

Approval for expenses & significant gifts

Section 39(3) of the *Guardianship and Administration Act 1993* & Regulation 5 of the *Guardianship and Administration Regulations 2015*

Administrators appointed by SACAT need to apply to SACAT for prior approval where in any 1 year of administration expenses of the protected person will exceed the following significant amounts:

- **\$19,000.00** in respect to the protected person's accommodation expenses (whether by way of rent, board and lodging)
- **\$100,000.00** for premiums under the Retirement Villages Act 1987
- For the maintenance of the protected person's spouse or domestic partner-
 - I. The sum produced by adding together the amount of average weekly earnings applicable in respect of each week in that year of administration or
 - II. One half of the protected person's net income (taxable income less tax) for the last financial year-**whichever is the lesser**
- **\$8,700.00** for the maintenance, education or advancement of the protected person's children and grandchildren

For SACAT to consider an application for approval of significant amounts of expenditure, it will require the following documents (in addition to the on-line application):

1. A letter from the Administrator addressing:

- The type of approval sought
- The reasons for the approval sought
- The protected person's attitude to the approval sought (if it can be expressed or provided)
- The protected person's attitude to the approval sought before suffering a loss of mental incapacity (if known)
- The attitude to the approval sought of all interested parties actively involved in the protected person's life (such as family members, carers etc.)

2. A medical report from the protected person's doctor addressing:

- Whether the protected person has a continuing mental incapacity which affects his/her ability to properly manage his/her finances and assets
- Whether the protected person is capable of making a valid decision concerning the subject of the application for approval and if so, what are his/her views

- 3. A letter of consent to the approval of the immediate family members and any beneficiaries under the protected person's will**
- 4. A copy of the protected person's last will and testament**
- 5. Copies of any Tax Invoices or other financial documents relating to accommodation costs, education expenses or needs of the protected person and/or his/her spouse or domestic partner.**
- 6. A summary of the protected person's income, assets and liabilities**
- 7. Copies of the Income Tax returns of the protected person and his/her spouse or domestic partner for the last financial year**

For financial gifts to the protected person's children and grandchildren of amounts less than \$8,700 SACAT approval is not required. And for small amounts of financial gifting to the protected person's spouse or domestic partner, less than the sum produced under the formula set out in the regulations, you will not need to seek approval from SACAT.

However, you will need to account for this expenditure when you report to the Public Trustee and the Tribunal in accordance with the conditions of the Administration Order. Public Trustee may make a recommendation to the Tribunal for disallowance of an item of expenditure if an Administrator did not act in good faith or with reasonable care.

In considering applications for approval SACAT needs to be satisfied that Administrators deal with a protected person's estate in an appropriate manner and for the benefit of the protected person. The foremost concern is to protect the assets of the protected person.

SACAT will have regard to the guiding principles contained in Section 5 of the *Guardianship and Administration Act 1993* which states:

5-Principles to be observed

Where a guardian appointed under this Act, an administrator, The Public Advocate, the Tribunal or any court or other person, body or authority makes any decision or order in relation to a person or a person's estate pursuant to this Act or pursuant to powers conferred by or under this Act-

- (a) Consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and*
- (b) The present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and*
- (c) Consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing or informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and*
- (d) The decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection*

Disclaimer

This information sheet is provided as a guide only. For further clarification please refer to the Guardianship and Administration Act 1993 (available through the SACAT website). SACAT disclaims all liability for all claims, losses, damages, costs or expenses as a result of any use or reliance upon this fact sheet.

