

RESIDENTIAL CLIENT USER FEES

When to Refer to the Public Guardian and Trustee

When there are concerns that an adult in a residential facility is no longer able to manage their financial affairs, or that a substitute decision maker (i.e. a power of attorney, representative, committee or pension trustee) for an incapable adult is abusing or mismanaging the adult's finances, a referral may be made to the Public Guardian and Trustee (PGT) for further investigation.

Concerns about abuse, neglect and self neglect may also be reported to a designated agency under the *Adult Guardianship Act* (i.e. the health authorities and Community Living BC).

These concerns are often first noted when user fees are not being paid or other needs of the adult are not being met.

However, the PGT has no role in mediating disputes between the adult or the adult's substitute and a facility regarding the applicable rate or services to be provided.

In these situations, the parties may access other available dispute resolution resources.

PURPOSE AND POSSIBLE OUTCOMES OF A PGT INVESTIGATION

- The PGT investigates concerns pursuant to its authority under the *Public Guardian and Trustee Act* to determine whether or not the adult who may be incapable requires assistance to manage their financial affairs.
- If assistance is required, the PGT investigates further to determine if informal resolutions are appropriate or to identify whether there is someone in the adult's life who may assist.
- If there is no abuse or mismanagement, the PGT will end its investigation.
- If the adult requires assistance and there is no one able to assist, the PGT may seek legal authority to manage the adult's financial affairs, usually as committee of estate (see below).
- The PGT does not conduct an investigation solely to address disputes about the adult's debts.

PGT AUTHORITY TO PROTECT ASSETS DURING AN INVESTIGATION

- If there are concerns that an adult's assets are in need of immediate protection, the PGT has authority to take steps to protect the adult's assets. This includes restricting access to the adult's bank account for up to 120 days.
 - o When access to an account is restricted, the PGT may direct that access be limited to amounts required for food, shelter and daily living.
 - o The PGT may also direct that preauthorized payments such as rent, user fees, mortgage payments, or insurance be continued.

- When exercising its authority to protect assets, the PGT does not have authority to:
 - o manage the adult's financial affairs,
 - o set up new payments or authorize payments to creditors,
 - o direct a substitute decision maker, or
 - o establish facility user rates or repayment plans for overdue amounts.

HOW PGT OBTAINS AUTHORITY TO MANAGE THE ADULT'S FINANCIAL AFFAIRS

- The PGT has authority to manage an adult's affairs if the PGT becomes committee of estate.
- The PGT will take steps to become committee of estate if:
 - o concerns about a substitute decision maker's management cannot be resolved, or
 - o the adult requires assistance and there is no one else available or appropriate to assist.
- A court order or a certificate of incapability is required to become committee of estate. Either process can take 3-6 months or longer depending on the circumstances and complexities and as a result, may not be appropriate in some circumstances.
- In some situations, the PGT may take steps to be appointed as pension trustee to receive federal pensions and pay the adult's expenses.

SETTLING UNPAID USER FEES WHEN THE PGT BECOMES COMMITTEE OF ESTATE

- Upon appointment as committee, the PGT gathers information about all of the adult's assets and liabilities. If sufficient funds are confirmed to be available, monthly user fees are paid. Generally, the minimum user fee rate is paid until the applicable rate is determined.
- Once full financial information is available, the PGT will review and assess claims for all debts, including unpaid user fees. Approved claims are paid promptly when sufficient funds are available. Where necessary, a repayment plan is established with the facility.
- The PGT must authorize all debt repayments. The PGT does not authorize facilities to access the adult's comfort account for repayment of user fees.

PAYMENT OF USER FEES AND OTHER EXPENSES AFTER THE ADULT'S DEATH

- If the PGT is the committee, the PGT has authority to continue to preserve assets until a personal representative is appointed to administer the estate.
- Pending appointment of the personal representative, the PGT as committee may advance funds for funeral expenses and pay recent invoices (e.g. last month's user fees or pharmacy bills). All other payments to creditors cease and must be addressed by the personal representative.
- If the PGT is appointed executor in the adult's will, or applies to be appointed by the court to administer the estate, the estate is managed by the Estate and Personal Trust Services division of the PGT.

For more information on the services of the PGT, visit the PGT website at www.trustee.bc.ca.