

Personal and Property Guardianship Self-Help Kit

1. IS THIS KIT FOR ME?

In order to use this kit successfully, you must be comfortable reading, writing, and following instructions. Read the entire kit over first before you begin.

Please see Appendix A on page 10 of this kit for definitions.

The staff of the Court of Queen's Bench cannot complete this kit for you or give you legal advice.

The staff of the Public Guardian and Trustee of Saskatchewan cannot complete this kit for you or give you legal advice.

You cannot rely on this kit to provide you with legal advice. There may be exceptions and qualifications to the information provided. The information has been condensed and simplified. You use this kit entirely at your own risk.

What does it help me do?

This kit is designed to help you obtain the legal authority to make decisions for a Saskatchewan resident, 16 years of age or older, who lacks mental "capacity". A person who lacks capacity cannot:

- understand information relevant to making a decision; nor
- appreciate the reasonably foreseeable consequences of making or not making a decision.

The decisions you would be making for the person lacking capacity would be personal or financial in nature. This kit will help you make a court application to obtain an order appointing you the person's legal decision-maker or "guardian" from the Court of Queen's Bench for Saskatchewan.

In this kit, the person lacking capacity will be referred to as the "dependent adult".

You cannot apply to be a dependent adult's guardian if you are his or her paid personal or health care provider.

What if the dependent adult already has a power of attorney in place?

You can use this kit even if the dependent adult already has a power of attorney in place. A court appointed guardianship effectively cancels a power of attorney.

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Do I need a lawyer?

While it is always advisable to obtain legal advice, you are allowed to complete a court application for guardianship without the help of a lawyer. You have the right to go to court without a lawyer; however, the court will not give you any special treatment because you do not have a lawyer.

If you want to find a lawyer you should search for one on the Law Society of Saskatchewan's website, check the Yellow Pages of the telephone book, research Saskatchewan lawyers on the internet, or ask for recommendations from family or friends. Lawyers usually charge by the hour and each lawyer has a different hourly rate. To learn more about lawyer's legal fees, review the Law Society of Saskatchewan's website <https://www.lawsociety.sk.ca/for-the-public/common-client-concerns/understanding-lawyers-fees/>.

If you are a low-income earner, you could contact Pro Bono Law Saskatchewan to see if you qualify for free assistance.

Pro Bono Law Saskatchewan
1650, 2002 Victoria Avenue
REGINA SK S4P 0R7
Ph: 306-569-3098
Toll free: 1-855-833-7257
info@pblsask.ca

If you decide to represent yourself in court, it is your responsibility to be familiar with the relevant *Court of Queen's Bench Rules of Saskatchewan*, as well as *The Adult Guardianship and Co-Decision-making Act* and *The Adult Guardianship and Co-Decision-making Regulations*. You can find copies of these at your local Law Society Library or on the internet at the Publications Saskatchewan website (<https://publications.saskatchewan.ca/#/home>).

2. WHAT WILL I NEED TO DO?

To make an application to the Court of Queen's Bench for guardianship, you will need to complete the following steps. Each step is detailed later on in this document.

- complete several fill-in-the-blank forms;
- sign the forms in front of a commissioner for oaths;
- ask health care professionals who are familiar with the dependent adult to complete two forms;
- make copies of the forms and provide them to certain individuals, the Public Guardian and Trustee, and the court;
- find out if the Public Guardian and Trustee thinks you need to obtain a commercial bond;

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- obtain a criminal record check;
- pay a filing fee and file your application with the registrar's office at the Court of Queen's Bench nearest the dependent adult;
- wait for the judge to either make a decision or ask you to appear in court for a hearing;
- if the judge makes a decision (a "fiat" or "court order"), pay a filing fee and issue the order at the registrar's office; and
- provide a copy of the court order to the Office of the Public Guardian and Trustee.

Most people who apply to the court for guardianship do not have to appear in court; however, if someone objects to your appointment as guardian and the judge believes he or she needs more information in order to make a good decision, the judge may order that a hearing take place. You will have to testify at the hearing and so will the person who objects to your appointment.

3. COMPLETING THE FORMS

The forms you would need for a typical application are located on the Publications Saskatchewan website at <https://publications.saskatchewan.ca/#/categories/334>. If you do not save the form prior to filling it out, your information may be lost. These online forms allow you to type your information into them. Alternatively, you could print out a blank version of the form and fill it out by hand. If you are having problems with the online fillable forms, neither the staff of the Court of Queen's Bench nor the Office of the Public Guardian and Trustee can correct those problems. You may need to print the blank forms and fill them out by hand.

If you run out of space on a form, you can add additional written or typed pages to the back of the form. More information is generally better than less. The court is relying on you to give it as complete a picture of the dependent adult's situation as possible.

Form A – Application for Appointment of a Decision-maker Other than a Temporary Personal Guardian or Temporary Property Guardian

This form is an outline for the judge, letting him or her know exactly what you are asking for. You do not have to ask to be both personal and property guardian. You can choose one or the other, if that would be more appropriate. Only check the boxes of the powers you wish to have.

If you and another person are applying to be co-guardians or guardian and alternate-guardian, you should amend Form A to make that clear and add both of your names and addresses.

You must strive to help the dependent adult maintain as much independence as possible, and only ask for those powers that are truly necessary.

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Form B – Affidavit in Support of an Application for Appointment of a Decision-maker other than a Temporary Personal Guardian or Temporary Property Guardian

This form is an affidavit and is very important because it is your evidence. Remember to give a complete picture of the situation to the judge. You must attach your criminal record check, completed by your local police service. You must sign this form in front of a commissioner for oaths.

If you and another person are applying to be co-guardians or guardian and alternate-guardian, you must each complete a Form B.

Form J – Affidavit re Assessment of Adult’s Capacity

This form is an affidavit and is very important because it is evidence about the dependent adult’s health. You will need two Form J’s, each filled out by a different professional. Each Form J has to be filled out by one of the following professionals:

- duly qualified medical practitioner (doctor);
- registered psychologist;
- registered psychiatric nurse;
- registered nurse;
- practicing occupational therapist;
- practicing social worker; or
- practicing speech-language pathologist.

You will have to find and ask two of these professionals to each fill out a Form J for you. They are not required to assist you, so you should keep that fact in mind when asking.

If you cannot obtain two Form J’s, you may have to make a different kind of court application. You will need to consult with a lawyer. If the situation is an emergency, you could apply for temporary guardianship, which does not require the submission of Form J’s. Temporary guardianship is not covered in this kit.

Form K – Statement of Inventory re Application for Appointment of a Property Co-decision-maker or Property Guardian or for Resealing a Foreign Order

This form is only required if you wish to become the dependent adult’s property guardian. This form lets the judge know what the dependent adult has for income, assets, and debts. You must sign this form in front of a commissioner for oaths.

Note: When it receives a copy of your completed application, the Office of the Public Guardian and Trustee may ask you to fill out a Form K listing your income, assets, and debts. The Office of the Public Guardian and Trustee wants to be assured that you have the means to compensate the dependent adult should you act inappropriately.

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Form M – Bond

This form is only required if you wish to become the dependent adult's property guardian. This form is a promise you are making to the court that you will fulfill your legal duties as property guardian. The dollar figure should reflect the value of the dependent adult's assets. A "surety" is a person who makes himself or herself responsible for another person's obligations. In this case, "another person" would be you, the applicant.

Note: When it receives a copy of your completed application, the Office of the Public Guardian and Trustee may ask you to provide a commercial bond as well. The amount of the commercial bond requested will vary depending on the value of the dependent adult's assets, your relationship to the applicant, whether or not you live in Saskatchewan, etc. A commercial bond provides protection to the dependent adult in the event you misuse or mismanage the dependent adult's income or assets. You can obtain a commercial bond from an insurance company or a bonding company.

Form N – Order Appointing a Decision-maker

You should have a clear idea of what powers you want the judge to give you. To make things easier for the judge, you can prepare a "ready to go" order for the judge to look at as part of your application. This document is called a draft order or Form N. The contents of Form N should be consistent with what you are asking for in your Form A.

The judge does not have to make an order that matches what you are asking for in the Form N, but he or she can, and often will, if what you are asking for is reasonable and is supported by the information in the other forms you have provided.

Do I have to sign the forms in front of a witness?

Yes. As indicated above, some forms must be signed in front of a commissioner for oaths. Before you sign a form in front of a commissioner for oaths, the commissioner for oaths will ask you whether or not you swear or affirm the contents of your affidavit to be true. The court staff are commissioners for oaths and you may swear your forms in front of them without being charged a fee. Members of the Legislative Assembly, police officers, and RCMP officers are also commissioners for oaths. You can also find commissioners for oaths in the Yellow Pages of the telephone book, on the internet, and in some businesses like banks, insurance agencies, and law offices. You will likely have to pay for their services.

I have completed all of the forms. Now what do I do?

Once you have completed the following forms, you will need to “serve” them. This means that you have to give copies of all of the forms to certain people or entities. The people or entities you will need to serve forms to are listed in the “service” section of Form A. One of the entities you must serve is the Public Guardian and Trustee of Saskatchewan. Its address is:

Public Guardian and Trustee of Saskatchewan
100-1871 Smith Street
REGINA SK S4P 4W4
Fax: 306-787-5065
Email: public.trustee@gov.sk.ca

You must prove to the court that you have served everyone. As such, you will have to enclose an Acknowledgment of Service form with each set of forms that you serve, except the one going to the court. The Acknowledgement of Service form can be found on the Law Society website under Part 12 of the following website <https://www.lawsociety.sk.ca/for-lawyers-and-students/practice-resources/resources-from-the-courts/queens-bench-forms/>. The person or entity receiving the Acknowledgement of Service form must sign it and return it to you.

Once you have served everyone, you can file your application (including the signed Acknowledgments of Service) with the Court of Queen’s Bench at the registrar’s office in the court house. You will be charged a filing fee for this service. A list of the Courts of Queen’s Bench is located on the Saskatchewan Courts website at <https://sasklawcourts.ca/index.php/home/court-of-queen-s-bench/court-locations-and-sitting-times>.

Do I have to prove to the court that the forms were served?

Yes. The judge will need to know that everyone has received a copy of all of your forms before he or she will look at your application. You can prove to the court that you have served everyone by giving the court all of the signed Acknowledgements of Service. You will file them at the Court of Queen’s Bench registrar’s office along with your application.

4. WHAT CAN I EXPECT AFTER THE FORMS ARE SERVED?

Once the person you have served reads the forms, he or she may want to respond to them. He or she may want to provide information about you or the dependent adult to the judge. If the person is not in support of the application, he or she may file a Notice of Objection with the court. You will know about this because he or she has to provide a copy of the Notice of Objection to you first.

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Once the Office of the Public Guardian and Trustee receives a copy of your application, the office will review the application for completeness. If the office sees that something obvious is missing, it will contact you. The office will also check to see whether or not you are providing a Form M (Bond) to the court. Depending on your relationship to the dependent adult, your place of residence, and the assets and income of the dependent adult, the Office of the Public Guardian and Trustee may ask that you also obtain a commercial bond and provide proof of this to it and the court. A commercial bond provides protection to the dependent adult in the event that you misuse or mismanage the dependent adult's income or assets.

The Office of the Public Guardian and Trustee will tell the court whether or not you have complied with its request for a bond.

5. WHEN DOES THE JUDGE MAKE A DECISION?

Once your application (i.e. all of the forms) and all of the Acknowledgments of Service are filed with the Court of Queen's Bench, the application should sit in the registrar's office at the Court of Queen's Bench for 10 days. This 10 day period allows time for any Notices of Objection to be filed. After the 10 day waiting period, the application is given to a judge to review. The judge can take as long as he or she wants to make a decision. Generally, the judge will review the application within a week or two.

The registrar's office will notify you when the judge has made a decision. Your contact information should be included in the forms. You can also phone and ask the registrar's office if a decision has been made.

6. WHAT HAPPENS AFTER THE JUDGE MAKES A DECISION?

The judge's decision will be in writing. Once you have received the judge's decision, it is your job to type it up in the Form N format. Once you have typed it up, you will need to make at least four copies: one for yourself; one for the dependent adult; one for the court; and one for the Public Guardian and Trustee. You must take them to the registrar's office to be "issued". There will be a small fee involved.

You must provide an issued copy of the order to the Office of the Public Guardian and Trustee:

Public Guardian and Trustee of Saskatchewan
100 – 1871 Smith Street
REGINA SK S4P 4W4
Fax: 306- 787-5065
Email: public.trustee@gov.sk.ca

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The law requires you to “account” to the Office of the Public Guardian and Trustee on an annual basis. Around the anniversary date of your appointment as guardian, you must tell the Office of the Public Guardian and Trustee, in writing, what you have done with the dependent adult’s assets, income, and debts. You must fill out a specific form known as a Form L – Annual Accounting by Property Co-decision-maker or Property Guardian. You will also have to fill out another Form K – Statement of Inventory re Application for Appointment of a Property Co-decision-maker or Property Guardian or for Resealing a Foreign Order. These forms are located on the Publications Saskatchewan website at <https://publications.saskatchewan.ca/#/categories/334>. You must also provide your annual accountings to the Court of Queen’s Bench.

7. WHAT ARE MY DUTIES AS GUARDIAN?

As a guardian you must act:

- diligently;
- in good faith;
- in the best interests of the dependent adult;
- in the best interests of the dependent adult’s “estate” (i.e. everything they currently own such as their house, land, bank accounts, investments, vehicles, etc.);
- in a way that protects the dependent adult’s civil and human rights;
- in a way that encourages the dependent adult to:
 - participate in financial decision-making; and
 - act independently, to the greatest extent possible; and
- in a way that limits your interference in the dependent adult’s life as much as possible.

You cannot make or change a will for the dependent adult.

You cannot give away the dependent adult’s income or assets. You can only make gifts to others if:

- a) the dependent adult or their dependent does not need what you are gifting;
- b) it is a gift the dependent adult would have made if they were competent; and
- c) the value of the gift is not greater than \$1,000.

The total value of all gifts made in a year cannot exceed \$1,000. If you want to make a larger gift, you have to get the court’s permission in advance. That is, you will require a court order.

You cannot decide that the dependent adult no longer needs his or her assets (i.e. house, farm land, investments, etc.) and give them away to the beneficiaries listed in the dependent adult’s will.

You are not permitted to benefit financially from your role as guardian.

Unless the court order appointing you specifically says so, you cannot start divorce proceedings for the dependent adult or give up his or her parental rights. However, you can deal with the financial aspects of a spousal relationship breakdown (i.e. division of family property, spousal support, etc.) if you are property guardian.

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Unless the court order appointing you specifically says so, you cannot agree to the following health care decisions for the dependent adult if you are the dependent adult's personal guardian:

- the withdrawal of life support;
- sterilization;
- live organ or tissue donation; nor
- an abortion if the dependent adult's life or health is not in danger.

You can use the dependent adult's funds to support the dependent adult's spouse (even if that spouse is you) and dependent children.

You must provide an annual report or "accounting" to the Office of the Public Guardian and Trustee and to the Court of Queen's Bench.

8. IF I BECOME GUARDIAN, CAN I BE PAID?

If you want to be paid by the dependent adult for acting as his or her guardian, you should ask for payment in your Form A and Form N. If you don't or the court order made by the judge is silent about payment, you can pay yourself according to the formulas set out in *The Adult Guardianship and Co-Decision-making Regulations* found on the Publications Saskatchewan website located at <http://publications.saskatchewan.ca/#/freelaw/acts>. Personal guardians can charge \$15 per hour. What property guardians can charge depends on the dependent adult's income and expenses.

9. HOW LONG DO I HAVE TO BE GUARDIAN?

Generally, you remain the dependent adult's guardian for as long as the dependent adult lives. When the dependent adult dies, your authority ends. If, at some point, you no longer want to act as guardian, you will have to apply to the Court of Queen's Bench to be released from that role. If the dependent adult regains capacity and wants to make his or her own decisions, the dependent adult can apply to the Court of Queen's Bench to terminate your guardianship. Similarly, anyone who thinks you are doing a poor job as guardian or are no longer a suitable guardian, including the Office of the Public Guardian and Trustee, can apply to the Court of Queen's Bench to have you removed from your role as guardian.

APPENDIX A – DEFINITIONS

Affidavit	A written statement of fact confirmed by oath or affirmation, for use as evidence in court.
Alternate Guardian	Someone who is appointed in case the first appointed guardian is unable to serve as guardian.
Co-decision-maker	Someone who has the authority to assist a dependent adult in making decisions and to make joint decisions with the dependent adult.
Commercial Bond	An agreement under which a company agrees to act as a surety for a fee.
Commissioner for Oaths	An individual with a formal appointment that allows them to certify the oath of another person upon documents.
Court Order	The more formal, written version of the judge’s fiat.
Fiat	The judge’s decision.
Personal Guardian	Someone who has the authority to make decisions about a dependent adult’s personal welfare.
Property Guardian	Someone who has the authority to make decisions about a dependent adult’s finances and property.
Serve	Officially providing someone with legal documents.
Surety	A person or company willing to back the applicant up financially.