

## How to assist someone who has no Enduring Powers of Attorney, and they need help?

If someone you care about is no longer able to make decisions about their health or how their money is managed and they have no Enduring Powers of Attorney for Property or Enduring Powers of Attorney for Personal Care and Welfare (EPOAs), then you may need to apply to the Court to help them. This type of application is commonly known as a PPPR application, which stands for an application under the Protection of Personal and Property Rights Act 1988 ("Act").

When someone is said to have "lost capacity", it means they can no longer understand or make informed decisions for themselves. This can happen because of age-related conditions like dementia, a brain injury, intellectual disability, or a serious illness. If there's no EPOAs no one has automatic authority to make decisions on that person's behalf, not even a spouse or close family member. That's when a PPPR application becomes necessary.

### **The Court Application – What's Involved?**

There are several steps to make an application under the Act.

#### *Step 1- Gather Medical Evidence*

Before the Court will let anyone step in and make decisions, you will need proof that the person (called the "subject person") is no longer able to manage their own affairs, namely that they have lost capacity. This usually means getting a doctor or medical specialist to write a report explaining the person's condition and confirming they lack capacity.

#### *Step 2- Prepare Your Application*

You'll need to prepare a detailed legal written statement to the Court explaining:

- Who the person is and what their situation is
- Why you believe they need help
- Why you are the right person to be appointed
- What kinds of decisions need to be made, namely personal care, property, or both
- Whether others in the family support or oppose your application

You'll also need to provide any other important documents, such as medical notes or bank statements to support your application.

Once the legal written statement is completed and all supporting documents gathered, then they are all submitted to the Court.

#### *Step 3 - Court Process*

Once your application is submitted, it is usual for the subject person to have appointed a court-appointed lawyer (called a "lawyer for the subject person") who will meet with them and represent their interests. The lawyer for the subject matter may also talk to family members or others involved. The Judge will then consider everything and make a decision. This is sometimes at a hearing but often based on the documents submitted if everyone agrees.

#### *Step 4 – Who Does the Court Appoint?*

Once the Court has considered all the documents, they can appoint you as a Property Manager to handle money matters, such as bank accounts, paying bills, selling property if needed and/or a Welfare Guardian to make decisions about healthcare, living arrangements, and general wellbeing.

These roles usually last for up to 3 years, but the Court can extend them. If appointed as a Property Manager and/or Welfare Guardian, you must act in the subject person's best interests and report back to the Court at regular intervals.

The Court, as an alternative to the appointment of a Property Manager can, make a Personal Administration Order for the management of property in respect of any item of property with a value not exceeding \$25,000 or any income or benefit that does not exceed \$40,000 in any one year.

#### **What if there is no agreement to my appointment?**

If there is no agreement to your appointment this is called a contested application. The Court will need you to attend a hearing where you will be heard and present evidence and submissions supporting why you should be appointed. The lawyer for subject person shall report their views on what would be best to promote the interests of the subject person. The Court will then consider:

- Your relationship with the subject person.
- Your ability to carry out the role.
- Conflicts of interest, if any.
- The subject person's view, if this can be established.
- The nature of the dispute.
- The reasons for the objections to your appointment.

The Court may make temporary appointments if there is urgency or uncertainty that needs to be managed while the dispute is resolved. After the hearing and considering all the evidence the Court will appoint the person it considers the most appropriate to be Property Manager and/or Welfare Guardian. The Court does not have to appoint a family member. It will be someone who will act in the best interests of the subject person and is suitable and willing to be appointed.

#### **How Much Does It Cost and How Long Does It Take?**

To make an application can run up considerable legal fees depending on the complexity and whether the application is contested. The application process usually takes 3-6months, depending on how busy the Court is and whether anyone objects.

#### **Summary**

Having a Property Manager and/or Welfare Guardian protects the subject person's interests and is helpful when there is a conflict in the family and ensures that there is proper decision making. Making an application protects the vulnerable person, allows disputes to be resolved fairly and holds those appointed accountable.

However, making an application to the Court is not a simple process and can be time consuming as it involves Court oversight and continual reporting to the Court. Also, it can be

an expensive and slow process and at times feel intrusive or overwhelming along with emotionally difficult for families. The person appointed also has legal responsibilities and their appointment may cause tension if people disagree on who should have been appointed.

If someone you love loses the ability to make their own decisions, and there's no EPOA, a PPR application might be the only way to make sure they're properly looked after. As a PPR application is a legal process and a serious responsibility, getting good legal advice can help smooth the way. If you require more information the team at Brookfields can guide you through the process and ensure all the requirements under the Act are met.