

Introduction

When an adult needs help managing their affairs because of mental incapability due to an illness, accident, disability or diseases associated with aging, their judgment may be impaired in some way. The adult may no longer be able to perform daily tasks which are important to their health and safety. They may forget to pay bills or put money away and forget where it is. The adult may be confused about banking, investments, property, and personal belongings. As a result, the adult becomes vulnerable in our society.

Each year many people contact the Public Guardian and Trustee (PGT) to find out what they can do to help an adult, friend or relative who cannot manage on their own. In most situations, the person contacting the PGT is able to provide the help that is needed. This is important, as the people closest to the adult often provide the best care and compassionate assistance. When there is no one else willing and able to assist, the PGT may have a role in providing assistance to the adult.

This guide explains committee of estate and how the PGT fulfils this role if appointed.

What is a Committee?

When an adult needs assistance in managing their financial and legal affairs, they may have planned ahead and appointed someone else to make decisions through an enduring power of attorney or representation agreement. If these are not in place and someone is needed to assist because the adult is incapable, usually a friend or relative applies to the court to manage the adult's financial affairs. This is known as a "committee of estate" under the *Patients Property Act*. Where there are no family or friends who are willing and able to act as committee, the Public Guardian and Trustee (PGT) may be appointed instead.

What is a committee of estate?

A committee of estate is a person who is appointed to make financial and legal decisions for an adult who is incapable and requires assistance. A committee of estate has many responsibilities including securing assets, confirming eligibility for benefits, receiving income, paying bills, contracting for services, maintaining, purchasing and selling real property, managing investments, preparing tax returns and appropriately providing for legal dependents. Legal responsibilities include acting as litigation guardian on civil law matters. In carrying out these roles, a committee is required to foster the independence of the adult and encourage the adult's involvement in any decision making that affects the adult.

What decisions can a committee of estate not make?

A committee of estate does not make decisions related to health care, facility placement and living arrangements or other personal decisions. Some or all of these decisions may be made by other types of substitute decision makers such as a committee of person under a court order, a representative under a representation agreement or a temporary substitute decision maker for health care. If consent for a health care decision is needed and there is no one else to provide it, the PGT may be authorized to act as a temporary substitute decision maker.

Similarly, if an adult needs a decision about admission to a care facility and there is no one else to provide it the PGT may act as substitute decision maker.

For information about how an adult's personal and health care decisions (including care facility admission decisions) can be made, see **It's Your Choice, Consent to Health Care and Care Facility Admission and the Role of the Public Guardian and Trustee**.

When is a committee needed?

Although an adult may not be capable of managing their own financial and legal affairs, they may still be capable of making some decisions. The decision as to whether an adult is capable of managing their financial and legal affairs is a legal one, based on an assessment that determines whether the adult has the mental capability to understand the impact of decisions that must be made. Appointment as committee of estate is a last resort and is only considered after all other options, such as pension trusteeship, representation agreement or enduring power of attorney, have been exhausted. See **It's Your Choice** and **Options to Consider** for more information.

When acting as committee of estate, the PGT strives to provide the level of help the adult needs, to involve the adult in decision making, and to foster independence. An adult's wishes and past practices are taken into consideration when the PGT carries out its fiduciary duties. Each adult's situation is unique.

Who can be a committee?

If a committee is required, a friend, family member or trust company can apply to the court to become a committee so that they can manage the affairs of a person who needs help. This is known as a “private committee.” If you have someone who needs help and you are interested in becoming a private committee, please see our **Private Committee Handbook** and **How You Can Help.**”

The PGT acts as committee in cases where there are no family or friends who are willing and able to act, or when there is a conflict among family members about committee and a neutral party is preferred to take on the role. The PGT is independent of government in client related decision making and has a duty of undivided loyalty to the client.

How is a committee of estate appointed?

A committee of estate can be appointed in one of two ways:

- (a) **By the court:** Any person or the PGT can apply to court to be appointed committee of estate under the *Patients Property Act*. The court will consider the opinions of two doctors, who have met with and examined the adult, and other relevant information.
- (b) **By a certificate of incapability:** A certificate of incapability may be issued by a health authority after an assessment of incapability of the adult has been conducted. The assessment includes both medical and functional components and must meet legislative standards. This process appoints the PGT as “statutory property guardian” under the *Adult Guardianship Act*. Once appointed, the PGT becomes the committee of estate under the *Patients Property Act*. Only the PGT can be appointed this way.

The rest of this guide is about how the PGT fulfills its role primarily appointed through the certificate of incapability process.