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Guide to Guardianship

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Why is a Guardianship Order necessary?

If the party lacks the mental capacity to understand and sign a Power of Attorney, then a Guardianship Order from the court may be required.

What is the best way to proceed?

The guiding principles are as follows:-

1. Intervention in the affairs of a party should only be undertaken where that intervention will be of benefit to the party and cannot be achieved without such intervention.
2. The level of intervention involved must be the least intrusive with regard to the freedom of the party.
3. In deciding how to proceed, if possible account should be taken of the present and past wishes of the party concerned if these are capable of being ascertained.

Having considered these principles, what steps can be taken?

1. Authority to intromit with funds. This procedure allows the court to grant specific authority for a party to deal with a specific bank account.
2. Intervention Order. A court can grant an Intervention Order authorising a party to take a specific action on behalf of the adult and to take such action or decisions regarding the property and financial affairs or personal welfare of the adult as the court orders.
3. Guardianship Order.

Who may apply?

Any person claiming an interest in property, financial affairs or personal welfare of the adult may apply. Normally the courts will favour a close family member but the court must also be satisfied that the party applying to be Guardian is sufficiently able and interested in the adult's affairs to deal with matters properly.

What is the procedure for Appointment of a Guardian?

Financial Guardianship - An application requires to be lodged with the Sheriff Court for the appointment of the Guardian. The Guardian requires to be named in the application and details as to suitability provided.

Full details of the assets over which the Guardian has to have control have to be provided and the application requires to be supported by two medical reports.

A Welfare Guardianship follows the same procedure and can be linked in the same application as the Financial Guardianship. The Welfare Guardianship requires a report by a Mental Health Officer appointed by the local authority.

What Powers should be granted?

There must be a specific crave in the application for a particular power before the Guardian can act.

With regard to Financial Guardianship, an example of the sort of powers sought would be to operate and close bank accounts; to deal in any shares or investments held by the adult and to deal with any house owned or occupied by the adult.

With regard to Welfare Guardianship, an example of the powers sought would be to decide where the adult should live; to consent to medical or dental treatment.

What happens after the Guardianship Order is granted?

The Guardian will be subject to supervision by the Office of the Public Guardian. The Guardian requires to prepare a management plan for submission and approval by the Office of the Public Guardian and must also submit annual accounts to the Office of the Public Guardian for examination.

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