

**HOW YOU CAN HELP PEOPLE
MANAGE FINANCES AND LEGAL
MATTERS WHEN THEY CANNOT
MANAGE ON THEIR OWN**



**PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA**

March 2005

PREFACE

The Public Guardian and Trustee operates under provincial law to protect the finances and legal matters of those who cannot protect themselves, including children under the age of 19, adults who require assistance in decision making, and deceased and missing persons.

Each year, thousands of people call us to find out what they can do to help a friend or relative who is not able to manage finances and legal matters on his or her own. While the Public Guardian and Trustee can step in to assist, the most knowledgeable, caring and compassionate assistance can only come from a loved one.

We have prepared this booklet to outline your options in helping a friend or relative with special needs and concerns. We hope this discussion will answer many of your questions and help you plan a safe and secure future for someone in need of assistance.

For further information on our services, please write or call:

Greater Vancouver Region

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1007
Fax: (604) 660-9498

*Vancouver, North Shore, Richmond,
Delta, Sunshine Coast*

Lower Mainland Region

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1001
Fax: (604) 660-9479

*Burnaby, Tri-Cities, North Fraser and
Fraser Valley*

Vancouver Island Region

1019 Wharf Street, 4th floor
Victoria, BC V8W 9J2
Tel: (250) 356-8160
Fax: (250) 356-7442

*Vancouver Island, Powell River and
Gulf Islands*

Interior-North Region

1345 St. Paul Street
Kelowna, BC V1Y 2E2
Tel: (250) 712-7576
Fax: (250) 712-7578

*Interior and Northern BC, east and
north of Hope*

Visit our website at
www.trustee.bc.ca

TO ORDER THIS BROCHURE

Phone: (604) 660-4444
Fax: (604) 775-0207
Email: mail@trustee.bc.ca

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YOUR OPTIONS

A person who cannot manage his or her own financial and legal matters is vulnerable in our society. He or she may find routine banking and legal matters difficult or even impossible, lose track of bank accounts, forget to pay bills or be easily persuaded to turn property over to strangers.

You can help.

Through a number of options, you can assist this person to manage some or all of his or her financial and legal matters.

- For someone who is competent, but needs help to carry out certain tasks such as signing documents or handling banking, you might consider the following options:
 - a family member, friend or trusted other may become the person's representative under a Representation Agreement or Attorney under a Power of Attorney;
 - local financial agencies and institutions, trust companies or accounting or law firms may provide advice and assistance;
 - a customer service representative at the person's bank or financial institution may be consulted with to see what assistance they may be able to provide (i.e., telephone banking, direct deposits); and
 - other local community support services such as Seniors Tax Clinics.
- For a person who is not capable of managing their federal pension income you might consider applying to become a Pension Trustee to manage this income.
- For someone who has been assessed by two qualified physicians as no longer capable of managing their financial and legal affairs, you could consider making an application to the Court to become Committee of the Estate.
- An application to the Court to become Committee of Person might be considered if an adult has become incapable of making personal and health care decisions, has not made a representation agreement and the procedures under the *Health Care (Consent) and Care Facility (Admission) Act* are not sufficient for temporary substitute decision making.

If an adult is being abused, neglected or self-neglected, a referral may be made to a local Designated Agency (such as Mental Health or Continuing Care), or to the Public Guardian and Trustee for investigation if it is believed that the adult is incapable.

POWER OF ATTORNEY

Power of attorney can be granted as either a general authority to handle all the person's affairs, or as a limited authority to handle specific matters, like cashing a cheque, signing a document or selling a car.

Power of attorney is valid only when the person granting it is over the age of 19 and is legally capable. You may need to obtain a doctor's opinion if there is any doubt about the person's ability to clearly understand what authority he or she is granting.

How to Appoint

Power of attorney can only be granted through a written document; it cannot be granted verbally. Standard forms for power of attorney are available at most stationery stores at minimal cost. If you intend to manage the person's bank accounts, remember that most banks require their own power of attorney form and may have other requirements as well, such as requiring a bank employee to be the witness.

The power of attorney form must be signed by the person granting you the authority and by one witness. If the power of attorney gives you authority to handle real estate, the witness will also have to sign an Affidavit (a written statement made under oath to be true) stating that he or she did in fact witness the signature of the person granting you the authority. The Affidavit must be sworn before a notary public or a commissioner for swearing oaths. The Land Title Office where the real estate is registered will also need a certified copy of the power of attorney.

Cost

Although it is not required to have a lawyer or notary public commission a power of attorney, you would be wise to seek legal advice and assistance. For example, buying or selling property requires special registration with the Land Title Office. A lawyer or notary public can make sure that the document is properly completed and signed. As costs vary for these services, you should get a quote before you make your decision to hire someone to help you draw up your power of attorney. You will be charged for the time it takes to make up the power of attorney, including visits and telephone calls.

The Enduring Clause

A power of attorney is not valid if the person who granted it becomes incapable, unless the document contains a special "enduring" clause. A person may choose to include an enduring clause to plan ahead for a time when he or she cannot make decisions. The enduring clause ensures that the power of attorney remains in effect even if the person who granted it becomes unable to give instructions concerning the financial or legal management of his or her affairs.

Responsibilities

Under a power of attorney, you must follow the direction of the person granting you the authority, or act in a responsible “fiduciary” manner if the person can no longer direct you. While you will not receive payment for this assistance and may not benefit from your authority, you are under a duty to maintain accurate records and be able to account for all the money and property you handle. Though your actions are not monitored, the Public Guardian and Trustee can demand an accounting if he receives a complaint of abuse. When there are no relatives or friends who will take on duties under a power of attorney, the Public Guardian and Trustee may be consulted for advice on other options.

REPRESENTATION AGREEMENTS

To become someone’s representative, that person must name you in a representation agreement. A representation agreement is a legal document that allows an adult (someone 19 years of age or older) to name another person (a representative) to make important decisions for them in the future. These decisions could be about health care or the management of the adult’s financial and legal affairs.

The adult making the agreement decides when it will take effect, and the representative cannot use the agreement until it does take effect. The adult who made the agreement continues to make their own decisions while capable of doing so, but with the added assurance that, if it ever became necessary, someone whom they trust will make decisions for them.

Representation agreements are new in British Columbia and have been made possible by the *Representation Agreement Act*. (effective February 28, 2000)

Financial representation agreements can be made instead of an enduring power of attorney, which may be preferable in some cases. Representation agreements can be more flexible and can be used to appoint a person to make decisions about an adult’s health care and personal care, as well as their financial and legal affairs.

Before the *Representation Agreement Act*, some people used various documents to express their health care wishes, such as advance directives and living wills. These documents were helpful statements of the person’s wishes, but they had no legal basis. The *Representation Agreement Act* provides the legal basis for an adult to give someone else authority to make health care decisions on their behalf. The adult can state, in advance, what those decisions should be and expect them to be followed.

A person does not have to make a representation agreement. It is up to each of us to decide whether we want to. It is simply a tool we choose to use to plan for our future.

Types of Representation Agreements

There are two kinds of representation agreements: those with limited provisions and those with general provisions.

A general agreement can give broad authority to the representative in areas such as managing your property or making health care decisions. This kind of agreement is sometimes called a “Section 9 Representation Agreement.” However, in order to make such an agreement, an adult must clearly understand the nature of the authority being given to the representative and the effect of giving that authority to that person.

To make an agreement with general provisions the law currently requires that the adult consult with a lawyer.

Alternatively, an adult may make a representation agreement with limited provisions. This kind of agreement is sometimes called a “Section 7 Representation Agreement.” This type of agreement gives more restricted authority to the representative. For example, this kind of agreement cannot be used by the representative to refuse life supporting care or treatment or to buy or sell real estate. However, it can be used to give authority to a representative to make most health care decisions and to manage the routine financial affairs of the adult. This type of agreement may be made by some people who do not have the capacity to make an agreement with enhanced provisions.

A representation agreement cannot be made on behalf of another person by, for example, a group of friends or relatives. The adult is the only person who can direct that the authority to make substitute decisions be given to a representative.

It is very important for an adult to carefully consider which kind of agreement is the right one to make. Thinking ahead to the kinds of decisions a representative might have to make and ensuring that they have the authority to make those decisions will help decide which type of agreement is appropriate.

To learn more about representation agreements, see “It’s Your Choice: A Guide to Making a Representation Agreement” available on our website at www.trustee.bc.ca. You can visit the Representation Agreement Resource Centre (RARC) website for further information at www.rarc.ca. RARC also manages the NIDUS registry to register a representation agreement or enduring power of attorney.

TRUSTEE OF GOVERNMENT PENSION INCOME

Federal income assistance laws allow for a person to be appointed as trustee of certain government benefits where the adult is having difficulty managing.

As a Trustee of Government Pension income, you would manage:

- Old Age Security;
- Guaranteed Income Supplement; and/or
- Canada Pension Plan

This is the only money you can manage as Trustee. You have no authority to manage other assets or receive payment for the help you provide.

How to Apply

To become a Trustee of Government Pension Income, contact the Federal Income Securities Program office nearest you. It is listed in the blue pages of your phone book under Government of Canada - Health Canada. You will need a signed certificate from one qualified medical doctor, verifying that the person needs help to manage his or her pension income. There may be a small charge for this service, but you will not need a lawyer to complete your application.

Responsibilities

Once a year, the Federal Income Securities Program will send you an accounting form to complete. On this form you will be asked to outline how you have managed the person's pension income and to ensure that the funds are being used for that person's benefit.

While this is a limited authority, it is often all that is needed to assist with routine daily financial matters.

COMMITTEE OF THE ESTATE

To become a Committee of the Estate, you must apply to the Supreme Court of British Columbia to be appointed under the *Patients Property Act*.

How to Apply

You will need a lawyer to help you prepare the documents necessary for this application. Your lawyer will submit the required notices and affidavits to the Court, including the sworn statements of two qualified medical doctors verifying that the person is not able to manage his or her financial and legal affairs. The lawyer will also speak to the Judge on your behalf. It is unlikely that you will have to appear in court.

A Supreme Court Judge will review your application. If the Judge is satisfied that the person is unable to handle his or her own financial and legal affairs, and that you are the appropriate person to act on his or her behalf, the Judge will grant a Court Order appointing you as Committee of the Estate.

The lawyer will write up the Court Order with any terms and conditions specified by the Judge, and will then file it with the Supreme Court Registry for the Judge's signature.

Cost

Because there is a lawyer's fee for preparing your application to be a Committee of the Estate, you may want to obtain estimates from more than one lawyer. The Canadian Bar Association (B.C. Branch) offers a Lawyer Referral Service that can help you find a lawyer near where you live who is experienced in dealing with this type of application.

It is in the discretion of the Court as to whether or not the lawyer's fee can be recovered from the estate of the person for whom you are Committee. The Private Committee is responsible for reviewing the legal bill to ensure that the fee is reasonable for the services provided. The PGT has developed a fact sheet on assessing your legal bill that may be helpful. You can help reduce the fee by providing the lawyer, at the beginning, with:

- the person's full name, address, birth date, and occupation;
- name and phone number of person's doctor;
- names and addresses of next-of-kin;
- relevant personal information about ongoing legal matters - lawsuits, divorce proceedings, and whether or not a will exists and its location;
- a brief inventory of the person's assets and income, including property, bank accounts, pensions, and benefits to which he/she may be entitled;
- the amount of any debts; and
- an estimate of the monthly cost of maintaining the person and his or her property.

Responsibilities

Being a Committee of the Estate is a responsible job. As Committee, you must take complete charge of another person's finances and legal matters. However, you are also expected to consider and respect the wishes of the person for whom you are acting as Committee. You have both wide powers and extensive responsibilities. You must administer the person's income, conduct all banking, pay all expenses, budget for the person and his or her family, and prepare all income tax returns.

You are responsible for buying or selling the person's property when it is in his or her best interest, for entering into contracts, for operating any existing businesses, and for bringing or defending any lawsuits on his or her behalf.

It is important to set up proper record-keeping procedures as soon as you are appointed. Within one year of being appointed Committee, you must submit a detailed accounting of the estate. Subsequent reporting intervals are then assigned by the Public Guardian and Trustee and may vary from one to five years (depending on factors such as the size and complexity of the estate). There is a sample of these records in the Private Committee Handbook provided by the Public Guardian and Trustee. The staff in the Private Committee Services Department are available to assist you with any difficulties with the accounting and any questions you may have about your role and responsibilities.

Liabilities and Restrictions

Your responsibilities as a Committee of the Estate are important. You are personally responsible for any funds or assets that are mismanaged, even if the person is your spouse.

The Court Order you receive appointing you as Committee is your source of authority. It may specify certain restrictions on your power and may require you to post security, such as a bond.

Payment

While you cannot reward or pay yourself for your work as Committee, the Public Guardian and Trustee will establish periodic reviews of your management of the person's affairs and may set a reasonable fee for your services.

Your payment will come out of the estate (assets and income) of the person for whom you are acting. The amount you will receive varies with the value of the estate and the amount of work you have done in protecting and managing it. If you have done extra work, you should supply written details to the Public Guardian and Trustee when you submit your accounts. Any reasonable, out-of-pocket expenses you incur as Committee can be paid from the estate as they happen, including professional fees for duties you cannot handle yourself.

Public Guardian and Trustee of British Columbia

The Public Guardian and Trustee provides advice to Committees and, provides a detailed handbook to each Committee after their appointment. The office also reviews the accounts of all private individuals who are Committees.

When there is no relative or friend who is willing and able to handle this responsibility, the Public Guardian and Trustee will act as Committee of the Estate. The Public Guardian and Trustee can be appointed in two ways, either by applying directly to the court - the same process as if a private person applies - or by having a certificate of incapability issued by the director of a Mental Health Centre or a hospital's psychiatric unit.

FOR MORE INFORMATION

Call Dial-A-Law, a free telephone information service.

In Vancouver, call (604) 687-4680;

Outside Vancouver, call 1-800-565-LAWS (5297) (toll free).

This service is offered by the Canadian Bar Association.

If you need assistance getting legal advice, the Canadian Bar Association's Lawyer Referral Service will provide you with the name and phone number of a lawyer who will give you up to ½ hour of initial consultation for \$10. Their toll-free number is 1-800-663-1919 and information is available on their website at:

http://www.bccba.org/GuestLounge/lawyer_referral.asp.