Understanding Guardianship in Alberta
Introduction

This brochure outlines the role of a legal guardian for a dependent adult. The *Dependent Adults Act* was created to provide a legal guardian for people who cannot make their own decisions or who need assistance in making decisions in their best interest. This booklet is designed for individuals and families who are considering guardianship of an adult. It provides general information and raises issues which will need to be discussed and considered before making a decision to proceed with an application for guardianship.

Who is a Dependent Adult?

Dependent adults are people 18 years of age or older who are repeatedly or continuously unable to care for themselves and unable to make personal decisions that may have resulted from a mental disability (for example, a developmental disability, chronic mental illness, acquired brain injury, or diseases associated with aging). The dependent adult must be over the age of 18 years of age and reside in Alberta.

The Dependent Adults Act

The *Dependent Adults Act* sets out the necessary legal process for granting powers of surrogate decision making to a guardian. Any Albertan over the age of 18 who meets the criteria can have a legal surrogate decision maker appointed by the Court. The appointment must be in the best interest of the dependent adult and result in a substantial benefit to him or her. The guardian is accountable to the Court for decisions made on behalf of the dependent adult. There is no residency requirement for a guardian.

What is Guardianship?

Guardianship is a legal process which gives an individual, a guardian, the legal authority and responsibility to make or assist in making decisions about non-financial personal matters on behalf of a dependent adult. The decision to apply for guardianship of a dependent adult is not an easy choice and must be made carefully and compassionately.
What is Guardianship?

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A proposed legal guardian would need to make an application to the courts to be appointed someone's legal guardian. Once the application is made to the courts it will go to a Judge, who will consider all the information presented to him/her and make a decision as to whether a guardianship order will be granted.

The Judge will decide who would be considered to be an appropriate person to be appointed as legal guardian. This may be family or friends of the dependent adult who are familiar with the dependent adult's values, preferences, opinions, religious and cultural heritage as well as having a personal concern for the individual's well being. Guardians must also consent to their appointment.

You need to know whether the proposed dependent adult has a personal directive and what it says before you apply for guardianship, because a guardian and an agent should not have responsibilities for making decisions in the same areas.

Role of the Public Guardian

Guardianship matters are handled by the Office of the Public Guardian, which is part of Alberta Seniors and Community Supports. The Office of the Public Guardian assists Albertans in applying for guardianship when needed by providing funding to 12 community agencies who can assist private citizens through the process. These agencies are called Community Involvement Programs and a list of their telephone numbers is on the back of this pamphlet.

The Office of the Public Guardian has eight offices throughout the province which can also provide assistance. The Office of the Public Guardian is served with every private guardianship application and reviews each application for a number of factors prior to proceeding to court.
Factors when considering Guardianship

Is a Guardian necessary and will it result in a substantial benefit to the dependent adult?

The decision to apply for guardianship is usually a difficult choice for a family. It may be helpful for you and your family to consider the following points when you discuss a family member’s need for a Guardian.

- Is the proposed dependent adult 18 years of age or older?
- Has the person already prepared a personal directive which appoints an agent and gives instructions about personal decisions to be made for him or her in the future?
- Has the person demonstrated that he or she has continuously had difficulty understanding the consequences of decisions he or she has made?
- Can he or she make responsible decisions?
- Is the person able to care for himself or herself?
- If there was not a guardian appointed, is the person at risk of being taken advantage of?
- Can the person look after his or her day-to-day needs such as dress, diet, personal care, etc.?
- Is guardianship the most effective way of meeting the person's needs?
- Has the person demonstrated an inability to manage his or her personal affairs without a substitute decision maker?
- Is the person knowledgeable about his/her legal rights?
- Is there a decision that requires legal authority such as health care consent, housing, or other legal matters?
- Are there alternate ways to formal guardianship that would meet the adults needs?
- Would the person receive substantial benefit to having a guardian appointed?

The key question is: “Will a legal Guardian be able to achieve something that someone without this legal authority cannot?”
What role would the Guardian play?

A guardian is usually a person who is a relative or close friend of a dependent adult. You do not have to be a lawyer or someone who has expertise in business or health matters to be a guardian. As a guardian you will be legally authorized to assist in making or to make decisions for the person, monitor the services received, advocate for services needed and ensure that the person’s rights are protected.

Who can apply to be a Guardian?

The Court may appoint you as an individual’s guardian if you:
- are 18 years of age or over
- consent to act as a guardian
- will act in the person’s best interest
- will encourage the person to be independent or to act as independently as possible
- will not allow your interests to conflict with the person’s; and
- are suitable and able to act as a Guardian.

There is no requirement under the *Dependent Adults Act* for the guardian to live in Alberta.

Choosing to be a Guardian

Choosing to become a guardian for a dependent adult may seem at first to be a great responsibility. Dependent adults can be vulnerable as a result of their difficulty caring for themselves or making reasonable decisions on a continuous basis. You or your family may be concerned that you are in some way taking away the rights of the dependent adult.

Guardianship ensures that the dependent adult's rights are exercised by an accountable person (the guardian) who can support the person while at the same time protecting their rights to participate in the decision making.
Choosing to be a Guardian
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You and your family may wish to consider the following when you are trying to decide who will be the most appropriate person to apply for guardianship:

- Who is able and willing to maintain regular contact with the person?
- Who lives closest to the person?
- Whom does the person trust?
- Who has a close relationship with the person?
- Who is able to make informed decisions based on the dependent adult’s values, beliefs and best interests?

What a Guardian is responsible for

Deciding Appropriate Areas of Guardianship

A Guardianship Order is made after a careful assessment of the needs and capabilities of the dependent adult. The Court must have as much information as possible in order to determine if guardianship is in a person’s best interest and will result in substantial benefit to him or her.

A detailed and fully completed physician’s or psychologist’s report is vital to assist you in determining if a person requires a substitute decision maker for personal decision making. Specific information is needed about the person’s repeated or continuous inability to (i) care for himself or herself and (ii) make sound personal decisions. This medical assessment would be included in the guardianship application and is often referred to as FORM 1. A functional assessment would also need to be completed by a family member other than applicant or a service provider who works closely with the adult. This assessment focuses on how the person handles their day to day living situation.
This assessment helps to identify what areas of authority are necessary to ask for in the guardianship application. Only the areas where there is a clearly demonstrated need should be applied for in the application. For example, it is unlikely that an adult in their eighties will need the areas of employment or education and training.

The *Dependent Adults Act* allows for guardianship in the following areas:
- where the dependent adult will live
- personal contacts
- social activities
- employment
- education and training
- licences and permits
- legal matters excluding finances
- health care
- daily living routines.

A guardian’s responsibilities are based on the needs of the dependent adult. As each person’s needs and capabilities differ, so do the responsibilities of each guardian.

**Making decisions in those areas**

A guardian is expected to exercise his or her power and authority in a manner which recognizes and respects the person’s dignity and best interests, promotes the development of the person’s ability to act independently and utilizes the least restrictive alternative when a choice must be made.

**Appointing the Alternate Guardian**

The *Dependent Adults Act* also provides for the appointment of an alternate guardian to be a surrogate decision maker in your absence (for example, temporarily when you are on vacation, or permanently...
What a Guardian is responsible for
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in the event of your death). The alternate should be chosen carefully, since both the guardian and the alternate should be familiar with the dependent adult’s needs and circumstances. Both people need to be in a good position to make effective decisions. If an alternate is not appointed, the Public Guardian becomes the guardian in the event of your death.

How to apply for a Guardianship Order

If you have decided to apply for guardianship, there are two ways to proceed.

You can prepare the application yourself by using a free Self-Help Kit produced by the Office of the Public Guardian. These kits are designed for use by people who wish to make an application for guardianship without hiring a lawyer. They include copies of an application form and the necessary related documents as well as step-by-step instructions for their completion. Kits are available from the Office of the Public Guardian and from local Community Involvement Programs. A contact list is at the end of this booklet or on the Seniors and Community Supports website.

The alternative is to hire a lawyer to prepare the application on your behalf. If you do not have a lawyer and would like to contact one, the Lawyer Referral Service operated by the Law Society of Alberta can provide you with the names of several lawyers in your community who are interested in this area of practice. You can contact the Lawyer Referral Service at no charge by calling 1-800-661-1095.

In very special circumstances, an emergency Guardianship Order can be obtained. A lawyer can also assist you with this process.
**Community Involvement Programs**

The Office of the Public Guardian funds Community Involvement Programs in several Alberta communities to provide information and assistance about guardianship. The programs can be sources of valuable advice and support for families seeking guardianship or carrying out their guardianship responsibilities.

**Costs**

The cost of obtaining a guardianship order varies depending on the option you choose.

If you prepare the application forms yourself using the Self-Help Kit, you may incur direct costs for such items as obtaining medical reports, photocopying and filing documents with the Court.

If you choose to retain a lawyer to prepare the application, your costs will increase accordingly. It is important that you discuss costs with your lawyer before you proceed.

The costs associated with guardianship can sometimes pose a hardship for individuals and families. Should this be the case, there are provisions for the Court to assign some of the costs to the Government of Alberta.

**Guardianship Review**

A legal guardian is accountable to the court for decisions made on behalf of the dependent adult. Accountability would be exercised by reviewing the guardianship order every six years or as stated in the guardianship orders. Anyone including the dependent adult, may ask the court to review guardianship at any time.
A review application of the guardianship order is prepared and provided to the court. The Court assesses the dependent adult’s progress and needs as well as the decisions the guardian has made. All of these decisions should be based on a serious consideration of the situation and various alternatives available. Decisions should encourage the dependent adult’s growth and development wherever possible.

By reviewing decisions of the guardian as well as the dependent adult’s progress, the court can monitor, assess and support the individual’s best interest. The court will determine if it is necessary to extend, modify or discharge a guardianship order.

If you prepare the review forms using a Self Help Kit, you may incur direct costs for such items as obtaining medical reports, photocopying, postage or service of documents.

If the services of a lawyer are used, the costs will increase accordingly. It is important to discuss costs with a lawyer before proceeding. If the costs associated with a guardianship review pose a hardship for you and for the estate of the dependent adult, there are provisions for the court to assign some of the costs to the Government of Alberta. Contact the Office of the Public Guardian at the regional office in your area for details.

The Office of the Public Guardian has developed other written information to assist guardians in their roles. They are available online at www.seniors.gov.ab.ca. The Office of the Public Guardian also provides ongoing support to guardians to assist them in their role.
You may obtain more information from a Community Involvement Program, Office of the Public Guardian, or a lawyer in your area.

1501, Provincial Bldg.  
10320 - 99 Street  
**Grande Prairie**, AB  
T8V 6J4  
Tel. (780) 833-4319

First Floor  
Provincial Building  
5025 - 49 Avenue  
**St. Paul**, AB  
T0A 3A4  
Tel. (780) 645-6278

4th Floor  
108th Street Building  
9942 - 108 Street  
**Edmonton**, AB  
T5K 2J5  
Tel. (780) 427-0017

Provincial Building  
203, 4920 - 51 Street  
**Red Deer**, AB  
T4N 6K8  
Tel. (403) 340-5165

To be connected toll-free to any Office of the Public Guardian, call 310-0000.

**Century Park Place**  
855 - 8 Avenue SW  
**Calgary**, AB  
T2P 3P1  
Tel. (403) 297-3364

3rd Floor  
Provincial Building  
#306, 346 - 3 Street SE  
**Medicine Hat**, AB  
T1A 0G7  
Tel. (403) 528-5245

**Community Involvement Programs**

- **Alzheimer Society for Lethbridge and Area**  
  Tel. (403) 329-3766
- **Seniors Association of Greater Edmonton (SAGE)**  
  Tel. (780) 423-5510
- **Calgary Volunteer Centre**  
  Tel. (403) 265-5633
- **Canadian Mental Health Association (Red Deer)**  
  Tel. (403) 342-2266
- **Citizen's Advocacy Society of Camrose**  
  Tel. (780) 672-4677
- **Grande Prairie & District Golden Age Centre**  
  Tel. (780) 532-5818
- **Lacombe & District FCSS**  
  Tel. (403) 782-6637
- **Medicine Hat & District Citizen Advocacy Society**  
  Tel. (403) 527-9767
- **Olds Neighborhood Place**  
  Tel. (403) 556-7161
- **St. Paul Abilities Network**  
  Tel. (780) 645-3441
- **Stettler Community Services**  
  Tel. (403) 742-2337
- **West Country Family Services (Rocky Mountain House)**  
  Tel. (403) 845-2033