

## **BACKGROUND**

The Adult Guardianship and Trusteeship Act (the Act) provides for the Court of King’s Bench of Alberta (the Court) to grant a Trusteeship Order with respect to an adult (Represented Adult) who is unable to make reasonable judgments regarding their estate. Once a trustee is appointed, they have the authority to sign and do all things necessary to give effect to any power of authority vested in them. (1) The provisions of the former Dependent Adults Act (the former Act) or the Public Trustee Act with respect to a Represented Adult are now provided for in the Adult Guardianship and Trusteeship Act.

The former Act was repealed on October 30, 2009. Orders pursuant to this Act before it was repealed are still in effect. The Public Trustee Act is now only applicable if the Certificate of Incapacity was issued prior to the former Act being repealed. Also, a Certificate of Incapacity can be continued if it was issued prior to the repeal. For clarity and further information please see Alberta Regulation 218/2009.

When one joint tenant is also the Trustee of the second joint tenant, the appointment as Trustee and their status as a person under law are separate and distinct and personal rights are not to be infringed upon simply because one was also appointed as Trustee. The legal obligation as Trustee to operate within the powers granted by the order are not to prejudice personal rights.

## **REGISTRATION PROCEDURE**

### **A. Orders under the Adult Guardianship and Trusteeship Act**

A certified copy of the Court Order appointing the Trustee may be submitted for registration. (2) The order will appoint an adult individual, a trust corporation or the Public Trustee to act as trustee on behalf of a Represented Adult. (3) An address for the Trustee is required and is to be included as part of the particulars endorsed on the certificate of title. Once the Order is registered, no further documents executed by the Represented Adult or pursuant to a power of attorney granted by the Represented Adult may be registered.

If the terms of the Order specifically authorize the Trustee to sell or dispose of an interest in the property, appropriate compliance with section 191 of the Land Titles Act is required. If the Public Trustee has been appointed as Trustee, an undertaking by the Public Trustee will be accepted as substantial compliance with section 191. The undertaking must state that the Trustee will not dispose of any real property interest unless the appeal period has expired and the Public Trustee is unaware of any notice of

appeal having been filed.

If a legal description is not provided in the Court Order, it may be provided on the Electronic Document Registration Form (E-D.R.R) or in a separate letter, and the name of the Represented Adult in the Order is consistent with the name of the registered owner or the owner of an interest in land, the Order is registered on the certificate(s) of title. An example of the particulars shown on title is:

“Adult Guardianship and Trusteeship Order  
Re Joan Smith appointing John Brown, Trustee  
Re mortgage 832123456 (if applicable)”

Dower compliance in respect of a Represented Adult requires a court order dispensing with consent (4) unless the Adult Guardianship and Trusteeship Act order specifically authorizes the Trustee to complete a dower consent and acknowledgement or a release of dower rights. (5)

Tariff item 11(6) is charged for the registration on the first title and Tariff item 13 is charged for registration on each additional title.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: ORDE

## **B. Order in Urgent Cases**

The Act makes provision for the Court to issue an order in urgent cases. This order only applies to property specified in the order (6) and does not authorize the trustee to sell, dispose of or encumber the property. (7) The order must specify a date for review and possible extension. Therefore, an order that provides for extension must be registered prior to expiry. (8)

Tariff items as specified in the section A above are applicable.

## **C. Alternate Trustee**

When making or reviewing the Trusteeship Order, the Court may appoint an alternate trustee who is to assume the office of the trustee on the death of the original trustee without further proceedings, or if authorized in writing by the trustee during the temporary absence of the trustee. (9) Once effective, the alternate trustee’s authority is the same as that of the original trustee. Before documents executed by an alternate trustee may be accepted, one of the following must be registered:

- a) a certified copy of a Court Order appointing the alternate trustee with the request on the E.D.R.R. or in a separate letter that the substitution be affected on the certificate(s) of title.

- b) if the alternate trustee was appointed in the original Order, a death certificate of the original trustee issued by the Vital Statistics Registry, Medical Examiner's Certificate, Cremation Certificate, or a Funeral Director's Certificate together with the request as indicated in item a) above. If the birth or marriage was registered in Alberta you may provide a photocopy in lieu of an original or notarized copy, or
- c) if the alternate trustee was appointed in the original Order, a notice or letter of authorization signed by the trustee which indicates the period during which the alternate trustee may act as a trustee. Attestation requirements must be complied with.

In respect of items a) and b) above, the original trustee's name is substituted under authority of the registration number of the further order or death certificate. In the case of the temporary appointment of the alternate trustee, an endorsement with the following particulars is entered on the title(s) in question:

"Notice of Temporary Appointment of John Smith  
As Trustee Re 387145678"

The endorsement may be discharged by the registration of a revocation executed by the original trustee, which complies with execution requirements. If the period of appointment indicated in the authorization has expired, the original trustee may apply by written request in a letter or on the E-D.R.R. to have the endorsement of temporary appointment expired. The letter or copy of the E-D.R.R. is given a registration number and registered as a discharge.

[Tariff item 11\(6\)](#) is charged for the registration of the order, notice or letter of authorization. [Tariff item 11\(5\)](#) is charged for the registration of the revocation or request to expire the notice.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: ORDE

#### **D. Death of Trustee**

On the death of a trustee and in the absence of an alternate trustee, the Public Trustee, on receiving notice of the death of the trustee, becomes the trustee of the estate of the incapacitated person with the same authority as the former trustee. A letter from the Public Trustee advising of these circumstances with proof of death of the former trustee attached can be registered. The former trustee's name is substituted in the manner outlined above under Alternate Trustee. The Public Trustee continues to be the trustee of the estate until either a new trustee is appointed by the Court or the Court orders the discharge of the Public Trustee. [\(10\)](#)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

#### **E. Death of a Represented Adult**

On the death of a Represented Adult, the trustee's authority continues to preserve and protect the property until the Represented Adult's personal representative exercises authority over the property. (11)

#### **F. Resealing of Foreign Orders**

Orders issued outside of Alberta (foreign orders) may be resealed on an order of the Court and is of the same force and effect as if it were issued by the Court. The Order must be reviewed to ascertain what powers the trustee has been granted and to ensure general registration requirements are met, including compliance with section 191 of the Land Titles Act.

Tariff items specified in section A are applicable.

#### **G. Discharge**

An Order may be discharged upon the registration of:

- a) a certified copy of a Court Order discharging the trustee (12)
- b) a transmission application by the personal representative of a deceased Represented Adult, or
- c) other evidence of the death of the Represented Adult, such as a statutory declaration accompanied by a Death Certificate, Funeral Director's Certificate or a letter from the Public Trustee advising of the death of a Represented Adult for whom the Public Trustee acted.

[Tariff item 11\(5\)](#) is charged for the first registration and [Tariff item 13](#) is charged for registration on each additional title.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

## **STATUTE AND CASE REFERENCES**

Statute references are to the Adult Guardianship and Trusteeship Act, R.S.A. 2008, c. A-4.2

1. s. 55(1)(b)(iii)
2. s. 55(3)
3. s. 49(1)
4. s. 10(1)(f) Dower Act, R.S.A. 2000, c. D-15
5. s. 55(2)
6. s. 48(5)(a)
7. s. 48(5)(c)
8. s. 48(6)
9. s. 53
10. s. 64
11. s. 65
12. s. 70(5)