

The Adult Guardianship and Trusteeship Act

in Alberta



This booklet is for people who want to learn more about decision-making options available for someone who has good mental capacity, has reduced mental capacity or who lacks mental capacity. This booklet gives general information only, not legal advice. See the last few pages of this booklet for information on where to get more help.



You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2019

DISCLAIMER

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

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What is the *Adult Guardianship and Trusteeship Act (AGTA)*?

The AGTA is an Alberta law that came into force on October 30, 2009. The AGTA provides a variety of ways for an adult to get help making decisions. Options range from having another person support the adult in making a decision to having another person take over the adult's decision-making completely. The right choice depends on the adult's **capacity** and the decisions being made.

Court orders under the old *Dependent Adults Act*

The AGTA replaced the *Dependent Adults Act*. A guardianship order or trusteeship order made under the *Dependent Adults Act* continues as if it was made under the AGTA. At the next review date for the order, the old order will be replaced with an AGTA order. This means that the AGTA provisions will apply.

Capacity

Capacity means:

- the ability to understand information that is relevant to making a decision; and
- the ability to appreciate the reasonably foreseeable consequences of making or not making the decision.

Capacity is measured on a spectrum. This means there is a range of different options, from having good capacity to having some capacity to having no capacity. A person can have capacity to make some decisions but not to make other decisions. For example, the capacity necessary to decide where to invest money is different from the capacity necessary to decide whether to take a crafting class. A person's capacity can also change over time, especially if the person is suffering from a degenerative disorder.

For more information on Capacity Assessments, see page 35.

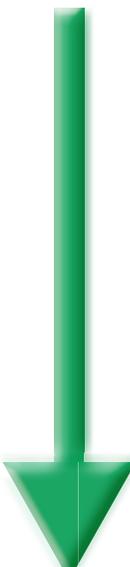
Types of decisions

There are two kinds of decisions covered by the AGTA: **personal matters** and **financial matters**.

PERSONAL MATTER	Any issue, except a financial matter, relating to the person of an adult, including: <ul style="list-style-type: none">• health care;• where, with whom and under what conditions to live (either permanently or temporarily);• with whom to associate;• participation in social activities;• participation in any educational, vocational or other training;• employment; and• any legal proceedings that do not relate primarily to financial matters.
FINANCIAL MATTER	Any matter relating to buying, selling, managing or protecting property. Essentially, a financial matter refers to anything you can own (including money).

Decision-making options for financial matters

There are different options available for someone to get help with making decisions about financial matters. The options are **(from least to most intrusive)**:



Temporary trusteeship orders in urgent cases

This is for situations in which an adult has no capacity and is in danger of financial loss if someone does not make a decision to prevent that financial loss. A temporary court order is required. This order generally lasts only 90 days. Under certain circumstances it can be extended up to 6 months. For more information, see page 27.

Trusteeship orders

This option is for adults who have been assessed as incapable and who have not completed an Enduring Power of Attorney. This court order gives another adult the ability to make financial decisions on behalf of the incapable adult. For more information on trusteeship, see page 27.

Decision-making options for personal matters

There are different options available for someone to get help with making decisions about personal matters. The options are **(from least to most intrusive)**:

Supported Decision-Making Authorizations

An adult with good capacity can name one to three supporters to help them make decisions about personal matters. There is no need to go to court. The adult must complete a form, called a Supported Decision-Making Authorization. This option is not available for financial matters. For more information, see page 8.

Co-decision-making orders

Co-decision-making orders are for adults who have some capacity and need help making decisions about personal matters. This is a court order that the assisted adult must agree to. This option is not available for financial matters. For more information, see page 12.

Specific decision-making

This option is for situations where:

- an adult has no Personal Directive or guardian; and
- a health care provider believes the adult cannot give consent to health care or to being temporarily admitted to or discharged from a residential facility.

In these circumstances, the health care provider can choose a relative of the adult to make the decision. If no relative is available, the Public Guardian can make the decision. For more information, see page 18.

Temporary guardianship orders in urgent cases

This is for situations when an adult has no capacity and is in danger of death or serious harm if someone does not make a decision to prevent that death or harm. A temporary court order is required. This order generally lasts only 90 days. The order can be extended up to 6 months under certain circumstances. For more information, see page 22.

Guardianship orders

This option is for adults who have been assessed as incapable and who do not have a Personal Directive. This court order gives another adult the ability to make personal decisions on behalf of the incapable adult. For more information on guardianship, see page 21.

What happens if there is a Personal Directive? Does the AGTA apply?

A Personal Directive must be completed while an adult has capacity and comes into effect only once an adult loses capacity.

If an adult has a Personal Directive:

- the adult can still get a Supported Decision-Making Authorization or a co-decision-making order for making decisions while they still have good or some capacity; and
- when the adult loses capacity, a guardianship order should not be required. Instead, the Personal Directive comes into effect and the named **Agent** can begin to make decisions about personal matters on behalf of the incapable adult.

If an adult does not have a Personal Directive and then loses capacity, a guardianship order under the AGTA will be necessary.

What happens if there is an Enduring Power of Attorney? Does the AGTA apply?

An Enduring Power of Attorney must be completed while an adult has capacity and usually comes into effect once an adult loses capacity.

If an adult has completed an Enduring Power of Attorney, and then loses capacity, a trusteeship order should not be required. Instead, the Enduring Power of Attorney comes into effect and the named **Attorney** can begin to make decisions about financial matters on behalf of the incapable adult.

If an adult has not completed an Enduring Power of Attorney and then loses capacity, a trusteeship order under the AGTA will be necessary.

A **Personal Directive** is a written, signed, dated and witnessed document that appoints someone else (your Agent) to look after your personal matters (non-financial only).

An **Agent** is a person named in a Personal Directive to make personal decisions on behalf of the Maker.

An **Enduring Power Of Attorney** is a type of Power of Attorney that continues on even if you lose mental capacity.

An **Attorney** is a person who is named to act on behalf of the Donor in a Power of Attorney or an Enduring Power of Attorney.

Supported Decision-Making

Sometimes adults who still have capacity would benefit from the help of a person they trust when making or communicating decisions about personal matters.

Adults can sign a form called a **Supported Decision-Making Authorization**. The adult who prepares this form is called the **supported adult**. The person who assists the supported adult is called the **supporter**. A supported adult can name up to three supporters in a Supported Decision-Making Authorization.

WHEN TO USE

This arrangement may be helpful where:

- a capable adult faces difficult decisions and wants a supporter's help in working through the decision-making process;
- a capable adult has difficulty communicating in English and wants a supporter to help communicate their decisions to other people;
- a capable adult has other communication difficulties;
- a capable adult has mild disabilities; or
- a capable adult needs help for a little while due to a temporary condition.

Do you have a Personal Directive?

If you are considering a Supported Decision-Making Authorization and you have not yet completed a Personal Directive, you may also think about preparing a Personal Directive. A Personal Directive comes into effect when you lose capacity to make decisions about personal matters.

For more information about Personal Directives, see CPLEA's booklet called **Making a Personal Directive**.

<https://www.cplea.ca/wp-content/uploads/MakingAPersonalDirective.pdf>

Choosing a supporter

A supporter must:

- be at least 18 years old;
- have the ability to act as a supporter (they themselves must have capacity); and
- consent in writing to act as a supporter.

Before naming a supporter, the supported adult should think about whom they are most comfortable with having access to their information and assisting them to make or communicate decisions. A supporter can be a relative or a close friend. The Public Guardian cannot be a supporter.

RESPONSIBILITIES

- keeping a record of decisions that they help the supported adult with;
- requesting only the personal information of the supported adult that is necessary to make a decision;
- keeping the supported adult's personal information safe and not disclosing it except where necessary to do so;
- acting in the supported adult's best interests;
- acting in good faith, or else they can be held liable for their actions.

The decisions made by the supported adult with the help of a supporter are the decisions of the supported adult, not of the supporter.

A person can refuse to recognize the decision made or communicated by the supporter if that person has reasonable grounds to think that:

- the supporter unduly influenced the supported adult in making the decision; or
- the supporter acted fraudulently or misrepresented something (either to the supported adult or to the person the decision is being communicated to).

The Supported Decision-Making Authorization form is available online here:

<https://www.alberta.ca/supported-decision-making.aspx>

For help with the forms, you can contact the **Office of the Public Guardian and Trustee**.

<https://www.alberta.ca/help-guardianship-trusteeship-forms.aspx>

Completing a Supported Decision-Making Authorization

There is no formal court process to make a Supported Decision-Making Authorization. The Supported Decision-Making Authorization form is available from the Public Guardian, either online or at one of their offices.

The supported adult and their supporter(s) must:

- agree to the Authorization; and
- sign the Authorization in front of a witness. (The witness must be an adult who is not named as a supporter or the supported adult and who did not sign the Authorization on behalf of the supported adult.)

SUPPORTER POWERS

The Authorization sets out what powers the supporter has. A supported adult can authorize a supporter to:

- access, collect or get information from any person that relates to the decision being made;
- help the supported adult to access, collect or get information from any person that relates to the decision being made;
- help the supported adult understand the information relating to the decision being made;
- help the supported adult make a decision; or
- communicate or help the supported adult communicate the decision to another person.

Once the Authorization is complete, the supported adult and each supporter should keep a copy of it. The supported adult and the supporter(s) may need to show the Authorization to others as proof of the arrangement. The Authorization is not registered anywhere.

Changing or cancelling a Supported Decision-Making Authorization

Any changes to an Authorization must be:

- in writing;
- signed and dated by the supported adult; and
- witnessed by an adult who is not named as a supporter or the supported adult and who did not sign the Authorization on behalf of the supported adult.

The supported adult can cancel an Authorization by completing a Termination of Supported Decision-Making Authorization form. The supported adult must have capacity in order to complete the termination form.

An Authorization automatically ends if:

- the supported adult's capacity decreases and the court appoints a co-decision maker; or
- the supported adult loses capacity and the court appoints a guardian (if the supported adult does not have a Personal Directive); or
- the supported adult's Personal Directive comes into effect.

Co-Decision-Making

If an adult has lost some capacity but can still make personal decisions with support, a **co-decision-making order** may be best. The adult who is the subject of the order is called the **assisted adult**. The person who is named in the order to help the assisted adult is called the **co-decision-maker**.

WHEN TO USE

This arrangement may be helpful where an adult:

- cannot make personal decisions on their own but could make personal decisions with the help and support of another person; and
- has a close relationship with someone willing to give decision-making support; and
- does not have a guardian or a Personal Directive.

Sometimes, after an adult has regained capacity and a guardianship order ends, co-decision-making orders are granted.

A co-decision-making order can be made for a person up to twelve months before their 18th birthday. This way, the order can come into effect at once when the assisted adult turns 18.

Co-decision-making orders specifically list the personal matters that the assisted adult and co-decision-maker must make decisions about together. The options include:

- the assisted adult's health care;
- where, with whom, and under what conditions the assisted adult is to live (either permanently or temporarily);
- who the assisted adult may associate with;
- the assisted adult's participation in social activities;
- the assisted adult's participation in any education, vocational or other training;
- the assisted adult's employment; and
- the carrying on of any legal proceedings that do not relate primarily to the assisted adult's financial matters.

A co-decision-maker or the assisted adult can ask the court for advice and direction on any question respecting the assisted adult.

Under a co-decision-making order, the assisted adult and the co-decision-maker are required to make decisions together. If the assisted adult and the co-decision-maker cannot agree on a decision, the assisted adult makes the final decision.

Being a co-decision-maker

The court appoints a co-decision-maker but the person must agree. The court can appoint more than one co-decision-maker and can say whether they are to act jointly (all must agree on all decisions), separately (each handles different decisions), or successively (acting one after the other in a ranked order) in helping the assisted adult.

A co-decision-maker must:

- be at least 18 years of age; and
- consent to act as the co-decision-maker; and
- have a trusting relationship with the assisted adult.

RESPONSIBILITIES

- discussing the decision with the assisted adult and helping the assisted adult make a decision;
- requesting only the personal information of the assisted adult that is necessary to make a decision;
- keeping the assisted adult's personal information safe and not disclosing it except where necessary to do so;
- acting in the assisted adult's best interests; and
- acting in good faith, or else they can be held liable for their actions.

A co-decision-maker cannot:

- assist with decisions on any personal matters that are not listed in the co-decision-making order; and
- assist with decisions on any financial matters.

A co-decision-maker can be a relative or a close friend. The Public Guardian cannot be a co-decision-maker.

A co-decision-maker can be reimbursed for expenses incurred in carrying out their duties, but they cannot be paid for being a co-decision-maker.

Co-decision-making orders are voluntary. This means that the court cannot grant this order unless both the assisted adult and the proposed co-decision-maker agree to the arrangement.

Applying for a co-decision-making order

The application process

There are many documents that must be completed and submitted to the Office of the Public Guardian and Trustee before the court will grant a co-decision-making order.

The necessary documents include:

- a Capacity Assessment Report (Form 3) (see page 35 for more information);
- the application forms (available online or from the Office of the Public Guardian and Trustee); and
- background check forms for the co-decision-maker.

The application must include the court filing fee of \$250.00, payable to the Government of Alberta.

The order can be made by way of a “desk application”. A desk application is a process for getting a court order without going to court. If the matter is straightforward and not challenged, then you can make the application by submitting the completed forms to a **Review Officer** at your local Office of the Public Guardian and Trustee.

The Review Officer reviews the documents, prepares a report, and files their report with the court. If the court is satisfied with the information it receives, it can grant the order. A judge will set a court date if they are not satisfied with the information and want to hear from the assisted adult, proposed co-decision-maker, or others.

Application forms and more information are available here:

<https://www.alberta.ca/co-decision-making.aspx>

For more information on the background checks required, visit

<https://www.alberta.ca/background-checks-opgt.aspx>

If someone is contesting (opposing) the application, then it must be filed directly with the court and a hearing will be scheduled. You will need to send notices to everyone who must be notified according to law.

See page 17 for more information on the role of the Review Officer and who must get notice of the application for a co-decision-making order.

What the court considers

Before granting a co-decision-making order, the court must find that:

- the adult's capacity is "significantly impaired" but that the adult could make a decision with guidance and support;
- less intrusive supports are not suitable; and
- it is in the adult's **best interests** to have a co-decision-maker.

BEST INTERESTS

In deciding whether it is in the adult's best interests to have a co-decision-maker, the court must consider many factors, including:

- the Capacity Assessment Report;
- the Review Officer's report;
- the assisted adult's Personal Directive (if there is one);
- the assisted adult's Supported Decision-Making Authorization (if there is one);
- whether the personal matters about which the adult is significantly impaired are likely to expose the assisted adult to harm;
- whether the benefits of having a co-decision-maker outweigh the risks, if any, to the assisted adult;
- the personal matters for which decisions need to be, or likely need to be, made;
- any matters the court considers relevant.

Reviewing a co-decision-making order

There is no required review period. A review of a co-decision-making order is necessary if:

- the order includes a review date;
- the assisted adult's capacity has changed and changing or cancelling the order would be in the best interests of the assisted adult; or
- the co-decision-maker's ability or suitability to act has changed.

Applications for reviews of co-decision-making orders go through the Review Officer.

Ending a co-decision-making order

A co-decision-making order stays in place until:

- the assisted adult files a Withdraw of Consent of Assisted Person (Form 13) with the court;
- the co-decision-maker applies to the court and the court allows the co-decision-maker to stop acting;
- the court terminates the order (for whatever reason);
- a guardianship order is granted; or
- the assisted adult's Personal Directive comes into effect.

Role of the Review Officer

- review the documents submitted by the adult and proposed decision-maker;
- meet with the adult to explain the application as well as the adult's right to request a hearing and have a lawyer;
- send notice of the application to the appropriate persons (for desk applications);
- receive any requests for a hearing (for desk applications); and
- prepare a written report stating the adult's views and the officer's opinion about whether the order is proper in the situation.

Who gets notice of the application?

For desk applications, the Review Officer will send the notice. For applications filed directly with the court, the applicant must send the notices at least one month before the hearing, including a copy to the Office of the Public Guardian and Trustee.

The following specific family members must be notified if they live in Canada:

- the spouse or the adult interdependent partner of the adult;
- the parents of the adult;
- all children of the adult who are 18 years of age or older;
- all the siblings of the adult who are 18 years of age or older;
- each supporter, co-decision-maker, guardian, alternate guardian, trustee, alternate trustee, agent or attorney of the adult who is the subject of the application;
- each proposed co-decision-maker, guardian, alternate guardian, trustee or alternate trustee;
- the director of the facility (if the adult lives in a facility); and
- the Chief of the council of the band if the adult is an Indian who is a member of a band and is ordinarily resident on a reserve.

The person making the application (the applicant) can apply to the court to dispense with (waive) notice to a specific person if there is an acceptable reason. For example, if a person would not understand the application (such as a sibling who has dementia), or there has been no contact between the adult and that person for many years. The court decides whether the notice should be sent.

The notice includes a summary document (called a Notice of Application) and a Request for Hearing form. The person does not get a copy of everything in the application, and does not get a copy of the Capacity Assessment Report.

Specific Decision-Making

WHEN TO USE

A health care provider (physician, nurse practitioner, or dentist) can choose a relative to make a decision for the adult where:

- the health care provider has assessed the adult and believes the adult does not have capacity to make the decision; and
- the adult does not have a guardian or a Personal Directive; and
- the decision is for the adult's health care or the adult's temporary admission to or discharge from a residential facility; and
- the health care provider needs a treatment or placement decision.

A specific decision maker usually makes a one-time decision on behalf of an adult.

A specific decision maker cannot make decisions about:

- psychosurgery;
- sterilization that is not medically necessary to protect the adult's health;
- removal of tissue from the adult's living body for medical education or research purposes;
- health care that involves participation by the adult in research or experimental activities, if the health care offers little or no potential benefit to the adult;
- any type of treatment decision if the adult is a formal patient or under a community treatment order under *Alberta's Mental Health Act*;
- decisions where withdrawal or withholding of health care would lead to imminent death.

A health care provider (physician, nurse practitioner or registered nurse) can always provide emergency care, without anyone's consent, if the health care is necessary to save the adult's life, prevent serious physical or mental harm, or ease severe pain.

Being a specific decision maker

The health care provider must choose the “nearest relative” of the adult, which is the person listed first of the following:

- spouse or adult interdependent partner;
- adult child;
- parent;
- adult sibling;
- grandparent;
- adult grandchild;
- adult uncle or aunt;
- adult nephew or niece; or
- the Public Guardian (as a last resort).

The nearest relative must also:

- be over 18 years of age;
- be available, able and willing to make the decision;
- be aware of the adult's wishes, beliefs and values;
- be on good terms with the adult; and
- have been in contact with the adult within the past 12 months.

If there is disagreement about who is selected, the Public Guardian can either act as the specific decision maker or appoint a family member to act.

HOW TO MAKE DECISIONS

When making a decision, a specific decision maker must:

- consult with the adult (where possible);
- make a decision in the best interests of the adult (considering the adult's wishes, values and beliefs);
- consider whether the adult's condition or quality of life will likely be improved by the proposed action;
- consider whether the potential benefit of the action is greater than the potential risk of harm; and
- consider whether something less restrictive or less intrusive would be equally beneficial.

Regardless of the specific decision maker's instructions, a health care provider does not have to give health care if the procedure would not be effective, in their opinion.

Challenging a decision

The health care provider must keep a record of the completed forms and the decision made.

If someone does not agree with the decision, they should immediately contact the health care provider. The health care provider cannot immediately act on the specific decision maker's decision if they have been informed that the adult (or a relative, close friend or legal representative of the adult) has requested a capacity re-assessment or a review of the decision.

The person who challenges the decision must take action within one week, even after acting on the decision. Action means arranging for a capacity assessment or making a court application. If they do not, the health care provider can act on the original decision.

Guardianship

Guardianship applies when an adult does not have capacity to make decisions about their personal matters. The court must make a **guardianship order** to allow someone else to make decisions for the adult.

The adult who is the subject of the guardianship order is the **represented adult**. The person named in the guardianship order to make decisions for the represented adult is the **guardian**.

If an adult has a **Personal Directive**, then a guardianship order is not necessary unless the Personal Directive does not deal with all types of personal matters. A guardianship order may be necessary to deal with personal matters not mentioned in the Personal Directive. An Agent named in a Personal Directive and a guardian cannot have the same powers.

A guardianship order can be made for a person up to twelve months before their 18th birthday. This way, the order can come into effect immediately when the represented adult turns 18.

GUARDIAN POWERS

Guardianship orders specifically list the personal matters that the guardian may make decisions about on behalf of the represented adult. The options include:

- the represented adult's health care;
- where, with whom, and under what conditions the represented adult is to live (either permanently or temporarily);
- who the represented adult may associate with;
- the represented adult's participation in social activities;
- the represented adult's participation in any education, vocational or other training;
- the represented adult's employment; and
- the carrying on of any legal proceedings that do not relate primarily to the represented adult's financial matters.

Guardians cannot make decisions about the represented adult's finances. However, a guardianship order and trusteeship order can be applied for together.

The guardianship order will include a **guardianship plan**, which outlines future decisions the guardian might make.

Temporary guardianship

The court can grant a guardianship order that is good for 90 days in urgent cases when:

- the adult does not have capacity to make a decision about a personal matter; and
- the adult is in immediate danger of death or serious physical or mental harm.

The Office of the Public Guardian and Trustee can sometimes obtain a grant of temporary guardianship within one week. Contact the Office of the Public Guardian and Trustee for more information.

Depending on how urgent the situation is, the court can change any requirements in the AGTA or its regulations about filing documents, serving documents and providing evidence.

The court must review the order within 90 days of granting temporary guardianship. At that time, the court can cancel the order, extend it for up to 6 months, or go forward with an application for a regular guardianship order.

Being a guardian

The court appoints a guardian but the person must agree to be a guardian.

The court can appoint more than one guardian and can say whether they must act jointly (all must agree on all decisions) or separately (each is responsible for different decisions). The court can give one guardian exclusive authority to make certain decisions. The court can also appoint an alternate guardian.

A guardian must:

- be 18 years of age or older;
- consent to act as the guardian; and
- be able to act for the adult (the guardian must have capacity).

RESPONSIBILITIES

- acting in the best interests of the represented adult;
- knowing and acting according to the represented adult's beliefs, values and wishes;
- encouraging the represented adult to become capable of caring for themselves and of making decisions for themselves, including consulting with the represented adult before making decisions (if appropriate);
- respecting the represented adult's dignity and privacy;
- having a good relationship with the represented adult;
- informing the represented adult of any decisions they make;
- complying with the terms of the guardianship order; and
- acting in good faith, or else they can be held liable for their actions.

A relative or close friend can be a guardian. The Public Guardian will only be the guardian if there is no one else who is willing, able and suitable to act for the represented adult and if the Public Guardian consents.

A guardian can be reimbursed for expenses incurred in carrying out their duties, but they cannot be paid for being a guardian.

A guardian can apply to the court for advice or direction on any question they have about the represented adult. If someone is not following the guardian's decision, the guardian can apply to court for an order to give effect to their decisions.

Applying for a guardianship order

The application process

There many documents that must be completed and submitted to the Office of the Public Guardian and Trustee before the court will grant a guardianship order.

The necessary documents include:

- a Capacity Assessment Report (Form 3) (see page 35 for more information);
- the application forms (available online or from the Office of the Public Guardian and Trustee); and
- the background check forms.

The application must include the court filing fee of \$250.00, payable to the Government of Alberta.

Application forms and more information are available here:

<https://www.alberta.ca/co-decision-making.aspx>

For more information on the background checks required, visit

<https://www.alberta.ca/background-checks-opgt.aspx>

The order can be made by way of a “desk application”. A desk application is a process for getting a court order without going to court. If the matter is straightforward and no one is challenging the proposed arrangement, then the application involves submitting the completed forms to a **Review Officer** at your local Office of the Public Guardian and Trustee.

The Review Officer reviews the documents, prepares a report, and files that report with the court. If the court is satisfied with the information it receives, it can grant the order. A judge will set a court date if they are not satisfied with the information and wants to hear from the represented adult, proposed guardian, or others.

If someone is contesting (opposing) the application, then it must be filed directly with the court and a hearing will be scheduled. You will need to send notices to everyone who must be notified according to law.

See page 17 for more information on the role of the Review Officer and who must get notice of the application for a guardianship order.

What the court considers

Before granting a guardianship order, the court must find that:

- the adult does not have capacity to make decisions about the personal matters listed in the guardianship order;
- less intrusive and less restrictive supports are not suitable; and
- it is in the adult's **best interests** to have a guardian.

BEST INTERESTS

In deciding whether it is in the adult's best interests to have a guardian, the court must consider many factors, including:

- the Capacity Assessment Report and other information about the adult's capacity;
- the Review Officer's report;
- the proposed guardianship plan;
- the adult's Personal Directive (if there is one);
- the adult's Supported Decision-Making Authorization (if there is one);
- a co-decision-making order (if there is one);
- whether the adult's lack of capacity to make decisions about personal matters is likely to expose the adult to harm;
- the personal matters for which decisions need to be, or likely need to be, made;
- whether the benefits of having a guardian outweigh the risks, if any, to the represented adult; and
- any other manner the court considers relevant.

Reviewing a guardianship order

There is no required review period. The guardian must apply to the court to review the order if:

- the order includes a review date; or
- the represented adult's capacity has changed and changing or cancelling the order would be in the best interests of the represented adult; or
- the guardian's ability or suitability to act has changed.

At any other time, the represented adult, the guardian or any interested party can apply to the court for a review of the guardianship order. The person requesting the review must serve specific people with a copy of the application at least one month before the hearing date. Simple applications for review can go through the Review Officer as a desk application. If someone is contesting (opposing) the application, then it must be filed directly with the court and a hearing will be scheduled.

For more information about the review process, contact the Office of the Public Guardian and Trustee.

Ending a guardianship order

A guardianship order stays in place until the represented adult dies or the court terminates (cancels) the order.

The court can cancel a guardianship order if:

- the represented adult no longer needs a guardian (maybe a co-decision-making order will be better or maybe the adult no longer needs support); or
- the guardian needs to be replaced because:
 - the guardian no longer wants to be the guardian;
 - the guardian is not following the order;
 - the guardian is not carrying out their duties and responsibilities;
 - the guardian has acted improperly or in a way that has endangered or might endanger the represented adult's well-being;
 - the guardian is no longer suitable to be guardian;
 - the relationship between the guardian and the represented adult has broken down; or
 - it is in the represented adult's best interest to name a new guardian.

Trusteeship

Trusteeship applies when an adult does not have capacity to make decisions only on financial matters. The court must make a **trusteeship order** to allow someone else to make decisions for the adult. A trusteeship order in Alberta can only be made:

- for an adult who lives in Alberta; or
- if the adult does not live in Alberta but owns real estate in Alberta, for that real estate in Alberta.

The adult who is the subject of the trusteeship order is the **represented adult**. The person named in the trusteeship order to make decisions for the represented adult is the **trustee**.

If an adult has an **Enduring Power of Attorney**, then a trusteeship order is not necessary unless the Enduring Power of Attorney does not deal with all types of financial matters. A trusteeship order may be necessary to deal with financial matters not mentioned in the Enduring Power of Attorney. An Attorney named in an Enduring Power of Attorney and a trustee cannot have the same powers.

A trusteeship order can be made for a person up to twelve months before their 18th birthday. This way, the order can come into effect immediately when the represented adult turns 18.

TRUSTEE POWER

Trusteeship orders specifically list the financial matters for which the trustee may make a decision on behalf of the represented adult. The options include property or financial matters or real estate located outside Alberta.

Trustees cannot make decisions about the represented adult's personal matters. However, a guardianship order and trusteeship order can be applied for together.

The trusteeship order will include a **trusteeship plan**, which outlines future decisions the trustee might make.

Temporary trusteeship

The court can grant a trusteeship order that is good for 90 days in urgent cases when:

- the adult does not have capacity to make a decision about a financial matter; and
- the adult is in immediate danger of suffering serious financial loss.

A temporary trusteeship order can allow a trustee to take steps to preserve and protect the property. A temporary order does not allow the trustee to sell or encumber the property.

Depending on how urgent the situation is, the court can change any requirements in the AGTA or its regulations about filing documents, serving documents and providing evidence.

The court must review the order within 90 days of granting temporary trusteeship. At that time, the court can cancel the order, extend it for up to 6 months, or go forward with an application for a regular trusteeship order.

The Office of the Public Guardian and Trustee can sometimes obtain a grant of temporary trusteeship within one week. Contact the Office of the Public Guardian and Trustee for more information.

Being a trustee

The court appoints a trustee but the person must agree with the appointment.

The court can appoint more than one trustee and can say whether they must act jointly (all must agree on all decisions) or separately (each handles different decisions). The court can give one trustee exclusive authority to make certain decisions. The court can also appoint an alternate trustee.

A trustee can be a person (such as a relative or close friend) or a trust corporation. The Public Trustee will only be the trustee if there is no one else who is willing, able and suitable to act for the represented adult and if the Public Trustee consents to being appointed.

A trustee who is a person must:

- be 18 years of age or older;
- be able to act for the adult (they must have capacity and be able to effectively manage the adult's financial matters);
- know and act according to the represented adult's beliefs, values and wishes; and
- have a good relationship with the adult.

RESPONSIBILITIES

- consenting to acting as the trustee;
- making efforts to determine if the represented adult has a **Will**;
- keeping the represented adult's property separate from their own;
- acting in the best interests of the represented adult;
- paying expenses reasonably required for the represented adult's education, support and care;
- exercising its powers to help the represented adult's spouse, adult interdependent partner, minor child or dependent child (over 18 years of age but unable to support themselves due to a physical or mental disability) (if appropriate);
- keeping accounts of its activities as the trustee;
- complying with the terms of the trusteeship order and trusteeship plan; and
- acting in good faith, or else they can be held liable for their actions.

A **Will** is a legal statement of how a person wants their property to be dealt with after their death.

If the trusteeship order allows, a trustee may make gifts on behalf of the represented adult if:

- the amount of the gift is not needed to meet the represented adult's needs (or the needs of a person they are responsible for, such as a spouse or dependent child); and
- the trustee believes the adult would have made the gift if they had capacity.

A trustee must perform its duties using the care, skill and diligence that a reasonable person would use in managing their own financial matters.

A trustee is paid for their work in one of two ways:

1. A trustee can choose payment according to a fee schedule set out in Schedule 1 of the *Adult Guardianship and Trusteeship Regulation*. If there is more than one trustee, they must share the fee. The court must approve the trustee's pay.
2. The court can set the trustee's pay based on their effort, care and responsibility, and the time they spent on behalf of the represented adult.

A trustee can be reimbursed for expenses incurred in carrying out their duties. A trustee may be ordered to reimburse the represented adult for any losses suffered by the represented adult due to the trustee's misconduct, neglect or default.

A trustee can apply to the court for advice or direction on any question they have about the represented adult.

Applying for a trusteeship order

The application process

There are many documents that must be completed and submitted to the Office of the Public Guardian and Trustee before the court will grant a trusteeship order.

The necessary documents include:

- a Capacity Assessment Report (Form 3) (see page 35 for more information);
- the application forms (available online or from the Office of the Public Guardian and Trustee); and
- the background check forms.

The application must include the court filing fee of \$250.00, payable to the Government of Alberta.

The order can be made by way of a "desk application". A desk application is a process for getting a court order without going to court. If the matter is straightforward and no one is challenging the proposed arrangement, then the application can be made by submitting the completed forms to a **Review Officer** at your local Office of the Public Guardian and Trustee.

Application forms and more information are available here:

<https://www.alberta.ca/trusteeship.aspx>

For more information on the background checks required, visit

<https://www.alberta.ca/background-checks-opgt.aspx>

The Review Officer reviews the documents, prepares a report, and files that report with the court. If the court is satisfied with the information it receives, it can grant the order. A judge will schedule a court date if they are not satisfied with the information and want to hear from the represented adult, proposed trustee, or others.

If someone is contesting (opposing) the application, then it must be filed directly with the court and a hearing will be scheduled. You will need to send notices to everyone who must be notified according to law.

See page 17 for more information on the role of the Review Officer and who must get notice of the application for a trusteeship order.

What the court considers

Before granting a trusteeship order, the court must find that:

- the adult does not have capacity to make decisions about the financial matters listed in the trusteeship order;
- less intrusive and less restrictive supports are not suitable; and
- it is in the adult's **best interests** to have a trustee.

BEST INTERESTS

In deciding whether it is in the adult's best interests to have a trustee, the court must consider many factors, including:

- the Capacity Assessment Report and other information about the adult's capacity;
- the Review Officer's report;
- the proposed trusteeship plan;
- the adult's Enduring Power of Attorney (if there is one);
- whether the benefits of having a trustee outweigh the risks, if any, to the represented adult; and
- any other matter the court considers relevant.

The court will also consider anything that would not allow the court to oversee and control the trustee, such as if the trustee does not live close by to the represented adult. The court may order a trustee who does not live in Alberta to post a bond or other security for performance of their duties.

Reviewing a trusteeship order

There is no required review period. The trustee must apply to the court to review the order if:

- the order includes a review date; or
- the represented adult's capacity has changed and changing or cancelling the order would be in the best interests of the represented adult; or
- the trustee's ability or suitability to act has changed.

At any other time, the represented adult, the trustee or any interested party can apply to the court for a review of the trusteeship order. The person requesting the review must serve specific people with a copy of the application at least one month before the hearing date. Simple applications for review can go through the Review Officer as a desk application. If someone is contesting (opposing) the application, then it must be filed directly with the court and a hearing will be scheduled.

For more information about the review process, contact the Office of the Public Guardian and Trustee.

Ending a trusteeship order

A trusteeship order stays in place until the represented adult dies or the court cancels the order.

The court can cancel the order if:

- the represented adult no longer needs a trustee; or
- the trustee needs to be replaced because:
 - the trustee no longer wants to be the trustee;
 - the trustee is not following the order;
 - the trustee has acted improperly or in a way that has endangered or might endanger the represented adult's property;
 - the trustee is guilty of a breach of trust;
 - the trustee is no longer suitable to be trustee.

Protective Measures and Investigations

This section applies to complaints against a co-decision-maker, a guardian or a trustee.

You can register a written complaint with the Complaints Officer at the Office of the Public Guardian and Trustee if you believe the decision-maker:

- is not following the court order;
- is not complying with their duties; and
- is likely to harm the adult (physically, mentally or financially) through their actions or by not taking action.

Anonymous complaints are not accepted.

The complaint form can be found online at

<https://www.alberta.ca/complaints-about-decision-makers.aspx>

or by visiting the Office of the Public Guardian and Trustee.

Once you have filed your complaint, the Complaints Officer will call you to let you know they received your complaint and will discuss your concerns with you. Based on the information you provide, the Complaints Officer will decide whether to refer the matter for investigation.

If the Complaints Officer recommends an investigation, the decision-maker will be told they are under investigation. The adult and any other decision-makers will also be informed. Once the investigation is complete, the investigator can make recommendations to resolve the situation. This can include resolving the issue through education or referring the matter to an alternative dispute resolution process (such as mediation or arbitration). The investigator may also recommend that the Public Guardian or Public Trustee apply to the court for a guardianship order or trusteeship order, or any other appropriate order.

If an investigator finds there are no grounds for the complaint, they will give their reasons in writing to the person who filed the complaint. The Complaints Officer may suggest other alternatives to an investigation.

If the Complaints Officer thinks the complaint is an offence under the *Criminal Code* of Canada, abuse under the *Protection for Persons in Care Act*, or an offence under any other Alberta law, the Complaints Officer may call the police or notify the appropriate government office.

Complaints against the Public Guardian or Public Trustee

Complaints about the Public Guardian or the Public Trustee can also be submitted to the Complaints Officer. An independent investigator will be appointed.

Find more information about complaints and forms here:

<https://www.alberta.ca/complaints-about-decision-makers.aspx>

Alternatives to filing a complaint

You can take other steps if you do not want to file a formal complaint:

- have a conversation with the person you are having a dispute with;
- hire a mediator or arbitrator to help resolve the issue; or
- apply for a court review of the order.

These alternatives are usually in everyone's best interests because they lead to a quicker resolution without more fighting.

If an adult is in serious danger, contact the Office of the Public Guardian and Trustee to discuss next steps. **If it is an emergency, call the police.**

Capacity Assessments

A capacity assessment determines an adult's cognitive and functional capacity. A capacity assessment must be done before a person can apply for a co-decision-making order, guardianship order or trusteeship order.

Capacity assessors

The person who completes a capacity assessment is a **capacity assessor**. Capacity assessors must act according to a standard of conduct and must undergo training and continuing education.

Only certain professions are qualified to be capacity assessors, including medical doctors, psychologists, registered nurses, registered psychiatric nurses and mental deficiency nurses, occupational therapists, and social workers. A capacity assessor must be certified by the government.

The assessment process

1. Pre-assessment phase

In the pre-assessment phase, the capacity assessor must:

- understand the reasons why the assessment is being requested;
- make reasonable efforts to meet with the adult and, unless the adult is non-responsive, explain the purpose and nature of the assessment (including the adult's right to refuse to consent to the assessment);
- explain to the adult their right to have assistance (such as a person or device) during the assessment process;
- if the adult does not refuse to participate, determine whether the adult understands everything they have been told;
- if the adult seems capable of consenting to the assessment, make sure that the adult does consent;

A list of qualified capacity assessors is available at:

<https://www.alberta.ca/find-capacity-assessor.aspx>

- if the adult does not seem capable of consenting of the assessment, determine whether it is in the adult's best interests to continue with the assessment;
- if the adult refuses to go ahead with the assessment, note this on the Capacity Assessment Report and stop the assessment;
- confirm that a medical examination was conducted within three months before the assessment and that the results did not indicate that the adult was suffering from a temporary, reversible condition;
- determine which decision-making areas need an assessment and only assess those areas; and
- ask the adult about any recent, significant changes in their values and beliefs related to the identified decision-making areas.

2. Medical evaluation

A medical practitioner conducts the medical evaluation. As part of the evaluation, the medical practitioner must rule out any temporary, reversible medical conditions affecting the adult's capacity.

3. Cognitive and functional inquiry

The cognitive and functional inquiry is a standardized process conducted by the capacity assessor during a formal interview with the adult. During this interview, the capacity assessor forms an opinion about the adult's capacity for each decision-making area under examination (personal matters, financial matters or both). The adult can be either "significantly impaired" or "incapacitated".

The capacity assessor must state whether the adult would be seriously harmed (emotionally or physically) if they were served with an application for trusteeship or guardianship.

If the adult is significantly impaired or incapacitated, the capacity assessor must decide whether the adult's capacity is likely to improve. If improvement is likely, the capacity assessor must recommend that there be a further assessment and say when that should take place.

The capacity assessor must complete a Capacity Assessment Report. The reports are different depending on the type of order being requested (co-decision-making, guardianship or trusteeship).

You Should Also Know ...

- ▶ An adult has the right to have a person present to help the adult feel comfortable and relaxed. That person must follow any directions of the capacity assessor. They may be asked to leave if they interfere with the process (for example, by answering questions for the adult).
- ▶ An adult has the right to have an interpreter present or to use a device to help them communicate.
- ▶ An adult is given the opportunity to complete the capacity assessment at a time when the adult will likely be able to demonstrate their full capacity.
- ▶ In general, a Capacity Assessment Report cannot be dated more than six months before the date that the application is submitted to the Review Officer. If the report is older than six months, you can request in your application that the court consider the older report but the Review Officer does not have to accept it.
- ▶ The court can order a capacity assessment be completed if an adult's capacity to make decisions is an issue in a court proceeding. The court can also order that a capacity assessor be allowed to enter the adult's home or that the adult go to a specific place for the assessment to be completed.
- ▶ If an adult refuses to complete (or is prevented somehow from completing) a capacity assessment, the court can look at any evidence it thinks is relevant to the adult's capacity. If the court thinks that it has enough evidence, it can make a decision about the adult's capacity without a Capacity Assessment Report.
- ▶ A capacity assessor can charge up to \$500 for a capacity assessment about either an adult's personal matters or financial matters. If the capacity assessor is asked to complete a capacity assessment about both the adult's personal matters and financial matters, they can charge up to \$700. The court can allow the fee to be higher if the assessment is more complex.
- ▶ The person requesting the capacity assessment can apply to have the government pay for the fee if they cannot afford it. However, the government will only pay for one assessment per adult per calendar year.

Glossary

adult interdependent partner

A person with whom you are in an adult interdependent relationship.

adult interdependent relationship

A term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*.

It is a "relationship of interdependence" between two people who:

- have lived together for three years or more; or
- live together and have a child together, by birth or adoption; or
- have signed an adult interdependent partner agreement.

A "relationship of interdependence" exists where two people:

- share one another's lives; and
- are emotionally committed to one another; and
- function as an economic and domestic unit.

assisted adult

An adult who is the subject of a co-decision-making order.

Attorney

A person who is named to act on behalf of the Donor in a Power of Attorney or an Enduring Power of Attorney.

capacity assessment

An assessment by a capacity assessor of an adult's cognitive and functional capacity. A capacity assessment is required to get a co-decision-making order, a guardianship order or a trusteeship order.

capacity assessor

A person trained and certified to carry out capacity assessments.

co-decision-maker

A person appointed in a co-decision-making order to help an assisted adult make decisions about personal matters.

co-decision-making order

An order of the court made under section 13 of Alberta's *Adult Guardianship and Trusteeship Act* in response to an application by a person requesting to be named the adult's co-decision-maker.

Enduring Power Of Attorney

A type of Power of Attorney that continues on even if you lose mental capacity.

guardian

Of an adult, a person named as a guardian in a guardianship order made under section 26 of Alberta's *Adult Guardianship and Trusteeship Act*. The guardian of an adult has the authority to make personal, non-financial decisions for that adult.

guardianship order

Of an adult, an order of the court made under section 26 of Alberta's *Adult Guardianship and Trusteeship Act* in response to an application by a person requesting to be named the adult's guardian.

mental capacity

The ability to understand information that is relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.

Personal Directive

A written, signed, dated and witnessed document that appoints someone else (your Agent) to look after your personal matters (non-financial only).

Power of Attorney

A written, signed, dated and witnessed document that gives someone else (your Attorney) the right to act on your behalf with respect to your financial affairs while you are still alive. A Power of Attorney can be for a specific act, a definite period of time, or general in nature.

represented adult

An adult who is the subject of a guardianship order or trusteeship order.

specific decision maker

The nearest relative of an adult who is chosen by a health care provider to make a personal decision for an adult who lacks mental capacity to make the decision. The specific decision maker can only make decisions about the adult's healthcare and the adult's temporary admission to or discharge from a residential facility.

spouse

A person to whom one is legally married.

supported adult

A person who makes a Supported Decision-Making Authorization and receives support from a supporter in making personal decisions.

supporter

A person named in a Supported Decision-Making Authorization to help a supported adult make personal decisions.

trustee

Of an adult, a person named as a trustee in a trusteeship order made under section 46 of Alberta's *Adult Guardianship and Trusteeship Act*. The trustee of an adult has the authority to make financial decisions for that adult.

trusteeship order

Of an adult, an order of the court made under section 46 of Alberta's *Adult Guardianship and Trusteeship Act* in response to an application by a person requesting to be named the adult's trustee.

Will

A legal statement of how a person wants their property to be dealt with after their death.

Resources

Legislation

Alberta Queen's Printer

For free electronic and print copies of Acts or Regulations.

www.qp.alberta.ca

Government & Court Services

Government of Alberta

www.alberta.ca

Making personal decisions for incapable adults:

<https://www.alberta.ca/making-personal-decisions-for-incapable-adults.aspx>

Making financial decisions for incapable adults:

<https://www.alberta.ca/making-financial-decisions-for-incapable-adults.aspx>

Alberta Courts

www.albertacourts.ca

Resolution and Court Administration Services (RCAS)

Resolution and court support services across Alberta.

1.855.738.4747

<https://www.alberta.ca/rcas.aspx>

Alberta Supports

Help accessing more than 30 programs and 120 community services.

Toll-free: 1.877.644.9992

Office of the Public Guardian and Trustee

Services and support for vulnerable Albertans and their families.

Toll-free: 310.0000 then 780.422.1868

www.alberta.ca/office-public-guardian-trustee.aspx

Legal Services

Law Society of Alberta Lawyer Referral Service

Provides names of three lawyers. Each lawyer to provide half-hour consultation free of charge.

Toll-free: 1.800.661.1095

<https://www.lawsociety.ab.ca/public/lawyer-referral/>

Legal Aid Alberta

Toll-free: 1.866.845.3425

www.legalaid.ab.ca

Edmonton Community Legal Clinic (ECLC)

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

www.eclc.ca

Student Legal Services

Legal clinic in Edmonton. Call for hours and eligibility.

780.492.2226

<https://www.slsedmonton.com/>

Calgary Legal Guidance (CLG)

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<http://clg.ab.ca>

Community Legal Clinic – Central Alberta

Legal clinics in Central Alberta. Call for hours and eligibility.

Central Alberta: 403.314.9129

Fort McMurray: 587.674.2282

Lloydminster: 587.789.0727

Medicine Hat: 403.712.1021

www.communitylegalclinic.net

Grande Prairie Legal Guidance

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

www.gplg.ca

Lethbridge Legal Guidance

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

<http://www.lethbridgelegalguidance.ca/>

Dial-A-Law

Pre-recorded legal information available 24 hours a day, 7 days a week.

Toll-free: 1.800.332.1091

<http://clg.ab.ca/programs-services/dial-a-law/>

Resources for Seniors

Protection for Persons in Care (PPC)

Report abuse of adults receiving care or support from publicly funded service providers.

Toll-free: 1.888.357.9339

www.alberta.ca/report-abuse-to-protection-for-persons-in-care.aspx

Older Adult Knowledge Network

Legal information on Canadian law for older adults.

www.oaknet.ca

Seniors Association of Greater Edmonton (SAGE)

780.423.5510

www.MySage.ca

Kerby Centre (Calgary)

403.265.0661

<https://www.kerbycentre.com/>

Golden Circle Senior Resource Centre (Calgary)

403.343.6074

www.goldencircle.ca

The Adult Guardianship and Trusteeship Act

in Alberta

This booklet is one of many publications produced by the Centre for Public Legal Education Alberta. All publications can be viewed and downloaded for free by visiting www.cplea.ca/publications or www.cplea.ca/store

Other publications related to this topic that may interest you include:

- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being a Personal Representative
- Being an Agent
- Being an Attorney Under an Enduring Power of Attorney
- General Powers of Attorney

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