



Villamanta Disability
Rights Legal Service Inc.

Villamanta Disability Rights Legal Service Inc. Information Sheet

Updated January 2009

Administration

This Information Sheet should be read together with the Villamanta Disability Rights Legal Service Inc Information Sheets about *Guardianship*, *Appointing an Enduring Guardian* and *Capacity and Consent*. The law assumes that all people are competent to make decisions about their lifestyle when they turn eighteen years old. If you are not competent to make your own decisions, orders of administration and guardianship are legal and formal ways by which another person can make decisions for you. Under a guardianship order, a guardian is appointed to make decisions in relation to your day to day life. Under an administration order, an administrator is appointed to make decisions in relation to the management of your finances and other legal matters. This Information Sheet is mainly concerned with administration orders.

What is an administration order?

If you are a person:

- Over the age of 18 years;
- With a disability (including an intellectual impairment, brain injury, mental disorder, physical disability or dementia); and
- That disability prevents you from making reasonable judgements in relation to legal and financial matters;

the Guardianship List of the Victorian Civil and Administrative Tribunal (the **Tribunal**) can make an **administration order** appointing an **administrator** to make those decisions for you. An administration order is a legal document. An administrator can be appointed to make all decisions in relation to your legal and financial affairs, or only decisions about a limited range of things. If a limited administrator is appointed, the administration order will set out the sorts of decisions that the administrator can make. An administrator may also be appointed temporarily.

Who can be an administrator?

The Tribunal can appoint an individual, such as a relative, friend, solicitor or accountant, or an organisation, such as the State Trustees, to be your administrator. The Tribunal will only appoint someone to be your administrator if that person consents and if the Tribunal is satisfied that:

- they will act in your best interests and listen to your wishes;
- their interests will not conflict with your interests;
- they are a suitable person to act as your administrator; and
- they have enough skill to administer your estate and finances, or there is a special relationship or other special reason why that person should be appointed.

In determining whether a person is 'suitable' to act as your administrator, the Tribunal must take into account your wishes about the person you want as your administrator, so far as they can be ascertained. The Tribunal must consider whether that person will get along with you and any guardian who may also be looking after your interests. The Tribunal prefers to appoint an administrator who is familiar with your values and beliefs, likes and dislikes, and will consider the wishes of you and your family members.

IMPORTANT NOTE!

Remember - this Information Sheet has been produced only for use in **Victoria, Australia**. Some of the laws mentioned in this Information

It will not usually be appropriate for a Tribunal member to be appointed as your administrator and this will be done only in exceptional cases. If there is no suitable or willing family member or friend available or if there is a disagreement about what is best for you, the Tribunal can appoint an independent administrator. This may be a company, such as the State Trustees. The Public Advocate cannot be appointed as your administrator. An administrator does not have to be an expert, but they need to be someone who will genuinely act in your best interests, *and*, as far as possible, in line with what you want.

How is an administrator appointed?

Any person can apply to the Tribunal for an administration order for a person with a disability. An application is made by completing the relevant form (available from the Tribunal, the Office of the Public Advocate (**OPA**) and Villamanta) and lodging it with the Tribunal. We recommend that you talk to the before completing this form to discuss whether administration is necessary and what supporting material is needed. After receiving the form the Tribunal will set a date for hearing the application. Urgent applications are heard as soon as possible, and most other applications will be heard within 30 days.

When will the Tribunal appoint an administrator?

The Tribunal should only appoint an administrator if you have a disability and:

- you are at risk because you cannot make your own decisions and manage your own financial and legal affairs;
- something serious might happen if the wrong decisions are made or there are major disagreements about what the right decision should be;
- there is no simpler or less restrictive way of meeting your needs; and
- it is in your best interests to have an administrator.

Because the appointment of an administrator means taking away your legal right to make your own decisions, the Tribunal should not appoint an administrator unless it is satisfied that all of these conditions are met. Administrators can only be appointed by the Tribunal. If a person has not been appointed as an administrator by the Tribunal, they have no legal authority to make decisions for you.

Can administrators be appointed for adults who do not have disabilities?

No. However, if you cannot look after your own financial affairs for practical reasons (for example, you are going overseas and want someone to pay your bills), you can appoint an attorney under a **power of attorney** document.

What decisions can an administrator make?

Administrators have a wide range of powers to do with financial and legal matters. The types of decisions that an administrator can make and the powers that they have will depend on what is set out in the administration order. When the Tribunal makes an order, it must be satisfied that the order places the least number of restrictions on your freedom of decision and action as is possible in the circumstances. In other words, the Tribunal must only give an administrator the fewest powers needed. As a result, your administrator might only have very limited powers, such as only being able to make decisions about long-term investments but not about day-to-day living expenses; or your administrator might have the power to make all decisions about your money. The administration order should state exactly what powers the administrator has. Some of the powers that an administrator may have include the power to:

- generally manage your financial affairs;
- invest your money;
- sign documents for you (this does not include documents such as your will);
- pay your bills, including money for the maintenance of you and your spouse or dependents;
- limit your access to your money;

- receive or collect monies (for example rent) for you;
- sell or mortgage any of your property for you;
- bring or defend legal proceedings in your name; and
- carry on any profession or trade or business you may have carried on before having an administrator.

You should remember that regardless of the powers of an administrator, your money remains your money and that it is held on trust for your benefit. It does not become the administrator's money and he or she cannot do whatever they want with your money.

Do I lose any rights if I become subject to an administration order?

Yes. Depending on the type of order made, there may be some things concerning your money that you cannot do. When an administration order is made, you become known as a *represented person*. Depending on what the administration order says, you may not be able to enter contracts without an order from the Tribunal or the written permission of your administrator. If you do try to enter a contract without this permission, the contract may be of no effect. If you are worried about a contract you should talk to your administrator or call Villamanta. If you think your administrator is unfairly not letting you buy goods or otherwise spend your money, you should try to discuss this with them. If this does not work, you should ask a friend, advocate or lawyer to help. If you are still unhappy about what is happening, you may need to get the Tribunal to reassess the order.

What responsibilities does an administrator have?

An administrator must act in your best interests. This means that an administrator must, as far as possible, make decisions that:

- protect you from abuse, exploitation and neglect;
- are in your best interests;
- encourage and assist you to become capable of administering your own estate; and
- take into account your wishes as much as possible.

The administrator may apply to the Tribunal for advice on any matter relating to the scope of the administration order, or the exercise of any power under that order. No matter who your administrator is you are entitled by law to expect that the administrator will take notice of what you want and do what you want wherever possible, and that the administrator will act in your best interests.

How long does an administration order last for?

Administration orders may last for a maximum of 3 years, although they will usually last for a shorter amount of time.

Emergency and temporary administration orders

Any person may apply to the Tribunal for an order appointing a temporary administrator. Often applications will be made when it appears that the person is spending or giving away large amounts of their money unwisely, or urgent medical or accommodation decisions need to be made. A temporary administration order lasts for 21 days and may be renewed for a further 21 days. Before the end of the temporary order, the Tribunal must hold a hearing to decide whether a permanent administration order should be made.

What safeguards exist to ensure that administrators act properly?

Safeguards that are in place to ensure that administrators act in your best interests include that:

- administrators can ask the Tribunal for advice at any time;
- private administrators must regularly lodge accounts for examination, as directed by the Tribunal;

- administrators cannot invest money in real estate or securities, apart from authorised trustee investments, without the approval of the Tribunal;
- any person who believes that an administrator is not acting in your best interests can apply to the Tribunal for a reassessment.

Your administrator is subject to audit requirements. This means that every year your administrator has to give your financial accounts to the Tribunal or a Tribunal-appointed auditor (an accountant who inspects your financial records to check they are being looked after properly). The Tribunal can also ask to see your accounts at *any time* to check that they are being managed properly. If the Tribunal thinks some items of spending have been improper or badly handled it may disallow the spending and make the administrator (not you) liable for any costs incurred.

How can I tell if my administrator is not doing their job properly?

These are the things you should look for in order to check that your administrator is doing everything the law says they should do. Your administrator should:

- know you well enough to be able to decide what is important to you and what isn't in the way your money is spent;
- be listening to you when you tell them what you want;
- be able to respond reasonably quickly when you need money;
- be keeping proper records about how your money is spent; and
- not be receiving any financial benefit from the decisions made about how your money is spent or invested.

Can I get accounts from my administrator?

There is no law forcing the administrator to give you accounts setting out how the administrator is spending your money. Most administrators will give them to you if you ask. If you can't get accounts and you think something is wrong, you should see a lawyer.

How can I apply for a rehearing?

If you are unhappy with a decision of the Tribunal decision in relation to your administration order, you can apply for a rehearing by a more senior person within 28 days of the initial hearing. If you are unhappy with the way the law has been applied you can appeal to the Supreme Court.

How can I apply to have an administration order changed or removed?

If you are not happy with the decisions that your administrator is making, you can ask the Tribunal to change the administration order. If the Tribunal agrees that the administrator is not listening to you or is not acting in your best interests, it can appoint a different administrator or change the administration order in whatever way it believes best suits your interests. The Tribunal must reassess your order within 12 months after first making the order and again every three years. You or any other person (such as a friend, advocate or family member) may apply at any time to have the order reassessed by the Tribunal, but the Tribunal has a discretion as to whether or not to conduct an early hearing. The Tribunal can also conduct a reassessment on its own initiative, for example, if there has been some material change in your circumstances. The Tribunal has the power to correct, change, continue, replace or revoke an administration order following a reassessment. You can apply to the Tribunal have your administration order removed (revoked). To do this, you will need to show either that you no longer have a disability, or that your disability no longer prevents you from making informed or reasonable decisions about your legal and financial situation. Medical reports from your treating doctor or an independent assessment by a doctor that demonstrate that your disability no longer prevents you from making decisions about your own legal and financial affairs will assist your application.

What if I am from another state or plan to move interstate?

If you are from another state and you are subject to an administration order made in that other state, it is possible to have that order registered in Victoria on the administrator's application. If your order is registered in Victoria, it operates as if it were an order made in Victoria and can be reassessed, modified, changed or cancelled by the Tribunal. If you move to another state, it may be possible to have your Victorian order registered with the interstate body. This does not mean that the order will

stop working in Victoria. If the Tribunal changed your administration order in Victoria, such as by appointing a new administrator, these changes would not necessarily apply in another state. If you wanted to cancel your interstate order you would still need to go before the equivalent tribunal in your state.

Who can I ask for assistance?

If you have any questions about guardianship or guardianship orders, the following organisations may be able to assist:

<p>Villamanta Disability Rights Legal Service Phone: 1800 014 111 Website: http://www.villamanta.org.au/</p>
<p>State Trustees Phone: 9667 6444 Website: http://www.statetrustees.com.au/</p>
<p>Mental Health Legal Centre Phone: 9629 4422 http://www.communitylaw.org.au/mentalhealth/</p>
<p>Victoria Legal Aid Phone: 9269 0120 Website: http://www.legalaid.vic.gov.au/</p>
<p>Public Interest Law Clearing House (PILCH) Phone: 1800 606 313 Website: http://www.pilch.org.au/</p>

Helpful Hint:

This Information Sheet should be read together with the Villamanta Disability Rights Legal Service Inc. Information Sheets on Guardianship, Appointing an Enduring Guardian and Capacity and Consent.

Looking for More Information?

If you want more information about having an administrator, you can phone: *The Guardianship List of the Victorian Civil and Administrative Tribunal.*