

## FACT SHEET FOR PRIVATE COMMITTEES

# Requesting Approval To Deal With Restricted Assets

## PUBLIC GUARDIAN AND TRUSTEE

As committee of estate, your ability to deal with particular assets may be limited by restrictions in the court order, or by agreement (such as an Irrevocable Letter of Direction). Subject to the terms of the restrictions, if you wish to sell, transfer, encumber, or otherwise access these assets, you must either get the approval of the Public Guardian and Trustee (PGT) or a further court order.

This fact sheet provides guidelines to help you prepare a request to the PGT for approval to deal with a restricted asset, other than the sale of real property. Refer to the PGT *Sale of Real Property* fact sheet for guidelines specific to requesting approval to sell restricted real property.

### CONSIDERATIONS

The PGT will only approve access when it is clearly demonstrated that the request is in the best interests of the incapable adult of whom you are committee (the “adult”). It may be in their best interests that you access a restricted asset in certain circumstances, such as:

- to cover an ongoing shortfall in the adult’s income;
- to fund a significant or unusual one time expense of the adult;
- to repay a debt of the adult;
- to transfer a restricted account to a new financial institution;
- to purchase real property for the adult’s use;
- to purchase a non financial asset for the adult; or
- to obtain a loan for the adult, using restricted real property as collateral.

Before submitting a request, consider:

- ***Is the request in the adult’s best interests and within the scope of your authority?***

If the request is for a large gift, or transfer(s) that resembles an early distribution of the adult’s estate, the PGT will not approve it.

- ***Is the asset mentioned in the adult’s will?***

If you want to sell or transfer an asset that is the subject of a specific gift in the adult’s will, you should retain documentation showing the amount of proceeds received, or the fair market value of the asset, to comply with section 48 of the *Wills, Estates, and Succession Act*.



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- ***Can unrestricted assets be used to finance the request?***

If so, you will have to explain why you are not using those assets rather than encroaching on restricted assets (e.g., where the unrestricted assets are bequeathed in the adult's will and you wish to preserve them for the beneficiaries).

- ***Does the PGT have a role in monitoring your committee's work?***

If the adult is deceased or is permanently residing outside of British Columbia, the PGT no longer has a role and will not consider the request.

## SUBMITTING YOUR REQUEST

Send your request in writing by email, fax or letter to the PGT, "Attention: Private Committee Services", and include:

- ☑ Details of the account and amount requested, along with a statement showing the current balance in the account;
- ☑ Contact information for the financial institution; and
- ☑ A brief explanation of the reason for the request, and why it will be in the adult's best interests to approve.

**Please note: The PGT requires a minimum of ten working days to review and respond to requests for approval to deal with restricted assets, except for restricted real property, which requires five working days. Failure to provide all required documentation will delay the completion of the PGT's review of your request.**

Additional information in accordance with the nature of your request is required as follows:

***Requests to cover an ongoing shortfall in the adult's income:***

- ☑ Develop a long term plan that will meet the adult's needs and determine the amount of capital required to finance the shortfall over that period;
- ☑ Prepare a budget that shows how much the adult will need on a monthly basis. Try to anticipate all day to day expenses and incorporate an allowance for small unforeseen payments and increases to regular costs;
- ☑ Provide up to date information about the adult's income and asset values.

The PGT recommends that you make your request when submitting your committee's accounts to minimize your paperwork and expedite the review process.

If your request is approved, you will be allowed access to a fixed amount of restricted capital for a predetermined period, ending at a time that is close to the end of the next committee's accounting period (e.g., where your next committee accounts are due in two years time, \$1,000/month for two years).

***Requests to fund a significant or unusual one time expense:***

- ☑ Submit a construction/contractor estimate to support the amount requested if the expense is significant (such as a real property renovation);
- ☑ Group minor expenses together and submit them as one request.

Requests of this nature should be for expenses that are unusual and/or unforeseeable, and in most cases submitted no more than once per year.

***Requests to repay a debt:***

- ☑ Include documentation that confirms the debt is an obligation of the adult, and shows the current balance owed.

***Requests to transfer a restricted account to another financial institution:***

- ☑ Confirm the ownership and any named beneficiaries remain unchanged.

The PGT will require that the new account be covered by equivalent security. If equivalent security cannot be provided, you must provide clear and compelling information to support that the request is in the adult's best interests. Please note, a transfer that moves the asset to a location or institution outside British Columbia, whether for the benefit of the adult, the convenience of the committee, or to obtain a modest increase to the rate of return, may not be sufficient to justify the resulting reduction in security.

***Requests to purchase real property:***

- ☑ Confirm the real property will be registered in the adult's name.

The purchase of real property for investment purposes is not considered a prudent investment and such requests are not approved. The PGT will only consider requests to purchase real property that are within British Columbia and for the adult's use. The subsequent sale or encumbrance of real property purchased with restricted assets will require PGT approval or a further court order.

***Requests to purchase a non financial asset:***

- ☑ Confirm the asset will be registered in the adult's name, and is required to meet the adult's needs (e.g., a vehicle, medical equipment or household effects).

***Requests to obtain a mortgage or home equity loan using restricted real property as collateral:***

- ☑ Provide a compelling reason why it is in the adult's best interests to do so (e.g., to maintain the adult in their home);
- ☑ Submit a budget that shows the adult will be able to afford the loan payments (if applicable).

The maximum amount of the loan the PGT will approve will be limited to what the adult currently requires. Loans for investment purposes are not considered prudent and requests to obtain such loans will not be approved.

## REVIEW PROCESS

A Committee Review Officer will review your request and may require further information to confirm it is in the best interests of the adult. If your request is approved, the PGT will first advise you of any security requirements, which must be arranged in advance. Once the security is in place, the PGT will send a letter approving your request.

**Security requirements:** If you are transferring a restricted asset to another financial institution, the PGT may require an Irrevocable Letter of Direction, signed by both you and the new financial institution, confirming that your access to the new account will be restricted. A Committee Review Officer will provide you with a template Irrevocable Letter of Direction if one is required.

**Unapproved requests:** The PGT does not approve requests in certain circumstances, such as:

- The request is not required to meet the adult's financial or legal obligations, or health and safety needs.
- The request would place you in a conflict of interest with the adult (e.g., a gift or loan to yourself or a related party).
- The request would contradict a term of the court order currently in effect.
- There have been repeated prior requests with no satisfactory long term plan developed.

If your request is not approved, you have the option of making an application for a court order to approve it under section 28 of the *Patients Property Act*. The PGT must be served with notice of your application, and will either take no position or, if there are concerns, the PGT will oppose your application.

## MORE INFORMATION

This Fact Sheet is intended as general advice and direction, to help you work effectively and successfully with the PGT. If you have any questions about your specific situation, please do not hesitate to contact the Private Committee Services department and ask to speak with a Committee Review Officer.

If you have further questions about committeeship, please refer to the Private Committee Services pages at [www.trustee.bc.ca](http://www.trustee.bc.ca), or contact the Private Committee Services department.



Private Committee Services  
Public Guardian and Trustee  
700-808 West Hastings Street  
Vancouver BC V6C 3L3  
Tel: 604.660.1500  
Website: [www.trustee.bc.ca](http://www.trustee.bc.ca)  
Email: [webmail@trustee.bc.ca](mailto:webmail@trustee.bc.ca)

 PGT Hours of operation  
Monday to Friday 8:30 am to 4:30 pm

Toll free calling

Toll free calling is available through Service BC. After dialing the appropriate number for your area (see below) and request to be transferred to the Public Guardian and Trustee.

 Vancouver	604.660.2421
 Victoria	250.387.6121
 Other Areas in BC	1.800.663.7867