



Public Trustee



Private Administrator's
Guide

Foreword

The Guardianship and Administration Act 1990 provides the legislative framework for the support and protection of persons who are not capable of making decisions in their own best interests. Administrators appointed under this Act play an important role in protecting people with decision-making disabilities from neglect, abuse or exploitation and in ensuring that their quality of life is maintained.


The State Administrative Tribunal, which replaced the Guardianship and Administration Board in 2005, appoints an administrator to make decisions in the best interests of the represented person and to ensure that their financial affairs are managed appropriately. Such appointments, however, create the need for accountability and transparency in both decision-making and financial record-keeping.

Section 80 of the *Guardianship and Administration Act 1990* and the *Guardianship and Administration Regulations 2005* require an administrator to report to the Public Trustee as to the receipts and payments and the assets and liabilities of the represented person's estate.

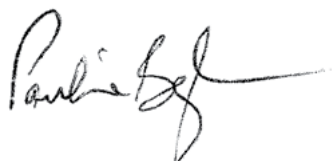
The Public Trustee recognises the ongoing need for a reference manual to assist administrators to understand their role and carry out their responsibilities on a day-to-day basis with clarity and confidence. This revised edition of the *Private Administrator's Guide* has been produced by the Public Trustee and is supported by the State Administrative Tribunal and the Office of the Public Advocate to provide you, the administrator, with information to assist you to carry out your obligations.

You may notice that some segments of information are repeated several times throughout the guide. This is to assist you to refer to individual chapters and help reinforce important information. The guide is also available on www.publictrustee.wa.gov.au.

We hope you find this guide to be a valuable source of assistance.



Brian Roche
Public Trustee



Pauline Bagdonavicius
Public Advocate

The purpose of this guide

This *Private Administrator's Guide* will assist you in understanding and carrying out your role and responsibilities as an administrator. The Guide is designed to answer questions and provide essential information in a clear, concise and straight-forward manner.

It is hoped that you will find the time to read this information carefully and refer to it whenever you have a question about your role. It is recommended that you keep this Guide with your administration order in a safe place.

If you have any questions about your responsibilities or the contents of this Guide you may contact:

Private Administrator's Support Team

Public Trustee
553 Hay Street
Perth WA 6000
Telephone: 1300 746 116
Facsimile: (08) 9221 1102
Email: public.trustee@justice.wa.gov.au
Website: www.publictrustee.wa.gov.au

For information on Guardianship, Administration, Enduring Powers of Attorney and Enduring Powers of Guardianship, please contact:

The Office of the Public Advocate

David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000
Telephone: 1300 858 455
Facsimile: (08) 9278 7333
Email: opa@justice.wa.gov.au
Website: www.publicadvocate.wa.gov.au

For information on the making and lodging of applications in respect of Guardianship and/or Administration matters please contact:

The State Administrative Tribunal

Level 6, State Administrative Tribunal Building
565 Hay Street
Perth WA 6000
Telephone: (08) 9219 3111
Country Toll Free: 1300 306 017
Facsimile: (08) 9325 5099
Email: sat@justice.wa.gov.au
Website: www.sat.justice.wa.gov.au

Disclaimer:

The material presented in this *Private Administrator's Guide* is provided voluntarily as a public service. The information and advice provided is made available in good faith but is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and that they should verify all representations, statements and information.

Neither the State of Western Australia (the "State") nor any agency or instrumentality of the State, or any employee or agent of the State or any agency or instrumentality of the State shall be responsible for any loss or damage howsoever caused and whether or not due to negligence arising from the use of or reliance of any information or advice provided in this Guide.

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The *Private Administrator's Guide* – Introduction

What is the State Administrative Tribunal?

The State Administrative Tribunal (the Tribunal) was established in Western Australia in 2005 as an independent body that makes and reviews a range of administrative decisions.

Under the *Guardianship and Administration Act 1990* (the Act), the Tribunal handles all matters that were previously the responsibility of the Guardianship and Administration Board.

The Tribunal recognises that people who are not capable of making reasoned decisions in their own best interests may need a substitute decision maker. This is not only to ensure that their quality of life is maintained, but also to protect them from neglect, abuse or exploitation, arising from the situations in which they place themselves or from the decisions or actions of other people.

The State Administrative Tribunal:

- makes orders for the appointment of guardians and administrators;
- reviews orders which have been made previously; and
- considers applications for intervention concerning Enduring Powers of Attorney, Enduring Powers of Guardianship and Advance Health Directives.

What is the Private Administrator's Support Team?

The Private Administrator's Support Team (PAS Team) assists administrators with questions about the preparation of the accounts or the role and responsibilities of an administrator.

The PAS Team examines accounts provided by the Administrator in relation to the represented person's finances and prepares a report and recommendation to the Public Trustee in relation to whether or not the accounts should be accepted. Officers within the PAS Team are unable to give legal or financial advice.

The role of the administrator

An administrator is appointed by the State Administrative Tribunal to manage the property and financial affairs of another person who, due to a decision-making disability, lacks the ability to manage his or her own affairs. This is an important responsibility to take on. It is about being responsible and careful in making investment and spending decisions. The role of the administrator is to use the represented person's money or assets to maximise his or her quality of life. While it is important to ensure that money is used wisely, a diligent and imaginative administrator should use the represented person's money in a way which maximises their lifestyle, while working within their financial limitations.

It has been common for a represented person to be denied any input into his or her own affairs once an administration order has been made. The administrator should, wherever possible, consult the represented person about decisions and consider if control over at least some day-to-day money can be given to the represented person. This can serve the represented person's interests by preserving his or her dignity even if some risks are involved. An administrator's main concern must always be the best interests of the represented person whose affairs are being managed. However, in making decisions, an administrator will need to take account of many factors, including:

- the represented person's immediate and long-term needs;
- the views of the represented person;
- the views of the family, any guardian or enduring guardian and other interested parties;
- the financial resources available;
- the represented person's previous, current and desired lifestyle;
- the represented person's family commitments; and
- the arrangements made by the represented person before the administration order was made.

Many of these issues are dealt with in this Guide.

If you do not find the answer to your question or the information you are seeking please feel welcome to contact the:

Private Administrator's Support Team

Public Trustee

Tel: 1300 746 116

Email: public.trustee@justice.wa.gov.au

If you are concerned about the wellbeing of an adult with a decision-making disability or if you need more information about guardianship and administration, Enduring Powers of Attorney or Enduring Powers of Guardianship, you can contact the:

Office of the Public Advocate

Telephone Advisory Service: Telephone: 1300 858 455

Email: opa@justice.wa.gov.au

The powers of an administrator are laid down by law in Part 6 of the *Guardianship and Administration Act 1990*. The administrator should obtain a copy of this Act (available through the State Law Publisher at www.slp.wa.gov.au) and be familiar with its provisions. Reference will be made to specific powers later in this Guide.

Getting started

I've just been appointed as administrator

You will receive from the State Administrative Tribunal the administration order appointing you as administrator. It is the basis of your authority. You should read the order carefully to ensure you understand the scope of your authority. In particular, check for:

Limited or plenary powers

The order will be either a 'limited order' or a 'plenary order'.

Limited administration

If the order made by the State Administrative Tribunal is for limited administration, you have been given legal authority to make decisions only in relation to the areas specified in the order. The order may, for example, specify that the substitute decision-making authority applies only to decisions about the sale of a house, or in relation to the investment of an inheritance, or a compensation payment, or any other specified transaction. This means you have no authority to make other decisions for the person.

Plenary administration

If the order made by the State Administrative Tribunal is for plenary administration, you have been given legal authority to make all decisions on behalf of the represented person which relate to his or her property and finances subject to some limitations which are referred to later in this Guide.

An administrator – whether plenary or limited – has no authority to make personal, lifestyle or treatment decisions unless they have also been appointed as a guardian or an enduring guardian.

Within the limits referred to already, decisions made by you as administrator will have the same status and effect as if they were made by the represented person.

You will be able to execute documents, sign, or withhold consent to sign legal and financial papers and perform any other functions necessary for the management of the represented person's property and finances in the same way they could themselves – if they were capable of making their own reasoned decisions.

Joint administrators

If the order appoints joint administrators then they are required to make decisions jointly, to act jointly and share joint responsibility.

Special conditions, restrictions or directions

The Tribunal's order might impose conditions and restrictions or provide directions about how or when any of your duties are to be carried out. You must comply with these conditions, restrictions and directions.

Does anyone review the order?

The State Administrative Tribunal is required to review orders periodically. The order will specify a date for review of the order by the Tribunal. At that review hearing the Tribunal will determine if the order is still required and whether the scope of the order is still appropriate. The Tribunal must ensure that the order remains relevant to the needs of the represented person.

As well as these scheduled reviews, any person (including the represented person or the administrator) can apply to the Tribunal, at any time, for the order to be reviewed. Leave to apply may be required.

The *Guardianship and Administration Act 1990* also provides for a review of the order when:

- evidence indicates that the represented person has regained capacity;
- the administrator dies;
- the administrator is unsuitable to continue because of neglect or misconduct;
- the administrator becomes bankrupt or enters an

arrangement with creditors pursuant to Part X of *the Bankruptcy Act 1966* (Cth);

- the administrator becomes incapable by reason of mental or physical incapacity; or
- the administrator is a Trustee Company that ceases business or is under administration.

If a sole administrator dies, on notification, the Public Advocate assumes the role of administrator until such time as the Tribunal is able to conduct a hearing and appoint a new administrator.

If a joint administrator dies, the surviving administrator (or administrators) must advise the Tribunal of the death. However, the administrator shall continue in his or her role until such time as the Tribunal conducts a review of the existing administration order.

Duties of the administrator

The duties and obligations of the administrator are contained within the *Guardianship and Administration Act 1990*, the *Guardianship and Administration Regulations 2005* and the administration order. The primary role of an administrator is to manage the estate in the represented person's best interests. The powers and duties of an administrator are set out in Part 6 of the *Guardianship and Administration Act 1990*, however these general duties may be varied by certain restrictions imposed within the body of the order made by the State Administrative Tribunal.

Examples of some of the duties and obligations of an administrator are as follows:

- arranging to collect and bank income;
- managing bank accounts;
- attending to the payment of accounts;
- managing assets and liabilities;
- managing and maintaining real estate;
- purchasing and/or selling real estate;
- surrendering life assurance policies;
- recovering debts;
- discharging mortgages;
- preparing and lodging tax returns; and
- carrying on a business.

Depending on the circumstances of the represented person's estate, you might need to consider:

- selling, renting, retaining or looking at other alternatives in relation to the represented person's home;
- acquiring from Landgate, a current search of the certificate of title (a fee will be payable);
- lodging a caveat to safeguard the represented person's property;
- selling, retaining, storing or looking at other alternatives in relation to other physical assets such as other realty, vehicles, furniture, jewellery and other items of the represented person;
- utilising the proceeds from sale of the represented person's home or other physical assets for the best interests of the represented person;
- investing the proceeds from sale of the represented person's home or other physical assets;
- selling or retaining shares, stock units, debentures;
- lodging tax returns;
- employing a solicitor or accountant;
- taking court proceedings on behalf of the represented person;
- recording the income the represented person has earned and how it has been spent;
- receiving and reviewing pension entitlements and other benefits; and
- ensuring all assets are recorded in the represented person's name.

There are some things an administrator cannot authorise. For example, an administrator cannot make treatment decisions on behalf of the represented, nor can an administrator compel the represented person to enter into a nursing home or other residential situations against his or her will.

If the represented person has not appointed an enduring guardian with the relevant authority and/or made an Advance Health Directive and decisions such as these need to be made, it may be necessary for the appointment of a guardian. For further information you should contact the State Administrative Tribunal or the Office of the Public Advocate.

Prepare an inventory

To establish the extent of the represented person's estate you should prepare an inventory of the financial and property affairs as soon as practicable. These might include:

- details of all income sources and regular outgoings;
- details of all assets (including furniture, jewellery and other personal effects) and liabilities;
- details of all accounts with financial institutions;
- confirmation of the details of current insurance policies. Some insurance companies will require written notice of vacant properties if they are to maintain insurance cover; or
- consider the need for formal valuations of such assets as jewellery and collectibles; and

Identify the whereabouts of all important documents and certificates of titles.

Develop a financial management plan

Although a financial management plan is not compulsory, it is recommended. You will not be asked to submit your plan to the State Administrative Tribunal but it will act as a guide to your decision-making. Your financial management plan will incorporate the inventory previously prepared and an assessment of the represented person's financial affairs. It will form the basis for decisions made by you in the represented person's best interests.

Consider carefully the represented person's entitlement to income support and other concessions or benefits from Centrelink or the Department of Veterans Affairs. You might need to confer with those agencies to ensure that all entitlements are in place.

Your financial management plan might also address the need to:

- take professional advice from accountants, solicitors or a licensed financial adviser;
- prepare a draft budget anticipating income and expenditure for the forthcoming year;
- review the security and protection of estate assets;
- review the represented person's entitlement to pensions and benefits;
- review existing assets with a view to disposing of assets that are under-performing or surplus to requirements; and
- anticipate the immediate and short-term needs of the represented person including his or her need for independence or support.

Reporting requirements

You must lodge complete details of the represented person's financial affairs (Form A – Estate Information Form) with the Private Administrator's Support Team at the Public Trustee within one month of your appointment. A sample of Form A is enclosed as an Appendix to this Guide.

The *Guardianship and Administration Regulations 2005* also require an administrator to submit accounts to the Public Trustee. The administrator shall, at yearly intervals from the date of the making of an administration order or within one month of his or her discharge, lodge with the Public Trustee an account set out in accordance with Form B, and verified by statutory declaration in accordance with Form C. These should be accompanied by supporting documents (such as receipts, invoices or statements) of the payment of all disbursements and where the supporting documents are numerous they should be marked with the corresponding number in the account. Samples of Forms B and C are enclosed as an Appendix to this Guide.

As can be seen from Form B and Abstracts 1–4, the accounts will disclose:

- the receipts and payments of the estate over the specified period; and
- the assets and liabilities of the estate.

An administrator must provide the Public Trustee, at such times as the Public Trustee determines, with a statement of the accounts of the estate, showing:

- the assets and liabilities of the estate;
- the receipts and payments of the estate over a specified period; and
- such other particulars relating to the estate as the Public Trustee may require.

The statement (the accounts) must:

- be in a form approved by the Public Trustee;
- be verified by the statutory declaration of the administrator and supported by such other evidence (if any) as the Public Trustee may require; and
- be filed within one month of the anniversary date of the appointment as administrator, or such other date as the Public Trustee allows.

The Public Trustee examines accounts

The Public Trustee must examine the accounts filed by the administrators and may:

- allow the accounts;
- disallow any amount paid; and/or
- determine that any amount or asset has been omitted or that a loss has occurred.

Where the Public Trustee disallows an item or determines that the estate has suffered a loss, the administrator may be held liable for that omission or that loss.

The Public Trustee may allow the reasonable and proper costs incurred by the administrator in the preparation and lodging of the accounts.

The Public Trustee is entitled to charge a fee for the examination of the accounts and that fee is payable by the estate of the represented person. The fee charged shall be in accordance with regulations prescribed by the Western Australian Parliament.

Why must I report?

The *Guardianship and Administration Act 1990* is the law covering the appointment and role of an administrator. It requires administrators (unless exempted in writing) to provide the Public Trustee with a set of accounts in the prescribed form, at such times as the Public Trustee determines.

The law requires this reporting because it is a major step to take away a represented person's control over his or her own affairs and hand it to someone else. It involves placing great faith and responsibility in the administrator. If the administrator performed poorly, the person's assets could be lost. It is therefore important that administrators be accountable for their actions.

What should be covered in financial reports?

The Public Trustee will provide you with a set of reporting forms which will assist you to keep your records and to understand what information should be provided. This will cover:

- all items of income or other receipts;
- expenditure (categorised as necessary);
- a record of all assets; and
- a record of all liabilities.

(See Financial Recording and Reporting)

Who needs to know I have been appointed?

The represented person's property will continue to be in his or her name after an administrator is appointed. However, other people will need to be informed that you have been appointed so that they know that they should now deal with you in that role.

You should notify all organisations in which the person holds investments of your appointment as administrator. This includes banks and other financial institutions in which the represented person has accounts or deposits and companies in which they hold shares. You should also notify other sources of the represented person's income e.g. Centrelink, and anyone who owes the represented person money. Do not forget to also inform organisations to which the represented person owes money.

These organisations generally want to see a copy of the order appointing you as administrator.

It is recommended that you notify family, carers and the guardian and/or enduring guardian(s) of your appointment. At the same time it would be prudent to explain how you intend to administer the estate and your interest in consulting with them when required. This may reduce confusion and possible challenges to your decision making.

However, you must respect the represented person's right to privacy and keep confidential personal information obtained by you in the course of your duties. Therefore, you should not disclose the represented person's financial information to others. Section 113 of the *Guardianship and Administration Act 1990* makes this obligation clear.

How long will I be an administrator?

The duration of your role as administrator will depend on individual circumstances. In all cases, however, your authority ceases immediately upon the death of the represented person.

Your authority will also cease if the State Administrative Tribunal revokes your appointment. This may occur if:

- the represented person regains capacity;
- you become unwell;
- you are unable to continue for any reason;
- the estate is mismanaged; or
- if the Tribunal is satisfied that the need for an order no longer exists.

If, at any time, you no longer wish to be the administrator you must inform the State Administrative Tribunal, in writing. The Tribunal will initiate a review hearing at which your authority may be revoked and, if necessary, a new administrator appointed.

What if someone won't recognise my legal authority?

It is unusual for someone to fail or refuse to recognise an order of the State Administrative Tribunal. If this does happen, contact either the Tribunal or the Office of the Public Advocate.

The need for a working account

It is a good idea for you to set up a bank account to use as a 'working account'. This is then the account into which income is deposited and from which expenditure is paid. Having all of the represented person's receipts and payments flow through one account makes it much easier to keep track of income and expenditure.

Many administrators find it convenient to use one of the represented person's existing accounts as a working account by adding the administrator's signature to the account. It may be advisable, if the order empowers you to close other accounts and consolidate the funds. The bank will need to see a copy of the order before this can be done.

What accounts do I need to keep?

You are required to keep full details of the represented person's assets, income and expenditure. Except for minor items such as confectionery and toiletries you should keep documentation of receipts and expenditure. This includes invoices, receipts, statements accompanying cheques received and bank statements.

You are required to provide detailed accounts to the Public Trustee. These cover the income and other amounts received, payments made, assets and outstanding liabilities.

Accounts need to be lodged each year or as required by the Public Trustee.

Administrator to act in best interests of represented person

An administrator shall act in the best interests of the represented person.

An administrator acts in the best interests of a represented person if he or she acts as far as possible:

- a) as an advocate for the represented person in relation to the estate;
- b) in such a way as to encourage the represented person to live in the general community and participate as much as possible in the life of the community;
- c) in such a way as to encourage and assist the represented person to become capable of caring for himself or herself and of making reasonable judgments in respect of matters relating to his or her person;
- d) in such a way as to protect the represented person from financial neglect, abuse or exploitation;
- e) in consultation with the represented person, taking into account as far as possible the wishes of that person as expressed in whatever manner or as gathered from the person's previous actions;
- f) in the manner that is least restrictive of the rights, while consistent with the proper protection, of the represented person;
- g) in such a way as to maintain any supportive relationships the represented person has; and
- h) in such a way as to maintain the represented person's familiar cultural, linguistic and religious environment.

See section 70, *Guardianship and Administration Act 1990*

Managing Finances and Property

What decisions can I make as administrator?

The order of the State Administrative Tribunal is the basis of your authority to make decisions about the estate of the represented person. The scope of that authority will depend upon whether your appointment is 'limited' or 'plenary'.

If the order is 'limited' your authority is limited to only those functions specified within the order.

If the order is 'plenary' you are authorised to perform any function that the represented person could perform if he or she were of full legal capacity.

A plenary administrator could, therefore, perform the following functions:

- receive monies, including income, due to the estate;
- expend estate monies in the represented person's best interests;
- purchase, sell or lease property;
- repay monies owed by the represented person;
- invest estate monies or finalise estate investments;
- engage and instruct agents including accountants, tax agents and solicitors;
- carry on a business of the represented person; and
- enter into, complete or terminate contracts.

If the order of the State Administrative Tribunal appoints you as 'limited' administrator you cannot perform any function other than those functions specified in the order.

If you have been appointed 'plenary' administrator the scope of your authority is very broad but there are some decisions you cannot make and some acts you cannot perform.

A plenary administrator cannot do any of the following without the specific authorisation, in writing, of the Tribunal:

- make payments of a charitable, benevolent or ex gratia nature. In brief, an administrator may not make gifts from the represented person's estate without the express written permission of the Tribunal;
- make payments in respect of a debt or demand that the represented person is not obliged by law to pay. These might include informal loans to family or friends or 'advances' to persons named as beneficiaries in the represented person's Will; and
- make payment to yourself, from estate funds, for your time or expertise in administering the estate. You are, however, entitled to reimbursement of your 'out-of-pocket' expenses such as telephone, postage, sundries and accountants' fees.

There are also some things that you can't do and which the Tribunal cannot authorise.

These include:

- you cannot, in the name of the represented person, consent, or refuse to consent, to a marriage;
- you cannot swear statutory declarations on behalf of the represented person; and
- You cannot vote on the represented person's behalf.

As well as these limitations, administrators must act cautiously in matters that involve some 'conflict of interest' between the represented person's interests and their own. In those instances you should contact either the State Administrative Tribunal or the Office of the Public Advocate.

Financial decisions made before the appointment of an administrator

It may be possible for an administrator to make an application to the State Administrative Tribunal to set aside a transaction (including a gift) made by the represented person if that transaction occurred within the two months immediately prior to the person being declared in need of an administrator (see section 82 of the *Guardianship and Administration Act 1990* (the Act)). The State Administrative Tribunal requires the application to be brought within two years of the completion of the transaction. In the case of transactions that are not gifts the State Administrative Tribunal will consider:

- a) whether the other party acted in 'good faith' and was aware of the represented person's impaired decision-making capacity; and
- b) whether the consideration for the disposition was adequate, or in the case of a purchase, was not excessive.

Section 82 of the Act includes special provisions regarding 'leases'.

Administrators ought to seek independent legal advice when contemplating making an application to the State Administrative Tribunal to set aside a transaction.

Working with a guardian / enduring guardian

In some instances a represented person will have a guardian or an enduring guardian, as well as an administrator.

A guardian is someone who is appointed by the State Administrative Tribunal to make personal, lifestyle and treatment decisions. Similarly, an enduring guardian has the authority to make these decisions, but their appointment is made by the represented person prior to them losing capacity, through the making of an Enduring Power of Guardianship (EPG).

As in the case of an administrator, guardians and enduring guardians can be plenary or limited, depending on the order from the State Administrative Tribunal (in

the case of guardians), or the functions chosen by the represented person in their EPG (in the case of enduring guardians).

Sometimes more than one guardian/enduring guardian are appointed. These are called joint guardians/enduring guardians. Joint guardians and joint enduring guardians must make decisions jointly.

Sometimes the guardian/enduring guardian and administrator will be the same person. If not, it is important for the guardian/enduring guardian and administrator to work closely together.

The administrator must consult the guardian/enduring guardian about major financial management decisions, which are likely to significantly affect the life of the represented person or to affect the function of the guardian/enduring guardian. For example the guardian/enduring guardian may have the authority to decide where someone is to live and what medical treatment they should receive.

The administrator should also keep the guardian/enduring guardian informed of other major transactions involving a represented person's assets.

If the administrator and the guardian/enduring guardian cannot agree, the State Administrative Tribunal can be asked to help resolve the issue in dispute.

Should I consult with anyone about decisions?

It will often be very important that you consult with other people about decisions you are considering. In particular, you should involve the represented person as much as practicable. Just because the represented person cannot manage his or her affairs alone, it does not mean that they do not have important contributions to make, especially about things that reflect his or her personal values, likes and dislikes. By consulting with the represented person, you can also enhance his or her feeling of dignity and the sense of retaining some control over his or her own affairs.

In addition to the represented person and a guardian or enduring guardian if one has been appointed, you should consult with family members, friends and people providing support to the represented person whose affairs you are managing. This is because they can provide insights or advice into the represented person's needs, likes and dislikes. It can also be because their interest may be affected by the decision.

Can I let the represented person have control of some of his or her own money?

It will often be very important to the represented person's feeling of self-worth to have control of some of his or her own money. This can be an important learning exercise for the represented person.

It can be in a represented person's overall best interests to allow this to happen, even if it involves risks that smaller amounts of money will be spent unwisely or the represented person is taken advantage of. These risks can often be minimised by arranging for those providing day-to-day support to the represented person to informally oversee the use of money or design a training program in money management skills.

There are also many instances where an administration order is only required to assist the represented person to look after large amounts of money or complicated transactions. The represented person might be quite competent to look after smaller amounts.

Can I allow others to control some of the represented person's money?

If the represented person lives in supported accommodation such as a group home or nursing home, it may be sensible to provide the manager of the accommodation with a cash float to pay for things like clothes, outings, toiletries and confectionery. If the represented person is living with family members, it might be appropriate to go further and provide a fortnightly allowance covering things like food and other household expenses.

It is important to note that the administrator is accountable for all disbursements from the estate of the represented person.

Where a float or allowance is provided, it is very important for the administrators to keep a close eye on the situation to make sure the represented person's needs are properly met.

Investments by the administrator

Administrators have a special responsibility to invest the funds of the represented person prudently. Administrators must ensure that they are 'investing' and not 'speculating' with the represented person's funds. If in doubt, an administrator should seek professional advice and the represented person's personal estate would bear the reasonable costs incurred.

When investing the represented person's funds, the administrator should consider:

- The terms of the Administration Order made by the State Administrative Tribunal.
- The needs and circumstances of the represented person.
- The amount available for investment and the proposed term/s of the investment.
- Whether the investment should be weighted towards income or capital growth.
- Whether there is a need to diversify the balance of investments.
- The costs of establishing and maintaining the investment/s.
- The liquidity and marketability of the proposed investment.
- The likely effects of inflation and taxation (including capital gains tax), during the period of the investment.
- The need to review the investments, from time to time.

If an administrator is imprudent or negligent in investing the represented person's funds resulting in a loss or diminution of the funds, the Public Trustee might determine that the administrator is liable for that loss.

In such circumstances, the Public Trustee might issue a Certificate of Loss and that certificate would be enforceable in a court. The Public Trustee might also take the matter back before the State Administrative Tribunal and ask the Tribunal to review the suitability of that administrator to remain in the role.

Am I liable for financial loss?

Should you act outside your authority or carry out your responsibilities negligently or illegally, you may be personally liable for losses to the estate.

In such instances the State Administrative Tribunal will convene a review hearing to consider your actions and your suitability to continue in the role of administrator.

Where, during the examination of the administrator's account, the Public Trustee determines that the estate has suffered a financial loss due to some failure of the administrator, the Public Trustee may issue a certificate of loss and the administrator may be required to make good the loss. An administrator who is aggrieved by the Public Trustee's decision may seek to have it reviewed by the State Administrative Tribunal (SAT).

The administrator should therefore maintain comprehensive records and accounts and act prudently in his or her decision-making. If you employ agents to act on your behalf you may need to demonstrate care and diligence in their selection and the monitoring of their recommendations or actions.

If, at any time, you are unable to continue to act as administrator you should immediately contact the State Administrative Tribunal.

What if I am uncertain about what to do?

If you are uncertain about what decisions to make in the best interests of the represented person, or if, as joint administrators, you are unable to agree, you may:

- contact the Public Trustee's Private Administrator Support team or the Office of the Public Advocate to discuss the options available to you;
- seek professional advice from a lawyer or financial adviser; or
- make an application to the State Administrative Tribunal for directions as to what action should be taken.

If you apply for direction from the State Administrative Tribunal, you must comply with any direction given by the Tribunal.

What can I spend money on?

You can spend money on basic items such as board and lodging, clothing, pharmaceutical needs, optical, medical and dental expenses and nursing home fees. You should also pay the costs associated with the represented person's home such as rates, insurance, electricity, telephone and repairs. On all of these items, the administrator is allowed to spend all 'reasonable amounts' taking into account the represented person's overall financial situation.

It is generally accepted that the administrator may spend an amount each year for holiday expenses for the represented person.

As administrator, you should be careful not to strictly limit your expenditure to these usual expenses especially if the represented person is financially secure. It is common to think of older people with decision-making disabilities as having few needs. This arises from factors such as the following:

- Many older people and people with decision-making disabilities cannot easily express their wants and needs.

- Older people and people with decision-making disabilities often live in large institutions such as nursing homes where basic services are provided to the group as a whole, but extra, individualised services need to be requested.
- Those who work with people with decision-making disabilities are often not accustomed to people with disabilities having significant financial resources. As a result, they do not think about ways that money can be spent to provide individual services beyond the basic services provided for everybody. In reality, the financial means of an older represented person or a represented person with a decision-making disability may be as great if not greater than those of anyone else. His or her needs, however, may be different.

Initiative and imagination may be required to identify a represented person's needs.

There are a number of ways of finding out what the represented person may need or what will add to the represented person's quality or enjoyment of life. The first thing is to ask. This may sound obvious but all too often it does not happen. For example, people assume that because someone has a dementing illness that he or she has nothing useful to say about anything.

Sometimes it will be difficult for the represented person to communicate what he or she may want. In this case it may be worthwhile taking the represented person shopping and gauging his or her reaction to a variety of goods. Alternatively, to find out what activities the represented person enjoys, it may be useful to expose the represented person to various activities. Often it will be obvious what the represented person enjoys.

It is also worth getting advice from professionals and those providing day-to-day support to the represented person. Carers will often have very valuable insights.

Professionals, such as social workers, therapists and psychologists can come up with valuable ideas. Often, someone who is not involved with the represented person's day-to-day care can approach the assessment of needs with a fresh mind and come up with sensible and imaginative ideas (based on his or her specific expertise) that day-to-day carers might not think of.

Here are just a few ideas that some administrators have come up with:

- An older woman was living in a nursing home. She liked to go on outings and was very bored in the nursing home. There was no family living nearby who could take her on regular outings. Her administrator paid for a companion to take her out four times a week. The woman and companion became close friends.
- An older woman living in a nursing home liked watching television but did not like going to the television room. The administrator wanted to buy her one, but the administration staff were worried that other residents would tamper with it and it would soon be broken. The administrator suggested that it could be put on a bracket on the wall with the represented person using a remote control device. This was agreed to.
- A man with an intellectual disability had trouble with his speech. Where he lived, there was only one hour of speech therapy available each week. The administrator paid a private speech therapist to come more often.
- A woman with Alzheimer's disease enjoyed having flowers around her. The administrator arranged for flowers to be delivered twice a week.
- An older man lost interest in television because he did not like modern programs. The administrator bought him a video player and some videos of old movies.
- A man with a psychiatric disability liked going on bus tours for his holidays. He needed a companion to go with him. The administrator paid for a companion to accompany him.
- It was felt that an older woman with Alzheimer's disease would have to leave her home and move to a nursing home because she was regularly going for long walks from her home and getting lost. She had always liked walking and the problem was occurring at the time of day when no family member could be present. The administrator paid a woman who lived nearby to be with the woman for a few hours each day and go walking with her.

- A frail older man found ordinary chairs uncomfortable. His administrator bought him a water chair.

Consideration must be given to ensuring an adequate balance is maintained between meeting day-to-day needs, long-term care and extraordinary items.

If the administrator is in doubt as to whether money should be spent for a particular need, he or she may approach the State Administrative Tribunal for direction under s 74 of the *Guardianship and Administration Act 1990*, however the Tribunal exercises this power sparingly.

What if I spend my own money?

You are entitled to reimbursement, from the estate, of any expenses reasonably incurred in carrying out your duties as administrator. This might include telephone expenses, postage or accounts paid on behalf of the represented person.

You must keep accurate records of such expenses and produce them to the Public Trustee, if required.

The Public Trustee may allow the reasonable and proper costs incurred by the administrator in the preparation and lodging of the accounts.

Can I use a petty cash float?

Where you find a need to pay several small payments, and it is inconvenient to make individual withdrawals from the represented person's bank account for each payment, you may draw a lump sum as a working cash float. This float amount should not be excessive. It should be sufficient only to cover an estimated collection of small payments over a maximum of one month. It should be declared in Abstract 3 as well as on the Form B, Summary of Accounts.

When you find a need to top up the float, you should draw the exact amount from the bank account necessary to bring the float back up to the same level. Top ups to the cash float amount may be made as often as necessary.

This top up amount (known as the imprest amount) should be broken down and declared in Abstract 2 under the relevant expenditure items. Schedules detailing the

individual payments should be attached to the accounts to support the bank account withdrawals. Supporting documents, such as invoices, are required for all individual payments exceeding \$400.

Can I make gifts etc?

The Act provides that an administrator shall not, without the specific authority of the Tribunal:

- a) make a payment or disposition of a charitable, benevolent or ex gratia nature; or
- b) make a payment in respect of a debt or demand that the represented person is not obliged by law to pay.

In brief, the administrator is not permitted to make gifts from the estate of the represented person unless the Tribunal's order specifically authorises the making of such gifts.

If, prior to his or her illness or disability, it was customary for the represented person to make donations or gifts, the administrator might seek the consent of the Tribunal to continue that practice. This will require the Tribunal to review the administration order. If the Tribunal authorises such gifting it will usually identify the amounts and the frequency of such gifts.

Furniture, jewellery, and other personal effects

Administrators often have to consider what should happen to personal possessions, especially if the represented person moves from his or her home to somewhere else. The administrator may have to consider whether to dispose of the contents of the house or put them into storage. The administrator may feel that some items should be held in trust for the represented person by other family members.

So far as possible, administrators should try to give effect to the represented person's current wishes or wishes previously expressed. The represented person's Will should be considered. It will often be important to consult other family members who may be aware of the represented person's wishes, particularly about some items of sentimental value.

The administrator should try to ensure that, wherever the represented person is living, he or she has items of sentimental value such as a favourite chair and family photographs within the environment. Items of substantial value, for example, a valuable coin collection, should be stored somewhere safe. It might be sensible for such things to be kept in safe custody at the represented person's bank.

It can be appropriate for items to be looked after by other family members. This especially arises if the family member is a beneficiary of the items under the represented person's Will. However, the represented person's needs must remain the administrator's primary consideration and furniture may be sold and the proceeds used to meet the represented person's needs, if necessary.

You may need to report to the Public Trustee on the disposal of assets when you file your annual accounts and explain the basis of your decision.

Administrators should acquaint themselves with the terms of the represented person's Will so that they do not inadvertently dispose of an estate asset specifically mentioned in the Will. Whilst it might be necessary, in the best interests of the represented person, to sell assets where the circumstances require it, such sales should not be undertaken lightly. Before initiating such sales, the administrator might take legal advice or write to the State Administrative Tribunal to seek a direction.

The represented person's jewellery, furniture and personal effects are not only of value financially, but may have great sentimental value. The administrator must, therefore, exercise considerable care and sensitivity in deciding whether to retain, store or dispose of items. Such decision-making should take into account the wishes of the represented person, and involve consultation with other family members. Once again, regard should be given to the terms of the represented person's Will, as its terms are an expression of the represented person's wishes.

If the decision is made to dispose of items, there may be family members who wish to be informed so that they may attend the sale.

If the decision is made to retain items, the administrator will need to consider a variety of issues including:

- the ongoing costs of storage;
- the need to ensure adequate insurance, especially of collectables;
- whether the items will deteriorate over time in storage; and
- whether some items should be held 'in trust' by family members.

Appendix (vi) of the Guide is an information sheet to assist decision-making in respect of jewellery, furniture and other items.

Centrelink and Department of Veterans' Affairs pensions and benefits

Many people, for whom administrators are appointed, are entitled to pensions, especially the Aged Pension, Service Pension and Disability Support Pension.

It is the administrator's responsibility to ensure that the represented person receives all of his or her entitlements. As well as the basic pension, entitlements might include supplementary assistance for rent, pensioner health benefits and fringe benefits. If someone is looking after the represented person on a full-time basis, he or she may be entitled to a Carer's Pension. Also, rebates might be available, from various government agencies, for such things as rates and utilities. It is important for the administrator to look carefully into the represented person's entitlements.

Entitlements from Centrelink and the Department of Veterans' Affairs are usually affected by income and assets tests. If you have not already done so, we recommend that you make a full disclosure of the represented person's income and assets to Centrelink and/or Department of Veterans' Affairs. In planning investments and cash flow, administrators need to consider the relevant income and assets tests.

A represented person's principal place of residence may be exempt, under some circumstances, from the assets test. These tests may allow the exemption to continue for up to two years after a represented person moves from his or her home into a place of care; however administrators should confirm such entitlements with Centrelink and Department of Veterans' Affairs.

The value to the represented person's estate of fringe benefits should not be overlooked. However, administrators need to be wary of taking the attitude that a pension or fringe benefit should be preserved at all costs. Under the income test for pensions, pensioners are allowed to earn additional income before Centrelink or Department of Veterans' Affairs reduces their pension. Typically, such reductions are less than 50 cents for each dollar of additional income above the permitted amount. For many people, fringe benefits may not be of significant value, particularly if people are in supported accommodation such as nursing homes.

For further information about pensions and pensioner entitlements please contact your local Centrelink or Department of Veterans' Affairs office or access their websites at www.centrelink.gov.au and www.dva.gov.au

Can I employ agents?

The administrator cannot delegate his or her responsibility for the represented person's estate to another person.

However, this does not prevent the administrator from seeking professional assistance with matters such as taxation, accounting services, land brokerage or legal advice. The fees for this assistance would be paid from the represented person's funds.

An administrator may employ an accountant to carry out accounting duties (but not the actual management of the represented person's financial affairs). This would cover things such as advice about taxation, investment decisions, Centrelink entitlements, preparation of tax returns and preparing the annual financial accounts for the Public Trustee. It would not cover things such as investing money with an accountant, or the accountant being given the responsibility to decide about investment of the money.

Taxation

The represented person's liability for income tax and capital gains tax is not affected by the appointment of an administrator. It is the responsibility of the administrator

to deal with these matters. The administrator may choose to employ an accountant to assist with this. This would generally be the represented person's own accountant if the represented person already had one. Returns are lodged in the represented person's own name and using the represented person's own tax file number but with the administrator signing on behalf of the represented person.

Jointly owned property

Often the represented person will own property jointly with someone else. This may be joint ownership of family assets with the represented person's spouse. The administrator needs to consider what should happen about joint ownership situations. Appropriate powers would be needed from the State Administrative Tribunal if, for example, the assets are to be divided between the owners.

There is often no reason why joint assets cannot simply be continued, if this is the wish of the owners. This should be the administrator's starting point. The status quo should only be altered if there is good reason.

It is important to note that a represented person's share in jointly owned assets may pass to the other surviving owner on death. If the represented person survives the other joint tenant, the property may pass to him or her by virtue of survivorship. Administrators should be cautious about interfering with such rights.

What happens if the represented person signs a contract or gives away property?

Section 77 of the *Guardianship and Administration Act 1990* deals with the problems associated with the represented person entering into contracts or disposing of estate property after the administration order has been made.

Importantly, once the Tribunal has determined that a person is in need of an administrator that person is incapable of:

- a) validly entering into contracts or disposing of their personal estate (see also 'Can the represented person's Will be changed?); or
- b) appointing an agent or attorney to act in that respect, except to the extent that the administrator, with the written consent of the Tribunal, permits.

Whilst an administrator is empowered to pursue recovery of any monies or property disposed of by the represented person, recovery may not be effective in the following situations:

- a) any contract for necessities;
- b) any contract or disposition made for adequate consideration with a person who acted in good faith without knowledge of the represented person's disability; or
- c) any act done under a power of attorney by a person who acted in good faith without knowledge of the represented person's disability.

Administrators faced with these difficult situations should promptly seek legal advice.

Conducting court cases for the represented person.

An administrator as next friend or guardian ad litem can initiate, omit, continue or defend court actions if the appointed plenary administrator or limited administrator has specific powers to do so. A next friend or guardian ad litem must act through a solicitor.

Of course, the administrator must consider carefully whether such action is in the represented person's best interests and whether the estate has the funds to meet the legal expenses. It is recommended that legal advice be sought in this regard.

The administrator should also consider whether it is appropriate for an application to be made on behalf of the represented person for legal assistance from Legal Aid Western Australia. If appropriate, the administrator can make such an application. It would be advisable to seek the approval of the State Administrative Tribunal if the costs associated with the proceedings are likely to be substantial.

Court actions might include:

- claims for damages for injuries sustained in motor vehicle or work accidents;
- actions with respect to divorce, property settlements, spousal maintenance and child support in the Family Court;
- claims to recover property where the represented person has been unfairly taken advantage of. For example, where a represented person with dementia has been persuaded to sell their house to someone for well below market value;
- claims where the represented person has given money to someone and it would be unfair, in the circumstances, if the represented person was not repaid; and
- claims where the represented person has not received adequate provision in someone else's Will. Under the *Family Provision Act 1972*, the Supreme Court can vary the terms of a Will which does not adequately provide for a child, spouse, former spouse, de facto spouse and some dependants or former dependants. This can also apply to distributions under intestacies (without a Will).

In the case of criminal proceedings against the represented person, the administrator cannot actually defend the proceedings as the represented person's representative. However, the administrator can engage a solicitor to represent the represented person.

How do I sign documents?

It might be important when signing some documents to seek the advice of a solicitor.

The usual way of signing a document on behalf of a represented person is:

Signed for and on behalf of the said JOHN SMITH by GLENDA JONES, administrator, of 10 Brown Street, City Beach WA 6015 Personnel Officer (signature of G. Jones)

Unless otherwise provided in the order, all joint administrators must sign documents.

Contents of the represented person's Will

Administrators should acquaint themselves with the terms of a represented person's Will, if they have a copy. Please note, however, that for privacy reasons, not all organisations that hold Wills will release them or reveal their contents to other people when the client is still alive. The Public Trustee, for instance, only does so in very limited circumstances.

When making important decisions, administrators need to take into account the wishes of the represented person. A Will might help to explain those wishes, but it is only of limited help.

Sometimes, a Will might leave a specific asset, such as a house, to a particular beneficiary. It might, however, be in the best interests of the represented person to sell the house. A Will does not stop an administrator doing this, because a Will only takes effect after death. The administrator's actions, however, might impact on how the estate is distributed after death.

In some cases, the represented person might be mentally capable of making a new Will and might want to do so, to take into account the fact that the house is being sold.

In other cases, the represented person clearly cannot make a new Will. Some or all of the proceeds of sale of the house, however, might end up going to the people who would be left the house under the Will.

It might be appropriate to seek legal advice on this, because the law is not straightforward. An important case for a lawyer to consider is a 1997 decision of the Supreme Court of WA called *Re Hartigan; ex parte the Public Trustee*.

There are other circumstances in which issues might arise. For instance, the Will might refer to a particular bank account but it is in the best interests of the represented person to redeem the money in that account.

It is important that a represented person's Will is kept in a safe place, such as the Public Trustee's WA Will Bank. Finally, remember that Wills are confidential documents, the contents of which should not be disclosed to others.

Making or changing a represented person's Will

If plenary administrators or plenary guardians consider that the represented person does not have the capacity to make, alter or revoke a Will, they can apply to the Supreme Court for an order authorising the making or alteration of a Will in specific terms approved by the Court, or the revocation of the whole or any part of a Will. Other people can also apply.

Section 77 of the *Guardianship and Administration Act 1990* addresses the issue of a represented person's incapacity to deal with his or her estate. That section provides:

77. Represented person incapable of dealing with estate

- (1) So long as there is in force a declaration by the State Administrative Tribunal under section 64(1) that a person is in need of an administrator of his estate, that person is —
 - (a) incapable of entering into any contract or making any disposition in respect of his estate or any part thereof or interest therein; or
 - (b) subject to Part 9, appointing or conferring any power on an agent or attorney in respect thereof,

except to the extent that the administrator, with the consent of the Tribunal, in writing authorises him to do so.

- (2) Any money or property the subject of an attempted dealing by a represented person contrary to subsection (1) may be recovered by the administrator in any court of competent jurisdiction.
- (3) Nothing in this section affects —
 - (a) any contract for necessities entered into by a represented person; or
 - (b) any contract or disposition by a represented person made for adequate

- consideration with, or in favour of, any other person who proves that he acted in good faith and was unaware that that person was a represented person; or
- (c) anything done under a power of attorney by a person who proves that he acted in good faith and was unaware that the donor of the power was a represented person.
- (4) Nothing in this section affects any legal incapacity attaching to a represented person by reason of infancy.
- (5) For the purpose of this section the acceptance of payment of the whole or any part of a debt shall be deemed to be a disposition in respect of the estate.

The Full Court of the Supreme Court of Western Australia has determined that section 77(1)(a) of the *Guardianship and Administration Act 1990* (WA) does not apply to a Will or other testamentary instrument made by a testator who is the subject of an administration order made under section 64 of the Act.

As a result of the decision, administrators should not apply to the State Administrative Tribunal for consent under section 77 in relation to a Will.

A represented person can make a Will and that Will can be valid if the represented person has the capacity to do so, however the courts may treat the Will of a represented person with some caution. The represented person's administrator and/or SAT do not need to consent to the person making a Will, nor can they stop or compel them to do so. After the represented person's death, a court can decide whether the represented person did or did not have the capacity to make the Will.

It is generally wise for a person to have their Will drafted professionally. That, however, is a decision for the represented person. They cannot be forced to see a Will-drafting professional. If they do see one, the administrator may be required to pay for the service out of the represented person's funds. It is also wise for

the administrator to make the professional aware that the person is a represented person. The professional will probably want to obtain a medical report on the represented person's capacity and may seek funds to do this.

It is a very unwise idea for administrators to attempt to draft Wills for represented persons themselves, unless they are professionals. Laypersons can be in serious trouble if they charge for the service. Gifts under a Will to the person who drafts it can, in some circumstances, be invalid.

What if the represented person regains capacity?

If the represented person regains the ability to manage his or her own estate, an application should immediately be made to the State Administrative Tribunal for the administration order to be revoked. The Tribunal would require supporting evidence such as reports from doctors, rehabilitation specialists or psychologists. Naturally, the represented person would need to attend the hearing.

If, however, the represented person has an illness whereby his or her capacity to make reasoned decisions fluctuates, the administrator must carefully consider whether an application for a review hearing is warranted. In all the circumstances it might suffice, at least in the short term, to allow the represented person a greater involvement in the management of his or her estate and to liaise regarding the ongoing need for the order to remain in force. The administrator should be mindful however, that while the order is still in place, they are still responsible for the management of the represented person's estate.

If the State Administrative Tribunal revokes the administration order, it is possible for the former represented person to execute an Enduring Power of Attorney. By such instrument the Donor can, while of full capacity, make decisions about who will assist with the management of his or her estate and the scope of the donee's authority. Enquiries regarding Enduring Powers of Attorney should be made to the Office of the Public Advocate.

What if the represented person is a trustee?

Sometimes, the represented person is trustee of assets under a formal trust document. In other cases, a trust document will require the consent of the represented person before some action is taken.

An administrator is not automatically entitled to exercise these powers on behalf of the represented person. The trust document will usually contain provisions for the appointment of a new trustee in the event of the mental incapacity of one of the trustees. If the power to appoint a new trustee is exercised in accordance with the terms of the trust document by the other trustee or trustees, it may not be necessary for the administrator to take any action in respect of the trust on behalf of the represented person. Administrators may, however, need to obtain legal advice as to what powers and obligations (if any) they may have in such situations.

What happens when the represented person dies?

Upon the death of the represented person the authority of the administrator ceases and the Public Trustee and the Tribunal should be informed. Final accounts must be lodged unless the Public Trustee waives this requirement.

Following the death of the represented person the executor of the Will should apply to the Supreme Court for a grant of probate. If the represented person died without a valid Will, an application should be made to the Supreme Court for letters of administration. It is recommended that legal advice be sought at that time.

Once the Supreme Court has granted formal authority the former administrator should pass over the administration of the estate to the executor or administrator (appointed by the Supreme Court).

Quite often, the same person will be both administrator and executor or administrator of the Will. However, it will still be necessary to go through the procedures mentioned above before the represented person's property can be distributed to beneficiaries of the estate. In certain instances where the value of the estate is quite small it may not be necessary to obtain a formal Grant of Probate from the Court.

This process is called 'informal administration'. In these circumstances the relevant financial institutions, for example the bank, should be consulted.

Accommodation Issues

What are the accommodation alternatives?

It is important to note that an administration order does not confer authority upon an administrator to determine where and with whom the represented person resides. If these decisions must be made they should be decided by an appointed guardian or enduring guardian in consultation with the represented person, medical professionals and family members.

Depending upon the personal circumstances and financial resources of the represented person, there might be a variety of accommodation options. The represented person might continue residing in his or her own home or:

- consider an arrangement of co-ownership;
- accept an offer of public housing;
- move to a retirement village, hostel or some other form of supported accommodation; or
- accept a placement at a nursing home.

What should I do with the represented person's home?

When a represented person moves into a hostel or nursing home, a decision is needed about what happens to their home, which can be a very sensitive issue. The represented person's views are very important and may outweigh pure financial considerations. For example, it might be extremely traumatic for the represented person if the house were sold. It will generally also be important to consult with close family members, especially those who would be entitled to the house under the represented person's Will.

An administrator does not have the power to force the represented person to move out of his or her home. Where a represented person resides is an issue for the guardian or enduring guardian.

Sometimes it will be best to leave the home unoccupied for a time in case it becomes possible for the represented person to return with appropriate support services.

In this case, it will be necessary to obtain special insurance cover. Alternatively, it may be very important to the represented person that he or she can regularly visit the home and enjoy the familiar surroundings there. The administrator may decide to let or lease the home so that the represented person can receive the dual benefits of income and capital appreciation. In other cases, it may be best to sell the home. The represented person may need capital to buy into a retirement village or pay an ingoing contribution at a hostel or nursing home.

If the administrator believes that the represented person needs to be in a nursing home, but the represented person refuses to go and there is no guardian or enduring guardian, an application should be made to the State Administrative Tribunal for a guardianship order.

Often the home will be jointly owned with the represented person's spouse who continues living there after the represented person has moved out. It will often then be appropriate for the spouse to continue in occupation. However, if the represented person cannot be adequately supported on his or her other financial resources, the administrator may need to discuss with the spouse the issue of the sale of the home. It might be better for a smaller substitute property to be purchased for the spouse to live in with the remaining capital being available to meet the needs of the represented person whose financial affairs are being managed. The spouse and the administrator (who is empowered to sell) may agree to the sale of the property.

Should the administrator not have the power to sell, an application to the State Administrative Tribunal to extend the administrator's powers, would be required.

Public housing

Represented persons may be eligible for public housing through the Department of Housing. Although there might be long waiting lists for public housing, a disability or medical problem might give the represented person priority in obtaining accommodation or in obtaining a transfer from unsuitable housing.

Retirement villages and hostels

Apart from nursing homes, there are forms of specialized accommodation available for older people or people who are capable of independent living but require some assistance with day-to-day tasks: for example, self-contained self-care units in retirement villages. They are similar to other home units except that they have access to communal recreation, sports and other facilities. They are designed for people who need little or no assistance with daily living. They provide people with access to community facilities in close proximity to their residential unit and relieve the occupants of the normal obligations in respect of ongoing maintenance of properties.

Other forms of accommodation include hostels and serviced apartments for people who do not need to be in a nursing home but do require some assistance with daily domestic tasks such as cooking, bathing and dressing. The accommodation usually consists of a “bed sit” room with an ensuite bathroom and various services and meals provided by the management.

These forms of accommodation come under the *Retirement Villages Act 1992*. There is also another publication, *Fair Trading (Retirement Villages Code) Regulations 2015* that may be used for an insight into Retirement Villages. These publications can be purchased at a small cost from the State Law Publisher at 10 William Street, Perth. Telephone (08) 6552 6000 or download for free at www.slp.wa.gov.au.

For anyone considering the option of entering a retirement village, you need to be aware that there are many important factors that need to be considered. There is currently a publication that will provide an insight into retirement villages and what factors that need to be taken into account beforehand. This publication is “So you are thinking of moving into a Retirement Village?” This publication is available from the Department of Mines, Industry Regulation and Safety.

It is strongly recommended that independent legal advice be obtained before considering any form of retirement village or hostel accommodation.

Selling and buying real estate

If the administration order authorises the buying or selling of real estate, then you are empowered to sign all relevant documentation for, and on behalf of, the represented person. Please note the section “How do I sign documents”. As with all estate assets, titles of ownership must be in the name of the represented person.

When filing transfer documents with Landgate, you will need to produce a certified copy of the order issued by the State Administrative Tribunal (SAT). If Landgate will not accept this certified copy of your order, please write to the SAT requesting a copy of the order, certified by the Tribunal.

If the property being purchased is for investment purposes, you must ensure that you act prudently and take proper advice.

If you are selling real estate, you must ensure that the estate receives fair market value. You are entitled to take professional advice (including market valuations) in respect of the sale and the estate will bear those costs. Other factors to take into account might include:

- the possibility that the represented person might recover his or her capacity or might need to return to reside there;

- the wishes of the represented person and his or her family or other support persons;
- the terms of the Will of the represented person;
- whether the property should be sold by auction or private treaty; and
- the need to spend money on maintenance and repairs to bring the property to a marketable condition prior to sale.

If the property is being purchased as a principal place of residence for the represented person, it should be appropriate to his or her needs and circumstances. You are entitled to take professional advice as to what is appropriate and the estate will bear the costs. Remember to take into account the views and wishes of the represented person and his or her family or other support persons. Other factors to take into account might include:

- the impact of the purchase on the represented person's financial position;
- the capacity of the represented person's estate to bear ongoing costs such as rates, insurance and maintenance; and
- the property's state of repair including, if necessary, a property inspection report.

Registration of land ownership

Landgate maintains the official register of land ownership for Western Australia. If the represented person owns real estate, administrators are encouraged to obtain, at an early stage of the administration, a current search of the Certificate/s of Title.

The realty search of the Certificate of Title will show the volume & folio numbers, the current registered proprietor and it will disclose any limitations, interests and encumbrances. It would be prudent for an administrator to obtain copies of any mortgages, caveats, memorials or other encumbrance registered against the land. Please be aware that Landgate charge fees for all searches. Those fees are payable from the estate of the represented person. If the realty search discloses "subject to dealing" an administrator should investigate this by requesting a dealing search.

If there are any encumbrances against the title (or current dealings) you might need to seek professional advice about your role as administrator. You might also take advice on the merits of lodging a caveat to safeguard the interest of the represented person in respect to his or her realty ownership. If you need more information about how to lodge a caveat, Landgate have brochures and information available to the public on their website at www.landgate.wa.gov.au. Alternatively, please contact Landgate if you require these brochures to be sent to your mailing address.

Discharge of mortgage

If the administrator was appointed to discharge a mortgage, the order will usually empower this to be done (no specific power is required if the order is plenary).

If the power to discharge the mortgage is not contained within the limited order, the administrator might need to apply to the Tribunal for review.

Insurance

The administrator is required to keep all real estate properly insured. Usually, cover should extend to buildings, contents and public liability.

If residential property remains unoccupied for periods of 28 days or more, the insurance company must be informed in writing and must agree to continue the insurance cover.

Repairs and improvements

Extensive repairs or renovations might require the specific approval of the State Administrative Tribunal. This approval will be readily given, if there is good reason for the work to be done and the represented person can afford it. Care needs to be taken not to leave the represented person without adequate funds.

Sometimes the represented person's home will be very run down and the administrator will need to consider very carefully whether it would be best to repair the property or to sell it. As well as considering the views of the represented person and close family, the administrator might need to take advice from real estate agents and builders.

Leasing (or letting) real estate

The *Guardianship and Administration Act 1990* gives a plenary administrator (and a limited administrator where the order makes provision) the power to lease or let real estate on behalf of the represented person.

The administrator is required to ensure that the estate receives fair market rent for the property. This would usually apply even if the lessees or tenants were family members.

The administrator is entitled to employ a real estate agent to find suitable tenants and manage the tenancy. This would include all necessary actions should the tenants fall into arrears or otherwise breach their tenancy.

The Importance of being an Administrator

Are administrators paid?

Administrators can be reimbursed for reasonable out of pocket expenses that they incur in carrying out their role.

Administrators are not usually paid for their work nor reimbursed for lost wages. Generally, they take on the role out of friendship or a feeling of family responsibility. Exceptions are made where the role of administrator will take an unusually large amount of time or where a professional is appointed, for example, the represented person's solicitor or accountant. Payment is then made at a rate set by the State Administrative Tribunal.

Watch out for conflicts of interests

A conflict of interest is normally of a financial nature and arises where the interests of the represented person clash with those of the administrator. Examples of conflict situations are set out below:

- the represented person and the administrator are joint owners of real estate and as such, expenditure for maintenance on the property should be properly apportioned between the co-owners. Due care must be taken to ensure that such a proper apportioning of costs does occur, and so avoid a situation where one or other of the co-owners pays more or less (disproportionately to their benefit) than the other.
- the administrator may be a potential beneficiary in the Will of the represented person and therefore stands to benefit from the estate upon the death of the represented person. It would be improper for the administrator to preserve a large capital balance in the estate while not maintaining a reasonable lifestyle for the represented person during his or her lifetime.

The administrator should not invest the funds of the

represented person in private companies, partnerships, trusts or similar entities in which the administrator holds a significant interest or role unless such investment is secure and offers a market competitive rate of return.

Where it appears as though such conflict situations are unavoidable, the administrator should approach the State Administrative Tribunal for a direction.

Does administration apply to assets outside Western Australia?

Section 83D of the *Guardianship and Administration Act 1990* provides for the recognition of administration orders for incapable adults between Western Australia and other States and Territories where an interstate arrangement is in effect.

Where an interstate arrangement is in effect, an administration order made in another State or Territory will apply in WA. Similarly, orders made in WA will apply in other States and Territories.

Western Australia currently has interstate arrangements with:

- New South Wales;
- Victoria;
- Australian Capital Territory;
- South Australia;
- Queensland
- Tasmania; and
- Northern Territory (Guardianship only).

Changing administrators

The State Administrative Tribunal can remove and replace an administrator if:

- the administrator wants to resign;
- the administrator does not comply with his or her obligations, for example, by not lodging annual accounts with the Public Trustee in a timely manner or not complying with a direction of the Tribunal;
- the administrator moves interstate or overseas; or
- the administrator has a conflict of interest.

If an administrator wishes to resign, he or she should contact the State Administrative Tribunal for an application to have the order reviewed. The application should state the reasons and suggest someone who would be suitable and willing to take on the role. If no one is suitable and willing the Tribunal may appoint the Public Trustee.

On the appointment of a new administrator, the former administrator will need to hand over the represented person's financial affairs to the new administrator and lodge final accounts with the Public Trustee.

What happens if the administrator dies?

Where an administrator dies, the State Administrative Tribunal will need to review the administration order and appoint a replacement.

Section 99 of the *Guardianship and Administration Act 1990* provides that, upon becoming aware of the death of a sole administrator, the Public Advocate shall assume the role and responsibilities of administrator (with the same powers and functions of the original administrator) until the Tribunal appoints a new administrator.

Where a joint administrator dies, the surviving administrator or administrators can act until the Tribunal reviews the administration order.

Financial recording and reporting

Financial recording and reporting

Section 80 of the *Guardianship and Administration Act 1990* and the *Guardianship and Administration Regulations 2005* require an administrator to report to the Public Trustee annually (or as otherwise allowed by the Public Trustee) about the assets and liabilities of the estate at a specific date and the receipts and payments during a specified period of time (the 'accounting period').

These reports are referred to as the 'accounts' and are required to be in the standard format. The Private Administrator's Support Team will send you the necessary forms and instructions approximately one month before the anniversary date of the order. For your information refer to Appendix (iii) and (iv) in this Guide. These are instructions and samples of the standard forms.

The administrator is required to file a statutory declaration verifying the correctness of the financial information.

(See Forms B & C and Abstracts 1–4 at the appendix to the Guide.)

Cashbook sheets

This Guide contains blank 'cashbook sheets' that you might find useful in maintaining records of receipts and payments. These cashbook sheets are simply aids or tools to assist you in collating and presenting the information required in Abstracts 1 and 2.

It will assist the Public Trustee to conduct a speedy and accurate examination of accounts if you supply cashbook sheets showing the calculation of composite figures reported on abstracts 1 and 2.

Cashbook sheets (receipts and income)

A separate entry should appear on each line of the worksheet recording each receipt, whether it is capital or income. Each transaction will record the date of the receipt, the name of the payee and the amount. It should appear in the appropriate column and the receipt total should appear in the 'total' column on the far right side of the worksheet.

Cashbook sheets (expenditure/payments)

Each transaction should record its date, the payee, the cheque number (or similar identification) and the amount. It should appear in the appropriate column and the payment total should appear in the 'total' column on the far right hand side of the worksheet.

Balancing the cashbook sheets

At the completion of the financial period for which you are reporting, total each column including the 'total' column. The sum of all the individual columns should equal the sum of the 'total' column. Once this is completed, the cashbook sheets are balanced and you can begin transferring the balances to the Abstracts 1 and 2.

If you have prepared any cashbook sheets, spreadsheets or other working papers, please provide copies to assist with the examination of the accounts.

Reporting requirements

- Forms B & C and Abstracts 1-4 represent the complete set of annual accounts. Item 3, on Form C Statutory Declaration Verifying Accounts specifically states that these accounts contain a true and correct record of the estate of the represented person. Therefore, the use of liquid whiteout ink, overwriting of figures and amendments to figures should be avoided.
- All assets must be included on Abstract 3.
- All liabilities must be included on Abstract 4 (if there are no liabilities, please clearly show as NIL).
- You must comply with the specified reporting dates when preparing accounts. If you believe that an alternative reporting period is necessary, you may make a written application to the Public Trustee setting out the proposed dates and your reasons for the variation.
- You are reminded that the provisions of section 72 of the *Guardianship and Administration Act 1990* prohibit administrators from making gifts (or other unauthorised dispositions) from the represented person's estate, unless authorised by the administration order. Unauthorised payments may be disallowed and you may be personally liable for those amounts. Should you require the authority to make gifts, or similar dispositions, you may make application to the State Administrative Tribunal for that authority.

Abstract 1 – Income

All income (and other receipts) received during the accounting period must be recorded on this page. If you have chosen to maintain cashbook sheets, you should simply transfer the column totals across to the relevant item on Abstract 1.

Generally, it is good practice to bank intact all monies received. This will enable funds to be easily reconciled at a later date and simplify the reconciliation process between your records and the bank statements.

Abstract 2 – Payments

All payments made by you during the accounting period must be recorded on this page. If you have chosen to maintain cashbook sheets, you should simply transfer the column totals across to the relevant item on Abstract 2.

Generally, it is good practice to make all significant payments by cheque, internet or bank transfer or credit / debit card as these provide an audit trail and makes reconciliation easier. Of course, administrators can maintain a nominal cash amount for the payment of incidental amounts and the purchase of personal comforts. A petty cash book could be maintained to record such payments and regular recoups. It is not envisaged that receipts would be obtained for incidental expenses.

All invoices (or similar vouchers) must be kept by the administrator and produced to the Public Trustee if requested. It might assist you to endorse the invoice with the cheque number and the date of payment.

Remember to update all bank accounts at the close of the accounting period and include interest receipts in Abstract 1 and bank charges and government fees on Abstract 2.

Abstract 3 – Assets

This form records all assets owned by the represented person as at the last day of the accounting period. If the assets are co-owned with other persons, the nature of the co-ownership should be specified (for example joint tenants or tenants in common).

Whilst the assets would usually be shown at their current market value, there might be occasions when it is more appropriate to show them at their 'book' value or their 'written down' value. If the asset is owned jointly with another person, one half of its market value will be shown.

Some assets, such as antique furniture or valuable collectables, might warrant special consideration. The

administrator should consider the need for a current valuation as well as ensuring that the asset is adequately insured. Copies of such records should be provided with the annual accounts.

In the case of investment portfolios, you should record the current market value of the total portfolio and attach separate documentation detailing the nature and currency of the individual investments.

The form requires that all assets be totalled and the total shown in the space provided.

Abstract 4 – Liabilities

This form records all liabilities of the represented person as at the last day of the accounting period. If the liabilities are in joint names, this should be recorded and the value shown as a half share of the current debt.

The most common liabilities are likely to be unpaid accounts or deferred rates on the principal place of residence.

Sometimes the represented person will have an unpaid mortgage over realty, or other commercial loan. The nature of the debt should be made clear on the form and the current amount outstanding specified. Copies of the loan documentation and the most recent statement showing the balance outstanding must be supplied.

The form requires that all liabilities be totalled and the total shown at the bottom of the page.

If there are no liabilities, please clearly show as NIL.

Form C — Statutory declaration

The statutory declaration is a sworn statement that the information contained within the annual accounts is true and correct. If there are joint administrators, they must all sign the statutory declaration and have their signatures properly witnessed.

The administrator's signature must be witnessed by a qualified witness. A list of qualified witnesses is annexed at Appendix (iv). If you are having difficulties locating a qualified witness please contact the Private Administrator's Support Team.

Reporting to the Public Trustee

Section 80 of the *Guardianship and Administration Act 1990* requires that the Public Trustee examine the accounts filed by the administrator. The Public Trustee may:

- allow them;
- disallow any amount paid; or
- determine that any amount or asset has been omitted, or that any loss has occurred.

The Act further provides that the administrator is liable to the estate for such loss or diminution (except to the extent that the Public Trustee relieves him/her of liability) where the Public Trustee:

- disallows an amount paid or determines that an amount or asset has been omitted or that any loss has occurred; or
- determines that there has thereby been a loss to or a diminution of the estate.

When the Public Trustee has examined the accounts and allowed them, the administrator will be notified in writing that the accounts have been allowed.

Useful Contacts

Contact details

Organisation	Address	Telephone	Email	Website
Aboriginal Legal Service of Western Australia Ltd	7 Aberdeen Street EAST PERTH WA 6004	(08) 9265 6666 Freecall 1800 019 900		www.als.org.au
ACTIV Foundation Inc	327 Cambridge Street WEMBLEY WA 6014	(08) 9387 0555		www.activ.asn.au
Advocare Inc	The Perron Centre 61 Kitchener Avenue VICTORIA PARK 6100	(08) 9479 7566 Elder Abuse Helpline 1300 724 679 Country callers 1800 655 566		www.advocare.org.au
Alzheimers Australia WA Ltd	9 Bedbrook Place SHENTON PARK WA 6008	(08) 9388 2800 Freecall 1800 100 500	alzwa@alzheimers.org.au	www.fightingdementia.org.au
Helping Minds (ARAFMI)	182 Lord Street PERTH WA 6000	(08) 9427 7100	info@helpingminds.org.au	www.helpingminds.org.au
Carers Australia WA	182 Lord Street PERTH WA 6000	1300 227 377	info@carerswa.asn.au	www.carerswa.asn.au
Citizens Advice Bureau of WA	Level 1, 25 Barrack Street PERTH WA 6000	(08) 9221 5711	cab@cabwa.com.au	www.cabwa.com.au
Dept of Communities (Child Protection) (State)	189 Royal Street EAST PERTH WA 6004	Freecall 1800 622 258 or 9222 2555		www.dcp.wa.gov.au
Dept of Communities (Office of Seniors Interests & Volunteers) (State)	189 Royal Street EAST PERTH WA 6004	(08) 6217 6888 Freecall 1800 176 888		www.communities.wa.gov.au
Dept of Health (Federal)	Level 1, Australia Place 15-17 William Street PERTH WA 6000	(08) 9346 5111 Freecall 1800 198 008		www.health.gov.au
Dept of Communities (Housing) (State)	99 Plain Street EAST PERTH WA 6004	9222 4666 1800 093 325	Generalenquiries@housing.wa.gov.au	www.housing.wa.gov.au
Dept Veteran Affairs (Federal)	Level 5 AMP Building 140 St Georges Terrace PERTH WA 6000	13 32 54 Country callers 1800 555 254	GeneralEnquiries@dva.gov.au	www.dva.gov.au
Dept of Communities (Disability Services)	146-160 Collin Street WEST PERTH WA 6005	(08) 9426 9200 Freecall 1800 998 214 TTY (08) 9426 9315	dsc@dsc.wa.gov.au	www.disability.wa.gov.au
Ethnic Disability Advocacy Centre	320 Rokeby Road SUBIACO WA 6008	(08) 9388 7455 1800 659 921	admin@edac.org.au	www.edac.eduka.info
Rise Community Network	41a Great Northern Highway MIDDLE SWAN WA 6056	(08) 6274 3700	contact@risenetwork.com.au	www.risenetwork.com.au
Landgate	1 Midland Square MIDLAND WA 6056	(08) 9273 7373 TTY 133 677 Country callers 1300 365 288	customerservice@landgate.wa.gov.au	www.landgate.wa.gov.au
Mental Health Law Centre WA Inc	96-98 Parry Street PERTH WA 6000	(08) 9328 8012 Freecall 1800 620 285	office@mhlcwa.org.au	www.mhlcwa.org.au
Mental Illness Fellowship of WA	Level 3, 9 The Avenue MIDLAND WA 6056	(08) 9237 8900	info@mifwa.org.au	www.mifwa.org.au

Contact details

Organisation	Address	Telephone	Email	Website
National Disability Services WA (formerly ACROD)	12 Lindsay Street PERTH WA 6000	(08) 9242 5544	ndswa@nds.org.au	www.nds.org.au
National Seniors Australia	City West Lotteries House 2 Delphi Street WEST PERTH WA 6005	(08) 9420 7274	wa@nationalseniors.com.au	www.nationalseniors.com.au
People With Disabilities WA Inc	Oasis Lotteries House 1/37 Hampden Road NEDLANDS WA 6009	(08) 9485 8900 Country callers 1800 193 331 National Relay Service 133 677	info@pwdwa.org	www.pwdwa.org
Retirement Village Residents Association Ltd	57/22 Carnegie Place GREENFIELDS WA 6210	0448 812 888	enquiry.wa@rva.com.au	www.warva.org.au
Richmond Wellbeing (Formerly Richmond Fellowship of WA)	29 Manning Road Cannington WA 6107	1800 742 466		www.rw.org.au
Silver Chain Nursing Association Inc	Silver Chain House 6 Sundercombe Street OSBORNE PARK WA 6017	(08) 9242 0242 Country Callers: 1300 650 803	info@silverchain.org.au	www.silverchain.org.au
State Head Injury Unit – Sir Charles Gairdner Hospital	Ground Floor E Block Hospital Avenue NEDLANDS WA 6009	(08) 9346 4488	shiu@health.wa.gov.au	www.health.wa.gov.au
Sussex Street Community Law Service Inc (Disability Discrimination Unit)	29 Sussex Street EAST VICTORIA PARK WA 6101	(08) 6253 9500 TTY: 9470 2831 Country Callers & IDAS: 1300 648 655	legal@sscls.asn.au	www.sscls.asn.au
Ability Centre (formerly The Centre for Cerebral Palsy)	106 Bradford Street COOLBINIA WA 6050	(08) 1300 106 106 Country callers 1800 198 263	info@abilitycentre.com.au	www.abilitycentre.com.au
WA Association for Mental Health	Level 1, 1 Nash Street PERTH WA 6000	(08) 6246 3000		www.waamh.org.au
WA Council of Social Services Inc	2 Delhi Street WEST PERTH WA 6005	(08) 9420 7222 or 1300 658 816	info@wacoss.org.au	www.wacoss.org.au
Welfare Rights & Advocacy Service	98 Edward Street PERTH WA 6000	(08) 9328 1751	welfare@wraswa.org.au	www.wraswa.org.au



Western Australia

Guardianship and Administration Act 1990

Guardianship and Administration Regulations 2005

Part 1 — Preliminary matters

[Heading inserted in Gazette 15 Sep 2009 p. 3583.]

1. Citation

These regulations are the *Guardianship and Administration Regulations 2005*¹.

2. Commencement

These regulations come into operation on the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 56 comes into operation or on the day of their publication in the *Gazette*, whichever is the later¹.

Part 2 — Estate administration

[Heading inserted in Gazette 15 Sep 2009 p. 3583.]

3. Information as to administrator and estate

An administrator must, within 4 weeks of being appointed, provide the Public Trustee with information as to the administrator, the represented person and the estate in a duly completed form approved by the Public Trustee.

Penalty: \$1 000.

4. Examination of accounts

- (1) Unless the Public Trustee otherwise allows, an administrator must lodge with the Public Trustee accounts in relation to an estate administered by the administrator set out in a form approved by the Public Trustee within 4 weeks of the due date approved by the Public Trustee.

Penalty: \$1 000.

- (2) An administrator must retain documents relating to the financial transactions of the estate and submit them to the Public Trustee if so required.

Penalty: \$1 000.

- (3) Unless the Public Trustee otherwise allows, if a person ceases to be the administrator of the estate of a represented person upon —

- (a) the making of an order by the State Administrative Tribunal under the Act; or
- (b) the death of the represented person,

that person must, within 4 weeks of the day on which the order was made or the represented person died, lodge with the Public Trustee accounts in a form approved by the Public Trustee.

Penalty: \$1 000.


5. False or misleading information

A person who provides information under regulation 3 or 4(1) or (3) which the person knows to be false or misleading in a material particular commits an offence.

Penalty: \$1 000.

Appendix ii

DIR PAS



Public Trustee
FORM A
ESTATE INFORMATION FORM

If exact replies cannot be given, give approximate details. If the space provided for any answer is insufficient please attach a separate sheet.

1 DETAILS OF THE REPRESENTED PERSON	
Miss/Mrs/Ms/Dr/Mr	<div style="display: flex; justify-content: space-between;"> (Given names) (Surname) </div>
Current address Postcode
Usual residential address Postcode
Date of Birth

2 RELATIVES	
FULL NAME	ADDRESS
(If deceased give date and place of death, if known)	
Spouse
Sons and daughters (If under 21 years also give date of birth)
Father
Mother
Brothers and sisters

3 SALARY OR WAGES DUE TO THE REPRESENTED PERSON

Name of employer

Address of employer

Phone Number of employer

Amount due or entitlement

4 PENSION / OTHER BENEFITS

Source from which received	Type of benefit	Benefit No.	Amount (month/fortnight/week)

5 TAXATION

Is the Represented Person liable to lodge Income Tax return? Yes / No

If liable, was a return lodged for the year ended 31 March last? Yes / No

Please attach copy of last return, (if available).

6 REAL ESTATE (including any interest therein)

Description (eg. land, house and land, shop property etc)

Full address (including P.O. Box Lot No., if known)

Who holds title documents?

Name of person who stands or Interest in Property

Is Property subject to Mortgage? Please give details.

If Buildings are insured, state name of Insurer and give details of Policy.

Does the Represented Person reside in the property Yes / No

If not, who occupies the property?

Is rent paid by the occupant? Yes / No

State the amount of rent

Date to which rent paid

By whom is the rent collected

If Property is vacant, what are your intentions regarding future management of the property

(If more than one property, please provide details on a separate page.)

Appendix ii

7 FURNITURE DESCRIPTION				
Has inventory been prepared? Yes / No (If Yes, please attach a copy)				
Location of furniture				
If furniture is Insured, state name of Insurer and give details of Policy				

8 PERSONAL EFFECTS (clothing, books, tools, jewellery etc)				
Has inventory been prepared? Yes / No (If Yes, please attach a copy)				
Description of personal effect				
Location of personal effects				

9 BANK (OR OTHER FINANCIAL INSTITUTION) ACCOUNTS				
Name of Financial Institution	Account No.	Name of account owner/s	Location of Passbook or Card	Balance (at date of Administration Order)

10 SHARES, STOCK UNITS, VENTURES, BONDS etc			
Name of Company	Name of Investment	Name of Account Owner/s	Investment Value (Estimate)

11 INTEREST IN TRUST/S	
Interest in a Trust	Yes / No
If Yes, please provide details:	
If Yes, please provide a copy of the Trust Deed	

12 MONEY LOANED ON MORTGAGE	
Provide full details	
Nature of security	
Name and address of person who holds documents	

13 LIFE ASSURANCE

Name of company	Policy number	Premium	Policy held by

14 SUPERANNUATION

Name of company	Member number	Balance	Regular superannuation pension (month/fortnight/week)

15 INTEREST IN A DECEASED ESTATE

Name of deceased

Date and place of death

Name of Executor/Administrator

Date of Grant of Probate (or similar authority)

Anticipated date of distribution

16 VEHICLE, OR OTHER PLANT AND EQUIPMENT

Make

Year

Type

Registration number

Location of vehicle

In whose care

Particulars of comprehensive insurance

(If insufficient space, please provide details on a separate page/s.)

17 INTEREST IN FARMING ACTIVITIES

Location

Description

(If insufficient space, please provide details on a separate page/s.)

□

Appendix ii

18 GOODS ON HIRE PURCHASE OR LEASE		
Description of goods	Name and address of Finance Company/Dealer/Lessor	Amount owing

19 MONIES OWED TO REPRESENTED PERSON	
Name of debtor
Address of debtor
Amount owing

20 MONIES OWED BY REPRESENTED PERSON (Please list all debts currently outstanding)		
Name of creditor	Nature of Debt	Amount owing

21 DETAILS OF ANY OTHER ASSETS, INTERESTS OR ENTITLEMENTS	
Please give details	
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.....	
.....	

22 FEES OF NURSING HOME, PRIVATE HOSPITAL etc	
Name and address of nursing home, hospital etc.
Accommodation fees (month/fortnight/week)
Is the Represented Person required to pay a nursing home accommodation bond?	Yes / No
Has the nursing home accommodation bond been paid?	Yes / No
Amount of nursing home accommodation bond paid	\$

If so, date when the Enduring Power of Attorney was granted

Name and address of person in favour of whom the Power of Attorney was given

ACCIDENTS / COMPENSATION CLAIMS

Please set out below full particulars of current claims for compensation or loss to the Represented Person. Please provide details of claim.

Appendix ii

27 OUTLINE OF PROPOSALS

i) Please estimate the annual income and expenditure of the Represented Person:

Income \$

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Expenditure \$

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ii) Outline the way in which, over the next 12 months, you propose to deal with the Represented Person's assets and liabilities

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Sample only

28 IF JOINT ADMINISTRATORS

If the Administration Order appoints 'joint administrators', please nominate the primary contact to whom the Public Trustee will post the annual accounts forms.

Name of primary contact

29 DECLARATION BY ADMINISTRATOR/S

I/We have read the completed form and consider, to the best of my/our knowledge, that all the information provided is true and correct, is not misleading and that no relevant information has been omitted.

Print full name of Administrator

Miss/Mrs/Ms/Dr/Mr

(Given name/s)

(Surname)

Date of birth of Administrator

Relationship to Represented Person

Daytime contact number

Email

Signature of Administrator

Date

(If applicable)

Print full name of Administrator

Miss/Mrs/Ms/Dr/Mr

(Given name/s)

(Surname)

Date of birth of Administrator

Relationship to Represented Person

Daytime contact number

Email

Signature of Administrator

Date

(If applicable)

Print full name of Administrator

Miss/Mrs/Ms/Dr/Mr

(Given name/s)

(Surname)

Date of birth of Administrator

Relationship to Represented Person

Daytime contact number

Email

Signature of Administrator

Date

Please forward this completed form to:

Public Trustee
553 Hay Street
PERTH WA 6000

or

Public Trustee
GPO Box M946
PERTH WA 6843



Public Trustee

Telephone: 1300 746 212

Facsimile: (08) 9221 661

Notes

Appendix iii

Private Administrator Instructions for Preparing Annual Accounts

Why do I have to file an account?

The *Guardianship and Administration Act 1990* requires administrators to report to the Public Trustee about the financial affairs of the person they represent by completing the annual accounts. Those accounts detail the income, expenditure, assets and liabilities of the represented person for the period of the accounts. The accounts are the means by which the Public Trustee ensures that the financial affairs of the represented person are in order and that the administrator is carrying out his or her responsibilities in the best interests of the represented person.

What is the accounting period?

Each account normally covers a one-year period starting from the day you were appointed as administrator. This is called the accounting period. The Public Trustee may allow a different accounting period following receipt of a written request.

When do I file my accounts?

You have an additional 30 days after the end of the accounting period to complete the forms and file them with the Public Trustee. It is very important that you file on time or request, in writing, an extension of time.

Can I request an extension of time?

If you cannot meet the deadline, you should **write** to the Public Trustee requesting an extension of time. You must explain, in writing, why you are unable to complete the forms on time and estimate the additional time that you will require. If the Public Trustee grants an extension, you will be notified in writing. If you fail to lodge accounts and do not contact the Public Trustee, the State Administrative Tribunal may review the order appointing you and you may be served with a formal summons to attend that review hearing.

What happens once the Public Trustee receives the accounts?

You will be advised in writing if the accounts are allowed. If there are queries about the accounts, you will be contacted initially by the Private Administrators' Support Team from the Public Trustee. The Public Trustee may ask you for more information or further documentation. If the Public Trustee is not satisfied with the details provided, an application may be made to the State Administrative Tribunal to review the accounts and/or to review the order appointing you as administrator.

Some accounts lodged by administrators may be subject to fees payable to the Public Trustee. The Public Trustee's fees are prescribed by Parliament and are payable from the represented person's estate.

Appendix iii

Instructions relating to the statutory declaration (FORM C)

You are required to submit a statutory declaration with your accounts. Without the statutory declaration the accounts have no effect and will be returned. **When you sign the statutory declaration, you are declaring that the information in the accounts is true and correct.** If there is more than one administrator, **all** administrators must sign the statutory declaration and have their signatures witnessed. Your signature must be witnessed by a qualified witness. If you are having problems locating an appropriate person to witness the document, please contact the Private Administrators' Support Team.

Instructions relating to the statement of accounts (FORM B—ABSTRACTS 1, 2, 3 AND 4)

Signature

You must sign at the bottom of each page of the accounts.

Functions covered by the administration order

If you are a **limited** administrator, you are only required to report on the functions specified in the order. For example, if you were appointed administrator and your functions are limited to managing funds that the represented person is entitled to receive as an inheritance, the accounts would only report on those funds. In this case, you would not be required to report in relation to any pension or other income the person receives.

If you are a **plenary** administrator, you must report on **all** assets, income, expenditure and liabilities of the represented person during the period.

Grouping income and expenditure

You may group together the same kind of items of income or expenditure but you must be in a position to itemise the amounts and provide supporting documentation if the Public Trustee asks for it. For example, you may report expenditure for "clothing" "\$550" but you should be able to produce receipts for any items over \$400 and to itemise what items have been purchased and when they were purchased.

Appendix iii

Documentation required to be submitted with the accounts in every case

YOU MUST LODGE THE FOLLOWING DOCUMENTS WITH THE ACCOUNTS:

- **copies** of all bank statements and copies of all bank passbook entries covering the entire accounting period and clearly showing the opening and closing balances for the period.
- **copies** of term deposit certificates.
- where real property forms part of the estate, **copies** of all rates and taxes and confirmation of insurance of the property.
- where property is rented, a **copy** of the rental agreement.
- where a motor vehicle is owned, **copies** of the annual registration and confirmation of current motor vehicle insurance.
- where property is subject to a mortgage, **copies** of all statements for the mortgage account.
- where a tax return has been lodged during the relevant period, a **copy** of the ATO tax assessment.
- where the represented person lives in a nursing home, **copies** of 3 nursing home invoices selected at random during the relevant period.
- where the represented person has a credit card in his or her name, **copies** of all statements during the relevant period.
- where the represented person owns shares, a **copy** of a dividend advice slip or other confirmation of the shareholding as at the last day of the accounting period.
- **copies** of all supporting documentation for all individual items and payments over \$400.
- such other documentation as the Public Trustee may request, in writing.

NB: If any of the amounts shown on Abstracts 1 or 2 are composite figures (made up of a number of lesser amounts) it will assist the Public Trustee if you provide schedules of those amounts.

Unless you are otherwise directed please only provide photocopies of these documents. If originals are required the Public Trustee will request them.

Abstract 1—Income & other receipts

All income and other amounts received by the represented person during the accounting period must be entered on this page. The examination of the accounts by the Public Trustee will be simplified if the income or other receipts are easily identifiable as deposits in the bank statements of the represented person. These will include such things as -

- pension and superannuation payments,
- interest on bank accounts and term deposits,
- dividends paid on shares,
- amounts paid to the person as a result of legal claims (eg compensation payments or inheritance entitlements)
- amounts received as rent from the rental of the represented person's property
- the proceeds of the sale of any assets sold during the accounting period
- amounts received in payment of a loan made by the represented person to another person
- refunds received

Appendix iii

Abstract 2—Expenditure

All funds paid by you on behalf of the represented person during the accounting period must be entered on this page. The examination of the accounts by the Public Trustee will be simplified if the items of expenditure are easily identifiable against withdrawals shown on the bank statements. Expenditure will include payment for such things as -

- nursing home or hostel fees
- rent
- rates
- income tax
- medical fund payments
- purchase of assets
- repayments of moneys borrowed by the represented person from another person or institution (such as mortgage repayments)
- property or vehicle insurance
- telephone bills
- prepaid funeral expenses

Abstract 3—Assets

You must enter here all assets owned by the represented person as at the last date of the accounting period.

Assets include real property (land/house) owned by the represented person. If the property is held as joint tenants or tenants-in-common, this should be specified on Abstract 3 and the name of the co-owner shown.

Other assets might include -

- monies held in bank accounts or term deposits
- monies owed to the represented person by another person
- shares
- motor vehicles or boats
- household items

Abstract 4—Liabilities

You must enter here any debts or other monies owed by the represented person as at the last date of the accounting period. Liabilities might include -

- a mortgage
- unpaid amounts on shares
- outstanding balance of a credit card account or personal loans
- amounts owing under a court judgment
- outstanding legal fee

DIR

PAS

**FORM C – STATUTORY DECLARATION
PUBLIC TRUSTEE OF WESTERN AUSTRALIA**



In the Estate of

Date of birth: ____/____/____

of _____
(address of the represented person)

STATUTORY DECLARATION VERIFYING ACCOUNTS
OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

I / We Mr/Mrs/Miss/Ms/Dr _____
(name)
of _____
(address)

Daytime contact telephone number _____ Email _____
and (joint administrator, if applicable)

Mr/Mrs/Miss/Ms/Dr _____
(name)
of _____
(address)

Daytime contact telephone number _____ Email _____

Declare that:

1. I am / We are the Administrator/s of the estate of the Represented Person.
2. The Account Number _____ attached to this statutory declaration, lists all the financial transactions relating to the assets managed by the Order of the Tribunal, during the period from _____ to _____.
3. These accounts contain true and correct record of the income, expenditure, assets and liabilities of the estate of the Represented Person covered by the Order of the Tribunal, during the period.
4. Please delete either a) or b):
 - a) I / We have not made any gifts of cash, real property, personal property or other assets from the estate of the Represented Person.
 - b) I / We have made a gift(s) on behalf of the Represented Person in the amount of / to the value of \$ _____ in accordance with the authorisation of the Tribunal in its Order dated _____.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under Oaths, Affidavits and Statutory Declarations Act 2005.

DECLARED at _____
(signature of administrator)

in the State of Western Australia
this _____ day of _____

BEFORE ME: _____
(signature of joint administrator, if applicable)

(name of authorised witness) (signature of authorised witness)

Appendix iv

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PAS

FORM B SUMMARY OF ACCOUNTS

Account number: _____

Represented Person: _____

Accounting period: From _____ to _____

	Amount		Amount
1. Opening balance(s):		3. Total Expenditure/Payments (from Abstract 2)	
A/c no. _____			
A/c no. _____			
A/c no. _____			
A/c no. _____			
A/c no. _____			
A/c no. _____			
2. Total Receipts/Income (from Abstract 1)		4. Closing balance(s):	
		A/c no. _____	
		A/c no. _____	
		A/c no. _____	
		A/c no. _____	
		A/c no. _____	
		A/c no. _____	
Total of 1 plus 2		Total of 3 plus 4	

Please note the following:

- i. At item 1 show 'Opening balance(s)' of financial institutions (banks etc) as at the first date of this accounting period.
- ii. At item 4 show 'Closing balance(s)' of financial institutions (banks etc) as at the last date of this accounting period.
- iii. Totals (1 plus 2) should equal totals (3 and 4).

Signature of Administrator/s _____

This is the account numbered _____ for the accounting period from _____
to _____ with abstracts 1 – 4 referred to in the accompanying
statutory declaration of _____

(name of administrator/s)

Declared before me this _____ day of _____ 20 _____

(name of authorised witness)

(signature of authorised witness)

DIR

PAS

ABSTRACT 1 RECEIPTS / INCOME

Account number:

Represented Person:

Accounting period: From

to

DESCRIPTION OF AMOUNT RECEIVED

Please specify source

AMOUNT**\$****C****Office Use
Only**

1.	PENSION / CENTRELINK BENEFIT:			
2.	EMPLOYMENT:			
3.	SUPERANNUATION:			
4.	INTEREST (from bank accounts and other investments):			
5.	DIVIDENDS:			
6.	RENT:			
7.	REFUNDS RECEIVED			
8.	OTHER RECEIPTS (including proceeds from the sale of assets)			
TOTAL RECEIPTS / INCOME				

Transfer this amount to
Form B

Signature of Administrator/s _____

Appendix iv

DIR

PAS

ABSTRACT 2
EXPENDITURE / PAYMENTS

Account number:

Represented Person:

Accounting period: From

to

DESCRIPTION OF EXPENDITURE / PAYMENTS MADE

AMOUNT
\$ COffice Use
Only

1. PERSONAL MAINTENANCE (food, clothing, entertainment etc, maybe grouped together. Use separate sheet if necessary):			
2. ACCOMMODATION FEES:			
3. MEDICAL EXPENSES (including pharmacy and health insurance):			
4. PROPERTY EXPENSES (including rates, taxes, insurance, repairs etc):			
5. TAXATION:			
6. BANK AND GOVERNMENT CHARGES:			
7. OTHER EXPENSES (provide details on separate sheet if necessary)			
TOTAL EXPENDITURE / PAYMENTS			

Transfer this amount to
Form B

Signature of Administrator/s

DIR

PAS

ABSTRACT 3 ASSETS

Account number:

Represented Person:

Accounting period: From to

PARTICULARS OF ASSETS AS AT

PARTICULARS	HOLDER OF TITLE DEEDS AND OTHER SECURITIES	VALUE		Office Use Only
		\$	C	
1. BANK ACCOUNTS (including term deposits, building society, credit union and trust accounts):				
2. REAL PROPERTY (land and house – provide full description of Certificate of title for each property):				
3. PERSONAL PROPERTY AND OTHER ASSETS (provide full description of each item of property):				
4. INVESTMENT (provide full description of each investment):				
5. OTHER ASSETS				
i. Superannuation				
ii. Nursing Home Accommodation Bond				
iii. Prepaid Funeral				
iv. Other Assets				
TOTAL ASSETS				

Signature of Administrator/s _____

Appendix iv

DIR

PAS

ABSTRACT 4

LIABILITIES / LOANS

Account number:

Represented Person:

Accounting period: From to

PARTICULARS OF LIABILITIES AS AT

[illegible]

Signature of Administrator/s _____

Authorised witnesses for WA statutory declarations made within WA

Item	Formal description	Informal description
1.	A member of the academic staff of an institution established under any of the following Acts <input type="checkbox"/> <ul style="list-style-type: none"> • <i>Curtin University of Technology Act 1966</i>; • <i>Edith Cowan University Act 1984</i>; • <i>Murdoch University Act 1973</i>; • <i>University of Notre Dame Australia Act 1989</i>; • <i>University of Western Australia Act 1911</i>; • <i>Vocational Education and Training Act 1996</i> 	Academic (post secondary institution)
2.	A member of any of the following bodies <input type="checkbox"/> <ul style="list-style-type: none"> • Association of Taxation and Management Accountants (ACN 002 876 208); • CPA Australia (ACN 008 392 452); • The Institute of Chartered Accountants in Australia (ARBN 08 1642 571); • National Institute of Accountants (ACN 004 130 643); • National Tax & Accountants' Association Limited (ACN 057 311 554) 	Accountant
3.	A person who is registered under the <i>Architects Act 2004</i> .	Architect
4.	An Australian Consular Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Consular Officer
5.	An Australian Diplomatic Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Diplomatic Officer
6.	A bailiff appointed under the <i>Civil Judgments Enforcement Act 2004</i> .	Bailiff
7.	A person appointed to be in charge of the head office or any branch office of an authorised deposit-taking institution carrying on business in the State under the <i>Banking Act 1959</i> of the Commonwealth.	Bank manager
8.	A member of Chartered Secretaries Australia Limited (ACN 008 615 950).	Chartered secretary
9.	A pharmacist within the meaning of the <i>Pharmacy Act 1964</i> .	Chemist
10.	A chiropractor within the meaning of the <i>Chiropractors Act 1964</i> .	Chiropractor
11.	A person registered as an auditor or a liquidator under the <i>Corporations Act 2001</i> of the Commonwealth.	Company auditor or liquidator
12.	A judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court of the State or the Commonwealth.	Court officer
13.	A member of the Australian Defence Force who is <input type="checkbox"/> <ul style="list-style-type: none"> • an officer within the meaning of the <i>Defence Force Discipline Act 1982</i> of the Commonwealth; • a non-commissioned officer within the meaning of that Act with 5 or more years of continuous service; or • a warrant officer within the meaning of that Act 	Defence force officer
14.	A dentist within the meaning of the <i>Dental Act 1939</i> .	Dentist
15.	A medical practitioner within the meaning of the <i>Medical Act 1894</i> .	Doctor
16.	A member of the Institution of Engineers, Australia, other than at the grade of student.	Engineer
17.	The secretary of an organisation of employees or employers that is registered under one of the following Acts <input type="checkbox"/> <ul style="list-style-type: none"> • <i>Industrial Relations Act 1979</i>; • <i>Workplace Relations Act 1996</i> of the Commonwealth 	Industrial organisation secretary
18.	A member of the National Insurance Brokers Association of Australia (ACN 006 093 849).	Insurance broker

19.	A Justice of the Peace.	Justice of the Peace
20.	A legal practitioner within the meaning of the <i>Legal Practice Act 2003</i> .	Lawyer
21.	The chief executive officer or deputy chief executive officer of a local government.	Local government CEO or deputy CEO
22.	A member of the council of a local government within the meaning of the <i>Local Government Act 1995</i> .	Local government councillor
23.	A member of the Australasian Institute of Chartered Loss Adjusters (ACN 074 804 167).	Loss adjuster
24.	An authorised celebrant within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth.	Marriage celebrant
25.	A member of either House of Parliament of the State or of the Commonwealth.	Member of Parliament
26.	A minister of religion registered under Part IV Division 1 of the <i>Marriage Act 1961</i> of the Commonwealth.	Minister of religion
27.	A nurse within the meaning of the <i>Nurses Act 1992</i> .	Nurse
28.	A registered optometrist within the meaning of the <i>Optometrists Act 1940</i> .	Optometrist
29.	A registered patent attorney under the <i>Patents Act 1990</i> of the Commonwealth.	Patent attorney
30.	A physiotherapist within the meaning of the <i>Physiotherapists Act 1950</i> .	Physiotherapist
31.	A podiatrist within the meaning of the <i>Podiatrists Registration Act 1984</i> .	Podiatrist
32.	A police officer.	Police officer
33.	The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <i>Australian Postal Corporation Act 1989</i> of the Commonwealth.	Post office manager
34.	A registered psychologist within the meaning of the <i>Psychologists Registration Act 1976</i> .	Psychologist
35.	A public notary within the meaning of the <i>Public Notaries Act 1979</i> .	Public notary
36.	An officer of the Commonwealth public service.	Public servant (Commonwealth)
37.	A person who is employed under the <i>Public Sector Management Act 1994</i> Part 3.	Public servant (State)
38.	The holder of a licence under the <i>Real Estate and Business Agents Act 1978</i> .	Real estate agent
39.	The holder of a licence under the <i>Settlement Agents Act 1981</i> .	Settlement agent
40.	The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.	Sheriff or deputy sheriff
41.	A licensed surveyor within the meaning of the <i>Licensed Surveyors Act 1909</i> .	Surveyor
42.	A person employed as a member of the teaching staff within the meaning of the <i>School Education Act 1999</i> or as a teacher of a non-government school within the meaning of that Act.	Teacher
43.	A member, registrar or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.	Tribunal officer
44.	A registered veterinary surgeon within the meaning of the <i>Veterinary Surgeons Act 1960</i> .	Veterinary surgeon

OR: Any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a statutory declaration may be made.

(The Public Trustee, however, prefers that one of the types of witnesses in the list above be used.)

[illegible]

Appendix v: Cashbook Sheets (Expenditure/Payments)

[illegible]

Appendix vi

What should I do with furniture, jewellery and other items?

An administrator may have the responsibility to look after many valuable assets including property, shares and deposits. No less important are the everyday effects of a person including furniture, and jewellery and other personal or household effects. In some cases these items may also have considerable monetary value. In other situations their priceless emotional value to the person with a decision-making disability and/or their family needs to be considered when determining whether to retain, store or dispose of items.

Whilst gifting is clearly not permitted, decisions regarding the retention, storage or disposal of these items requires considerable thought. The following checklist provides a guide for administrators. Keeping written records of your decision-making process provides evidence of your duty of care and consideration of the best interest of the person for whom you are administrator. This may be important should you be required to respond to any challenge to the decisions made by you.

What should I do first?

HAVE I...

- prepared a comprehensive inventory soon after assuming the role of administrator?
- obtained valuations of any 'special items' such as collectables and investment items for example: coin collections, antiques, jewellery?
- ensured that all items are safe and appropriate insurance is in place? Some special items may require specific insurance cover and, if any items remain briefly in a vacant property, you may be required to inform the insurance company in writing.
- consulted the family, taking into consideration their wishes and knowledge of the person's special likes and needs. Asking the family is important, however the ultimate decision rests with the administrator.

Should I keep, store or dispose of items?

HAVE I...

- considered the person's wishes?
 - Establishing this requires sensitivity as wishes may be expressed in a variety of ways.
 - Would having the items with them in a new residence be beneficial to their quality of life or to provide a familiar environment? For example, their television or special chair.
- checked the person's Will for any provisions for special items?
 - A Will may be a useful guide, however alternative decisions may need to be made.
 - Selling items that have been bequeathed to someone else may be contentious.
 - In every decision, the emphasis must be on the person's best interest.
- identified items that should be kept or stored? Considerations should also include:
 - insurance and security;
 - the appreciation of the monetary value of the special items and storage costs over time;
 - items deteriorating over time; and
 - the placement of items in trust with family members.

Making these types of decisions may be very difficult. Using this checklist may assist you to consider all possibilities and, ultimately the needs and best interests of the person you are administrator for.

Appendix vii

Making decisions – selling property

For a variety of reasons, an appointed administrator may need to consider the sale of the represented person's home, for example, to pay ingoing fees or accommodation bonds, required by most care facilities.

Often the home represents the major asset of the represented person's estate and the decision to sell is an important one. The administrator must ensure that the Administration Order authorises him or her to make that decision.

Is there a need to sell the property?

- Is a move to supported accommodation or a care facility necessary?
- Is the sale of the property necessary to fund a move to supported accommodation?
- Is the condition of the home deteriorating?

For example, are there any council work orders?

- What are the likely costs of retaining and maintaining the property?
- Is the property likely to appreciate or depreciate in value?
- Are there options available other than the sale of the property?

Have all interested parties been consulted?

- Is the represented person able to express a meaningful opinion in relation to the prospect of a sale?
- Have you sought the views of the represented person, other family and interested parties (including a guardian if one has been appointed)?

Financial considerations

- What is the current financial position of the represented person?
- Is a mortgage registered against the property?

What is the current loan balance outstanding?

- Are there any encumbrances registered against the title to the property? Current searches of the certificate of title are available from Landgate.
- Are all rates, taxes and insurances paid up to date?

- What effect will the sale have on Centrelink and other Commonwealth benefits?
- Will the sale have any capital gains tax implications?
- How does the investment potential (including both rental income and capital growth) of the property compare to other forms of investments?
- Has the potential of the property been fully considered? For example, the location, future developments/rezoning etc (these are usually listed in a report from a licensed valuer).

Other considerations

- Has the home been specifically bequeathed (or devised) in the represented person's Will, or has the represented person previously made arrangements for the occupation of the property?
- Is a sworn valuation (not an agent's appraisal) required to ascertain market value? A charge would generally be levied for the valuation.
- What are the likely costs involved in selling? Consider the recommendation of the agent or sworn valuer to determine this.
- How should the contents of the home (including furniture, jewellery and other items) be dealt with?
- A sale to a family member or other interested party requires extra care in relation to accountability requirements. A sworn valuation is recommended. Direction from the State Administrative Tribunal may also be necessary in certain circumstances.

Proceeding to sale

Administrators are normally authorised to engage the services of other advisory professionals to support decision-making around the sale of property.

The selected real estate agent should be provided with a copy of the administration order.

Making these types of decisions may be very difficult. Using this checklist may assist you to consider all possibilities and, ultimately the needs and best interests of the person you are administrator for.

Glossary

The *Private Administrator's Guide* might contain some words or phrases that are unfamiliar to you. This glossary has been compiled to explain some of the legal or technical terms used in this Guide.

Abstracts

The financial summaries submitted by the administrator as part of the accounts.

Accounts

A set of financial records, in a prescribed format, detailing the estate's income, expenses, assets and liabilities for a specified accounting period.

Administrator

A person appointed by the State Administrative Tribunal to make financial and property decisions on behalf of a person with an impaired decision-making ability.

Administration order

An Order of the State Administrative Tribunal appointing an Administrator (or Joint Administrators) to make financial and property decisions on behalf of a person with an impaired decision-making ability.

Advance Health Directive (AHD)

A legal document in which an adult sets out their future medical, surgical or dental treatment and other health care. This document then speaks for them if they become unable to make decisions or communicate their wishes.

Best interests

The Administrator is required to act in the represented person's best interest. The term 'best interests' is addressed in section 70 of the *Guardianship and Administration Act 1990*.

Contractual capacity

The ability of a person to validly enter into binding contracts. A represented person is considered to have lost his or her 'contractual capacity'.

Enduring Power of Attorney (EPA)

A legally binding document whereby the Donor (the principal) grants to the Donee (the agent) authority to make certain legal, financial or property decisions. Unlike ordinary Powers of Attorney an EPA survives the Donor's loss of legal capacity.

Enduring Guardian

A person appointed under an Enduring Power of Guardianship to make personal, lifestyle and treatment decisions on behalf of the appointor.

Enduring Power of Guardianship (EPG)

A legal document in which a person nominates someone (an enduring guardian) to make personal, lifestyle and treatment decisions on their behalf in the event that they lose the capacity to do so themselves.

Estate

The represented person's real and personal property.

Examination of accounts

The Public Trustee's annual examination of the financial records submitted by the Administrator.

The Public Trustee may allow the accounts, seek further information, refer the accounts for a more detailed examination or require the Administrator to appear at a hearing to explain certain aspects of the accounts.

Guardian

A person appointed by the State Administrative Tribunal to make certain personal, lifestyle and treatment decisions on behalf of a person with a decision-making disability. (Section 45 of the *Guardianship and Administration Act 1990* lists the functions of a guardian).

Guardianship and Administration Board (the Board)

Please see State Administrative Tribunal.

Glossary

Joint administrators

Two or more Administrators appointed by the Tribunal and required to confer and make decisions jointly.

Legal capacity

In respect to the issue of administration, legal capacity is a person's ability to make reasonable judgements in respect of matters relating to all or any part of his or her estate (see also Testamentary Capacity).

Least restrictive alternatives (LRAs)

The Tribunal may not make an order for a person if the purpose of the order could be achieved by a means less restrictive of the person's freedom of expression or action.

Limited order

An order of the Tribunal that limits the powers of the Administrator and the scope of his or her responsibilities.

Plenary order

An order of the Tribunal that does not limit the powers or responsibilities of the Administrator.

(NB: A plenary order can be made subject to conditions and restrictions. Directions can also be imposed by the Tribunal.)

Public Advocate

The Public Advocate is the independent statutory officer appointed under the *Guardianship and Administration Act 1990* to:

- give information, advice and training about protecting the human rights of adults with decision-making disabilities;
- investigate concerns about the wellbeing of an adult with a decision-making disability and whether an administrator or guardian is required;
- investigate specified applications made to the State Administrative Tribunal;
- provide guardianship services for personal, lifestyle

and treatment-related decisions when the Tribunal determines that there is no one else suitable or willing to act as the person's guardian; and

- is appointed by the Tribunal if no other person is suitable and willing.

Public Trustee

The independent public officer, created by the *Public Trustee Act 1941*, whose Office accepts appointments as Administrator where there is no other person suitable and willing to act.

The Public Trustee examines accounts pursuant to the provisions of Section 80 of the *Guardianship and Administration Act 1990*.

Represented person

A person with an impaired decision-making ability for whom the Tribunal has made an order appointing an Administrator.

State Administrative Tribunal (SAT) (the Tribunal)

The State Administrative Tribunal (SAT) was established in Western Australia in 2005 as an independent body that makes and reviews a range of administrative decisions. Under the *Guardianship and Administration Act 1990* (the Act), the SAT handles all matters that were previously the responsibility of the Guardianship and Administration Board.

Statutory Declaration Verifying Accounts

The Statutory Declaration Verifying Accounts (Form C) affirms that the accounts are a true and correct record of the income, expenditure, assets and liabilities of the estate of the Represented Person covered by the Order of the Tribunal, during the period.

Testamentary capacity

The ability of a person to give valid instructions as to the preparation or amendment of a Will.

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Notes



Public Trustee



Government of **Western Australia**
Department of **Justice**

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