

Guardianship; Managing the affairs of a missing person



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The Guardianship (Missing Persons) Act 2017 came into force on 31st July 2019.

It aims to help the family of a missing person to manage their property and finances in the hope that they will one day return.



When can an application be made?



If someone has been missing for at least 90 days (or sooner if there is some urgency) an application can be made to the High Court for a Guardianship Order. This includes where somebody is kidnapped or held hostage.

Who can apply?

An individual aged 18 or over, or a Trust Corporation, who must act in the missing person's "best interests". Someone who is applying to be a Guardian needs to have a "sufficient interest" in the proceedings and that would include the missing person's;

- ✓ Spouse
- ✓ Civil partner
- ✓ Child
- ✓ Sibling

A cohabitee or friend does not automatically have a sufficient interest but can apply for permission.



What is the role of a guardian?



A Guardianship order will allow a guardian to “stand in the missing person’s shoes”. The powers of a Guardian can include the ability to:

- Sell, let and mortgage property
- Make investments
- Execute deeds or other documents
- Recover money owed to the missing person
- Pay their debts
- Bring or conduct legal proceedings on their behalf
- Make gifts

How is an order made?



An application must be made to the High Court with supporting evidence. A hearing will usually be necessary. Detailed information about guardianship can be found in the Code of Practice, rules of court (Part 57 of the Civil Procedure rules) and Practice Direction, 57c.

Supervision of the guardian



The Public Guardian is required by the Act to maintain a register of Guardianship Orders and is responsible for supervising Guardians. A Guardian may need to pay security for costs in the form of a bond. The Public Guardian can suspend a Guardian's powers if they seem to be acting inappropriately.

Decision making



When a Guardian is exercising their powers, they need to bear in mind:

- a) The wishes and feelings that the missing person has expressed in the past
- b) The missing person's beliefs and values
- c) Any other relevant factors

It would be sensible for a Guardian who is unsure about making a decision to consult with others, and if necessary make an application to the Court for approval.

How long does an order last?



An Order cannot last for longer than four years, but a further Order can be made at the expiry of that period. The Court has the power to revoke or vary a Guardianship Order.

How much does it cost?



The Act makes it clear that a Guardian can be reimbursed from the missing person's property for their reasonable expenses (it is important to keep records). The cost of obtaining a Guardianship Order is likely to be in the region of £5,000 plus VAT and expenses which should be payable from the missing person's estate.

There will also be an initial fee payable to the public guardian as well as an annual supervision fee during the life of the guardianship order.

Testimonials

“My first meeting with Sarah Young was really great. She seemed to care about my situation and gave good advice on what we should expect throughout our case. My case has now come to an end thanks to Sarah. I would highly recommend her services to others in similar situations.”



Sarah Young
Director and Solicitor



Next steps?

If you would like to discuss any of the issues arising from this report please call Sarah Young on 0800 8 60 62 65 or take a look at our website: <http://ridleyhall.co.uk/our-services/contentious-probate-inheritance-disputes/missing-people/>

