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# Duties and Powers of a Property Guardian in Saskatchewan



DUNNING PLACE





## Duties and Powers of a Property Guardian

The purpose of this booklet is to help a person who has been appointed by the Court as the property guardian of an incapable person. It explains what this important role involves, what things the property guardian is allowed to do and what steps must be taken by the property guardian to meet his or her obligations to the incapable person.

This booklet may also be useful to others who are not property guardians. For example, if you are considering applying to be the property guardian of a relative or friend who is incapable, you should be fully aware of what the role involves. If you are a person working with a property guardian, you may want to know what the property guardian is allowed to do and what you can expect in your dealings with the property guardian.

The powers and duties of a property guardian are set by law. *The Adult Guardianship and Co-decision-making Act* (<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/A5-3.pdf>) and the *Regulations* (<http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/A5-3R1.pdf>) set out these powers and duties. This booklet is a summary and a guide based on the law. It is not as comprehensive as the law itself. It is not legal advice. If, after reading this booklet, you have questions or are uncertain about how to interpret the information, you should consult with a lawyer.

## Property Guardianship

People who are mentally incapable of handling their own finances may be unable to look after the basic financial transactions that adults normally carry out for themselves. They may be unable to do their own banking, look after day-to-day bills, buy personal items, buy food, shelter and services, and collect payments to which they are entitled or deal with assets they own such as a house or investments. This makes them extremely vulnerable. It also affects other people such as dependants, service providers and those who own property together with the incapable person. The role of a property guardian is to step into the shoes of the incapable person for the purpose of financial decisions and transactions. This serves to protect the welfare of the incapable person. It also indirectly benefits others whose own financial interests are connected to those of the incapable person.

This obligation is a very serious one. Almost every aspect of the incapable person's life is affected – directly or indirectly – by the property guardian's actions. By performing the role diligently and sensitively, the property guardian will give the incapable person the most comfortable, enjoyable and safe life that the incapable person can afford. On the other hand, extreme harm can result to the incapable person and to others if the guardian does not act diligently and honestly. Therefore, the highest standards of honesty, integrity and trust are demanded from the property guardian.

Taking control of an incapable person's income and assets by a property guardian does not mean that the property guardian assumes ownership of the income and assets. Ownership remains in the name of the incapable person. The property guardian is responsible for managing the income and assets, in the best way possible, for the incapable person.

## Contact Information

### Public Guardian and Trustee Office

100 - 1871 Smith St.  
Regina, Saskatchewan  
S4P 4W4

Telephone: (306) 787-5424

Toll Free: 1-877-787-5424

Fax: (306) 787-5065

Email: [pgt@justice.gov.sk.ca](mailto:pgt@justice.gov.sk.ca)

Web site: [www.justice.gov.sk.ca/pgt](http://www.justice.gov.sk.ca/pgt)

Office Hours: Monday through Friday, 8:00 a.m. to 5:00 p.m.  
(Closed for the noon hour and holidays)

## Confidentiality

It is expected you will not disclose any information contained in the accounts and records unless required to do so in order to make transactions on the incapable person's behalf or otherwise fulfill your duties as a guardian, or if ordered to do so by a Court.

You can produce copies of your records to:

- the incapable person;
- the incapable person's attorney for personal care or guardian of the person;
- the Public Guardian and Trustee.

This booklet has been provided to help a person who has been appointed as a property guardian of an incapable person. While it provides useful information about the role and responsibilities of a property guardian, it is only a summary and it is not legal advice. If you have specific questions about your own situation, you should speak to a lawyer or an accountant for advice to guide you.

## Authority

Unless the court order appointing you says otherwise, as a property guardian, you are allowed to do anything in relation to his or her property that the person could do if capable, except to make a will. For example, you are allowed to do the following on the incapable person's behalf:

- open and close bank accounts;
- review pensions and other income;
- apply for benefits or supplementary income to which the person is entitled;
- deal with investments;
- collect debts;
- pay bills;
- buy goods and services;
- start or defend law suits, if there are financial implications;
- sell, store or dispose of personal belongings; and
- maintain or sell a house or vehicle.

You are entitled to receive, from any person or business, information about the property that belongs to the incapable person and copies of any documents signed by, or given to, the incapable person.

A person who holds, or controls the property is required to deliver the property to you when you request that person to do so. For example, you may need to obtain the contents of the incapable person's safety deposit box to look for valuable papers like savings bonds or guaranteed investment certificates. You are entitled to obtain a copy of the person's will.

## Responsibilities

You must keep the incapable person's financial accounts and transactions completely separate from your own. You must never borrow or use the incapable person's money for yourself or your family and friends unless authorized by the Court.

You should consider the personal comfort or well-being of the incapable person in determining whether any financial decision or transaction is for the incapable person's benefit. The most important goal is to act in the best interests of, and maximize the quality of life of, the incapable person.

You must manage the property in a way that accommodates the decisions made about the incapable person's personal care. For example, if the person wants to live in a certain place and can afford it, you should arrange to pay for this choice of residence. If the person wants to take a vacation and can afford it, you should make arrangements to pay for it. However, there is one exception to this obligation. You may make a financial decision that overrides a personal care decision if to do otherwise would result in negative consequences with respect to property that heavily outweigh the personal care benefits of the decision. For example, the person may want to remain living in his or her own house, but may require 24-hour care and not have enough money to pay for it without selling the house. In that case, the need to sell the house in order to have enough money to pay for the person's care may heavily outweigh the person's wish to remain living in the house.

You should try to inform the incapable person of all your powers and duties, to the extent that the person is able to understand.

As the property guardian, you should encourage the incapable person to participate, to the best of his or her abilities, in your decisions about the property.

It is also a good idea to keep copies of invoices and bills you have paid on the person's behalf, and cancelled cheques. You should retain the accounts and records until:

- another person is given the authority to manage the incapable person's property and you deliver the accounts and records to that person;
- the incapable person dies and you deliver the accounts and records to the person with legal responsibility for the estate;
- you are discharged from your duties by the Court;
- a court order directs you to destroy or dispose of the accounts and records; or
- you are provided with a document called a release, relieving you of any further personal legal responsibility for your actions as a property guardian, signed by the person, if they are now capable, or a legal representative of the person's estate, or a new property guardian.

When you hand over the accounts and records, you should retain photocopies in the event that someone questions you in the future.

- an up-to-date list of all money that you pay out or receive on behalf of the incapable person, including all details associated with the transaction, i.e. the date, reason, information about the account you withdrew from or deposited into, and the person with whom you carried out the transaction;
- an up-to-date list of all investments made on behalf of the incapable person, including amount, date, interest rate and type of investment;
- a list of all of the incapable person's liabilities (debts) as at the date of your appointment as property guardian;
- an up-to-date list of all liabilities that you have paid off or taken on, if any, on behalf of the incapable person, including the date, the nature of the liability (to whom or for what does the person owe or no longer owe money) and the reason for its being discharged or incurred;
- an up-to-date list of all compensation that you charged, including the amount, date and method of calculation and a list of the assets and the value of each asset used to calculate your management fee, if any; and
- an up-to-date list of the assets at the date of completing your accounts. (Form L in *The Adult Guardianship and Co-decision making Regulations* provides the form that can be used as a guide in preparing an accounting. It can be viewed at <http://www.qp.gov.sk.ca/documents/Forms/A5-3R1-L.pdf>).

You should discuss the financial decisions and transactions you make, from time to time, with family members and friends who are in regular contact with the incapable person and with people providing personal care to the incapable person. You should also encourage personal contact between family members, caregivers, and the incapable person.

You must make reasonable efforts to determine whether the incapable person has a will, and if so what is in the will. If the incapable person's will includes a gift of property, you should retain that property so that it may be gifted in accordance with the incapable person's will when he or she dies. You may need to depart from this rule if selling the property is absolutely necessary for you to fulfill your duties to the incapable person while he or she is alive.

## Expenditures

As the property guardian, you are expected to make certain expenditures from the incapable person's property, provided there is enough money, in the following order:

1. Expenditures that are necessary, within reason, for the support and care of the incapable person;
2. If enough money remains, expenditures for the maintenance and education of the incapable person's dependants; and
3. If enough money remains, expenditures that are necessary to meet the incapable person's legal obligations.

## Discretionary Expenditures

In addition to the expenditures listed above, you may make the following expenditures:

- gifts or loans to the incapable person's friends and relatives if the incapable person previously (before becoming incapable) indicated that he or she would make these gifts or loans. You should proceed with great caution before making gifts or loans; and
- charitable gifts, if the incapable person previously made similar gifts or authorized these gifts in a power of attorney before becoming incapable.

If the incapable person indicates to you that he or she does not want to make gifts or loans, you should follow the person's wishes.

## Directions from Court

If any difficult questions about the management of the property arise, you may apply to the Court for directions on how to resolve the issue. The Court you apply to will be the Court of Queen's Bench for Saskatchewan. The Court will give you directions as to what it considers to be beneficial to the incapable person. You will probably require the services of a lawyer to bring your application to Court.

## Compensation

As a property guardian, you may be paid for your work. The annual compensation that you are allowed to take must be set out in a court order. Reasonable fees, depending on the circumstances might be the same fees as the Public Guardian and Trustee charges (<http://www.justice.gov.sk.ca/pgt>).

## Accounts

The legislation requires you to keep accounts of all transactions involving the property. This is one of your main legal duties as property guardian. You must provide copies of your annual accountings to the Court and the Public Guardian and Trustee. You may be required to pass (submit) your accounts to the Court for inspection in several circumstances. The Public Guardian and Trustee can apply to the Court for a review of your guardianship. As well, the incapable person, the incapable person's guardian or attorney for personal care, any of the incapable person's dependants, or a creditor of the incapable person, with the Court's permission, may apply for a review of your guardianship.

It is extremely important that you maintain your records and accounts.

## Keeping Records

In addition to the accounts, you must keep the court order that appointed you as the property guardian and any court orders that relate to the incapable person's property.

The records that you keep must include:

- a list of all of the incapable person's assets as of the date of your appointment as property guardian. Assets include real estate, money, securities, investments, motor vehicles and other personal property;
- an up-to-date list of all assets acquired and disposed of (bought, sold or given as a gift) on behalf of the incapable person. You must include the date and reason for acquiring or disposing of the property and the name of the person from or to whom the asset was acquired or disposed;