

PROVIDING PROPERTY GUARDIANSHIP SERVICES

**The Role of the Office of the
Public Guardian and Trustee**

The Office of the Public Guardian and Trustee
Providing Property Guardianship Services
ISBN 978-1-4249-3924-4
© Queen's Printer for Ontario, 2007
Reprinted in 2016
Disponible en français

THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE IN PROVIDING PROPERTY GUARDIANSHIP SERVICES

QUESTIONS AND ANSWERS

1. What is the purpose of the OPGT's property guardianship service?

This service protects mentally incapable adults and maximizes their quality of life by managing their financial affairs when no one else can do so. When acting in this role the Office of the Public Guardian and Trustee is called the person's "guardian of property". The short-form title of the office is the "OPGT". Individuals for whom the OPGT acts as guardian are referred to as "clients".

2. What is the legal authority for this service?

The *Substitute Decisions Act* and the *Mental Health Act* say that the OPGT must be appointed as the guardian of property for a mentally incapable adult in certain circumstances. The *Substitute Decisions Act* sets out the powers and duties that govern all people – including the OPGT – who have the legal authority to manage the property of an incapable person.

3. When is a person considered to be "mentally incapable" of managing property?

A person is mentally incapable of managing property if they cannot understand the relevant information or cannot appreciate what may happen as a result of making or not making decisions about finances.

4. How does the OPGT become an incapable person's guardian of property?

There are three ways that the OPGT can be appointed:

1. Physicians are required by law to appoint the OPGT whenever a person admitted to a psychiatric facility for treatment of a *mental disorder*, is assessed as being incapable of managing property and does not already have a guardian of property or power of attorney.
2. An expert in evaluating mental capacity – called a “capacity assessor” – may, under certain conditions, assess a person's capacity to manage property and appoint the OPGT. This process cannot be used if the person has a power of attorney or objects to being assessed.

Capacity assessors are independent health professionals. They charge fees for conducting assessments. Fees vary according to the hourly rate charged by the particular assessor and the length of time the assessment takes. The person who requests the assessment pays the fee. They may be reimbursed from the incapable person's funds if the OPGT is appointed and the incapable person can afford it. More information about capacity assessments is contained in the brochure entitled the “Capacity Assessment Office” or by contacting that Office at 416-327-6766, TTY: 416-314-2687 or toll-free at 1-800-366-0335.

3. The court will sometimes appoint the OPGT, as a last resort. This will usually occur only after the OPGT has conducted an investigation that finds that an incapable person is at extreme risk due to self-neglect or financial abuse and that the appointment of the OPGT is the only appropriate solution.

5. Who initiates the appointment of the OPGT?

Someone such as a health professional, caregiver, friend or family member who is concerned about a person's mental capacity usually initiates the appointment. A finding by a physician, capacity assessor, or a court that the person is mentally incapable of managing property is always required before the OPGT can be appointed. The OPGT usually has no advance notice of the appointment or involvement in the process. The OPGT has no authority to refuse the appointment although it may, in certain circumstances, transfer the guardianship responsibilities to someone else, as noted below.

6. Can a person for whom the OPGT is appointed have the decision reversed?

Yes. A person who has been assessed as incapable by a doctor in a psychiatric facility or by a capacity assessor has the right to have the assessment independently reviewed by the Consent and Capacity Board, a tribunal operated by the Ministry of Health and Long-Term Care. If a court appoints the OPGT, the person has a right to appeal to a higher court.

People who are assessed as incapable of managing property must, by law, be advised of their right to appeal.

7. What if there is already a Power of Attorney?

If the incapable person had made a valid, Continuing Power of Attorney for Property before the OPGT was appointed and the person named as the attorney is prepared to accept the responsibility, the OPGT will not continue to act as the guardian of property.

8. What if there is no power of attorney but someone else, such as a family member, is willing to be the guardian?

The OPGT is the guardian of last resort and encourages alternative appointments wherever possible. Relatives who want to be appointed can apply directly to the OPGT or to a court. People who are not relatives must apply to a court.

If the incapable person has no income or assets except for government pensions such as Old Age Security (OAS) or Canada Pension Plan (CPP) or benefits such as Ontario Disability Support Program (ODSP), an application for guardianship may not be necessary. The income source such as CPP can appoint someone else as a “trustee” to manage the income for the incapable person in place of the OPGT.

9. What powers does the OPGT have as guardian of property?

The OPGT has the power to do anything on an incapable client’s behalf that the client could normally do in the handling of finances. This includes accessing bank accounts, entering, securing and repairing a residence, making purchases, contracting for services, signing documents, selling assets and taking legal action. It includes the right to receive any information that others have about the client’s property. The OPGT has, for example, the right to obtain a copy of the client’s Will.

These rights do not extend to personal matters such as making health care choices or deciding where the person will live, although approval from the OPGT for related financial expenses would be required. The OPGT cannot make, or change, the client's Will.

10. What obligations does the OPGT have as guardian of property?

The OPGT – like all guardians of property – has an overriding duty to make decisions and conduct transactions that are in the client's best financial interest. It has an obligation to manage the client's finances in a way that promotes the client's comfort, well-being and quality of life to the maximum extent possible given the client's financial resources. If the client has surplus funds, these must be invested in a prudent way so that the funds earn an acceptable return with the primary objective of capital preservation.

The OPGT – like all guardians of property - must encourage its clients to be part of this decision-making if they can do so. The office must consult with supportive family members, friends and caregivers. But the final responsibility and accountability for decisions always rests with the OPGT as guardian. Sometimes this means that choices must be made or actions taken that are unpopular with the client or others. For example, a client may want more spending money than they can afford, or the OPGT may come under pressure from relatives to give them the use of the client's property without charge. Creditors may object when the OPGT challenges a claim on the client's behalf. Despite these pressures, the OPGT is bound to abide by its legal duty to do only what is best for the client.

11. Does the client's property continue to belong to the client?

Absolutely. The client's property continues to be owned by the client and remains in the client's name. The OPGT, as guardian of property, is a caretaker, manager and trustee but is never the owner of the property.

12. How are OPGT property guardianship services delivered?

The OPGT has offices in Toronto, Ottawa, Hamilton, London, Sudbury and Thunder Bay. In all offices there are "Client Representatives" who handle the clients' day-to-day financial decision making and transactions.

Senior Client Representatives provide services to clients who have more complicated financial matters to solve. They receive administrative support from Client Representative Assistants. Senior staff must approve certain decisions such as the sale of a house, initiation of a lawsuit, or transactions of a high monetary value.

Senior Client Representatives and Client Representatives are supported by an Area Manager and Team Leader and receive assistance from OPGT investigators, financial experts and legal counsel in the office.

13. What hours does this service operate?

This service operates from 8:30am – 5:00pm Monday to Friday.

14. How does the OPGT get the information it needs to manage the clients' affairs?

Once appointed as guardian, the first step is to try to gather all the critical information that enables the OPGT to begin to properly manage the client's finances. This can be very challenging. The OPGT rarely has any information about the client's affairs when a file is opened and the client is often unable to provide it. Because of this, the OPGT must rely very heavily on others to share any information they have.

OPGT staff also make extensive efforts to track down information. An investigator will usually go to the client's place of residence to check for financial documents such as bank statements, tax returns, insurance policies and a Will. The investigator will list the belongings, secure valuables, check on the client's car and arrange to access the client's safety deposit box, if applicable. Computers and phones may also contain information that is useful.

If the client is in a hospital or a long-term care home, the OPGT may give staff, on the client's behalf, permission to check the client's belongings for valuables or important papers. The client's mail will usually be redirected to the OPGT for a period of time in order to obtain information about the client's debts, income sources, assets and bills. Any leads are followed up with inquiries, including those relating to property or benefits the client may have in foreign countries.

15. How does the OPGT ensure that clients' assets are safe?

The OPGT places assets in safekeeping if clients are not using them. Insurance is placed and maintained on clients' cars, valuables, furniture and real estate as required. Properties such as houses are professionally inspected, appraised and maintained. Tax and mortgage payments are made, providing the client has the funds. If there are people occupying a client's property, steps will be taken to try and ensure that the client is paid the proper rent, that the property is kept in good repair and that bills relating to the property are kept in good standing. Banks and financial institutions are notified so that unauthorized transactions do not take place. Accounts that the client does not need for day-to-day spending will be closed and the

money placed in the client's OPGT trust account. Legal action may, if necessary, be taken to recover or safeguard clients' assets.

16. What happens if the client cannot afford the upkeep of an asset or doesn't need it any more?

In this situation, the client's asset will usually be sold. If, however, the debts on an asset exceed its value, it may be relinquished to creditors. If others, such as family members, want to retain the asset and are willing to pay for the upkeep, they will usually be allowed to do so.

Before the OPGT decides to sell an asset of significant value, such as the client's house, the office will consult with the client, if possible, and any family members who are supportive and involved with the client. The OPGT also reviews the client's Will. Specific assets that are named in the Will cannot be sold unless it simply cannot be avoided because the client needs money.

If assets are sold, the OPGT always makes best efforts to obtain a fair price.

17. How does the OPGT deal with the client's personal belongings?

These items remain with the client if possible. In many cases, however, the client cannot live independently and needs to move to a residence where they can get care and support. If so, the OPGT will consult the client if their condition permits, and talk to caregivers and family to see what items the client may wish to keep. Things that are of sentimental value, such as family photos and memorabilia, are treated with respect and will be stored if the client cannot keep them at the residence and can afford the storage fees. Family or friends sometimes agree to store certain belongings as well. Unwanted items are sold, usually at public auction.

18. How does the OPGT make sure that the person gets all the financial benefits they are entitled to?

In most cases, the OPGT is required to redirect all income owing to the client to the office. Staff are also well informed about all the current entitlements available under various private and public programs and benefit plans. They make extensive efforts to ensure that each client's personal circumstances and entitlements are regularly reviewed and that all income and benefits are obtained as they become due to the client. The OPGT will also try to obtain benefits from foreign countries that may be due to the client.

19. How does the OPGT manage the client's expenses?

This varies depending on the particular client's financial resources and needs. The OPGT tries to accommodate each client's wishes and chosen lifestyle if it is possible and reasonable to do so. Bills such as telephone and rent are paid directly by the OPGT as long as they are in the correct amount and the client has the funds. Clients are given spending money according to their needs and the amount of money they have left after other basic necessities are paid.

When clients can't look after their own shopping or spending money, the OPGT sometimes entrusts a family member, caregiver or friend with money from the client's account so they can help the client. The OPGT must, however, be advised in advance how the money will be spent. Sometimes people spend their own money or provide services and ask for reimbursement. This is fine as long as the OPGT approves the expense first. It is the OPGT's legal duty to make sure that the client can afford the expense, will directly benefit from it, and will be getting good value. Proper documentation such as receipts must be provided.

There are specific rules about priorities of expenditures in the *Substitute Decisions Act*. The client's current basic needs come first, followed by their legal obligations to dependents such as a spouse or children, and then payment of debts. In managing the property, the OPGT is in exactly the same position that the client would be if the client were capable. The OPGT does not subsidize clients who lack the money to meet all their needs or all the costs involved in maintaining their property.

The office relies on, and strongly encourages, the client, caregivers, and family to contact the applicable Client Representative if the client needs money for purchases, services or recreational activities. OPGT staff will also make inquiries in order to check on the client's needs.

20. What financial planning services are provided by the OPGT?

As the "guardian of property" for an incapable person, the OPGT makes all financial decisions in the best interests of the client. To assist in this important role, the OPGT has employed qualified professionals, including certified financial planners with many years of experience.

For all eligible clients who have funds invested, or available for investment, financial planners will consult with the Client Representative to assess the client's ongoing financial needs and health status. The financial planner will review all applicable information to determine sources of income, deductible expenses, etc. Based on the client's individual situation, a financial plan is

prepared addressing such concerns as cash management, income tax issues, investments, retirement, etc.

21. Upon becoming guardian, does the OPGT automatically sell a client's investments?

OPGT has unitized trust funds available for investment by OPGT clients upon completion of a financial plan. Investments such as equities, bonds, term deposits, and registered plans owned by a client at the time they come under OPGT guardianship must be reviewed to determine the appropriateness of the investment and whether they should be sold so that clients can be invested in OPGT funds. This is determined through a financial plan prepared by an OPGT financial planner and in compliance with OPGT policies. Client investment accounts that are to be retained (e.g. registered investment accounts) will be moved to the OPGT's contracted broker and receive on-going management.

22. How will the client's cash be invested?

After securing the client's assets, cash from non-registered investment accounts and banks, safety deposit boxes, sale of a house, etc. is invested prudently in one or more of the OPGT's common trust funds.

Initially, all clients of the OPGT have their cash invested in the OPGT Fixed Income Funds. The Funds consist of high quality fixed income securities (bonds and money market) invested in six month maturities of five year high quality bonds to help clients achieve the best possible interest rate. Interest is paid monthly with an interest rate that is based on income earned by the funds and approved by the OPGT's Investment Advisory Committee.

Where clients have cash in the OPGT Fixed Income Funds that is excess to their needs, these monies may be invested in one of the two OPGT unitized trusts: Canadian Income and Dividend Fund or the Diversified Fund.

The OPGT Canadian Income and Dividend Fund offers the potential for higher income and some capital growth and is appropriate for clients who can tolerate some capital risk. The fund consists of dividend-paying Canadian equities and fixed income securities. Income from this fund can be paid directly into the client's account or can be reinvested in the Canadian Income and Dividend Fund if there is no need for the income.

The OPGT Diversified Fund is available for clients who have excess funds that are not required for daily living and can be invested for a longer term. This Fund consists of a diversified portfolio of Canadian and foreign equities and Canadian fixed income securities. Income earned from this Fund is

automatically reinvested in additional units, so this Fund is only appropriate for clients not requiring the additional income earned.

23. Do clients or family members have any input into how the client's investments are handled?

Clients are invited to provide input if their condition allows. The OPGT may consult with other significant persons in the client's life if they have information relevant to the client's investments.

24. What happens to a client's investments if the OPGT's authority is terminated during their lifetime?

Upon termination of the OPGT's authority, the OPGT unitized trust Funds will be redeemed at their current market value. External assets will normally be left intact during the transition phase. All financial information will be forwarded to the client or their new guardian, as applicable.

25. What happens to a client's investments upon death?

When a client dies, their investment in the OPGT unitized Funds must be redeemed at their current market value. External assets will normally be left intact. All financial information will be forwarded to the client's estate trustee for purposes of the estate administration process.

26. What if the client has legal problems?

The OPGT will retain and instruct a lawyer on the client's behalf if legal work relating to the client's finances needs to be done and the client can afford the legal fees. Typical examples of legal work include dealing with a real estate issue, negotiating a separation agreement or representing the client in a lawsuit. The law prohibits anyone else from retaining a lawyer on the client's behalf in these matters unless a court has authorized it.

The OPGT does not have any role in legal affairs that relate to a client's personal matters such as immigration, criminal charges or a custody dispute. The OPGT will, however, help locate a suitable lawyer where necessary and will have to approve the proposed legal fees in advance. The OPGT does not represent clients in applications to contest guardianship but will help the client with arranging a lawyer if necessary.

27. Does the OPGT file the client's income tax returns?

Yes. As the guardian this is the OPGT's responsibility. It is very important that anyone who is considering doing this for a client obtains special

permission from the OPGT first so that complications resulting from duplicate returns are avoided.

28. Can the OPGT be responsible for just one part of the client's financial affairs and let the client or someone else be responsible for the rest?

No. The law does not allow this. If the OPGT – or anyone else – is a guardian of property, the guardian is responsible for all aspects of the client's finances.

29. What if a client wants to end the guardianship?

Any client who wants to resume control of their finances can have their capacity reassessed. Guardianship will automatically end if the reassessment finds the client capable. Clients who disagree with the results of a re-assessment are entitled to have this issue reviewed periodically by the Consent and Capacity Board. Client Representatives make sure that clients are aware of these rights and will assist them in arranging a reassessment if requested. The client is usually responsible for the cost of the reassessment.

30. If a guardianship client dies, will the OPGT administer the estate?

The OPGT's guardianship appointment automatically ends when the client dies. Responsibility for the administration of a client's estate, including the funeral and burial arrangements, then passes in the normal manner to the executor (now called the "estate trustee") named in the client's Will. If there is no Will or if the estate trustee cannot act, then the beneficiaries, or the next-of-kin who live in Ontario, may apply for the right to administer the estate. In cases where there are no next-of-kin in Ontario the OPGT will usually administer the estate and try to locate potential heirs.

31. What does the OPGT charge for property guardianship services?

The amount depends on the client's financial situation as follows:

If the client can afford regular fees, they will pay the amount that the law permits any guardian to charge. The fee is 3% for any payment made or received on the client's behalf. For example, if a bill of \$100.00 is paid, \$3.00 goes for OPGT fees. If \$100.00 of income is received, \$3.00 is paid toward OPGT fees.

There is also a fee of 0.6% on the value of the client's property. For example, if the PGT holds \$1,000 in trust, the fee for one year would be \$6.00.

If the client receives ODSP, no fees will be taken from this income. Fees will still be collected on other non-ODSP monies held by the PGT such as inherited funds.

If the client has limited money, but is not on ODSP, they will only pay a very small fee. This will not exceed the value of the interest received on the client's account with the OPGT. The difference between the amount the client pays and the regular fee may have to be repaid if their financial circumstances improve.

Fees for legal work, property management and tax filings are charged at standard rates.

32. What if a client, or someone else involved with a client, does not agree with the way that the OPGT is providing guardianship services?

The OPGT is required to provide clients and their immediate family members with information, including a financial statement, if one is requested. If there are concerns, these should be brought to the attention of the Client Representative, who will try to resolve the issue. If this is unsuccessful, the Area Manager for the applicable office may be contacted at the number noted below.

Under the *Substitute Decisions Act*, the court can be asked to review the OPGT's actions as guardian of property. This process is called a "passing of accounts" and is the appropriate way to resolve concerns if they cannot be addressed informally.

33. How do I get more information?

You can access the OPGT's website at www.attorneygeneral.jus.gov.on.ca/english/family/pgt/

You can obtain a copy of the *Substitute Decisions Act* online at www.ontario.ca/laws

Information about how to apply to the Consent and Capacity Board can be obtained from the Board's website at: www.ccboard.on.ca or by calling the Ministry of Health and Long-Term Care Information Line at 416-314-5518 or 1-800-268-1154 Toll Free in Ontario. TTY: 1-800-387-5559.

To request an information session with OPGT staff, please contact the Area Manager in the OPGT regional office closest to you. Telephone numbers and addresses are listed below.

Please be advised that the OPGT cannot give individuals, professionals, facilities or organizations legal advice about specific cases or their own legal obligations. These questions should be directed to a lawyer. The Law Society Referral Service (LSRS) can put you in touch with a lawyer for a half-hour at no charge. Information about how to be referred to a lawyer through the LSRS is available at www.lsrinfo.com. A request to the LSRS may be made by completing the online request form at www.lawsocietyreferralservice.ca. A crisis line is available Monday to Friday, 9:00 am to 5:00 pm. The crisis line is intended for people who are unable to use the online service, such as those without access to the internet. The phone number for the crisis line is 416-947-5255 (toll free 1-855-947-5255).

Alternatively, you may contact JusticeNet which is a not-for-profit service promoting increased access to justice for low and moderate-income Canadians. The lawyers in the program offer their services at a reduced fee to clients of limited means, based on a sliding scale that takes into account both income and number of individuals supported. They can be contacted at: Toll Free: 1-866-919-3219 or by e-mail at www.justicenet.ca

34. How can I contact the OPGT to complain about an issue or seek information:

The OPGT is committed to providing accessible and timely service. We welcome feedback about meeting our standards on accessibility and providing client focused service.

Feedback may be provided in person, at any one of the OPGT's local offices, by telephone, or in writing. Contact information is contained below.

All feedback is reviewed by an OPGT staff member. If the feedback constitutes a complaint about the service standards, an attempt will be made to respond immediately. If the complainant is not satisfied with the response, the complaint will be forwarded to the manager of the applicable OPGT business unit to review and respond within ten business days using the same means of communication that was used to provide the feedback. All reasonable efforts will be made to resolve the complaint. Feedback is used to facilitate continuous improvement in the way we provide service. Positive feedback is always welcomed.

Contact Information:

Greater Toronto

595 Bay Street, Suite #800
Toronto, ON M5G 2M6
Tel: (416) 314-2800
Toll-free: 1-800-366-0335
TTY: (416) 314-2687
Fax: (416) 314-2619

Hamilton Region

119 King Street West, 9th Floor
Hamilton, ON L8P 4Y7
Tel: (905) 546-8300
Toll-free: 1-800-891-0502
Fax: (905) 546-8301

London Region

199 Dundas Street, 1st Floor, Suite 100
London, ON N6A 1G4
Tel: (519) 660-3140
Toll-free: 1-800-891-0504
Fax: (519) 660-3148

Ottawa Region

351 Preston Street, Suite 200
Ottawa, ON K1S 2E6
Tel: (613) 241-1202
Toll-free: 1-800-891-0506
Fax: (613) 241-1567

Sudbury Region

199 Larch Street, Suite 602
Sudbury, ON P3E 5P9
Tel: (705) 564-3185
Toll-free: 1-800-891-0503
Fax: (705) 564-3193

Thunder Bay Region

189 Red River Road, Suite 101
Thunder Bay, ON P7B 1A2
Tel: 1-800-891-0503
Fax: (807) 343-7223

This brochure provides a very general overview of the mandate and operation of the OPGT's property guardianship services. It does not include all of the details of the law, policies, procedures or exceptions that may apply in a particular case. For information about the law please refer to the applicable statutes and contact your lawyer.

Alternate formats of this brochure are available upon request. Please contact 416-314-2803 or toll free 1-800-366-0335.

The Office of the Public Guardian and Trustee
Providing Property Guardianship Services
ISBN 978-1-4249-3924-4
© Queen's Printer for Ontario, 2007
Reprinted in 2016
Disponible en français