



PUBLIC TRUSTEE GUIDE FOR FINANCIAL ADMINISTRATORS



Government of
South Australia



TIMELY AND RESPONSIVE
INTERESTED
CASES MANAGED WELL
KEEN TO HELP

THE PRINCIPLES WE LIVE BY TO GET THE **BEST**
FOR SERVICE FROM OUR CUSTOMERS

Foreword

The *Guardianship and Administration Act 1993* (the Act) provides the legislative framework for the support and protection of persons who are not capable of making decisions in their own best interests. Administrators appointed under this Act play an important role in protecting people whose decision making capabilities are significantly impaired from potential neglect, abuse and/or exploitation, and also play a crucial role in ensuring that the quality of life of the protected person is maintained.

The South Australian Civil and Administrative Tribunal (SACAT) appoints an administrator to make decisions in the best interests of the protected person and to ensure that their financial affairs are managed appropriately. Administrators, as part of their role, must be accountable and transparent in both decision-making and financial record-keeping in relation to the protected person.

Section 44 of the Act requires an administrator to report to Public Trustee annually regarding the receipts and payments and the assets and liabilities of the protected person's estate.

Public Trustee and SACAT recognise the ongoing need for a reference manual to enable administrators to understand their role and to carry out their responsibilities on a day-to-day basis with clarity and confidence. This revised edition of the South Australian Financial Administrators Guide has been produced by Public Trustee, with the support of SACAT, to provide you, the administrator, with information to assist you in carrying out your obligations.

We hope you find this guide a valuable source of information and assistance.

Public Trustee

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1. INTRODUCTION

The role of administrator is a very important responsibility.

As an administrator you are required to take care of the financial matters of the protected person in a way that is consistent with and promotes their proper care and protection. It can be difficult and confronting for a person when the control over their financial affairs is removed from them. They must be able to have faith in you, as the administrator of their financial matters, that you will be conscientious in your role and that you will maintain their best interests.

This guide has been developed to assist you as the administrator. It provides important information about your role and responsibilities, and the resources available to assist you.

2. ROLES AND RESPONSIBILITIES

2.1. The Administrator

An administrator is appointed by the SACAT to manage the financial, legal and business affairs of another person (the protected person) who is unable to manage their own affairs because of mental incapacity.

As administrator you should consult with the protected person concerned (to the degree their incapacity allows), their family, guardian (where appointed), or any person named in the order to communicate with Public Trustee to make sure the protected person's money and assets are used for the protected person's benefit. This includes looking after all legal and financial matters.

In making decisions, you will need to observe the relevant principles that are set out in Part 1, Section 5 of the Act:

Consideration must be given as to what would, in the opinion of the decision makers, be the wishes of the protected person in the matter if he or she were not mentally incapacitated. In addition there must be reasonable evidence on which to base such an opinion. You must also take into account that:

- The present wishes of the protected person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes
- The decisions you make must have as minimal restriction as possible on the protected person's rights and personal autonomy while still taking into account the requirements for his or her proper care and protection.

The paramount consideration above is about 'standing in the shoes' of the protected person who does not have the capacity to make decisions in their own right. That means making decisions that enable the protected person to continue to live his or her life as close as possible to the way he or she would have lived it if not for the incapacity. For example, if the protected person has made a donation to his/her local church every week for a significant period of time, then it would be reasonable for this practice to be continued by you on their behalf if the donation does not reduce the quality of the protected person's lifestyle.

You must also consider that a protected person's circumstances can change at any time. For example, the care required for the protected person might increase and/or they may need to go into a care facility and as a result greater expenditure in the areas of care and accommodation becomes necessary. This may mean that money that was set aside for another purpose must now be redirected to cover this additional expenditure.

Your main concern must always be the interests of the protected person whose affairs you are administering. In making decisions, you will need to take into account many factors, including but not limited to the:

- Protected person's immediate and long-term needs
- Views of the protected person (to the degree that their incapacity allows)
- Views of family, any guardian/liaison person, and other interested parties
- Financial resources available
- Protected person's previous, current and hoped for lifestyle
- Protected person's family commitments
- Arrangements made by the protected person before the administration order was made; and
- Rights and views of the probable beneficiaries of the protected person's Will.

2.1.1. What do you have to do as an administrator?

The Act sets out the powers and duties of an administrator. However, these general duties may vary due to certain restrictions which will be set out in the administration order made by SACAT.

Examples of some of the duties and obligations of an administrator include:

- Document the income the protected person has earned and what it has been spent on
- Arrange to collect and bank the income of the protected person
- Attend to payment of accounts for the protected person
- Manage their assets and liabilities, ensuring all assets are recorded in the protected person's name, that assets are secure and covered by appropriate insurance
- Continuing and reviewing pension entitlements
- Manage and maintain real estate purchases and sales (real estate can only be purchased and sold with prior approval from SACAT)
- Surrender life assurance policies
- Recover debts
- Discharge mortgages
- Prepare and lodge tax returns
- Carry on a business
- Employ a solicitor or accountant where necessary
- Invest a protected person's money on their behalf
- Attend court proceedings on behalf of the protected person

As an administrator you have an obligation to report on your financial administration of the estate of the protected person. You **MUST** provide annual statement of accounts to Public Trustee. More information on what is required is provided later in this document.

2.1.2. What decisions can't you make?

There are some decisions that you are not authorised to make as an administrator. For example you cannot:

- Consent to medical treatment on behalf of the protected person
- Force the protected person to move into a nursing home
- Change a Will
- Appear for the person in court on a criminal matter
- Decide what the protected person will eat and/or drink
- Donate large amounts of money where the protected person would not have done so had they not been incapacitated

Some of these decisions fall within the scope of decision making by a guardian. For further information please refer to the website www.sacat.sa.gov.au.

2.2. South Australian Civil and Administrative Tribunal (SACAT)

SACAT is a state tribunal that helps people in South Australia to resolve issues within specific areas of law, either through agreement at a conference, conciliation or mediation, or through a decision of the Tribunal at a hearing.

A person who is unable to make certain decisions about, or who is unable to manage their financial, legal, and/or business affairs due to a mental incapacity has his or her rights

protected by the law. SACAT can appoint a person as an administrator who acts in the place of the person with an incapacity and who can make decisions on their behalf.

SACAT deals with the following types of applications in this area:

- Appointing an administrator under an administration order to make decisions about the legal, financial, and/or business affairs of a person
- Revoking the appointment of a particular administrator and appointing another
- Providing advice or direction to an administrator under an administration order
- Approving payment of money as gifts to the protected person's children or grandchildren, for accommodation and/or maintenance expenses of a spouse or domestic partner
- Approving loans
- Making urgent orders if there is an immediate risk to the protected person's assets
- Approving the sale and/or purchase of real estate
- Giving directions about the making of testamentary provisions
- Reviewing or revoking a previous administration order.

SACAT is also able to:

- Appoint a guardian in certain circumstances to make decisions about the medical treatment, living situation, and/or lifestyle decisions for a person with a mental incapacity
- Make certain decisions about advance care directives
- Provide consent to medical treatment, consent to prescribed psychiatric treatment and/or consent to prescribed medical treatment in certain circumstances
- Review mediation decisions by the Office of the Public Advocate and make directions and declarations about consent to treatment decisions and and/or advance care directives in certain circumstances.
- Make and review treatment orders for people with mental illness.

For further information on SACAT please refer to their website www.sacat.sa.gov.au.

2.3. Public Trustee

Public Trustee is a statutory officer whose role and responsibilities are defined by the *Public Trustee Act 1995*. 'Public Trustee' is a body corporate and has the powers of a natural person. Public Trustee is also a separate agency within the broader departmental organisation of the Attorney-General's Department (AGD).

Under the *Public Trustee Act 1995*, Public Trustee has a legal responsibility to receive and examine statements of accounts from private administrators. This examination is done by staff within Public Trustee in the role of Financial Examiner. A Financial Examiner's role is to ensure you are fulfilling your role in accordance with the requirements of the Act. A Financial Examiner will also:

- Ensure your financial administration is to the benefit of the protected person
- Inform you of your legal rights and obligations as administrator
- Report to SACAT about financial compliance aspects and issues of concern

Once the accounts are examined, Public Trustee will report this to SACAT. If Public Trustee considers that an administrator is not fulfilling their responsibilities satisfactorily, Public Trustee may recommend to SACAT that spending in specific areas be disallowed or that action be taken against the administrator. Action could result in a direction from SACAT to return monies to the protected person's estate.

2.3.1. How can Public Trustee help you?

Public Trustee fully understands the duties and obligations of an administrator and can provide information and support. This will help to ensure you are effectively performing your duties for the proper care of the protected person.

Contact Public Trustee's Regulatory Services Team and speak with a Financial Examiner on (08) 8463 7441 or email PT.RegulatoryTeam@sa.gov.au.

2.3.2. What fees are payable to Public Trustee?

Public Trustee charges an SA Government regulated fee per hour for the examination of the statement of accounts provided by you as the Private Administrator. The SA Government reviews this fee annually. The current financial examination fee is available on our website at www.publictrustee.sa.gov.au/about-us/fees-and-charges/

This fee is charged after the financial examination and Public Trustee will invoice the estate of the protected person. The raising of an invoice confirms that Public Trustee is satisfied that the statement of accounts and other accompanying information provided by you as administrator has met the obligations under the Act.

Public Trustee may waive this fee if it will cause the protected person financial hardship or unreasonably reduce their estate. A request to the Team Leader in writing is required.

2.3.3. What do you do if you have questions or concerns about Public Trustee?

Any questions or concerns should be raised initially with a Financial Examiner. However, if this discussion does not resolve the issue, or if you do not feel comfortable about talking to this officer, you may contact the Team Leader Regulatory Services or the Chief Operating Officer for assistance on (08) 8226 9200 or SA country toll free on 1800 673 119. The Chief Operating Officer is responsible for the overall management of reporting under the Act.

If the issue still remains unresolved, the next available option is to send a letter to the Public Trustee (the Public Trustee is the Statutory Officer within the Attorney General's Department, as opposed to Public Trustee as an agency). The Public Trustee will then make a decision and inform you of the outcome.

2.4. Ombudsman

The Ombudsman is available to assist people who have complaints against the administrative actions of South Australian Government departments and/or agencies such as Public Trustee.

The Ombudsman can be contacted at:

Ombudsman SA
PO Box 3651
Rundle Mall SA 5000

Phone: (08) 8226 8699 OR
Free Call: 1800 182 150 (outside metro Adelaide only)
Email: ombudsman@ombudsman.sa.gov.au
Website: www.ombudsman.sa.gov.au

3. GETTING STARTED

3.1. SACAT has appointed you as an administrator – now what?

An administration order has just been made by SACAT appointing you as an administrator. This now means that you will manage the financial affairs of the named protected person.

Here are some tips to help you understand your duties and to get you started:

3.1.1. Read the administration order carefully

Ensure that you understand the scope of your responsibilities.

3.1.2. Develop a financial management strategy

Before you take any action in your new role, you need to work out a budget and/or a financial management plan. You will need to determine the protected person's assets, their source(s) of income, their expenses and debts. This plan will help clarify what you should do for the protected person.

3.1.3. Safeguard any assets

It is important to safeguard the protected person's assets. The person's property will continue to remain in their name, even after you are appointed as administrator. Under the Act you may consider the lodgment of a caveat to safeguard the protected person's interest in any real estate. Make sure assets are insured where appropriate and that items are physically secured where relevant.

3.1.4. Read the *Guardianship and Administration Act 1993*

It is advisable to look at the Act as this is the authority under which you must carry out your duties. You do not necessarily need to read it cover to cover but you should be familiar with its contents and the sections that specifically apply to your role and duties as administrator.

3.1.5. Read this guide and look at information available on line

This guide should give you the necessary tools to be an appropriate administrator for the protected person. You can find further information on line and various resources are suggested throughout the guide.

3.1.6. Meet Public Trustee Staff

At this stage, you can also meet with a Financial Examiner to obtain advice and/or discuss any concerns relating to your new responsibilities. You can contact Public Trustee's Regulatory Services Team to discuss your concerns and/or to make an appointment to meet with a Financial Examiner on (08) 8463 7441 or email PT.RegulatoryTeam@sa.gov.au.

It is also recommended that you attend an information session, offered by Public Trustee, to understand your role, seek advice from Public Trustee, and share your concerns with other administrators at the session. These sessions are generally held on the first Thursday of each month. Please call (08) 8463 7442 or email PT.RegulatoryTeam@sa.gov.au to register.

3.1.7. Tell relevant people and organisations that you have been appointed

Specific people and organisations will need to be informed that you have been appointed as administrator. These organisations will generally need to see a certified copy, (that is a copy of an original document that has been verified as being a true copy of the original by an authorised person), of the administration order that appoints you as the administrator.

You should notify all organisations where the protected person has investments or has any financial dealings. These might include:

- Banks and financial institutions where the person has accounts
- Companies in which the protected person has shares.
- Centrelink or Department of Veteran's Affairs
- Anyone who owes the protected person money, and
- Organisations to which the protected person owes money.

3.1.8. Set up a 'working account'

It is a good idea for you to open a bank account in the sole name of the protected person to use as a 'working account'. This will then be the account into which all income is paid, and from which all expenditure is paid. Having one account for the protected person's income and expenditure will make it easier for you to keep track of their finances.

You may find it convenient to use one of the protected person's existing accounts as a working account by adding your authority as administrator to operate the account. You may then decide that it is more practical to close any other accounts and consolidate them into the working account. The bank will need to see a copy of the administration order before this can be done.

3.1.9. Start managing documentation

When you are first appointed you need to lodge the 'Initial Statement of Assets & Liabilities' form, which is included with the letter you will have received from Public Trustee, together with the supporting information outlined in the accompanying guide on how to complete the statement. This statement and the supporting information must be sent to Public Trustee within 21 days of receiving Public Trustee's letter.

As the administrator, you are required to keep full details and documentation of the protected person's assets, income, and expenditure. Documentation includes invoices, receipts, statements accompanying cheques received and bank statements.

As set out in the administration order, you are also required to provide a detailed statement of accounts for each financial year (beginning 1 July and ending 30 June). These statements include the assets you are holding, money and other assets received, and payments made. These statements must be lodged at Public Trustee by 30 September each financial year.

3.1.10. Find out what is in the protected person's Will

Some of the decisions you make as administrator may be affected by the terms of the protected person's Will. It is therefore advisable to locate, store and check the protected person's Will.

For example, if the protected person is making a gift of a block of land to a beneficiary of their Will then you may be reluctant to sell it. However, it may become necessary to sell the land to provide funds for the protected person to continue to enjoy a reasonable standard of living. If a property is left to someone in a Will and you then sell it, this beneficiary may apply to the Supreme Court for an order to rectify any distribution entitlement. (See more about real estate in Chapter 10 of this document)

It is important that the protected person's Will is kept in a safe place, for example document safe custody (safety deposit box) at a bank. If Public Trustee has prepared the Will, it will be held free of charge in safe custody at Public Trustee. A Will is a confidential document and its contents should not be disclosed to anyone, except with the authority of SACAT.

4. CONSULTING OTHERS

4.1. Working with a guardian

In some instances a protected person will have a guardian appointed by SACAT. A guardian is a person appointed to make major life decisions for the person. The guardianship order will state the extent of the guardianship, which may relate to accommodation, health, and/or lifestyle decisions. SACAT can appoint a guardian as well as an administrator. Sometimes the same person will be appointed to both of these roles, but if they are not, it is important that you and the guardian work closely together.

It is important to consult with the guardian about major financial management decisions, and particularly decisions that are likely to significantly affect the life of the protected person and/or the functions of the guardian. When SACAT appoints the guardian, it will specify what the role and functions of the guardian will be. For example, SACAT may determine that a function of the guardian is to decide:

- Where the protected person should live
- What medical treatment they should receive

CASE STUDY

Mary is 80 years old and has Alzheimer's disease. She has not been coping well at home but refuses to move into an aged care facility. SACAT appoints her son, Peter, as her guardian and gives him the power to decide where Mary should live. SACAT also appoints Mary's friend, Wendy, as administrator. Peter decides that his mother should move into a nursing home for at least a trial period. Wendy now needs to decide whether or not to sell the family home. The sale of the home may be necessary if the protected person has insufficient funds to cover any accommodation bond that the nursing home may require. Alternatively, the property could be rented out to subsidise the nursing home fees. It is very important that Wendy consults Peter about which is the best option, particularly if it is possible that Mary might move back to her home. Wendy also needs to get permission from SACAT to sell Mary's home.

4.2. Should you consult with anyone else about decisions?

It is important that you consult with other relevant people about decisions you are considering. In particular, you should involve the protected person as much as possible in the decision making process.

Although a protected person cannot manage their affairs alone, they may still have important contributions to make. This is especially the case with regard to decisions where their personal values, likes, and dislikes need to be carefully considered. Consulting with the protected person and involving them in the decision making process as much as possible enhances their feelings of dignity and their sense of retaining some control over their own affairs.

5. APPROPRIATE SPENDING AND CONTROL OF MONEY

5.1. Can you let the protected person have control of some of their own money?

It is important to allow the protected person to maintain self-respect and a sense of self-worth. This can be achieved by giving them some control of their own money if possible, even if it involves a low level of risk.

There are risks that the protected person may spend the money they have been given control over unwisely, or it may put them in a position where they may be taken advantage of. These risks can be minimised by using the following strategies, which also provide the opportunity for the protected person to learn more about managing their money.

You might:

- Provide day to day support to the protected person to informally oversee the use of money, and/or
- Encourage the protected person to access guidance in money management skills from a community financial service and/or information on the Federal Government's Money Smart website <https://www.moneysmart.gov.au>

5.2. Can you allow others to control some of the protected person's money?

If the protected person lives in supported accommodation such as a group home or nursing home, it would be reasonable to provide the manager of the accommodation with some money to pay for things like clothes, outings, toiletries, and confectionery.

If the protected person is living with family members, it might be appropriate to provide the family with a fortnightly allowance to cover essentials like food and other household expenses. It is important for you to monitor the expenditure of an allowance. It is important that you know what money is being spent on what items, and to ensure that the protected person's needs are being properly met.

5.3. What can you spend money on?

Examples include:

- Board and lodging
- Clothing
- Pharmaceutical needs
- Care of a pet
- Medical and dental expenses
- Optical expenses
- Nursing home fees, and
- Costs associated with the protected person's home, such as rates, insurance, electricity, telephone, and house repairs and maintenance.

It is accepted that you may spend an amount of money each year for holiday expenses for the protected person.

These are not the only expenses or items that you can spend money on. You may spend reasonable amounts on items needed for the benefit of the protected person; given the protected person's overall financial situation is taken into account.

The *Guardianship and Administration Regulations 2015*, Regulation 5 stipulates annual limits of expenditure beyond which prior approval of the Tribunal must be sought or you can refer to the SACAT website at

<http://www.sacat.sa.gov.au/get-started/administration-of-a-persons-affairs/approval-for-gifts-and-dealing-with-property>

CASE STUDY

David lives in a large institution for people with intellectual disabilities. He often seems very bored and unhappy. In the past staff have bought his clothing for him and have been reimbursed by the administrator. The clothing has mainly been tracksuits similar to those worn by most of the residents of the institution. The administrator decides to take David shopping and let him choose his own clothes. David chooses things like denim jackets and colourful shirts. He greatly enjoys the shopping trips. There is a noticeable increase in David's self-worth and contentment when he wears his new clothes.

As an administrator you should consult with family members, friends and/or other support people of the protected person. These people can provide information or advice about the protected person's needs, likes, and dislikes.

It is also possible that the interests of family members may be affected by any decisions you make. As an example, selling the contents of the protected person's house may be considered to be in their best interests. However, there may be beneficiaries who are entitled to those contents or specific items included in the contents, under the protected person's Will, and therefore it is essential that those beneficiaries are consulted before a decision is made on the sale of the contents of the house.

5.4. Can you hire a paid carer?

A paid carer can help with domestic tasks and personal care, which allows the protected person to continue living in their own home.

Hiring carers should be done through a commercial carer agency that accepts employer responsibility for the carer – that is the agency takes responsibility for paying leave entitlements, workers' compensation insurance, superannuation, income tax, and related expenses. If you engage a carer privately the protected person will have to meet all employer responsibilities and may face financial penalties if they fail to do so. If a carer is employed directly by a protected person you must ensure all appropriate workers' compensation and other relevant insurance is in place. Most insurance providers will provide this cover for a small charge.

Regardless of the method of employment, all carers should provide a national police certificate (either to their agency or to you if employed privately). This ensures that the carer has not been convicted of any crimes that would put the protected person at risk of harm or abuse physically and/or financially.

The administrator cannot employ themselves as a paid carer as this would create a conflict of interest.

If a carer is unpaid, you will still need to arrange appropriate insurance for them such as workers' compensation, public liability insurance and income protection insurance. Most insurance providers will provide this cover.

5.5. How can you determine what the protected person's wants and needs are?

This can be very difficult, and initiative and creativity will be needed to discover a protected person's needs. There are a number of ways of finding out what the protected person may need and/or what will add to the protected person's quality or enjoyment of life. The following are some suggestions that you might find useful:

Ask appropriate people

It may sound obvious, but many administrators forget to ask family and/or friends about the protected person's wants and needs.

Talk to and spend time with the protected person

Some administrators might also assume that because someone has become a protected person they have nothing useful to contribute to their own situation. It might be difficult for the protected person to communicate what they want, but some suggestions on how to find out include:

- Taking the protected person shopping and gauging their reaction to a variety of goods. Are they delighted by a colourful piece of clothing they see or do they stop to watch a movie that might be playing in a store that sells DVDs?
- Finding out what the protected person likes to do by exposing them to various activities.

Speak to professionals

Professionals, such as social workers, therapists, and psychologists can provide useful strategies on how to meet the protected person's wants and needs. Some of the strategies they may suggest include:

- Regular outings with a companion: An elderly woman was living in a nursing home. She liked to go on outings and was very bored in the nursing home. There were no family members living nearby who could take her out on a regular basis. Her administrator paid for a companion to take her out four times a week, which has greatly enhanced the woman's quality of life.
- Buying a personal entertainment system: An elderly man living in a nursing home liked TV but did not like going to the TV room. The administrator wanted to buy him a TV, but the management of the nursing home was worried that other residents would tamper with the TV and it would soon be broken. The administrator suggested that the TV could be put on a bracket on the wall with the protected person using a remote control device. The TV was installed and the man can now enjoy watching shows of interest to him in the privacy of his own room.
- Employing a private therapist: A man with an intellectual disability had a lot of difficulty speaking. There was only one hour of speech therapy available each week through community services due to the man living outside the metropolitan area. The administrator paid a private speech therapist to come more often and the man's speech improved considerably.
- Delivery of flowers: A woman with Alzheimer's disease clearly enjoyed having flowers around her. The administrator arranged for flowers to be delivered twice a week which increased the woman's contentment.
- Buying a personal chair: An elderly man who was physically frail found ordinary chairs uncomfortable. His administrator bought him a water chair which greatly increased his wellbeing.

You must ensure a balance between meeting the protected person's day to day needs, requirements for long term care, and the purchase of extra, unplanned items.

If Public Trustee is of the opinion that you have not acted in good faith or with reasonable care with regard to any expenditure made on behalf of the protected person, then they may recommend to SACAT that the payment(s) be disallowed. If SACAT disallows the payment you will be required to repay the estate for the item(s) of expenditure. If advice is needed as to whether money should be spent for a particular purpose, you can approach SACAT for advice and direction.

5.6. Can you give a financial gift to someone else on behalf of the protected person?

You may gift monies to people on behalf of the protected person. However, the foremost concern is to protect the assets of the protected person and as administrator you must treat these assets prudently and for the benefit of the protected person. You should consider how the protected person would have responded to such a request at a time when they had capacity.

Any gifts which appear unusual or which may be against the best interests of the protected person should be noted.

You have a responsibility to draw the attention of SACAT to any irregular transactions. Gifts as described above, which are unusual or against the best interests of the protected person, are irregular transactions for this purpose.

The *Guardianship and Administration Regulations 2015*, Regulation 5 stipulates annual limits of expenditure beyond which prior approval of the Tribunal must be sought or you can refer to the SACAT website at <http://www.sacat.sa.gov.au/get-started/administration-of-a-persons-affairs/approval-for-gifts-and-dealing-with-property>.

5.7. Can you make donations to charity?

You can make donations to charity on behalf of the protected person, but it is important that you are able to show and explain to Public Trustee that the protected person could:

- Afford the donation
- Either wanted to make the donation or would have wanted to make it if they still had control over their own financial affairs, and
- It was the custom of the protected person to make donations to the particular charity

It is important to find out whether a protected person previously made donations to charities to guide you in making donations on their behalf.

CASE STUDY

John made a donation of \$500 to the Salvation Army every year over many years. Even though he now has advanced Alzheimer's disease, it may be reasonable to continue making this donation. You would need to try to fulfil John's donation wishes as indicated by the consistent pattern of donations in the past, while also considering John's current requirements and needs and whether he is still able to afford the donation. You may need to reduce the amount of the donation or cancel it altogether if making it will negatively impact on the level of care he receives.

5.8. Can you pay someone else to do the work?

You cannot delegate your responsibility as administrator for the protected person's estate to another person. However, you can seek professional assistance and advice regarding matters such as taxation, accounting, conveyancing, and/or legal advice. For example, an administrator may employ an accountant to carry out accounting duties but not to manage the protected person's financial affairs. These accounting duties could include:

- Advice about taxation, investment decisions, and/or Centrelink entitlements
- Preparation of tax returns, and
- Preparing the statement of the accounts for Public Trustee

These accounting duties would not include:

- Investing money with an accountant, or
- The accountant being given the responsibility to decide about any investment of the protected person's money.

5.9. Taxation

The protected person still has an obligation to pay tax if applicable, even after your appointment as administrator. Part of your role as administrator is to attend to the protected person's taxation matters; however, you may choose to employ an accountant to assist with this. Generally you would consult the protected person's own accountant if they already have one. Tax returns are lodged in the protected person's own name and using their own tax file number, however you will need to sign the document on behalf of the protected person.

6. PERSONAL POSSESSIONS

Administrators often have to consider what should happen to personal possessions, especially if the protected person moves from their home to somewhere smaller like a care facility. You may have to consider whether to dispose of the contents of the house or put them in storage. Another alternative may be that other family members could hold some items in trust for the protected person.

It is important to try and fulfil the protected person's current or previously expressed wishes. The protected person's Will must also be considered, and it is important to consult with other family members as they may be aware of the protected person's wishes, particularly in relation to items of sentimental value.

As administrator you need to ensure that wherever the protected person is living, they have some items of sentimental value. These items might include a favourite chair and family photographs. Items of substantial value, for example a valuable coin collection, should be stored somewhere safe such as a safe custody (safety deposit box) or vault at a bank (this will incur fees). Family members might also choose to look after valuable items, which is appropriate unless the protected person's Will makes special provision for distributing valuable items.

It is important to remember that furniture and valuable assets may need to be sold and the money used to meet the protected person's current needs. For example, the protected person does not have enough funds available to purchase a piece of equipment (e.g. a walker or scooter) that would greatly enhance their independence and you believe that selling a piece of their antique furniture would provide enough money to buy the equipment. The protected person's needs must remain your priority.

It is important that you report to Public Trustee on the disposal of any assets. You should provide these details in the submitted annual report, along with an explanation of why you made the decision to dispose of the assets.

The Section 43 of the Act allows a beneficiary of a Will to apply to the Supreme Court for an order to make good on a situation where they find that they are at an unfair advantage or disadvantage due to the sale of an asset that was in a protected person's will. For example, if an asset was sold that was intended for a certain family member (beneficiary), they can ask the Supreme Court for an order where they will receive money or other items to the value of the asset that was sold.

The protected person's possessions must be insured, and each valuable item (e.g. jewellery or antique furniture) should be listed separately on the assets schedule along with an assigned agreed value for each item.

7. INCOME

As administrator you need to be aware of all forms of income that the protected person is entitled to and ensure that all income entitlements are received.

This may include pensions from Centrelink or the Department of Veterans' affairs, overseas pensions if the protected person was born in another country, and/or superannuation income. You are also responsible to ensure all income from investments, including any businesses or rental properties, is received and accounted for. It is possible the protected person could have other forms of income such as workers compensation payments, an entitlement from an estate, and/or an annuity.

You will also need to find out if any pensioner concessions are available such as rebates on council and water rates, and electricity and telephone bills.

7.1. Centrelink

Many protected people are entitled to pensions, especially the Age Pension or the Disability Support Pension. It is your responsibility to ensure that the protected person receives all their entitlements. These entitlements could include:

- Basic pension
- Rent assistance
- Commonwealth Seniors Health Card
- Pensioner Concession Card

There are also a number of allowances available such as mobility allowance, sickness allowance, and carer payments. It is highly recommended that you contact Centrelink to ensure all entitlements are being received.

Entitlements from Centrelink are subject to income and assets tests. A protected person's principal place of residence is exempted from the assets tests; however you need to consider the impact other assets may have on the allowances the protected person could receive.

Contact Centrelink via their website:

www.humanservices.gov.au/customer/dhs/centrelink

or phone the relevant departments as below:

Older Australians Age Pension Bereavement assistance Seniors Health Card Pensioner concession cards Widow B Pension Wife Pension	Phone 132 300 Monday to Friday 8.00am – 5.00pm
People with disability Disability Support Pension Mobility Allowance Sickness allowance	Phone 132 717 Monday to Friday 8.00am – 5.00pm

8. INVESTING FUNDS

8.1. Where can you invest the protected person's money?

As the administrator you have the responsibility to act as trustee of the protected person's estate when it comes to investing money. As trustee there are specific requirements for investing money as set out in the *Trustee Act 1936*.

Within the *Trustee Act 1936* Section 7 "Duties of trustee in respect of power of investment" and Section 9 "Matters to which trustee must have regard in exercising power of investment" are particularly relevant to your role as trustee. Before investing any funds on behalf of the protected person you should familiarise yourself with these sections which are included below for your information

7—Duties of trustee in respect of power of investment

(1) *Subject to the instrument creating the trust, a trustee must, in exercising a power of investment—*

(a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons—exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or

(b) if the trustee is not engaged in such a profession, business or employment—exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

(2) *A trustee must, in exercising a power of investment, comply with any provision of the instrument creating the trust that is binding on the trustee and requires the obtaining of a consent or approval or compliance with any direction with respect to trust investments.*

(3) *Subject to the instrument creating the trust, a trustee must, at least once in each year, review the performance (individually and as a whole) of trust investments.*

9—Matters to which trustee must have regard in exercising power of investment

(1) *Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to—*

- (a) the purposes of the trust and the needs and circumstances of the beneficiaries; and*
- (b) the desirability of diversifying trust investments; and*
- (c) the nature of and risk associated with existing trust investments and other trust property; and*
- (d) the need to maintain the real value of the capital or income of the trust; and*
- (e) the risk of capital or income loss or depreciation; and*
- (f) the potential for capital appreciation; and*
- (g) the likely income return and the timing of income return; and*
- (h) the length of the term of the proposed investment; and*
- (i) the probable duration of the trust; and*
- (j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment; and*
- (k) the aggregate value of the trust estate; and*

- (l) *the effect of the proposed investment in relation to the tax liability of the trust; and*
 - (m) *the likelihood of inflation affecting the value of the proposed investment or other trust property; and*
 - (n) *the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and*
 - (o) *the results of a review of existing trust investments.*
- (2) *A trustee may—*
- (a) *obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and*
 - (b) *pay out of trust funds the reasonable costs of obtaining the advice.*

The legislation provides that, if the trustee is charged with a breach of trust, the court may take into account an investment strategy formulated in accordance with the duties of a trustee. It is strongly recommended that you formulate an investment strategy based on the advice of a competent independent person. The cost of this advice may be charged to the estate.

Public Trustee will require evidence of an annual review of trust investments and may ask for a copy of the investment strategy.

Before investing a protected person's money it is highly advisable to seek independent professional advice.

9. WORKING WITH LEGAL ISSUES

There are various legal issues involved in the administration of a protected person's estate. The following section of the guide provides information about the legal issues that you may encounter and need to resolve. It is always best to seek independent advice from a lawyer or legal advisor.

You may wish to seek free legal advice from the following:

Legal Services Commission
Phone: 1300 366 424 (local call cost)
Monday to Friday 9.00am - 4.30pm
Website: www.lsc.sa.gov.au

Women's Legal Services SA
Telephone Advice: 08 8221 5553
Country Callers: 1800 816 349
TTY: 1800 670 864
Email: admin@wlssa.org.au
Website: www.wlssa.org.au

SA Community Legal Services
Phone: (08) 8342 1800
Mailing Address:
SACCLS Secretary
PO Box 697, Salisbury,
South Australia, 5108
Website: www.saccls.org.au

9.1. What if the protected person was running a business?

The Act empowers you to continue operating the protected person's business. If the business is being operated through a company, you are authorised to exercise the protected person's voting rights in the company and be a director of the company.

In other cases, SACAT may give you the powers that you need to sell the business or have it wound up.

9.2. What if the person has jointly owned property

Sometimes the protected person will own property jointly with someone else. For example, the protected person may jointly own a house with their spouse. Careful consideration is needed if changes need to be made to joint ownership situations. If any assets need to be divided between the owners then SACAT would need to give you certain approvals before you can organise this. Caution should be taken whenever you believe arrangements of joint ownership need to be changed, as this may affect the rights of both the protected person and the other joint owner.

In most cases there will be no valid reason to change arrangements regarding joint assets, and therefore the arrangements will continue as is.

It is important to note that upon their death the protected person's share in jointly owned assets automatically passes to the other surviving owner, and vice versa, the property passes to the protected person if they survive the other joint owner.

9.3. Can you conduct court cases for the protected person?

Section 39 of the Act sets out the powers and duties of an administrator and s39(2)(j) specifically states that an administrator may “institute or defend, in the administrators own name or in the name of the protected person, any action or other proceedings relating to the protected person’s estate”

Section 39(3) of the Act states that the regulations may prescribe limits as to the amount of money that can be expended by an administrator under this section and may provide that any such limit can be exceeded only with the approval of the Tribunal. The Guardianship and Administration Regulations 2015, Regulation 5 set out the limits on expenditure.

The *Guardianship and Administration Regulations 2015* do not set a limit for expenditure relating to the institution or defense of proceedings.

Under s74 of the Act an administrator can seek advice, direction or approval on the exercise of their powers if so required.

9.4. Are there legal proceedings where you cannot represent the protected person?

You cannot represent the protected person:

- In the case of criminal proceedings, however you can pay a solicitor to represent the protected person. You cannot defend the proceedings as the protected person’s representative in this circumstance
- In Family Court proceedings for custody, guardianship of, and/or access to the person’s children
- In adoption proceedings or ‘in need of care’ applications in the Children’s Court.

If a guardian has been appointed it will be the task of the guardian to represent the protected person in the proceedings outlined above. If there will be legal costs associated with the guardian’s actions on behalf of the protected person, then you will need to advise the guardian of the protected person’s ability to pay such costs, and you may need to make an application to the Legal Services Commission for financial assistance. It is important for you to liaise closely with the appointed guardian in such cases.

9.5. How do you sign documents?

The usual way of signing a document on behalf of the protected person is:

Signed for and on behalf of the said
JOHN SMITH by GLENDA JONES of
10 Brown Street
GREENVALE 5063 SA

G.JONES
Administrator appointed under the *Guardianship and Administration Act 1993*

It would be advisable to seek independent advice from a solicitor or conveyancer before executing any *Real Property Act 1886* documents.

9.6. Can the protected person's Will be changed?

You do not have the power to make or change the protected person's Will, and in most cases you cannot prevent them from making a Will. A protected person generally has the right to make a Will even though an administrator has been appointed.

You are able to inform the protected person's Will maker of any doubts you may have about the protected person's capacity to make a valid Will.

It is likely that when SACAT creates the administration order it will specify that a Will may not be made by the protected person, or, alternatively, that the making of a Will with the consent and in the presence of Public Trustee may be approved.

A Will is only valid if the person making the Will:

- understands and approves the contents of the Will, and
- has testamentary capacity (which is explained in the next section).

The Supreme Court may authorise an application for the making, alteration, or revocation of a Will on behalf of a person lacking testamentary capacity (Section 7 of the *Wills Act 1936*).

9.7. What is testamentary capacity?

To have testamentary capacity the person must:

- Know what a Will is
- Realise, in general terms, the amount and type of property to be covered by the Will, and
- Be able to understand the nature of the claims of others who, by the Will, are being excluded from participation in that estate.

If it is unclear whether the protected person has testamentary capacity, you should check the requirements for testamentary capacity in the current order and find out what the process is to arrange an assessment of the protected person.

A Will can be challenged in court after the protected person's death if its validity is in question. The protected person's Will maker should take precautions to protect a Will from this kind of challenge. This might include obtaining a medical certificate and a statement from a professional, such as a clinical psychologist, who is skilled in assessing whether the protected person had testamentary capacity at the time the Will was made.

A Will can also be challenged on the basis that it was made under undue influence or pressure from a beneficiary. This is something to be aware of and potentially discuss with the protected person and their solicitor.

9.8. What happens when the protected person dies?

Your powers as administrator cease when the protected person dies. However, SACAT requires that a final statement of the account to the date of death, together with a certified copy of the death certificate, be forwarded to Public Trustee within 6 weeks of the death of the protected person. It is then up to the executor of the protected person's Will to apply to the Supreme Court for a grant of probate of the Will if necessary.

On the death of the protected person you are authorised to pay funeral expenses. SACAT may authorise the extension of your powers for a

further period, which will not exceed two months after the date of death of the protected person.

If there is no Will, the assets of the protected person are distributed according to the 'laws of Intestacy'. The next of kin will be entitled to the protected person's property (Part 3A of the *Administration and Probate Act 1993*). Only the next of kin has the rights to apply to the Court for the administration of a protected person's estate and they may instruct a solicitor, Public Trustee, or another trustee company to administer the estate.

When the Court grants administration of the deceased estate, you must hand over the protected person's financial affairs to the executor.

Often the administrator and executor responsibilities will be delegated to the same person. Even if this is the case the above procedures will need to be followed before the protected person's property can be distributed to the beneficiaries of the estate.

In certain instances, such as where the value of the estate is quite small, it may not be necessary to obtain a formal grant of probate from the Court. This process is called 'informal administration'. In these circumstances the relevant institutions, for example the protected person's bank, should be notified.

9.9. What if the protected person signs a contract to sell or give away property?

Section 42 of the Act deals with the problems associated with the protected person disposing of property either by sale or gift after the administration order has been made. It is advisable to gain advice if this situation arises and you may wish to familiarise yourself with the sections of the Act that specifically deal with this issue.

In instances where the other party to the transaction did not know, or could not reasonably be expected to know, that the protected person they dealt with did not have the mental capacity to make decisions about disposing of their property, the transaction cannot be overturned.

However, where the other party to the transaction either knew or could be reasonably expected to have known that the protected person had a mental incapacity, then any transaction made by the protected person after the issuing of the administration order can be overturned. You are empowered under Section 42 to avoid a contract entered into by the protected person while their estate is under administration.

You have the authority to avoid the disposition or contract, but are not bound to do so. You must consider the terms of the transaction in order to decide if it is appropriate to avoid the transaction. Legal advice should be sought with these decisions.

SACAT is empowered to exempt a disposition of property or the signing of a contract to sell the property if SACAT is satisfied that to do so would be for the benefit of the protected person and that they had an adequate understanding of the nature of the particular transaction.

9.10. What if the protected person is a trustee?

Sometimes the protected person will be a trustee of assets under a formal trust document. In other cases a trust document will require the consent of the protected person before an action is taken regarding the trust. You are not automatically entitled to provide consent or act on behalf of the protected person in these situations. The trust document will usually contain provisions for the appointment of a new trustee in the event of the mental incapacity of one of the trustees. If the power to appoint a new trustee is exercised by the other trustee or trustees in accordance with the terms of the trust document, it may be necessary for you to take action

in respect of the trust on behalf of the protected person. It is recommended that you obtain legal advice as to what powers and obligations (if any) you may have in such situations.

10. ACCOMMODATION OPTIONS

Accommodation can be a sensitive issue and options need to be reviewed carefully. If a guardian has been appointed you will need to work with them to determine what is in the best interests of the protected person. There are also limits on how much you can spend on accommodation and you need to seek SACAT approval to exceed these limits.

The *Guardianship and Administration Regulations 2015*, Regulation 5 stipulates annual limits of expenditure beyond which prior approval of the Tribunal must be sought or you can refer to the SACAT website at <http://www.sacat.sa.gov.au/get-started/administration-of-a-persons-affairs/approval-for-gifts-and-dealing-with-property>.

You may have a number of accommodation options to choose from but this will depend on the personal circumstances and financial resources of the protected person. Options include:

- Living in their own home
- Public housing
- Boarding houses
- Community housing
- Supported residential facilities
- Retirement villages, or
- Residential aged care.

10.1. Living in Own Home

For most people, staying in their own home and living as independently possible is ideal. Assistance is available with home maintenance, such as changing light bulbs or mowing the lawn, grocery shopping, and gardening. The protected person might also need aids and equipment, like a walking frame, to assist them in getting around the home safely and easily. Assistance may also be available with tasks like dressing and preparing meals, and there may be some level of home nursing care available to enable the protected person to stay in their own home.

The following websites have valuable information on assisting people to remain in their own home:

My Aged Care

<https://www.myagedcare.gov.au/help-at-home>

Catalyst Foundation (formerly Seniors Information Service)

<http://www.catalystfoundation.com.au>

10.2. Public Housing

Protected people are often eligible for public housing through Housing SA. There can be long waiting lists for public housing. Having a disability or medical problem may give the protected person priority in obtaining accommodation or in obtaining a transfer to more suitable public housing.

The following websites are good sources of information on public housing:

Housing SA

<https://www.housing.sa.gov.au/housing-sa-information>

sa.gov.au – Government of South Australia

www.sa.gov.au/topics/housing-property-and-land/housing/public-and-community-housing

10.3. Boarding Houses

A boarding house is a form of accommodation where rent is collected for the use of a single private room while other facilities such as a kitchen, toilet, and living areas may be shared. The single room may be provided on a sole or shared basis. Meals and other services such as laundry may or may not be included. Boarding houses are also known as 'rooming houses' or 'lodging houses'. To find out more about boarding houses visit:

sa.gov.au – Government of South Australia

<https://www.sa.gov.au/topics/housing/renting-and-letting/rooming-lodging-and-boarding-in-private-rental>

10.4. Community Housing

Community housing offers long term secure housing, opportunities to be involved in the community, the potential to make new friends, and the opportunity to self-manage as much as possible while receiving support from the community. Housing associations and housing co-operatives provide housing for low income households, the majority of whom receive government benefits as their main source of income. The following websites provide very useful information on community housing:

sa.gov.au – Government of South Australia

www.sa.gov.au/topics/housing-property-and-land/housing/public-and-community-housing

The Community Housing Council of South Australia Inc.

<http://www.chcsa.org.au/>

10.5. Supported Residential Facilities

Supported Residential Facilities (SRFs) provide accommodation and care services to older people and people with disabilities in a group setting. SRFs are regulated by the *Supported Residential Facilities Act 1992* and are privately operated. For more information visit the following website:

Catalyst Foundation (Formerly Seniors Information Service)

<http://www.catalystfoundation.com.au>

10.6. Retirement Villages

There are forms of specialised accommodation available for older people who are capable of independent living but require some assistance with day to day tasks. Examples include:

Self-contained self-care units in retirement villages. These are similar to other home units except that they are located in a village environment where there are communal recreation,

sports, and other facilities. They are designed for people who need little or no assistance with daily living. The biggest benefits of retirement villages are that there are community facilities in close proximity to residential units, and residents do not have to worry about ongoing maintenance of their unit or the village grounds as this will be taken care of by the retirement village management.

Hostels and serviced apartments. These are for people who do not need to be in a nursing home but do require some assistance with daily domestic tasks such as cooking, bathing, and/or dressing. The accommodation usually consists of a 'bed sit' room with an ensuite bathroom, with various services and meals provided by the management.

It is essential that you, as financial administrator, are fully aware of the terms and conditions that will be placed on the protected person if they become a resident of a retirement village or hostel. For example, entry into a retirement village or hostel does not give the occupant a title of ownership on the unit or room in which they will live.

It is strongly recommended that independent legal advice be obtained before considering any forms of retirement village or hostel accommodation.

The following sites have useful information for those considering entering a retirement village or hostel:

sa.gov.au – Government of South Australia
<https://www.sa.gov.au/topics/housing/aged-care-and-retirement-housing>

Catalyst Foundation (Formerly Seniors Information Service)
<http://www.catalystfoundation.com.au>

10.7. Residential Aged Care

Residential care services provide accommodation and support for people who can no longer live at home. Staff at aged care homes can help with day-to-day tasks (such as cleaning, cooking, laundry); personal care (such as dressing, grooming, going to the toilet); or 24-hour nursing care (such as wound care, catheter care).

Aged care homes are owned and run by people who are approved by the Australian Government. The aged care system in Australia aims to make sure that all older people can receive support and quality care when they need it.

The following websites are valuable sources of information:

My Aged Care
www.myagedcare.gov.au/aged-care-homes

Catalyst Foundation (Formerly Seniors Information Service)
<http://www.catalystfoundation.com.au>

10.8. What should you do with the protected person's house?

When a protected person moves into alternative accommodation to give them access to the support they need a decision will need to be made about what happens to their house. This is likely to be a very sensitive decision and the protected person's wishes must be taken into account. It may be that their wishes outweigh pure financial considerations. For example, if the protected person is extremely traumatised by the prospect of selling of their house it would be unwise to go ahead with a sale unless there is no other option. It will be important to consult with close family members regarding the potential sale of the house and especially with those who could be entitled to the house under the protected person's Will. Please remember that you are not able to put a protected person's house on the market without permission from SACAT.

Options to consider:

- If it is possible that the protected person may return to live at their house the best option will be to leave the house unoccupied. In this case you must arrange special insurance cover which states that no one will be residing in the house. It may be beneficial to the protected person to regularly visit their home to enjoy familiar surroundings and therefore it is once again best to leave the home unoccupied and obtain appropriate insurance cover
- It may be appropriate to rent out the house so that the protected person can receive the dual benefits of rental income and capital appreciation. The protected person may need the higher income that renting their house out can provide.
- To sell the house as the protected person may need capital to move into a retirement village or to raise revenue for an accommodation bond in a care facility.

The protected person's doctor, family, and other professional care providers (such as psychologists and/or social workers) can provide useful advice on the non-financial aspects of deciding whether or not to sell the protected person's home.

You do not have the authority to force the protected person to move out of their own home. If you feel that the protected person needs to be in a nursing home but the protected person refuses to go, an application can be made to SACAT for a guardianship order. More information on guardianship orders can be found at <http://www.sacat.sa.gov.au>.

Sometimes the house will be jointly owned with the protected person's spouse who will continue to live there after the protected person has moved out. More information on what to do in this situation can be found under section 9.2 of this manual.

10.9. Selling Real Estate

If you decide that selling the protected person's home is in their best interests, approval from SACAT is required prior to the sale of the protected person's home. The procedure for application is as follows:

You must seek approval from SACAT in writing for the property to be sold, prior to the property being placed on the market and include:

- Details of the property to be sold
- Reasons for sale
- The protected person's attitude to the sale
- The protected person's attitude to the sale of property before suffering a loss of mental capacity
- The attitude to the proposed sale of all interested parties actively involved in the protected person's life

- A medical report from the protected person's doctor advising;
 - Is there is any likelihood of the protected person being able to manage their own finances?
 - Will the protected person be capable of returning to the house to live?
 - Is the protected person capable of making a valid decision regarding the rent or sale and if so, what are their views?
- Letter of consent from the immediate family and any beneficiaries under the protected person's Will
- A copy of the protected person's Will
- Summary of current assets and liabilities, and
- Valuation from an approved land valuer or appraisals from two real estate agents and where possible a copy of the council rates.

The valuation must provide (and a licensed real estate valuer will be aware of these requirements):

- A printout of the Certificate of Title
- A brief description of the property and any improvements that have been made
- A description of the property's state of repair
- The property's market value and the recommended method of sale
- The insurable value of the home
- Details of possible encroachments on the property
- Details of any zoning which may affect the use or development of the property
- A rental valuation
- A suggested advertising budget where auction is recommended, or
- Any other relevant matters which may have an effect on the sale or rental of the property, including the value of the property and potential rental income.

Upon receipt of SACAT's order consenting to the sale of the real estate you can instruct a real estate agent to market the property.

You will need to advise Public Trustee of the sale in the next annual statement of accounts, and include a copy of SACAT's consent to the sale, a copy of the valuation, the conveyancer's settlement statement, and details of the investment or use of the proceeds of the sale.

10.10. Purchase of Real Estate

SACAT's approval is also required before an administrator can purchase real estate on behalf of the protected person. You need to show that the purchase is desirable for the purpose of:

- Providing a home for the person and/or their dependents, or
- Preventing the real value of the protected person's assets being reduced by inflation.

The purchase of vacant land will usually be approved where it is proposed to build a home for the protected person. However, purchase of vacant land merely as an investment is not normally approved because it does not produce an income for the protected person and so there is not any short term benefit to the protected person.

If you wish to purchase real estate on behalf of the protected person you must provide SACAT with the following information:

- The type of real estate you propose to buy and the expected cost
- The reason for the purchase, including the perceived benefits for the protected person

- The opinion of the protected person
- The opinion of the protected person towards purchasing property before suffering a loss of capacity
- Medical report from the protected person's doctor advising;
 - Is there any likelihood of the protected person being able to manage their own finances?
 - Is the protected person capable of making a valid decision regarding purchase and if so, what are their views?
- Letter of consent for the purchase from the immediate family and any beneficiaries
- Summary of current assets and liabilities, and
- Copy of the protected person's Will

When you locate a particular property you must provide SACAT with a valuation from a licensed valuer, who is independent from the vendor and the vendor's agent. The valuation must set out:

- A brief description of the property and any improvements that have been made
- A description property's state of repair
- The property's market value
- Copy of the Certificate of Title
- The insurable value of the home
- Details of possible encroachments on the property
- Details of any zoning which may affect the use or development of the property
- A rental valuation, and
- Any other matters which may have an effect on the purchase of the property.

If SACAT approves the purchase, you may proceed with negotiations with the agent, purchase the property (if appropriate), and engage a land broker or solicitor to settle the transaction. Make sure that the contract for sale includes a statement that ensures the purchase of the property is subject to a satisfactory building inspection.

You need to advise Public Trustee of the purchase in the next annual report and enclose a copy of SACAT's order to allow the purchase, the valuation of the property, and the conveyancer's settlement statement.

Insurance

You must ensure that you keep all real estate and other valuable assets of the protected person properly insured. Standard home and contents insurance policies cover buildings, typical household contents, and public liability. If the protected person has specific items of value, such as antiques or jewellery, then each valuable item must be listed separately on the insurance schedule along with an assigned agreed value for each item.

Any additional assets of value such as motor vehicles, boats and/or caravans, should be insured at current market value.

Repairs and improvements

Repairs or renovations can be made to any property owned by the protected person, as long as receipts are retained, there is good reason for the work to be done and the protected person can afford it. However, care needs to be taken not to leave the protected person without adequate funds.

Sometimes the protected person's home will be run down and you will need to consider carefully whether it would be in the best interests of the protected person to repair the property prior to a sale or to sell it as is. As well as considering the views of the protected person and close family, you should obtain advice from real estate agents and builders about the best way forward.

Leasing out real estate

The Act gives you the authority to lease the protected person's home or other real estate when the protected person can no longer live at home. However, if the lease is for more than two years, SACAT approval is required. You are required to seek the best rent reasonably obtainable. You may employ a real estate agent to find tenants and to manage the property.

If the rent falls into arrears or breaches the term of the lease you must make an application to SACAT – Housing Disputes for determination.

10.11. Discharge of mortgage

You may discharge a mortgage without consultation with Public Trustee or SACAT.

11. THE IMPORTANCE OF BEING AN ADMINISTRATOR

This guide has highlighted the roles and responsibilities you will have as an administrator. In addition to understanding your roles and responsibilities it is important to be aware of the following questions and how to resolve any issues that might arise. If you are ever in any doubt about what to do it is wise to consult a professional.

11.1. Are administrators paid?

Generally, you will not be paid for your work, although administrators may be reimbursed for reasonable out of pocket expenses incurred in carrying out the role. The role of administrator is usually taken on based on the relationship with the protected person and the desire to care for their wellbeing.

Payment may be made to an administrator only where they are a professional person who is in the business of administering estates. Private family members who do not administer estates as a business cannot claim a fee. Payment is made at a set rate by the *Guardianship and Administration Regulations 2015*. In some cases SACAT may grant approval for a higher rate to be paid but only after consultation with the Office of the Public Advocate.

11.2. What are conflicts of interest?

You may find yourself in a situation where your personal and financial interests are in conflict with the interests of the protected person whose financial affairs you administer. A conflict of interest is any action where an administrator's interest competes with or negatively affects the interests of a protected person. For example, a conflict of interest may occur when the administrator:

- Wants to borrow money from the protected person's estate
- Proposes that either they or a close relative or friend moves into the protected person's house
- Proposes that the protected person invest money in a company or business in which the administrator has an interest
- Seeks to gain a greater interest in a deceased estate and in doing so adversely affects the protected person's rights and/or entitlements
- Is a potential beneficiary of the Will of the protected person and therefore, may benefit from the estate upon the death of the protected person. It would be improper for you to preserve a large capital balance in the estate at the expense of maintaining an adequate lifestyle for the protected person during their lifetime.

It is important to recognise when a conflict of interest arises and situations in which you may have difficulty making impartial decisions as an administrator.

It is important that you know that should a conflict of interest arise it does not mean you have done anything wrong. If you believe that there may be a potential conflict of interest, contact Public Trustee's Regulatory Team on (08) 8463 7441 to discuss the situation or email PT.RegulatoryTeam@sa.gov.au. You may be referred to SACAT for further advice and direction.

11.3. Can an administration order be revoked?

An administration order can be revoked by SACAT if the protected person recovers the ability to handle their own financial affairs. SACAT also has the powers to appoint a new administrator if the current administrator isn't prudently managing the protected persons estate. If the appointed administrator is not prudently managing the protected person's affairs, SACAT has the powers to appoint a new administrator. The steps in cancelling an administration order are:

- The protected person must make an application to SACAT to handle their own financial affairs. The protected person would need supporting documents (in the form of reports) from appropriate professionals such as:
 - Doctors
 - Clinical psychologists
 - Rehabilitation specialists, and/or
 - Neuropsychologists
- SACAT will contact the protected person and other relevant people to gather together necessary information, and
- There will be a hearing that the protected person would be expected to attend.

If SACAT revokes the administration order, you must give back to the protected person control over their financial affairs. You will also need to lodge a final statement of the accounts (from the beginning of the financial year, 1 July, to the date control is handed back to the protected person) to Public Trustee.

11.4. Does the administration apply outside South Australia?

This question is particularly important if:

- the protected person owns property located outside of South Australia
- the protected person lives outside of South Australia.

The law is not completely clear about the authority of a South Australian administrator in dealing with interstate or overseas property. The extent of an administrator's authority varies between states, territories, and countries. If your authority is not accepted in a different state, territory, or country you will need to seek an administration order in the state, territory, or country in which the property is located or the protected person resides.

It is unusual for a protected person who lives in South Australia to have an administrator appointed who does not live in the State. In addition to your reporting obligations the administrator must also be able to be consulted when the order is being reviewed and available for consultation with the guardian on any substantial decisions. For these reasons it is appropriate that you advise SACAT and the Public Advocate whenever you change address, move interstate or overseas. This notification should be by letter quoting the name of the protected person, the date of the administration order and the SACAT reference number.

11.5. Changing administrators

You can be replaced by someone else:

- If you want to resign
- Upon your death
- If you do not comply with your obligations, e.g. by not lodging annual statements of accounts or not complying with a direction from Public Trustee
- If you move interstate or overseas, or
- If you have a conflict of interest.

SACAT will appoint a replacement if any of the above situations occur.

If you wish to resign you must write to SACAT stating the reasons for your resignation and, where possible, suggest a person who would be willing and suitable to take over the role of administrator. Alternatively, Public Trustee can be appointed as administrator.

If a new administrator is appointed you will need to hand over the protected person's financial affairs to the newly appointed administrator and lodge a final statement of the accounts (from the beginning of the financial year, 1 July, to the date your resignation comes into effect) with Public Trustee.

12. FINANCIAL RECORDING AND REPORTING

You have the responsibility, as an administrator, to record and report on the financial affairs of a protected person. The following section outlines your obligations, the specific information that you need to collect and report on, the reporting process, and how the report is to be submitted to Public Trustee.

12.1. Does an administrator have to provide an annual statement of accounts?

As an administrator of a protected person's estate, you must, by law, provide Public Trustee with an annual statement of accounts of the estate. If you do not fulfil these obligations then the protected person's assets could decrease or the quality of their lifestyle may reduce. It is therefore important that you be accountable for your actions and make sure you provide these annual reports.

An annual statement of accounts is due for the period 1 July to 30 June and must be lodged to the Public Trustee by 30 September each year. This requirement will be stated on all administration orders. You are required to refer to your administration order for any other requirement, for example to submit statement of accounts to SACAT as well.

If you fail to produce a statement of the accounts without a reasonable explanation you may be guilty of an offence under the Act with a fine of up to \$5,000.

12.2. What is the Public Trustee's responsibility to SACAT?

Public Trustee must examine and report to SACAT on all statements of accounts. Public Trustee may:

- Under certain circumstances, where the estate is highly complex, request the accounts to be audited externally at the cost of the protected person's estate
- Recommend to SACAT the disallowance of an item of expenditure where it is possible that unjustifiable expenditures have been made, or that decisions were not made in good faith or with reasonable care.
- Report on any other administration matters of the estate which Public Trustee thinks should be brought to the attention of SACAT.

SACAT will review Public Trustee's recommendations, and will also provide an opportunity for the administrator to explain and justify their decisions.

In relation to a recommendation to disallow an item of expenditure, SACAT will either:

- Approve the item of expenditure, or
- Accept the recommendation of Public Trustee and not allow the expenditure.

SACAT would only accept the recommendation to not allow the expenditure if it believed that the administrator did not act in good faith or for the benefit of the protected person.

Where SACAT makes a decision to disallow expenditure, the administrator is personally liable to the protected person for the amount of money spent. The administrator is also personally liable to Public Trustee for costs and expenses incurred for the identification and processing of the disallowance.

12.3. What reports and documents do I need to provide?

The following completed reports and documents are to be lodged annually with Public Trustee for review:

- Statement of receipts and payments from 1st July to 30th June
- Assets and liabilities as at 30 June
- Assets sheet (details of assets where applicable)
- Worksheets of receipts and payments
- Statutory declaration
- All bank account statements
- Term deposit statements (if applicable)
- Share certificates (if applicable)
- A copy of the mortgage statement (if applicable), and
- All other financial asset details

12.4. Where do I get the templates for the reports?

You will have received a set of templates with the correspondence you received from Public Trustee confirming that you have been assigned the role of administrator for a protected person. You can photocopy these forms, as required, to complete the statement of accounts each year.

You can also download copies of the templates from the Public Trustee website at www.publictrustee.sa.gov.au/private-administrators which can be printed and completed manually or completed electronically using MS Excel. You can also email the completed forms to: PT.RegulatoryTeam@sa.gov.au

12.5. How do I complete the templates?

Payments Worksheet

Enter the following details for every transactions made from the bank account during the reporting period:

- Date the payment was made
- Payment description (e.g. nursing home)
- The total value for each expense type at the foot of each column - this will be automatically calculated for you if using the Excel worksheet.
- The total value for each line in the total column on right hand side - this will be automatically calculated for you if using the Excel worksheet.

It is usual to keep “cash in hand” for day to day needs by or on behalf of the protected person. To account for this, it is recommended a nominal sum of cash be maintained and reimbursed from the protected person’s account.

You are not required to send any receipts for payments with your reports unless requested to do so. It is not necessary to obtain receipts for payments under \$100, however, it is recommended that you keep the receipts for all payments for your own records.

Invoices

All invoices must be kept in a file and in payment order. Each one must have the word ‘paid’ either stamped or written on it, together with the date on when the payment was made.

Sometimes you may not receive a receipt for payments, such as bills paid by phone or internet. In these cases you must keep the original invoice and make a note of the details of the payment including receipt numbers for any payments that you have made.

Where the supplier of goods or services does not provide an invoice then you must prepare a receipt for the monies paid out, which would include details of the goods and services provided, and have it signed by the supplier.

Bank interest and Charges

Remember to update all bank accounts at the close of the statement period and amounts in the 'Interest' column on the receipts worksheet. Any bank charges are also to be included on the payments worksheet in the 'Other' column with the payment description being 'bank charges'.

Receipts Worksheet

An entry is to be made on the worksheet for each transaction. Each entry will have:

- A date of receipt when the funds were deposited into the bank.
- The name of the person or organisation that provided the funds.
- The amount received, in the appropriate column according to the type of receipt (e.g. pension).
- The total value for each receipt type at the foot of each column - this will be automatically calculated for you if you are using the Excel worksheet.
- The total value for each line in the total column on right hand side - this will be automatically calculated for you if you are using the Excel worksheet.

Receipts

To simplify the reconciliation process between your records and that of the bank, all monies received must be banked intact to enable the funds to be properly reconciled.

There is no need to issue receipts for monies received by cheque or by electronic funds transfer (eg a direct credit to the protected person's bank account).

Cash receipts should be issued where monies are received by way of cash. Therefore, a simple duplicate cash receipt book should be obtained for the estate.

Balancing the worksheets (both payments and receipts)

Once all details have been entered for the reporting period, total each column, including the 'Total' column. The sum of the 'Total' column must equal the sum of all other columns.

Once the columns are all totaled the balances are to be entered against their respective categories on the statement of receipts and payments summary sheet.

If you use the Excel worksheet on your computer the totals will automatically be calculated for you.

12.6. Statement of receipts and payments

- Enter protected person's name and the year-end date for the period being reported
- Enter totals for each receipt type under the 'Receipts' category and each payment type under the 'Payments' category as recorded on the worksheets.
- Enter the closing balance of the previous statement; this is the opening balance of the estate for this reporting period (A).
- Add the opening balance (A) to the total receipts (B) to determine the total funds (C).

- Deduct total payments (D) from the total funds (C) to determine the available funds (E) held by the estate.
- On the right hand side of the statement of receipt and payments, you will find an area where the balances of all bank accounts, fixed deposits, etc., are to be listed.
- The total of these balances (F) must be equal to the available funds (E).

If you use the Excel worksheet on your computer the statement of receipts and payments will be calculated for you.

12.7. Statutory Declaration

The statutory declaration confirms that the statement of accounts you are providing is correct and accurate.

You are required to respond to each of the statements in relation to Section 5 of the Act in the declaration as applicable to your role as administrator.

The declaration must be signed by you in the presence of an authorised witness, such as a Justice of the Peace or a solicitor and provided with every annual statement of accounts.

12.8. Assets and Liabilities

The 'Assets & Liabilities' form is to determine the overall value of the estate and provide a means by which the assets of the estate can be assessed. It is essential to maintain accurate and up to date records of these assets for proper estate administration.

Assets

Cash Holdings

This figure is obtained from the statement of receipts and payments (F). Cash holdings represent the total of all cash balances such as bank accounts, fixed deposits, and cash in hand.

Real Estate

To determine the value of the protected person's interest in real estate property (e.g. land, house) you should use the council valuation from the most recent council rates notice.

In the case where the property is jointly owned by the protected person (joint tenancy), the appropriate portion owned by the protected person is to be shown.

If the property is held as tenants in common, the appropriate portion (if more than 2 tenants) of the council or other valuation is to be shown.

The details of the real estate (address etc) can be recorded in the separate sheet, titled 'Assets'.

Furniture

If the protected person owns a reasonable amount of valuable furniture (e.g. antiques) it is appropriate to have these items valued. This value is to be included under the category of 'furniture'.

The insured value of usual household items such as tables, chairs, whitegoods, beds, etc., will also be included under the category of 'furniture'.

Motor Vehicle

Where a motor vehicle, motor bike, caravan, boat and/or trailer is in the name of the protected person, then the market value should be recorded. The details of the motor vehicle (make, model etc.) can be recorded in the separate sheet, titled 'Assets'.

Shares / Investments

Record the total of all shares and investments held. The details of individual holdings are to be recorded in the separate sheet, titled 'Assets'. The amount to be recorded for share investments is the market value at the close of trading as at the 30th of June for that financial year.

It is important to maintain complete and accurate records of shares and investments as this will assist with the preparation of taxation returns and will also provide a valuation for inclusion in the statement of assets.

For taxation purposes it is recommended:

- You keep a record of the cost of the shares at purchase, or
- The market value of the shares at the date of transfer, if the shares were transferred
- The value of shares acquired through a dividend reinvestment plan, generally the value of the dividend paid

If these records are not available you will be able to obtain the information from either the Stockbroker used in purchasing the shares or the Share Registry for the particular shareholding. Each dividend statement would show the details of the Share Registry.

Personal Effects

A nominal value should be included unless the items are of significant financial value (e.g. jewellery, antiques). If they are valuable, then they should be properly identified, valued, and insured.

Where a valuation is carried out, then that valuation should be recorded on the Assets & Liabilities form.

Debts owed to estate

Where debts are owed to the protected person and enforceable in law, it is important that they are not brought to account until such time as they are collected or otherwise finalised. Every effort must be made to recover debts owed to the protected person and you should assess the implications of seeking legal advice and assistance.

Other assets

Please include any other assets of significant value that are unable to be included under any of the other categories. Please identify each asset and its value under this category.

Liabilities

Unpaid accounts

Include under this category, any monies due that:

- Have exceeded their 'due-by' date, and
- The protected person has not been able to meet due to lack of funds.

Loans

Include under this category, any monies lent to the protected person that require repayment irrespective of whether they are formal or informal arrangements.

Details of all loans must be maintained and a loan summary statement as at 30 June provided.

Mortgage

Where any real estate property in the name of the protected person is subject to a mortgage, then the amount outstanding is to be included under the category of liabilities. A copy of the mortgage statement must be provided with the annual financial statement of accounts.

Other

Please include any other liabilities of significant value that cannot be included under any of the other categories.

Finalising the statement of assets & liabilities

All assets and liabilities are to be totalled. The net financial worth or debt of the protected person's estate will come from the difference between the total assets less total liabilities.

Total Assets (G)

Total liabilities (H)

Net Value of Assets $G-H = (I)$

The values of the previous year's assets and liabilities are to be included in the right hand column of the statement. A comparison between the current and previous year figures will provide an indication as to any changes in the assets and liabilities during the financial year in question. The statement also provides an overview of the overall value and financial stability of the estate.

If you have any questions or require assistance with completing the statement of accounts contact Public Trustee's Regulatory Services Team on (08) 8463 7441 or email PT.RegulatoryTeam@sa.gov.au.

12.9. How should documents be lodged?

Once completed, the full set of reports and other required documents can be posted to:

Regulatory Services
Public Trustee
GPO Box 1338
ADELAIDE SA 5001

Or emailed to PT.RegulatoryTeam@sa.gov.au

It is essential that you keep a copy of the full set of reports and other documents for your own records.

