

Statutory property guardianship under the Adult Guardianship Act

How can it end?

Introduction

The Public Guardian and Trustee (PGT) website at www.trustee.bc.ca/adults provides information relating to all PGT services for adults including those related to the **Adult Guardianship Act (AGA)**. This paper provides a brief summary of the statutory property guardianship principles in the AGA specifically related to the PGT and then sets out the connected analysis that results in termination of statutory property guardianship. The information is somewhat technical and intended for those who are looking to understand the principles in the legislation in more depth and how they apply to the processes at the PGT.

The AGA contains some of the legislation in British Columbia aimed at providing health and personal well-being support, and legal and financial support, to adults who are unable to manage their own affairs. Parts 1 and 2.1 of the AGA sets out the statutory property guardian role of the PGT which relates only to the legal and financial affairs of the adult. It is intended that the PGT will be the last resort; taking on the role of statutory property guardian only when there are no other viable options to provide needed support for an adult.

The principles underlying statutory property guardianship

Statutory property guardianship requires three key facts to exist, which are set out in AGA section 32(3):

1. The adult needs to make decisions about the adult's financial affairs;
2. The adult is incapable of making those decisions;
3. The adult needs and will benefit from the assistance and protection of a statutory property guardian.

The PGT as statutory property guardian is to be the last resort. To this end, AGA subsections 32(3) (d) and (e) require that before a statutory property guardian is appointed, it must be established that the needs of the adult would not be met at the time of the assessment by an alternative means of assistance and that there is no functional power of attorney in place to support the adult.

These principles guide the investigation and evaluation processes that lead to the appointment of the PGT as statutory property guardian and that conversely lead to its termination.

How does PGT involvement end?

Because circumstances can change over time, it is necessary to ensure that PGT involvement will terminate if the underlying principles no longer apply. To this end, there are specific provisions in the AGA that allow for review of the facts relating to those principles.

Reassessment of capability

There are **two provisions** in the AGA that provide for reassessment of the adult's capability to make decisions about the adult's financial affairs.

The **first provision** is a review of the initial finding of incapability. Section 33(3)(a) provides that the adult may request a second assessment within the prescribed time. The prescribed time is set out in section 13 of the Statutory Property Guardianship Regulation under the AGA, which states that a request for a second assessment must be made within 40 days after the date on which the PGT gives or sends to the adult the advice that the PGT is the adult's statutory property guardian.

The **second provision** is set out in AGA section 34 and includes a right to reassessment that can be exercised by the adult once every 12 months. The statutory property guardian can also trigger a reassessment by informing the authority who issued the certificate of incapability that a reassessment should occur.

If at anytime during these assessments the adult is found capable, the certificate of incapability will be cancelled and the statutory guardianship will end.

Court review of determination of incapability

If a reassessment has been conducted under either AGA section 33(3) or 34, the adult may apply under AGA section 35 for a court review of the determination of incapability. During the review process, the court may order the adult to attend as the court directs and submit to a further

assessment. At the conclusion of the review, the court may either confirm or reject the determination of incapability. If the determination is rejected, the court will order the statutory property guardianship is ended.

No longer a need to make decisions about the adult's financial affairs

In the event that the adult's financial affairs become simplified to the point where there is no longer a role for a statutory property guardian to make decisions, the PGT can end the statutory property guardianship under AGA section 37(3)(a). This is not a determination of capability. It is a determination that the adult no longer needs to make decisions about financial affairs that would require the support of a statutory property guardian. When this happens, the certificate of incapability is cancelled.

No longer need for a statutory property guardian of last resort

Because the PGT as statutory property guardian is considered as a last resort, AGA section 37(3)(d) provides that statutory property guardianship ends if the court appoints a committee under the Patients Property Act. This provision allows for more suitable representatives to replace a statutory property guardian where the court is satisfied that it is in the adult's interest to do so.

Summary

The statutory property guardianship role in the AGA is founded on specific principles set out in the AGA. In the appointment of a statutory property guardian, those principles guide the assessment processes that establish the need for the appointment. The AGA also contains provisions to ensure that statutory property guardianship will be terminated when the facts and/or circumstances that lead to the appointment no longer exist. Understanding how the underlying principles relate to the various provisions in the AGA will help to navigate that process and consider relevant options in decision making.

Contact the Public Guardian and Trustee

Greater Vancouver Regional Office

700-808 West Hastings Street
Vancouver, B.C. V6C 3L3

Phone 604-775-1001
Fax 604-660-9498
Email sta@trustee.bc.ca

Interior-North Regional Office

1345 St. Paul Street
Kelowna, B.C. V1Y 2E2

Phone 250-712-7576
Fax 250-712-7578
Email sta@trustee.bc.ca

Vancouver Island Regional Office

1215 Broad Street
Victoria, B.C. V8W 2A4

Phone 250-356-8160
Fax 250-356-7442
Email sta@trustee.bc.ca

Toll free calling

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

Vancouver 604-660-2421
Victoria 250-387-6121
Other areas in B.C. 1-800-663-7867

General inquiries

For questions unrelated to the information in this publication.

Email mail@trustee.bc.ca
Website www.trustee.bc.ca

PGT hours of operation

Monday to Friday 8:30am to 4:30pm