

Hiring A Lawyer To Help You Apply For Trusteeship

Office Of The
Public Trustee

**Government
of Alberta** ■
Justice

It is not necessary to hire a lawyer to apply for trusteeship under the *Adult Guardianship and Trusteeship Act*, but it is highly recommended. A lawyer can not only help you through the process, but help you understand your responsibilities and even some options you may have.

Find A Lawyer

If you do not already have a lawyer, you can ask a friend, colleague, or support group to recommend one. You can also call the Alberta Law Society's Lawyer Referral Service at 1-800-661-1095. They will provide you with the names of three experienced local lawyers who you can meet with for a free, half-hour consultation.

Be Open And Honest

Give your lawyer as much information about the situation as possible. They will need to know that you are suitable to be appointed as trustee and will act in the best interest of the proposed represented adult, whether you have any current financial dealings with the proposed represented adult, and if you expect the application to be opposed.

Any conflict of interest between a proposed trustee and the proposed represented adult must be disclosed.

Don't Be Afraid To Talk About Costs Of The Application

To avoid any misunderstanding, make sure you discuss legal fees and costs of the application with your lawyer. They can advise you on how you can save money on your fees. Most often, costs of the application are ordered to be paid by the proposed represented adult; however, the Court can order a portion of the costs to be paid by the Crown in cases where there would be financial hardship on the proposed represented adult's estate. In certain circumstances a Court can also direct the person making or opposing the application to pay the costs.

Consider Your Alternatives

There are alternatives to Court ordered trusteeship under the *Adult Guardianship and Trusteeship Act*. You should discuss these with your lawyer to see if they would be better suited to your situation.

Informal Trusteeship

If a person does not have significant assets to manage but needs help managing cheques issued by the government, informal trusteeship may be an option and may be arranged with the Department issuing the benefit cheque.

Enduring Power of Attorney

An Enduring Power of Attorney (EPA) may be made by an individual (donor) who is mentally capable of understanding the nature and effect of the EPA. An EPA appoints someone (called an attorney) to manage the donor's financial affairs, either effective immediately or after the donor becomes incapacitated.

Things You Need To Apply For Trusteeship

- Your application must be accompanied by a Capacity Assessment Report regarding the proposed represented adult.
- Your application must also include a Trusteeship Plan.
- You must provide your consent to the Review Officer to obtain a criminal record check and credit report on you.
- You must provide two personal references.

Trustee Authority And Responsibility

Discuss with your lawyer what your authority will be.

A trustee must exercise his authority in the best interest of the represented adult.

A trustee must act in accordance with the Trusteeship Order and Trusteeship Plan approved by the Court.

The Court can impose limits or conditions on a trustee's authority and may provide in a Trusteeship Order that the Order applies only to property or financial matters specified in the Order.

Real Property

A trustee has no authority to deal with real property of a represented adult except as permitted by the *Adult Guardianship and Trusteeship Act*, its Regulations or by Court Order.

Expenditures

A trustee is under a positive duty to make expenditures out of a represented adult's property that are reasonably required for the education, support and care of the represented adult.

A trustee may exercise his authority to use funds of the represented adult for the benefit of dependents, or anyone else with Court approval.

Separate Property

A trustee must keep trusteeship properties separate from the trustee's own property.

The Trusteeship Order can authorize a trustee to permit the represented adult to open or maintain a deposit account in the adult's own name at a financial institution.

Investments

A trustee is required to invest with a view to earning a reasonable return, without taking undue risk ("Prudent Investor Rule"). However, the Trusteeship Order and Trusteeship Plan approved by the Court may take precedence over the general Prudent Investor Rule.

Gifts

Private trustees have limited authority to make gifts without specific Court authority.

Wills and Testamentary Dispositions

A trustee cannot make a Will or other Testamentary Dispositions for a represented adult.

Accounts

A trustee is under a positive duty to maintain proper accounts of his administration of a represented adult's financial affairs.

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This publication was prepared as a public service to Albertans by the Office of the Public Trustee with the assistance of the Office of the Public Guardian and the Court Services Division of Alberta Justice. This publication is intended to give information about trusteeship under the *Adult Guardianship and Trusteeship Act*. It is not intended to give legal advice for which a lawyer should be retained. The *Adult Guardianship and Trusteeship Act* and its Regulations should also be consulted. The Public Trustee does not warrant the outcome or result of using the information in this publication. This publication is current to September, 2009.