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285

File Number

10249

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Title: Public Trustee and the management of funds

Original source: THINK March/April

Resource type: Written

Publication Date: 01/03/92

Publisher info: -

Abstract

In South Australia, a Public Trustee may be appointed administrator or manager of the financial affairs of a person found incapable of managing their own affairs. Other States and Territories have a similar arrangement in place. This paper describes the Public Trustee Office of South Australia and how it works. **Keyword: Legal**

Public Trustee and the Management of Funds

In South Australia, Public Trustee may be appointed administrator or manager of the financial affairs of a person found incapable of managing their own affairs. Other States and Territories have a similar arrangement in place.

THE SOUTH AUSTRALIAN Public Trustee Office has long had a significant, though perhaps not well known role in the management of the financial affairs of persons found either by the Guardianship Board of South Australia or the South Australian Supreme Court to be incapable of managing their own affairs. The Public Trustee or State Trustee Offices in most other States and Territories have a similar role. In New South Wales the role is undertaken by the Office of the Protective Commissioner or by the Public Trustee (where infants are involved). The legislation referred to in this article is only applicable in South Australia; for details of what applies in other States please contact organisations listed overleaf.

The Public Trustee Office of South Australia was established in 1881. There are several pieces of State legislation which define and control its functions.

The management of funds is of particular importance to brain-injured persons who are awarded damages through the courts for injuries which they have suffered. These awards will often be the only financial security these persons will have and they need to be carefully managed to ensure a reasonable quality of life throughout their lives.

HOW PUBLIC TRUSTEE BECOMES INVOLVED

In South Australia there are two mechanisms by which the Public Trustee can be appointed to manage the funds of adults incapable of managing their own affairs. In addition, Public Trustee can also be appointed to manage the funds of minors until they attain majority (or in some instances until further order of the Court). I have confined myself here to consideration of the position of adults.

Public Trustee can be appointed administrator of a person's legal and

financial affairs by Order of the Guardianship Board (called an administration order) or alternatively can be appointed manager by Order of the Supreme Court (called a protection order).

Such orders can be made at any time. The Guardianship Board can only make an order upon application by certain prescribed persons. The court can make an order either upon the application of a prescribed person or in a personal injury claim where the court thinks it appropriate.

Both administration and protection orders can be limited to a particular aspect of the person's affairs, such as the management of an award of damages made by a court in a personal injury claim. On the other hand, they may require the management of the person's entire estate.

THE ROLE OF PUBLIC TRUSTEE

This will depend initially on the terms of the order. There may be specific directions as to how the money can be used (such as the payment of outstanding accounts or the purchase of a house property). As well as compliance with the terms of the order, there are legislative provisions setting out the powers and duties of administrators and managers. (The powers and duties of administrators and managers are not identical as they are conferred by different legislation. Their roles are, however, similar. Their fundamental duty is to at all times act in the best interests of the protected estate. They must also comply with the terms of the order by which they are appointed and the relevant legislation).

Public Trustee may then collect and account for the client's income, including dividends from shares, rents, pension entitlements or interest. Public Trustee also pays the client's bills, including accommodation, personal

expenses, rates, rents, repairs to property, gas, electricity, and medical, hospital and nursing homes charges. Where appropriate Public Trustee will prepare and lodge tax returns on behalf of the client and manage the client's property. Where legal representation is required, Public Trustee will arrange this and, where necessary, seek legal aid.

Approval must be sought from the Board or the Court where authority to undertake a particular action is not conferred either by the order or the relevant legislation. A common example is where the administrator or manager wishes to purchase or sell a property.

In some instances the Board does not have the jurisdiction to grant the authority and the matter must be referred to the Supreme Court.

WHAT HAPPENS WHEN PUBLIC TRUSTEE IS APPOINTED

The first step is for Public Trustee to receive the Supreme Court or Guardianship Board order. It is this order which confers legal authority on Public Trustee to act.

Once the order has been obtained a Public Trustee Estate Services Officer is assigned the day to day administration of the estate. That officer will generally be someone who has had considerable experience in the management of these estates and has developed expertise in the area. The officer will be part of a team of officers specialising in the administration of brain-injured and other disabled persons' financial affairs reporting to a more senior officer in the first instance and through him or her to a Deputy Public Trustee. The estate officer will be the first contact point for the injured person and his or her family. The officer will have access to specialised areas of the Public Trustee Office if he or she is required to deal with legal, financial, investment, taxation or other specialised matters.

The estate officer's first task will be to write to the client, members of the client's family and any other persons who may have details of the client's estate advising of Public Trustee's appointment and requesting the completion of a form providing information to Public Trustee.

The information sought will depend on whether the order is limited or over the entire estate. In the latter case comprehensive information will be sought including personal details and infor-

mation regarding the person's family, marital status, employment, taxation situation, pension entitlement and any other matters involved in the management of the person's affairs. Particular detail will be sought regarding the person's assets and liabilities.

In many instances a meeting is set up between the officer and the client and his or her family to attend to immediate needs. There may be pressing needs in relation to accommodation, maintenance (particularly if there has been an award of damages and pension payments have ceased), the payment of outstanding accounts and a range of other matters. Public Trustee requirements and procedures are explained at this meeting.

At all times Public Trustee attempts to balance the needs of the client with the ability of the estate to sustain those needs and with prudent and responsible financial management. This is often initially a cause of frustration for clients because they are not always given access to the extent of funds which they would like. One of the unpopular functions of the Public Trustee is to sometimes say no. A "no" is not always absolute and can be reviewed if circumstances change. Decisions regarding major matters are referred by the officers to a senior officer and often to the Deputy Public Trustee. Where there are sufficient funds available and the necessary court or other approval is obtained, Public Trustee will be quite prepared to purchase properties (including in some instances hobby farms), to provide funds for overseas trips (including where necessary funding the provision of a care assistant) and to otherwise attempt to meet the wishes of the client. At the same time Public Trustee tries to ensure that adequate funds remain to meet future needs.

Efforts are made to ensure that a good rapport is established between the Estate Services Officer and the client. The officer will be available to the client both by phone on a day to day basis and where necessary personally.

Statements detailing the financial administration of the estate are prepared at the end of each financial year. Annual and interim reports can be provided upon request.

DEVELOPING AN INVESTMENT STRATEGY

Once Public Trustee has collected the assets of the estate and the initial capital needs of the client have been met, a regime is implemented to meet recurrent needs. The estate officer will then confer with the client and his or her family regarding the investment of estate funds. The Public Trustee's Funds Manager is then asked to develop an appropriate investment

strategy. Where the estate is large, requiring long-term capital growth and an assessment of the taxation implications, a sharebroker is often appointed to assist with the establishment and monitoring of an appropriate investment strategy.

Public Trustee seeks advice from the sharebroker on both the short- and long-term investment and on the proportion of the estate that should eventually be invested for capital growth, for example in shares. The period over which the investment purchases should take place is also considered.

For some very large awards, specialist income tax advice is sought from a chartered accountant once the sharebroker's recommendations are received.

A typical investment portfolio in a large estate will include a blend of equities, fixed interest deposits, debentures and funds on call. The Public Trustee manages Fixed Interest Common Funds for both long- and short-term investments which may be used. Where equities are to be purchased on behalf of an estate, units may be purchased in Public Trustee's Equities Common Fund or money is invested in individual share portfolios.

The aim of the Equities Common Fund is to provide estates administered by the Public Trustee with attractive income and capital growth through investment in a broadly diver-

sified portfolio of shareholdings. The fund adheres to very strict criteria in its investment selection and acts on the advice of the Equities Common Fund Panel which includes several independent sharebrokers.

Public Trustee invests only in investments authorised by law for the investment of trust funds or otherwise authorised by the Supreme Court in a particular estate portfolio.

THE RIGHT OF APPEAL

There are several avenues by which clients not satisfied with the services being provided by Public Trustee can seek redress. In the first instance if a client is concerned about the service provided by the estate officer, a complaint can be made to that officer's senior officer, or even to a Deputy Public Trustee or the Public Trustee.

Where there is a court order, that order would normally contain a "liberty to apply" provision enabling the person to make application to the Supreme Court seeking the revocation or variation of the order. Guardianship Board orders are reviewed by the Board at reasonable intervals depending on the person's circumstances. The Board may continue, vary or revoke the order to ensure the person's best interests continue to be served. Any clients concerned about Public Trustee's administration may request an early review.

PRIVATE ORDERS

Both the Supreme Court and the Guardianship Board can make orders appointing private persons (usually a member of the family of the injured person), other trustee companies and professionals such as accountants or lawyers to manage or administer the affairs of an injured person.

Private managers appointed by the Supreme Court must within three months file with the Court and serve on Public Trustee a statement showing particulars and the estimated values and condition of all items of property comprising the protected estate together with details of all income and liabilities. Annual returns must then be filed with the Court and served on Public Trustee by September 30 each year. Public Trustee examines the statements and returns and reports to the court regarding any irregularities. Particular attention is paid to any actions undertaken by the manager which may not be authorised either by the order or by legislation. Where necessary Public Trustee will apply to the Court for removal of the manager and to be substituted in the manager's place.

Public Trustee has a similar role in the monitoring of the administration of estates by private administrators appointed by the Guardianship Board.■

Contact information

The South Australian Public Trustee Office is situated at 25 Franklin Street, Adelaide. Phone (08) 226 9200. There are also regional offices in Port Augusta and Mount Gambier.

New South Wales. The Protective Commissioner, Level 2, The Fletcher Building, 491 Kent Street, Sydney, N.S.W. 2000. Phone: (02) 265 3131.

Public Trust Office, G.P.O. Box 7, Sydney, N.S.W. 2001. Phone: (02) 252 0523.

Victoria. State Trust Corporation of Victoria, 168 Exhibition Street, Melbourne, Vic. 3000. Phone: (03) 667 6444.

Queensland. Public Trust Office, G.P.O. Box 1449, Brisbane, Qld. 4001. Phone: (07) 835 4288.

Tasmania. Public Trust Office, G.P.O. Box 1565, Hobart, Tas. 7001. Phone: (002) 30 7598.

Western Australia. Public Trust Office, G.P.O. Box 946, Perth, W.A. 6001. Phone: (09) 222 6777.

Northern Territory. The Public Trustee's Office, P.O. Box 470, Darwin, N.T. 0800. Phone: (089) 89 7271.

Australian Capital Territory. Public Trustee, P.O. Box 515, Canberra, A.C.T. 2601 and 4th Floor, Ansett Centre, 4 Mort Street, Canberra, A.C.T. 2601. Ph: (062) 57 1222.

DAVID ADES is the Manager -- Legal Services of the Public Trustee in South Australia. He was first appointed as a Legal Officer with the Public Trustee Office in 1986 and has since that time had considerable involvement in legal issues arising out of the administration of the affairs of disabled