

FACTSHEET

General advice for administrators

As an administrator for a represented person, you must:

- follow the principles outlined in this flyer
- be an advocate for the person
- encourage and assist them to develop their capacity to make financial and legal decisions, and
- protect them from neglect, abuse or exploitation.

You must also:

- act honestly, diligently and in good faith
- use reasonable skill and care
- not use the position for profit
- avoid taking action if there is, or may be, a conflict of interest,
- not share confidential information gained as an administrator, unless allowed by the administration order or by law,
- ensure that all investments and bank accounts are held in the name of the represented person, unless VCAT decides otherwise,
- take a copy of the VCAT administration order to the represented person's bank, and provide a copy to other investment entities, insurance companies, utilities, lenders, Centrelink, etc.
- if a guardian is appointed to make decisions about personal matters (i.e. decisions about accommodation, medical treatment, etc.), consult and work closely with the guardian,
- regularly review the represented person's investments, seek advice if needed and reduce any financial risk, and
- notify VCAT of the death of the represented person and provide proof of their death.

The duties of an administrator are outlined in section 55 of the *Guardianship and Administration Act 2019*.

General principles

You must follow these principles when making decisions and acting as administrator:

- You need to find out the 'will and preferences' of the person – that is, what's important to them.
- What's important to the person must guide the decisions made for them, as far as practical.
- If necessary, you must support the person, as far as practical in the circumstances, to:
 - make and take part in decisions affecting them
 - express what's important to them, and
 - develop their capacity to make decisions.
- You must act in the way that least restricts the person's ability to make and act on their own decisions, given the situation.

The general principles are outlined in section 8 of the *Guardianship and Administration Act 2019*.

Making decisions

Decisions you make for the represented person must follow these guiding principles:

- You must try to make decisions based on what's important to them, as far as practical and appropriate.
- If the person cannot tell you what's important to them, you must try to work this out. You need to use all available information to make the best decision you can in the situation. This includes asking their relatives, close friend and carers.

- If you cannot work out what's important to them, you must act in a way that promotes their personal and social wellbeing.
- If the person has a companion animal, you need to act in a way that recognises how important the animal is to them and any benefits the animal gives them.
- You can only disregard what's important to the person if it is necessary to protect them from serious harm.

These guiding principles are outlined in section 9 of the *Guardianship and Administration Act 2019*.

Powers of an administrator

An administrator has power to make financial decisions. These include:

- making money available for the person
- paying their expenses and debts, and
- insuring, maintaining or improving the person's property.

An administrator also has other powers, including the power to:

- collect income and other money owed to the person
- invest their money
- lease or sell their property
- run their business
- sign contracts on their behalf
- pay maintenance for their children or other dependents.

All the powers of an administrator are outlined in sections 46, 51 and 52 of the *Guardianship and Administration Act 2019*.

The administration order says what powers the administrator has and whether their powers are limited. For example, an administrator may need VCAT's permission to take legal action or sell property for the person.

An administrator can, as part of their powers:

- restrict or allow access to some or all of the represented person's accounts

- open and close bank accounts in the represented person's name, including term deposits, cheque accounts, passbook accounts and credit card accounts
- deposit or withdraw money from bank accounts or transfer money between bank accounts
- set up internet banking
- pay the represented person's debts or expenses, including authorising direct debits or periodic electronic transfers
- buy and sell assets including shares, real estate and motor vehicles
- receive income
- deal with any financial or legal matters relating to Centrelink and other government agencies, or private companies or individuals, on behalf of the represented person.

The administrators:

- are not trustees. Bank accounts, investments and other assets must be held in the represented person's name and not by the administrators 'in trust' or 'on trust'
- do not need to separately register as a 'nominee' for a represented person, to act or sign on their behalf
- have the same powers for financial and property transactions as a represented person would have if it weren't for their disability. They do not have the power to make a will or sign a Power of Attorney on represented person's behalf.

The order

Read the VCAT order carefully. The order sets out:

- the terms of your appointment
- your powers as administrator
- the duration of the appointment
- any restrictions on your powers
- any requirements to lodge documents, such as a Financial Statement and Plan

and an annual online Account by Administrator.

Administrators acting jointly principles

Administrators can act together or individually (that is, jointly and severally). Each administrator has the power to act or sign on behalf of represented person and do any of the things outlined in this letter.

An administrator must have written or oral authority from the other administrator/s to buy or sell land or substantial assets and submit the Financial Statement and Plan (FSP) and the annual online Account by Administrator (ABA).

If administrators are to act jointly and severally, so that each can deal with day-to-day matters alone, VCAT must make an order permitting them to do so.

Administrators need to reasonably consult with each other about decisions they make individually.

Lodging a Financial Statement and Plan (FSP) Principles

When you are appointed as an administrator, VCAT will generally make an order requiring you to complete and lodge an FSP within a set time (usually 6 weeks from the date of the order).

You will need to provide all relevant information on the FSP from the date of your appointment.

When you complete the FSP, you must think carefully about how you are going to manage the represented person's income and expenses, their day-to-day needs and investments, and how commitments are to be met in the short and long term.

Remember to include the person's own home in the FSP as an asset.

If the FSP isn't lodged by the due date, VCAT may schedule an early reassessment hearing.

Lodging an annual online Account by Administrator (ABA)

You must account for all income, expenditure, assets and liabilities of the represented person.

Administrators must lodge an online ABA with VCAT by 30 September annually. In exceptional circumstances there may be an exemption from this.

Each year in mid-July, VCAT:

- provides a link on the VCAT website that allows administrators to lodge the ABA online
- posts a detailed letter to all private administrators, outlining the lodgement and annual fee process, together with the administrator's reference number.

Annual administration fee

An annual administration fee must be paid from the represented person's estate to VCAT, if the represented person's fortnightly income is above the threshold set by government regulations.

The current fee and threshold amount can be found on the VCAT website, go to vcat.vic.gov.au/aba.

On application to VCAT, the annual administration fee can be waived or reduced, but only if VCAT is satisfied payment would cause the represented person undue hardship.

State Trustees Limited (STL) is required to independently examine ABAs lodged by private administrators. An examination fee is payable to STL for this service and must be paid from the represented person's estate. The level of the fee depends on the value of the estate examined.

This fee is separate to the VCAT annual administration fee. VCAT cannot make an order to waive the STL examination fee.

Seeking advice

You need to seek VCAT's advice if there is some uncertainty or conflict surrounding a major decision to be made or if you wish to

give a significant gift or make a loan from the represented person's estate.

You can also seek:

- advice about what you can do in your role as a guardian, administrator, supportive guardian or supportive administrator
- permission as an administrator to enter into a transaction that may be a conflict of interest
- confirmation about whether a transaction you already entered into as an administrator posed a conflict of interest
- advice on how to resolve a disagreement between guardians and/or administrators.

Bank accounts

The represented person's assets, including bank accounts, should be held in the name of the represented person. This is to ensure the correct legal ownership of the bank account and to reflect the represented person's independence and dignity.

You should provide the bank or financial institution with a copy of the current order under which you are appointed as administrator.

Gifts

You can make gifts from the represented person's funds to relatives or close friends if they are of a seasonal nature (i.e. birthdays, weddings, Christmas, etc.). The amount must be reasonable in light of the represented person's circumstances. Seek approval from VCAT before you purchase if the amount is more than \$100 per gift.

You may also make donations and gifts from the represented person's funds to charities that the represented person has always supported. Seek approval from VCAT if the single donation or gift is over \$100.

Loans

You must seek approval from VCAT if you want to lend the any of the represented person's funds to someone.

Wills

If you hold the represented person's will, you are obliged to make sure it is kept safe and secure.

If you don't hold the represented persons will, you can make an application to VCAT to do so.

VCAT has the power to open and read a will, but this does not necessarily mean that VCAT will disclose its contents, even to an administrator.

Reassessment

Administration orders are routinely reassessed every three years, unless otherwise ordered by VCAT.

Early reassessments can be requested if there is an issue or circumstances have changed.

More information

Information sessions for newly appointed administrators are held on a regular basis by VCAT throughout the year. Check the VCAT website for details and dates. Bookings are not required.

Online

vcat.vic.gov.au/guardianship

Email

humanrights@vcat.vic.gov.au

Phone

1300 018 228

Translating and Interpreting Service
131 450

In person

VCAT Human Rights Division
Level 4, 414 La Trobe Street
Melbourne VIC 3000

By Post

GPO Box 5408