apply to a temporary personal guardian or a temporary property guardian.

After the death of the decision-maker, the person named in the will automatically becomes the decision-maker, but must apply to the court within six months of the death of the former decision-maker to confirm the nomination. There are forms in the regulations to use to make an application to confirm a nomination in a will.

In the case of a property decision-maker, the person must also immediately notify the public trustee.

When a person named in a will makes an application to confirm their nomination as a personal decision maker, copies must be provided to the persons listed in section 7, unless the court rules otherwise.

When a person named in a will makes an application to confirm their nomination as a property decision maker, copies must be provided to the persons listed in section 31, unless the court rules otherwise.

The court must not confirm the nomination until it has made the necessary inquiries to determine the adult's wishes, the suitability of the applicant, and that the adult needs a decision-maker. When a nomination is confirmed the court may set limitations, conditions or requirements.

When a nomination with respect to a property decision-maker is confirmed, a bond must be posted with the court.

If the person named in the will to become the decision-maker does not apply to the court within six months for confirmation of the nomination, the public trustee may apply to become the decision-maker.

### **65. No Testamentary Nomination**

If a property decision-maker dies without naming a replacement in a will, the public trustee may take over this position until an appointment has been made.

## **PART V     GENERAL**

### **66.     Review of Appointment**

An application to the court to review the appointment or testamentary nomination of a decision-maker may be made by:

- ! the adult;
- ! the personal decision-maker;
- ! the property decision-maker;
- ! anyone who the court agrees has an appropriate interest in the personal or financial affairs of the adult;
- ! the public trustee.

There is a form in the regulations to use to make an application to review an appointment. When making application to review the appointment of a personal decision maker, a copy must be provided to everyone listed in section 7 as well as anyone who consented to the application.

When making an application to review the appointment of a property decision maker, a copy must be provided to everyone listed in section 31 and to anyone who consented to the application.

For an application to review the appointment of a temporary personal guardian, only the adult must be provided with a copy.

For an application to review the appointment of a temporary property guardian, only the adult and the public trustee must be provided with a copy.

### **67.     The Court May Discharge a Decision-maker**

Following a review, the court may dismiss a decision-maker if it finds that the adult does not need a decision-maker or if the decision-maker:

- ! is unwilling or unable to act;
- ! fails to follow the directions of the court;
- ! acts in any improper manner;
- ! acts in a way that may endanger the well-being of the adult or the adult's property;
- ! is not a suitable person to act as a decision-maker.

The court must not dismiss a decision-maker before considering whether other suitable arrangements have been made for the care of the adult and the adult's property or whether another application will be made.

The court may appoint the public trustee as the property decision-maker if:

- ! the adult still needs a property decision-maker; and
- ! no other application will be made; and
- ! the public trustee consents to the appointment.

The court may make changes to the appointment of a decision-maker following a review.

## **68. Filing and Passing of Accounts**

The court may order a property decision-maker to file accounts.

## **69. Appeal**

Anyone affected by an order under this Act may appeal the order to the Court of Appeal.

## **70. Immunity**

No one who has acted in good faith in performing duties under this Act will be liable for any loss or damage to anyone.

## **71. Notice of Prior Judgment, Writs of Execution**

If any action was brought or judgment was made against the adult before a decision-maker was appointed, thirty days notice must be given to the decision-maker before any action on the judgment can be taken.

## **72. Copies of orders to Public Trustee**

The court must provide the public trustee with a certified copy of:

- ! every appointment of a decision-maker;
- ! any changes made to the appointment following a review;

## **73. Payment of Money**

If an adult resides in another province and there is money held by the court which belongs to the adult, and there is a court order from the province in which the adult resides authorizing the money to be paid to another person, the court may order that the money be paid to that person.

#### **74. Orders as to Costs**

The court may order that any expenses arising under this Act be paid:

- ! by anyone who is a party in the court action;
- ! from the adult's property;
- ! partly from the adult's property and partly by anyone who is a party in the court action.

#### **75. Regulations**

The Lieutenant Governor and Cabinet may make regulations:

- ! defining any words or expressions used, but not defined in the Act;
- ! prescribing any forms required by this Act;
- ! prescribing a designated person or agency that can make applications under this Act;
- ! concerning the use of restraint of the adult for which the decision-maker may give consent;
- ! prescribing advocacy groups to be involved in the application process;
- ! setting the requirements for inventories of the adult's property, as well as for annual accounting by the property decision-maker;
- ! setting the conditions for exempting property decision-makers from filing annual accounts;
- ! setting the value of an estate below which a bond is not required from the property decision-maker;
- ! determining the jurisdictions in which the court may order money to be paid on behalf of a resident adult;
- ! establishing registers of orders appointing decision-makers;
- ! determining how copies of applications may be provided to the appropriate persons and how information is provided to the court, including electronic methods;
- ! determining anything else concerning this Act;
- ! respecting any other matter considered necessary to carry out the intent of this Act.

### **PART VI REPEAL, TRANSITION AND COMING INTO FORCE**

#### **76. Repeal**

*The Dependent Adults Act* is repealed.

#### **77. Transition**

Any order in force under *The Dependent Adults Act* when this Act comes into force continues, but will come under the jurisdiction of the new Act.

Any personal guardian or property guardian appointed under *The Dependent Adults Act* is bound by the provisions of this new Act.

### **78-85 Amendments**

The words "*The Dependent Adults Act*" are changed to "*The Adult Guardianship and Co-decision-making Act*" whenever they occur in the all other relevant Acts.

In *The Public Trustee Act*, the definition of "dependent adult" is changed to include a person for whom a property guardian, temporary property guardian or property co-decision-maker has been appointed.

### **86. Coming Into Force**

This Act comes into force when proclaimed (July 15, 2001).

## **THE ADULT GUARDIANSHIP AND CO-DECISION-MAKING REGULATIONS**

### **Forms**

The Adult Guardianship and Co-decision-making Regulations contain forms that can be used for making an application to be appointed as a decision-maker, to consent to an appointment, and to object to an appointment.

The Regulations also contain the forms that can be used for the assessment of an adult, to provide an initial inventory or annual accounting of an adult's property, to provide the court with a bond, to notify land titles of an appointment or termination of an appointment or to review an appointment.

### **Notification of Hearing**

The Regulations direct that when the court notifies interested persons about a hearing, the notification will be in the form of registered mail.

### **Assessment**

The Regulations outline the requirements with respect to the assessment of the adult's capacity. At least two assessments must be provided and at least two assessments must be performed by one of the following: a qualified medical practitioner, a registered psychologist, a registered nurse, an occupational therapist, a social worker, or a speech-language pathologist. Each assessment must contain the following:

- ! the name, address and telephone number of the assessor
- ! the qualifications of the assessor
- ! the assessor's personal relationship to and professional involvement with the adult
- ! the process used in assessing the adult, including a description of the tools or methods used, the number of visits with the adult and information obtained from caregivers or other professionals
- ! the assessor's opinion of the adult's decision-making abilities and disabilities
- ! the assessor's opinion of the likelihood that these abilities and disabilities will change
- ! the assessor's opinion of the need for a decision-maker with respect to specific areas of decision-making

## **Advocacy Groups**

The Regulations define advocacy groups to which the Public Trustee can provide information with respect to an application under this Act. The Saskatchewan Association for Community Living is such an advocacy group. Family and Friends of Cosmo and Elmwood Inc. are advocacy groups for persons who live in a home operated by Elmwood or participate in a program run by Cosmopolitan Industries.

If the application is for a person over the age of 55, Senior Power, Inc. is also an advocacy group.

## **Dispensing with Filing of Bond**

If the value of an adult's property is \$10,000 or less, the court may dispense with the requirement that the applicant provide a bond.