

This is an Information Booklet. It is not intended to be a legally binding document nor is it an interpretation of legislation.

This booklet is produced by



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booklet

Office of Wards of Court





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1. Introduction

The Registrar and staff of the Office of Wards of Court have prepared this leaflet for the assistance of members of the general public. The leaflet is not intended to provide legal advice. If you wish to obtain legal advice in relation to a wardship matter you should consult a solicitor. The topics covered are not exhaustive.

For the sake of simplicity, the "Office" is used throughout this leaflet to denote the Office of Wards of Court while "The Registrar" is used to denote the Registrar of Wards of Court.

The office is located on the 3rd floor, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7 (see map below):

The office is open from 10.00 a.m to 4.30 p.m daily and can be contacted by telephone at 01- 8886140, by facsimile at 01 - 8724063 or email wards@courts.ie.

For enduring powers of attorney, email epa@courts.ie

Additional information about wardship matters may be accessed on the Courts Service website at www.courts.ie.

The President of the High Court is the Judge who deals with wardship. The registrar and his staff deal with the day to day administration of wardship.

The affairs of all wards of court are confidential. It may be necessary to write to the Registrar at the above address with regard to certain types of queries.

Phoenix House





2. Wardship explained

- ▼ Purpose of Wardship
- ▼ Types of Wardship

- *Purpose of Wardship*

The main purpose of Wardship is to look after the welfare and to protect the property of a person where this is considered necessary. The Office of Wards of Court is responsible for administering this process.

- *Types of Wardship*

There are two types of Wardship. One covers adults who may require the Court's protection because of mental incapacity. This covers the majority of persons taken into Wardship.

The second concerns persons under 18 years of age who require the Court's protection for particular reasons and who when taken into Wardship are known as Minors. The mental capacity of the Minor is not relevant in this particular area of the Wardship jurisdiction. (For further information with regard to Minors see Section 9).

When considering whether or not a person over the age of 18 years 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 or her person or property that he or she be taken into Wardship.

3. *The Wardship application*

- ▼ Who applies?
- ▼ Types of application
- ▼ Persons resident outside the Republic of Ireland
- ▼ Costs
- ▼ Right to object
- ▼ Circuit Court
- ▼ Alternatives to Wardship

● *Who applies?*

If a person considers that there are grounds for making a Wardship application, that person should instruct a solicitor.

The solicitor provides the Registrar with all available details in relation to the medical condition, next of kin, assets and income of the person to be protected.

A family member usually makes the request to bring a person into Wardship. However, the request does not have to be made by a family member. The person's own solicitor, his or her doctor or the hospital authorities if he or she is a patient in a hospital may make the application.

● *Types of application:*

Under the relevant legislation relating to Wardship, there are a number of types of application which, depending on the individual circumstances of a particular case, can be made:

- ◆ Application made by a form of request known as a petition which is accompanied by two medical affidavits. This is the usual form of application. The person presenting the petition is known as "the petitioner".



- ◆ Application made by petition accompanied by medical affidavit or medical report where the respondent's property does not exceed €6,350.00 or where his annual income does not exceed €380.00.
- ◆ Application made by letter to the Registrar. This form of application is only used where there is no willing and suitable person to act as petitioner.

The procedure governing Wardship is set out in Order 67 of the Rules of the Superior Courts. The procedure in respect of applications to bring persons under the age of 18 years into Wardship as Minors is set out in Order 65 of those rules.

- *Persons resident outside the Republic of Ireland:*

A person who resides outside the jurisdiction may be taken into Wardship in certain circumstances. However, it would generally only be necessary to do so where there is a need to sell some property which is located within the jurisdiction.

It would not usually be necessary to bring Wardship proceedings in this jurisdiction if the only assets here were moveable assets such as a bank account, provided the person concerned has a guardian or trustee appointed in his country of residence to receive those assets.

- *Costs:*

The legal costs of a Wardship application and of ongoing Wardship proceedings are in most cases paid out of the Ward's property. These costs include the solicitor's fee, fees for medical reports and €90.00 (in 2003) Stamp Duty which is payable when the Declaration Order (i.e. the Order which admits a person into Wardship) is made. Costs can be taxed by the Taxing Master or measured (assessed) by the Registrar. The legal costs are usually paid when all of the Ward's assets have been brought under the

control of the Court. Further legal costs will arise if there is a need for the continued involvement of a solicitor.

The Office is part of the High Court and there is a levy charged on all Wards' incomes (known as a Court percentage) which is payable to the State. At the time of publication (2003) the maximum rate of Court percentages is €750.00 per annum but this maximum rate only applies where the Ward's net income in the preceding tax year was the sum of €18,750.00 or more.

● *Right to object:*

Notice of the proposed Wardship application must be served personally on the proposed Ward. It is only in very exceptional circumstances that some other form of service is allowed.

The documentation served on the proposed Ward will notify him or her of his or her entitlements to object. He or she may make his or her objection by notifying the Registrar in writing within a set time, generally, but not necessarily, through a solicitor.

● *Circuit Court:*

A request for Wardship may also be made to the Circuit Court where the property of the person does not exceed €6,350.00 or the income from that property €380.00 per annum, (See Section 22(2) of the Courts (Supplemental Provisions) Act, 1961 as amended by Section 2 (3) of the Courts Act, 1971.) In such a case the local Circuit Court office rather than this office handles the application.

● *Alternatives to Wardship:*

If, prior to becoming mentally incapacitated, a person has made alternative arrangements, by completing a document called an Enduring Power of Attorney, it should not be necessary to bring Wardship proceedings.



4. Committees:

- ▼ What is a Committee?
- ▼ Role of Committee
- ▼ The General Solicitor for Minors and Wards of Court
- ▼ The Committee's obligation to account.

● *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". The Committee is therefore the person(s) appointed by the Court to act on behalf of the Ward. There are two kinds of Committee:

- (a) The Committee of the Person who has the responsibility of overseeing the personal care of the Ward
- (b) The Committee of the Estate who has the responsibility for assisting the Court in managing the financial affairs of the Ward.

● *Role of Committee:*

The Committee acts under the directions of the Court either personally or through his or her solicitor. The Court may also require the Committee to follow directions of the Registrar. Typically, a Committee may be permitted by the Court to carry out such functions as collecting a Ward's pension, letting his or her farm or selling his or her house. However, there may be many aspects of the running of the Ward's day to day affairs, which the Committee will be required to attend to on a regular basis, such as:

- ◆ Insuring the Ward's property
- ◆ Keeping the Office informed of any matters which require Court approval e.g. change of residence, consent to medical procedure etc.
- ◆ Ensuring that the Ward's clothing and other personal needs are met

- ◆ Dealing with the Ward's tax affairs
- ◆ Making applications for the Ward's benefit e.g. pension, Health Board subvention, medical card entitlements etc.

Once a person is taken into Wardship, a member of staff of the office known as a case officer will be assigned to look after his or her affairs. The Committee or his or her solicitor will correspond with the case officer in relation to the management of the Ward's affairs. The case officer follows any directions which the President of the High Court may give.

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

● *The General Solicitor for Minors and Wards of Court:*

The Committee is usually but not always the person who made the Wardship application. In some cases, where there is no suitable relative who is prepared to act, where there is disagreement among the Ward's relatives as to how his or her affairs should be managed, or where a conflict of interest arises the Court may appoint the **General Solicitor for Minors and Wards of Court** (a public official in the service of the State) to act as Committee.

Although the Office of the General Solicitor is located in the same building as the Office of Wards of Court, it is a completely separate office.

● *The Committee's obligation to account:*

The Committee is required to account to the Office for all funds received and payments made by him or her in relation to the Ward.

In many cases, a Committee will be required by the Court to enter into security with an approved Insurance Company in respect of income received by him or her on the Ward's behalf. In those circumstances the Committee is required to file accounts in the Office.



5. Property and finance

- ▼ Investment of Wards' funds
- ▼ Dwellinghouse and other property.
- ▼ Bank, Building Society and Post Office accounts
- ▼ Shares and other investments
- ▼ Pension, letting or trust income
- ▼ Payment of bills
- ▼ Income Tax
- ▼ Purchase or renovation of property by a Ward
- ▼ Renovation of a house which is not the property of a Ward

● *Investments of Wards' funds:*

When a person is made a Ward of Court, his or her assets are brought under the control of the Court so that they may be used for his or her maintenance and benefit. Money lodged in Court is invested by the Office on behalf of the Ward.

● *Dwellinghouse and other property:*

Where it is necessary to meet nursing home expenses or other debts of the Ward, or where the property is vacant and cannot be secured, the Court may permit the Committee either to sell or to let the property. Where the property is sold, the net proceeds are lodged in Court, invested and used for the Ward's benefit. Where the property is let, the Court would usually permit the Committee to receive the letting income and to use it for the Ward's benefit.

● *Bank, Building Society and Post Office accounts:*

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

● *Shares and other investments:*

Investments such as shares and endowment policies, or the cash received for them are usually lodged in Court.

● *Pension letting or trust income:*

Pension income is usually directed to be paid to the nursing home or hospital in which the Ward resides. However, in some instances, the Court may direct that pension, letting or trust income be paid to the Committee on the Ward's behalf.

● *Payment of bills:*

The Committee should write to the case officer when payments are required for the maintenance and benefit of the Ward or his or her dependants. In the majority of cases, nursing home maintenance accounts are paid directly by the Office from the funds in Court.

Where the Ward is living at home, regular payments can be made to the Committee or other person looking after the Ward to meet the Ward's living expenses. The level and frequency of payments depend on the Ward's needs and income and this is a matter which the Committee should discuss in detail with the case officer.

The Committee should obtain Court approval before incurring any expenditure which is not covered by the regular payments received.

If a Ward resides in a nursing home or a hospital, the staff may write directly to the Office with regard to these expenses.

Where a Ward has dependants e.g. spouse and/or children, the Court or the case officer 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:*

Wards have the same obligation to submit tax returns as other citizens and are entitled to the same reliefs. Income Tax reliefs which may be of particular relevance to Wards include medical expenses and exemptions from interest on compensation paid following proceedings for certain kinds of personal injury.



- *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 or suitable accommodation, his or her funds can be used to purchase a house. If a house already owned by the Ward needs to be extended or modified e.g. for wheelchair access and the Ward's means are sufficient, the Court can authorise the necessary works to be carried out and the costs of the works to be discharged from the Ward's funds.

Where a house is bought with the Ward's funds, the Ward must be registered as owner.

- *Renovation of a house which is not the property of a 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, the Court would usually require that an interest in the house be transferred to the Ward in return for the Ward's funds being used for that purpose. The Committee should discuss any proposals in this regard with the case officer. This may be dealt with in a number of ways, including buying the house for the Ward and then funding the extension or modification.

6. Discharge from Wardship on recovery:

▼ How to apply to be discharged:

● *How to apply to be discharged:*

A Ward may request the Court to discharge him from Wardship. This request must be made to the Officer in writing by the Ward or by a solicitor on his or her behalf. The request should be supported by medical evidence that the Ward is now mentally capable of managing his or her affairs. The Court will consider the request on the basis of the medical evidence provided and may require a further medical examination.



7. What happens when a Ward dies?

- ▼ Inform the Office
- ▼ Request to conclude Wardship
- ▼ Distribution of property

- *Inform the Office:*

In the event of the death of the Ward, the Committee should inform the case officer as soon as possible.

- *Request to conclude Wardship:*

It is necessary for a formal request to be made to conclude the Wardship proceedings. This will usually involve lodging with the Office a document (called a "Statement of Facts") which will include details of the deceased Ward's property and debts. The funds of the deceased Ward are made available by the Court to pay funeral expenses, nursing home charges, legal costs and Court fees.

- *Distribution of property:*

On the death of a Ward, the Ward's property remaining after payment of debts and costs is distributed amongst the persons entitled to it, either in accordance with the terms of the Ward's will or where he or she has not made a valid will under the rules of Intestate Succession. It is the task of the personal representative of the deceased Ward to distribute the property.

8. Other issues:

- ▼ Consent to medical treatment
- ▼ Wills
- ▼ Marriage
- ▼ Travel Aboard
- ▼ Legal Proceedings

● *Consent to medical treatment:*

If a Ward needs medical treatment, e.g. surgery, the approval of the Court should be obtained. However, emergencies will arise where it is not possible to obtain prior approval and in those circumstances, normal medical considerations should apply.

● *Wills:*

If a Ward has already made a will, it must be lodged in the Office for safekeeping. The will should be accompanied by a document called an “Affidavit of Plight and Condition”. This is a statement sworn by a solicitor as to the condition of the will.

Where a Ward expresses a wish to make a will, the Court may permit the Ward to do so, provided that the Court is satisfied on medical evidence that the Ward is mentally capable of making the will.

If the Court permits the Ward to make the will, the Ward should use a solicitor other than the solicitor acting for the Committee.

● *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, the Wardship proceedings do not invalidate the marriage.



- *Travel abroad:*

A Ward may not travel abroad without the the Court's permission. In practice, permission is usually granted. However, medical or safety considerations may have to be taken into account.

- *Legal proceedings:*

A Ward may only commence legal proceedings if the Court permits the Committee to bring those proceedings on behalf of the Ward.

The fact that a person has been taken into Wardship does not mean that he or she cannot be sued, or be prosecuted for committing a crime. The Committee should inform the case officer if the Ward is being sued or prosecuted and make arrangements with the case officer for the Ward to be legally represented.

The Court must approve any settlement of proceedings involving a Ward and the case officer should be informed before any settlement is agreed.

It is not always necessary to take someone into Wardship in order to institute or defend proceedings. In certain cases, the Court may allow someone called a "next friend" or "guardian ad litem" to represent the person in the proceedings.

9. Minors:

- ▼ When is it necessary for a Minor (i.e. a person under 18 years) to be taken into Wardship?
- ▼ What happens when the Minor reaches the age of 18 years?
- ▼ Are all Minors who have been awarded damages taken into Wardship?

● *When is it necessary for a Minor to be taken into Wardship?*

There are a number of reasons why it might be necessary to take a person under 18 years of age into Wardship. The most common situation is where the Minor has been awarded substantial damages by a Court and has special housing or care needs. If a house is being purchased from the Minor's funds, the house must be registered in the Minor's own name.

The request to have a Minor taken into Wardship is made by lodging a document called a "Summons", and which is supported by a sworn statement (an "Affidavit").

The person appointed to look after the affairs of a Minor who has been taken into Wardship is called a "Guardian".

● *What happens when the Minor reaches the age of 18 years?*

A Minor who reaches the age of 18 years and is mentally capable should request the Court through the Office to pay to him or her any funds in Court to which he or she is entitled.

● *Are all Minors who have been awarded damages taken into Wardship?*

Where a person under 18 years of age is awarded damages and has not been made a Ward of Court, the award is paid into Court and invested on the Minor's behalf until he or she reaches the age of 18 years. The Office does not deal with such cases. Enquiries about these cases should be made to the court in which proceedings were taken.

Foreword

I am indebted to the Registrar and staff of the Office of Wards of Court for preparing this Information Booklet which I am confident will be of great assistance to the families - and their advisors - of those in respect of whom Wardship proceedings are being considered or those whose affairs are already under the Court's protection. It is a long standing tradition of the Office of Wards of Court that a family in that position should be given every assistance and this Information Book is intended to supplement and not to replace that tradition. The Office of Wards of Court will continue to dedicate itself to the physical and financial well being of those within its care. As to the financial well being of the Wards, this year will see Wards of Court benefiting from a major investment by the Courts Service in information technology and personnel in the Accountant's Office and the introduction of new procedures all designed to enable the affairs of Wards of Court to be managed with maximum efficiency. It will also see the implementation of a new investment policy for the funds of Wards of Court which will mirror that of major institutions and funds and which will better equip the Office of Wards of Court to secure the optimum return consistent with security. These changes imposed a very heavy burden on all concerned within the Office of Wards of Court and the Office of the Accountant of the Courts of Justice and I am very grateful to them for the manner in which they bore the same. It is fitting that I should record that they have earned the gratitude of all those who come under their care and I am delighted that this Foreword has given me the opportunity to do so.



The Hon. Mr Justice Joseph Finnegan

President of the High Court