



Guardianship + Trusteeship

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Overview

Incapacity planning is a critical consideration for every Albertan. Despite common understanding, your legal spouse/common law partner or adult children do not have any legal authority to make your healthcare and/or financial decisions on your behalf in the event of your incapacity. Therefore, advance planning is important to avoid added stress and burden to your family during an already difficult time.

For this reason, preparation of a legally-valid Enduring Power of Attorney and Personal Directive is of critical importance in every circumstance. We can assist you in preparing documents that properly reflect your wishes and take into consideration your personal circumstances.

If an Albertan becomes incapable and did not prepare an Enduring Power of Attorney and Personal Directive - or if the Albertan never had capacity to prepare such legal documents - a Guardianship and Trusteeship Order will be required to allow someone to make decisions for the incapable Albertan.

Guardianship and Trusteeship are distinct concepts governed by Alberta's *Adult Guardianship and Trusteeship Act* (the AGTA), and related legislation. While the words Guardianship and Trusteeship have different meanings in specific contexts, under the AGTA:

- Guardianship is the authority for an adult to make personal decisions on behalf of another adult when they are not able to do so by reason of mental incapacity or infirmity
- Trusteeship is the authority for an adult to make financial decisions for another adult when they are not able to do so for the same reasons.

Guardianship and Trusteeship are both forms of substitute decision-making secured by a Court Order and the requirements are different in every Province.

Guardianship and/or Trusteeship is often sought in cases when the incapable adult requires assistance with making decisions regarding their activities of daily living and finances but does not have a Personal Directive or Enduring Power of Attorney. A close relative, such as a child, spouse or sibling, may apply to the Court for Guardianship and/or Trusteeship. In cases where there is no one else available but the adult requires assistance managing their personal matters or finances, the Office of the Public Guardian and Trustee may become involved and, in some cases, take on the role of Guardian and/or Trustee for the adult in question. Professional Corporate Trustees may also be an option.

Even when not contested, Guardianship and Trusteeship applications are lengthy, detailed and require having a plan in place to manage the personal decisions and/or assets of an incapable adult. There are other, less intrusive, legal arrangements which must be

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considered prior to obtaining a Guardianship or Trusteeship Order and the options are numerous. Further, the Guardianship and Trusteeship process takes a significant amount of time and expense to complete. The process places an adult's personal circumstances and assets into a public forum, which allows for intervention by the Court or an interested party, if necessary.

The above reasons, amongst others, illustrate why it is important to think about planning for incapacity while you are still capable of doing so: by putting together an incapacity plan as part of your estate plan. Planning ahead will save time and money and reduce the risk of disputes between family members.

The lawyers in our Wills, Estates + Trusts group can help you put together an incapacity plan as part of your estate planning, including preparing an Enduring Power of Attorney and Personal Directive. Our group of talented lawyers can also assist in navigating the Guardianship and Trusteeship process under the AGTA, including submitting applications to the Office of the Public Guardian and Trustee and arguing contested applications on behalf of interested parties or the Guardian and/or Trustee, if necessary. Our lawyers can also advise Guardians and Trustees on their legal obligations and assist with accounting to interested parties.

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