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Adult Guardianship & Trusteeship Fundamentals

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Setting Up Guardians and Trustees for Success

Adult Guardianship & Trusteeship Fundamentals

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INTRODUCTION

The focus of this paper is to discuss the authority and duties of both guardians and trustees. Part 1 discusses drafting considerations when applying to appoint a guardian and trustee while focusing on obtaining the proper authority for the proposed decision maker. Part 2 discusses steps to be taken once a guardian and trustee have been appointed and how to ensure success in his or her new role.

The paper is written within the framework of the *Adult Guardianship and Trusteeship Act* S.A. 2008, c. A-4.2 (AGTA) and the *Adult Guardianship and Trustee Regulations*, A.R. 219/2009 (AGTR) and is based on our firm's practical experience assisting guardians and trustees with their appointment and fulfilling their duties.

Lastly, we have attached the following supplementary material:

- Schedule 1: Sample Order Appointment of guardian & trustee
- Schedule 2: Bruni Law Report Letter to new guardians & trustees
- Schedule 3: From the Office of the Public Guardian and Trustee – useful resources for newly appointed guardians and trustees

PART 1: CONSIDERATIONS UPON APPOINTMENT; HOW TO ENSURE YOUR CLIENT HAS THE RIGHT AUTHORITY?

GUARDIANSHIP AND TRUSTEESHIP PLANS

In determining whether it is in the Adult's best interests to appoint a guardian and a trustee, the court is required to consider the proposed Guardianship and Trusteeship Plans submitted with the application.¹

When the court grants an Order, the Court shall approve the Guardianship and Trusteeship Plans subject to any variations the Court may deem necessary. The applicant may also be required to submit an amended plan for the Court's approval.²

This highlights the importance of preparing a comprehensive Guardianship and Trusteeship Plan. These plans will serve as the guardian and trustee's guide in making decisions for the Adult. In addition to the Court Order, these plans specify the extent of the authority of the guardian and trustee.

¹ *Adult Guardianship and Trustee Act*, SA 2008, c A-4.2, section 26(7) and 46(7) [AGTA].

² *Ibid.*, section 33(3) and 54(1).

These plans should be consistent with the duty of the guardian and trustee to act in the least intrusive and least restrictive manner and in a way that fosters the Adult's independence to the extent possible.

The information provided in these plans should be mirrored in the Application and Court Order.

COURT ORDER

Section 35(3) and 56(1) of the *Adult Guardianship and Trusteeship Act* requires a guardian and trustee to comply with any conditions or requirements set out in the Guardianship and Trusteeship Order.

CAPACITY ASSESSMENT REPORT

The Adult's Capacity Assessment Report (CAR) will indicate the specific matters for which an Adult does not have capacity to make decisions, including financial matters (detailed on section 10 of the CAR). As a result, the CAR can limit the guardian's authority to specific personal matters. The information provided in the CAR should be mirrored in the Application, Guardianship & Trustee Plans and the Court Order.

GUARDIANSHIP – SPECIAL AUTHORITY

Appointment of Multiple Guardians

Section 31 of the AGTA allows the appointment of multiple guardians. Appointment of more than one guardian is common in cases of parents applying to be joint guardians of their child.

It is necessary to explain the legal and practical implications of a joint appointment. The extent of one's authority should be clarified. If two or more guardians are appointed, unless requested otherwise, the guardians may act and make decisions separately respecting the personal matters of the Adult as specified in the Order.³

The Court has the power to grant a guardian exclusive authority to make decisions respecting specified personal matters of the Adult and may also provide that the guardians are to act jointly or separately in respect of one or more personal matters of the Adult.⁴

Most parents, regardless of their marital status, wish to act jointly respecting personal matters of their child. This arrangement may seem beneficial as it fosters a collaborative decision-making

³ *Ibid.*, section 31(3).

⁴ *Ibid.*, section 31(2).