

Guardianship & Administration appointment by VCAT

If a person suffers from a disability and is unable to make reasonable decisions about their lifestyle, personal circumstances, legal or financial affairs, VCAT can appoint a guardian and an administrator to make these decisions.

What is a guardian?

A guardian is a person appointed by order of VCAT to make decisions for another person (represented person) that a parent would be able to make for a child, including to decide:

- > where the represented person lives
- > who the represented person lives with
- > whether the represented person should be permitted to work
- > who the represented person works for
- > who can visit the represented person

What is an administrator?

An administrator is a person appointed by order of VCAT to manage the legal and financial affairs of a represented person, including:

- > banking and paying bills
- > collecting, receiving and recovering money due to the represented person
- > carrying on any trade or business of the represented person
- > executing and signing documents
- > selling property

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When does a person have a disability?

A disability is defined in section 3 of the *Guardianship and Administration Act 1986 (Vic)* and means:

- > intellectual impairment
- > mental disorder
- > brain injury
- > physical disability
- > dementia

If an application is made to VCAT for the appointment of a guardian or an administrator for a person, it will be necessary to produce medical evidence in support of the application to VCAT to establish that:

- > the person has a disability
- > the person is unable to make reasonable judgements about his/her person or circumstances, or all or any part of his/her estate because of the disability

This evidence will generally be in the form of a report from a treating doctor or from a medical specialist following a formal assessment of the person.

Who can apply to VCAT?

Any person can apply to VCAT for an order appointing a guardian or an administrator for a person with a disability who is 18 years or older or to take effect when they turn 18.

An application will usually be made by a family member or a health care provider.

When should you apply to VCAT?

The primary purpose for appointing a guardian or an administrator is to protect the welfare and interests of a vulnerable person.

Examples of circumstances where there may be a need for a guardian include:

- > where a person is no longer able to care for themselves
- > where there is disagreement between family members regarding the living arrangements of an elderly parent





Jim's Story

Jim is 83 years old. Following the death of his wife in 2012, Jim's son Michael moved into the family home to help care for him and was appointed as Jim's power of attorney for financial matters. Over the past 12 months, Jim has become very forgetful and has recently been diagnosed with Alzheimer's disease.

Jim has two other children, Jane and Simon, who are concerned that Jim cannot look after himself and needs to go into aged care. Jane and Simon also obtained a copy of the title search of Jim's property and were shocked to learn that the title had been transferred into the joint names of Jim and Michael.

Michael is refusing to let Jane and Simon visit Jim and has told them that Jim does not need to go into aged care as he is looking after their father.

By applying to VCAT for the appointment of a guardian and an administrator for Jim, Jane and Simon were able to ensure that Jim's finances were independently managed and that he received the support he required for his day to day living needs.

An investigation was also conducted by the administrator into the transfer of Jim's property and the title was eventually transferred back into Jim's sole name.

- > where there are concerns that a person is not being properly cared for or receiving appropriate medical treatment

Examples of circumstances where there may be a need for an administrator include:

- > where a person is unable to pay their bills or manage their finances
- > where there are concerns that a financial power of attorney is not acting in the best interests of the person who appointed them as their Attorney
- > where there are concerns that a person is being financially exploited

What are the duties of a guardian and an administrator?

The principal duty of both a guardian and an administrator is to act in the best interests of the represented person.

In the case of a guardian, this includes acting as far as possible:

- > as an advocate for the represented person
- > in consultation with the represented person and taking into account their wishes
- > to encourage the represented person to participate in the life of the community
- > to encourage and assist the represented person to become capable of caring for herself or himself
- > to protect the represented person from neglect, abuse or exploitation

In the case of an administrator, this includes acting as far as possible:

- > in consultation with the represented person and taking into account their wishes

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Other statutory duties of an administrator include a duty to take care of the estate of the represented person and to exercise the care, diligence and skill of a prudent person in managing the represented person's affairs.

Guardians and administrators also owe fiduciary duties to the represented person arising from the nature of their relationship. This includes, for example, a duty not to place themselves in a position where there is a conflict between their own interests and the interests of the represented person.

Can an order appointing a guardian or an administrator be challenged?

If you do not agree with VCAT's decision to appoint a guardian or an administrator for a represented person, it may be possible to apply for a rehearing of the application. There are strict time limits that apply to applications for a rehearing.

It may also be possible to have a guardianship order or an administration order varied or revoked at a reassessment hearing.

Further information

We provide a comprehensive Wills & Estates service to professionals, executives, business owners, investors, mums and dads and retirees. Contact our Wills and Estates team on **+61 3 9321 7857** or **willsandestates@rigbycooke.com.au**

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