

WARD OF COURT APPLICATION

Preliminary Requirements

In the case of all clients who are not personally known to the office, evidence of identity is needed in order to comply with Anti Money Laundering Regulations – photographic evidence (passport or driving licence) to identify the person, and a utility bill to confirm the address.

The following information should be forwarded to the office so that the required paperwork can be prepared:

1. Full Name _____
2. Home address _____

3. Current residential address _____

4. Occupation (former occupation if retired) _____
5. Martial Status _____
6. Religion _____
7. PPS number (formerly called PRSI number) _____

Doctors

Name of Doctor 1 (who will certify the incapacity of the person) _____
Address of Doctor 1 _____
Contact number Doctor 1 _____

Name of Doctor 2 (who will certify the incapacity of the person) _____
Address of Doctor 2 _____
Contact number Doctor 2 _____

Assets

List of assets (including any house or apartment) owned or jointly owned by the proposed Ward

Include certificates or valuations in respect of each asset and bank account numbers and branch addresses in respect of all bank accounts

State the location of the deeds and the whereabouts of the last Will (if any) of the proposed Ward

Liabilities

List of debts/liabilities and certificates in respect of each

Income & Expenses

Details of any current income and outgoings of the proposed Ward

Decline in capacity

Brief statement as to recent medical history, showing the decline in capacity leading to the planned application to court

Next of Kin

Full name of next of kin 1

Address of next of kin 1

Occupation of next of kin 1

Marital status of next of kin 1

Religion of next of kin 1

Relationship to the proposed Ward

Full name of next of kin 2

Address of next of kin 2

Occupation of next of kin 2

Marital status of next of kin 2

Religion of next of kin 2

Relationship to the proposed Ward

Full name of next of kin 3

Address of next of kin 3

Occupation of next of kin 3

Marital status of next of kin 3

Religion of next of kin 3

Relationship to the proposed Ward

Full name of next of kin 4

Address of next of kin 4

Occupation of next of kin 4

Marital status of next of kin 4

Religion of next of kin 4

Relationship to the proposed Ward

Petitioner (person making application to the court)

Full name of petitioner 1

Address of petitioner 1

Occupation of petitioner 1

Marital status of petitioner 1

Religion of petitioner 1

Relationship to the proposed Ward

Full name of petitioner 2

Address of petitioner 2

Occupation of petitioner 2

Marital status of petitioner 2

Religion of petitioner 2

Relationship to the proposed Ward

When considering whether or not a person should be taken into Wardship, the Court must be satisfied that the person is, on the basis of the medical evidence available, mentally incapacitated and incapable of managing his or her affairs, and that it is necessary for the protection of his/her person or property that he/she be taken into Wardship.

THE WARDSHIP APPLICATION

Who Applies?

It is normally a family member who initiates the matter (two family members working together is better to share the load). However, it does not have to be a family member; the person's own GP, hospital authorities or even solicitor may make the application.

Application

Application to the Wards of Court Office (hereinafter referred to as "WOC") is by way of a form of request known as a **Petition** which is accompanied by **two medical affidavits** which would confirm that due to his/her mental condition their patient is unable to manage and administer his/her own property and affairs and that they would support an application to have him/her made a Ward of Court.

- **Petition** sets out the background information. Assets/income/general circumstances. Supported by certificates of balance of accounts and policies, valuations re property, pension slips etc. This would be a substantial document with all assets and income 'vouched'.

Procedure

- Petition duly executed by the petitioners with two Medical Affidavits are lodged with WOC.
- On foot of the Petition an Inquiry Order is made by the Court, ordering that the person be examined by the President's Medical Officer to corroborate the Petition. **(this is a safeguard for the person who is being made a Ward of Court)**
- Notice of the proposed Wardship Application must be served personally on the proposed Ward. The documentation served will notify him/her of their entitlements to object. He/she may object in writing to the Registrar, generally but necessarily, through a solicitor. **(this is a safeguard)**
- Once the President's Medical Officer's Report and all necessary Affidavits of Service are with WOC, the matter is then listed to be heard before the High Court and thereafter the Declaration Order admitting the person into the Wardship of the Court is issued by the Court.

COMMITTEE

What is a Committee?

A "Committee" in the Wardship context means one or more persons to whom the welfare or affairs of a Ward are "committed".

Role of Committee

The Committee acts under the directions of the Court either personally or through his/her solicitor. Typically, a Committee may be permitted by the Court to carry out such functions as collecting a Ward's pension, letting his farm or selling his house.

There may be many 'day to day' affairs that the Committee will be required to attend to on a regular basis:

- Making sure that the Ward's property is insured;
- Keeping the WOC informed of any matters which require Court Approval e.g. change of residence/nursing home, consent to medical procedure etc;
- Making sure that the Ward has adequate clothing and that his/her personal needs are met;
- Dealing with the Ward's tax affairs. This would require the retention of an accountant to file annual income tax returns for the Ward. Accountant's fee would be paid through

- the WOC. Note medical expenses provide some income tax relief;
- Making applications for the Ward's benefit e.g. pension, Nursing Home Support Scheme (Fair Deal), medical card entitlements etc.

Once a person is taken into Wardship, a case officer in WOC will be assigned to look after the affairs. The Committee or solicitor will correspond with the case officer in relation to the management of the Ward's affairs and the case officer in turn follows the direction of the President of the High Court.

Death/Resignation of the Committee?

On the death or resignation of a Committee, a new Committee is appointed by the Court.

Committee's obligation to account

The Committee is required to account to the WOC for all funds received and payments made in relation to the Ward.

PROPERTY AND FINANCE

Investment of the Ward's funds

When a person is made a Ward of Court, his / her assets are brought under the control of the Court so that they may be used for his/her maintenance and benefit. The Declaration Order would normally direct that various accounts/policies are cashed and the money lodged in Court, which is then invested by the WOC on behalf of the Ward.

Dwellinghouse and other property

Where it is necessary to meet nursing home expenses or other debts, or if the property is vacant and cannot be secured, the Court may order that the Committee either sell or let the property.

If the property is **sold**, the net proceeds are lodged into the WOC, invested and used for the Ward's benefit. If the property is **let** the WOC generally allow the Committee to receive the income and use it for the Ward's benefit.

Bank, Building Society, Post Office Accounts

The Ward's accounts are usually closed and the proceeds lodged in WOC and invested for the Ward's benefit.

But, Credit Union accounts may be left in situ so that the Ward does not lose any rights or entitlements he/she might have earned over the years by being a member of the Credit Union. The same applies to shares and other investments.

Pension Income/Letting Income

This is sometimes re-directed (eg from a bank account) directly to the bank account of the nursing home or hospital in which the Ward resides. The pension is off-set against the maintenance costs of the nursing home and the WOC deal with payment of the balance.

Payment of Bills

- Committee or solicitor should write to case officer in WOC when payments are required for maintenance and benefit of the Ward or his/her dependents.
- Usually, Nursing Home maintenance accounts are sent directly to WOC and paid from the funds in Court.
- If the Ward is living at home, regular payments can be made to Committee to meet Ward's living expenses. The amount and frequency of payments of course depends on the Ward's needs and income. This can and should be discussed in detail with the case officer.
- Committee should obtain court approval before incurring significant expenditure which is not covered by regular payments received.
- If the Ward is in a Nursing Home, staff may write directly to WOC re expenditure.
- If the Ward has dependents e.g. spouse and/or children; the WOC may arrange for payment of their living expenses from the funds of the Ward in accordance with their needs and subject to availability of funds.

Income Tax (this was touched upon earlier)

The Ward has the same obligation to submit tax returns as other citizens and is entitled to the same reliefs. Reliefs of particular relevance would be medical expenses. The Committee is entitled to sign off on Tax Returns on behalf of the Ward.

Purchase or renovation of property by a Ward

If a Ward has sufficient means, is able to reside in the community and does not have adequate/suitable accommodation – the Ward's funds can be used to purchase a house. If a house that is already owned by the Ward needs to be extended or modified (e.g. For wheelchair access) and the Ward's means are sufficient, WOC can authorise the necessary work to be carried out the costs of which to be discharged from the Ward's funds. Where a house is purchased with the Ward's funds, the Ward must be registered as owner.

Renovation of house that is not the property of the Ward

- Where a Ward has sufficient means and funds need to be used to extend or modify a house which the Ward does not own, WOC would possibly require that an interest in the house be transferred to the Ward in consideration of the Ward's funds used for such extension/modification.
- This should be discussed in detail with the case officer.

RECOVERY OF THE WARD

How to apply to be discharged

- A request must be made to WOC in writing by the Ward or by his solicitor on his behalf.
- This should be supported by medical evidence that the Ward is now mentally capable of managing his/her affairs.
- Court will consider the request on the basis of the medical evidence provided and may require a further examination by the Court's Medical Officer.

WHAT HAPPENS WHEN A WARD DIES?

Inform the WOC

In the event of the death of the Ward, the Committee (directly or through the solicitor) should inform the case officer as soon as possible.

Request to conclude Wardship

- Lodge a formal request to conclude Wardship proceedings.
- Lodge with the WOC a document (called a "Statement of Facts") which includes details of the deceased Ward's property/assets and debts.
- The Ward's funds are made available by WOC to pay funeral expenses, nursing home charges, legal costs and court fees.
- The Grant of Probate / Grant of Administration Intestate is extracted in the normal way in close consultation with the WOC.

Distribution of Property

Property/assets, after payment of debts and costs are distributed among those entitled to them. This is either under the terms of the Will or where there is no Will under the rules for distribution on Intestacy.

MISCELLANEOUS ISSUES

Consent to Medical Treatment

- If a Ward needs medical treatment (e.g. surgery) the approval of the Court should be obtained.
- But, emergencies will arise where it is not possible to obtain prior approval; in these circumstances normal medical considerations should apply and the appropriate decision

made by the Committee in the best interests of the Ward.

Wills

- If a Ward has made a Will prior to illness, it remains valid until revoked. You can only revoke a Will if you are of sound mind.
- If a Ward has already made a Will, it must be lodged in the WOC for safekeeping.
- If a Ward expresses a wish to make a Will, the WOC may permit the Ward to do so only if WOC is fully satisfied that on medical evidence that the Ward is mentally capable of giving proper instructions and capable of making the Will, at the time.
- If WOC permit the Ward to make the Will, the Ward should instruct a solicitor other than the solicitor acting for the Committee (who acted in the Wardship Application)

Marriage

- A person who is taken into Wardship because of mental incapacity is not permitted to marry.
- However, where a married person is taken into Wardship, this does not invalidate the marriage.

Travelling outside of Jurisdiction

- Ward may not travel outside the State without the Court's permission.
- In practice, permission is usually granted. However, medical and safety considerations would have to be taken into account.

Legal Proceedings

This is not something a Committee would normally think about, but I think that it is worth mentioning here:

- A Ward may only commence legal proceedings if the WOC permits the Committee to bring those proceedings on behalf of the Ward.
- Just because a person has been taken into Wardship does not mean that he/she cannot be sued or prosecuted for a crime. If this arises the Committee should inform the case officer immediately so that the Ward can be legally represented.
- If a Ward is involved in any legal proceedings, the Court must approve any settlement before any settlement is agreed.

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When particular personal circumstances render the above procedure necessary, it can be quite an emotional time for you the person giving us instructions on the Wardship process. We at McCullagh Higgins & Co. understand this and will ensure that you and your family are shown compassion, understanding and discretion in all of our dealings throughout the process.

If you have any questions in relation to any of the above, please contact McCullagh Higgins & Co. Solicitors.

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