

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER D8

DEPENDENT ADULTS ACT

Showing the Law as at 15 December 2006

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 18/2006, in force 30 November 2006

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DEPENDENT ADULTS ACT

PART 1

INTERPRETATION

Interpretation

1. In this Act—

"alternate guardian" means a guardian appointed under section 14(1);

"alternate trustee" means a trustee appointed under section 35(1);

"Court" means the High Court;

"dependent adult" means a person in respect of whom—

(a) a guardianship order is in effect;

(b) a trusteeship order is in effect; or

(c) both a guardianship order and a trusteeship order are in effect;

"facility" means that part of the Princess Alexandra Hospital or any other place so designated in the regulations as a facility under the Mental Health Act;

"guardian" means the person named as a guardian in a guardianship order;

"guardianship order" means an order of the Court appointing a person as a guardian pursuant to section 6 or as an alternate guardian pursuant to section 14;

"health care" includes—

(a) any examination, diagnosis, procedure or treatment undertaken to prevent any disease or ailment;

(b) any procedure undertaken for the purpose of preventing pregnancy;

(c) any procedure undertaken for the purpose of an examination or a diagnosis;

(d) any medical, surgical, obstetrical or dental treatment; and

(e) anything done that is ancillary to any procedure, treatment, examination or diagnosis;

"institution" means—

(a) a facility;

(b) the Princess Alexandra Hospital;

(c) the Miriam Gumbs Senior Citizens Home;

(d) a place declared to be a prison under the Prison Act; or

(e) any other establishment or class of establishment designated in the regulations as an institution;

"interested person" means any adult person who is concerned for the welfare of the person in respect of whom a guardianship order or trusteeship order is sought or has been obtained;

"Minister" means the Minister responsible for health;

"nearest relative" means, with respect to any person, the relative of that person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph being preferred to the other of those relatives regardless of gender—

(a) spouse or partner;

(b) son or daughter;

(c) father or mother;

(d) brother or sister;

(e) grandfather or grandmother;

(f) grandson or granddaughter;

(g) uncle or aunt;

(h) nephew or niece;

"partner", in relation to a person who is the subject of an application (the "subject person"), means a person—

(a) who is of the opposite sex from a subject person who is unmarried or who is married but separated by court order from his or her spouse; and

(b) who has cohabited with the subject person continuously for a period of at least 3 years immediately preceding the application in respect of the subject person;

"place of care" means the Miriam Gumbs Senior Citizen's Home or other place designated in the regulations as a place of care;

"prescribed" means prescribed by regulation under section 50;

"psychologist" means a person who holds a degree in psychology;

"trusteeship order" means an order of the Court appointing a person as trustee of the estate of a person pursuant to section 22 or as an alternate trustee of the estate of a person pursuant to section 35.

PART 2

GUARDIANSHIP

Division 1

Application for Guardianship Order

Application for guardianship order

2. (1) Subject to this section and section 3, any interested person may apply to the Court for an order appointing a guardian in respect of an adult person.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied by a report in the prescribed form of a medical practitioner, social worker or a psychologist.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as guardian to the effect that the person is willing to act as the guardian of the person in respect of whom the application is made.

Form and service of application

3. (1) An application for an order appointing a guardian may be made in accordance with the Rules of the Eastern Caribbean Supreme Court.

(2) The interested person making the application must serve a copy of the application and the report referred to in section 2 on—

(a) the person in respect of whom the application is made;

(b) the person living in Anguilla who is—

(i) the nearest relative of the person in respect of whom the application is made, or

(ii) if the nearest relative referred to in subparagraph (i) is the applicant, the next nearest relative of the person in respect of whom the application is made;

(c) the person proposed as the guardian of the person in respect of whom the application is made if the person is not the applicant or the nearest relative served pursuant to paragraph (b);

(d) if the person in respect of whom the application is made is a resident of an institution, the person in charge of the institution;

(e) any trustee of the person in respect of whom the application is made if the trustee is not the applicant or a person served pursuant to this subsection; and

(f) any other person that the Court may direct.

(3) A person who is served with a copy of the application under subsection (2) may, within 10 days after being served, file a notice of objection with the Registrar of the High Court.

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

(5) If no notice of objection is filed within 10 days after service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

(7) The Court may, if it considers it appropriate to do so—

(a) shorten the time for service on all or any of the persons referred to in subsection (2);

(b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2);

(c) dispense with the requirement for service on all or any of the persons referred to in subsection (2) and, subject to paragraph (d), the person in respect of whom the application is made; or

(d) dispense with the requirement for service on the person in respect of whom the application is made if the Court is satisfied that it is in the best interests of that person to do so.

Inquiry by Court and report

4. (1) When considering an application for an order appointing a guardian, the Court shall inquire as to whether it is in the best interests of the person in respect of whom the application is made for a guardian to be appointed for the person.

(2) If—

(a) the Court has any doubt as to whether a guardian should be appointed; or

(b) a guardianship order is being reviewed by the Court;

the Court may appoint a person to prepare a report on the person in respect of whom the application is made with respect to any or all of his or her physical, mental, social, vocational, residential, educational or other needs both present and future and generally his or her ability to care for himself or herself and to make reasonable judgements with respect to matters relating to his or her person.

Persons at hearing

5. If a hearing is held in respect of an application for an order appointing a guardian or on a review of a guardianship order—

(a) any person served pursuant to section 3(2) or (6); and

(b) any other person who wishes to make representations and whom the Court agrees to hear;

may appear and make representations.

Division 2

Guardianship Order and its Effect

Appointment of guardian

6. (1) When the Court is satisfied that a person in respect of whom an application for an order appointing a guardian is—

(a) an adult; and

(b) repeatedly or continuously unable—

(i) to care for himself or herself, and

(ii) to make reasonable judgements in respect of matters relating to his or her person;

the Court may make an order appointing a guardian.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of and result in substantial benefit to the person in respect of whom the application is made.

(3) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 3(2) or (6).

Persons eligible as guardian

7. (1) The Court may appoint as a guardian of a dependent adult, any adult person who consents to act as guardian and in respect of whom the Court is satisfied that the person—

(a) will act in the best interests of the dependent adult;

(b) will not be in a position where the person's interests will conflict with the dependent adult's interests;

(c) is a suitable person and is able to act as the guardian of the dependent adult; and

(d) is resident in Anguilla.

(2) Notwithstanding paragraph (1)(b), a person shall not be considered to be in a position where his or her interests will conflict with the dependent adult's interests by reason only of the fact that the person is a potential beneficiary or a relative of the dependent adult.

(3) The Court may require the person proposed as guardian to attend and answer questions to determine whether the person meets the requirements of subsection (1).

Review of guardianship order

8. (1) On making or reviewing a guardianship order granted pursuant to an application referred to in section 3, the Court shall specify—

(a) the time within which the order must be reviewed by the Court, which shall not be later than 6 years after the date of the order or the date of the review of the order, as the case may be;

(b) the person required to apply to the Court for the review; and

(c) any requirement to be complied with by the guardian or any other person with respect to a review of the circumstances of the dependent adult.

(2) On granting an order pursuant to an application considered under section 4(2), the Court shall specify the time, not later than 90 days after the date of the order, within which the order must be reviewed by the Court.

Order appointing guardian

9. (1) When the Court makes an order appointing a guardian, the Court shall grant to the guardian only the powers and authority referred to in subsection (2) that are necessary for the guardian to make or assist in making reasonable judgements in respect of matters relating to the person of the dependent adult.

(2) In making an order appointing a guardian, the Court shall specify whether all or any one or more of the following matters relating to the person of the dependent adult are to be subject to the power and authority of the guardian—

(a) to decide where the dependent adult is to live, whether permanently or temporarily;

(b) to decide with whom the dependent adult is to live and with whom the dependent adult is to consort;

(c) to decide whether the dependent adult should engage in social activities and, if so, the nature and extent of them and related matters;

(d) to decide whether the dependent adult should work and, if so, the nature or type of work, for whom the dependent adult is to work and related matters;

(e) to decide whether the dependent adult should participate in any educational, vocational or other training and, if so, the nature and extent of it and related matters;

(f) to decide whether the dependent adult should apply for any licence, permit, approval or other consent or authorization required by law;

(g) to commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to the dependent adult's estate;

(h) to consent to any health care that is in the best interests of the dependent adult;

(i) to decide that the dependent adult may be subject to compulsory care;

(j) to make normal day to day decisions on behalf of the dependent adult including the diet and dress of the dependent adult;

(k) any other matters specified by the Court and required by the guardian to protect the best interests of the dependent adult.

(3) In making an order appointing a guardian, the Court may make its order subject to any conditions or restrictions it considers necessary.

(4) When the Court specifies in an order that a dependent adult may be subject to compulsory care and the dependent adult is residing or is proposed to reside in a place of care and the guardian is satisfied that—

(a) the dependent adult is in a condition that presents a danger to himself or herself or to others;

(b) it is in the best interests of the dependent adult that he or she be confined in a place of care; and

(c) a written report of a medical practitioner, social worker or psychologist confirms that the dependent adult is in a condition that presents a danger to himself or herself or to others;

and the guardian signs a compulsory care authorisation for the purposes of this section, the authorisation is sufficient authority—

(d) for the person in charge of the place of care to confine the dependent adult in the place of care;

(e) for the guardian, or the police on the instructions of the guardian, to apprehend and convey the dependent adult to a place of care and to detain the dependent adult while the dependent adult is being conveyed until the dependent adult arrives at the place of care; and

(f) for any person on the instructions of the guardian to transfer the dependent adult to another place of care and to detain the dependent adult while the dependent adult is being transferred.

(5) A compulsory care authorisation remains in effect until it is cancelled in writing by the guardian or by the Court or until the dependent adult dies, whichever first occurs.

(6) Any decision made, action taken, consent given or thing done by a guardian with regard to any matter in respect of which the guardian is appointed guardian is deemed for all purposes to have been decided, taken, given or done by the dependent adult as though the dependent adult were an adult capable of giving consent.

(7) On receipt of an instruction under subsection (4)(e), a police officer may apprehend and convey the dependent adult to the place of care and detain the dependent adult while the dependent adult is being conveyed until the dependent adult arrives at the place of care.

Leave of absence of dependent adult

10. (1) During the term of a compulsory care authorisation, the person in charge of the place of care may, if the person is satisfied that the security of the dependent adult will be assured, grant the dependent adult a leave of absence from the place of care for medical, rehabilitative or humanitarian reasons for a time, and on any terms and conditions, that the person in charge of the place of care may prescribe.

(2) If a dependent adult who is the subject of a compulsory care authorisation—

(a) leaves a place of care and a leave of absence has not been granted; or

(b) leaves a place of care pursuant to a leave of absence but fails to return within the prescribed time;

the person in charge of the place of care may order any police officer to return the dependent adult to the place of care.

(3) On receipt of an order made under subsection (2), a police officer may apprehend the dependent adult without a warrant and return the dependent adult directly to the place of care.

(4) Nothing in this section limits the right of the guardian, on reasonable notice to the person in charge of the place of care, to take a dependent adult from the place of care.

Exercise of authority

11. A guardian shall exercise his or her power and authority—

(a) in the best interests of the dependent adult;

(b) in such a way as to encourage the dependent adult to become capable of caring for himself or herself and of making reasonable judgements in respect of matters relating to his or her person; and

(c) in the least restrictive manner possible.

Division 3

Other Guardianship Provisions

Application for review

12. (1) Nothing in this Act or in any order of the Court made under this Act prevents a dependent adult or any interested person on the dependent adult's behalf from applying to the Court in accordance with the Rules of the Eastern Caribbean Supreme Court for a review of a guardianship order at any time.

(2) A person making an application for a review of a guardianship order must serve a copy of the application on—

(a) the dependent adult;

(b) the person living in Anguilla who is—

(i) the nearest relative of the dependent adult in respect of whom the application is made, or

(ii) if the nearest relative referred to in subparagraph (i) is the applicant, the next nearest relative of the dependent adult;

(c) the guardian of the dependent adult if the guardian is not the applicant or the nearest relative served pursuant to paragraph (b);

(d) if the dependent adult is a resident of an institution, the person in charge of the institution;

(e) any trustee of the dependent adult if the trustee is not the applicant or a person served pursuant to this subsection; and

(f) any other person that the Court may direct.

(3) A person who is served with a copy of the application under subsection (2) may, within 10 days after being served, file a notice of objection with the Registrar of the High Court.

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

(5) If no notice of objection is filed within 10 days after service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

(7) The Court may, if it considers it appropriate to do so—

(a) shorten the time for service on all or any of the persons referred to in subsection (2);

(b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2); or

(c) dispense with the requirement for service on all or any of the persons referred to in subsection (2).

Court order after review

13. (1) When considering an application for review of a guardianship order, the Court—

(a) shall consider whether the conditions referred to in section 6(1) and (2) are still applicable and whether the guardian has exercised his or her power and authority in accordance with the guardianship order and section 11; and

(b) may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

(2) If the Court amends, varies or replaces an order under subsection (1), the applicant shall serve a copy of the order as amended or varied or of the replacement order, as the case may be, on the persons who are required to be served with an application under section 12(2) or (6).

(3) If the Court cancels, terminates or continues an order under subsection (1), the applicant shall serve on the persons referred to in subsection (2) a notice indicating that the cancellation, termination or continuation has taken place.

Appointment of alternate guardian

14. (1) On making a guardianship order or on a review of a guardianship order, the Court may appoint an alternate guardian if—

(a) the person proposed as alternate guardian has given his or her written consent to act as guardian of the dependent person in the event of the death or temporary absence or inability to act of the guardian; and

(b) it is satisfied that the persons on whom the application for a guardianship order or a review of a guardianship order is served pursuant to section 12(2) have had sufficient notice of the willingness of the person proposed as alternate guardian to act as an alternate guardian.

(2) Section 7 applies to the person proposed as the alternate guardian.

(3) If the Court appoints an alternate guardian under subsection (1), the applicant shall serve a copy of the order appointing the alternate guardian on the persons who are required to be served with an application under section 3(2) or (6).

Authority of alternate guardian

15. (1) If an alternate guardian is appointed, the alternate guardian shall take over the office of guardian without further proceedings—

(a) in the event of the death of the guardian; or

(b) if authorized in writing by the guardian, during the temporary absence or inability to act of the guardian.

(2) An authorization under paragraph (1)(b) shall indicate the period during which the alternate guardian may act as guardian and terminates—

(a) at the end of the period indicated on the authorization; or

(b) when revoked in writing by the previous guardian;

whichever is earlier.

(3) The alternate guardian shall notify the Registrar of the High Court in writing of the death of the previous guardian and send the Registrar of the High Court a certified copy of the death certificate of the previous guardian.

(4) On the appointment of the alternate guardian becoming effective, the power and authority of the alternate guardian is the same as that of the guardian replaced by the alternate guardian.

Discharge of guardian

16. (1) The guardian or any interested person may apply to the Court for an order discharging the guardian from his or her office.

(2) An application pursuant to subsection (1) shall be made in accordance with the Rules of the Eastern Caribbean Supreme Court.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 12(2), and section 12(7) applies.

(4) When the Court considers that a dependent adult is no longer in need of a guardian or if the Court is satisfied that a guardian—

(a) is unable or unwilling to continue to act as guardian;

(b) refuses to act or to continue to act as guardian;

(c) fails to act as guardian or fails to act in accordance with a guardianship order;

(d) acts in an improper manner or in a manner that has endangered or that may endanger the well-being of the dependent adult;

(e) is no longer a suitable person to act as guardian; or

(f) is no longer a resident of Anguilla;

the Court may make an order discharging the guardian from his or her office or make any other order it considers appropriate in the circumstances.

(5) Before making an order under subsection (4), the Court shall satisfy itself that—

(a) suitable arrangements have been or will be made in respect of the dependent adult; or

(b) an application for another guardianship order will be made.

(6) If the Court makes an order under subsection (4), the applicant shall serve a copy of the order on the persons who are required to be served with a copy of an application under section 12(2).

Treatment of incapacitated adults

17. (1) When an adult person—

(a) is, in the written opinion of 2 medical practitioners, in need of an examination or medical, surgical or obstetrical treatment or is, in the written opinion of 2 dentists or, if only one dentist is readily available, a medical practitioner and a dentist, in need of dental treatment;

(b) is incapable by reason of mental or physical disability of understanding and consenting to the examination or medical, surgical, obstetrical or dental treatment needed; and

(c) has not previously withheld consent to the examination or medical, surgical, obstetrical or dental treatment needed, to the knowledge of either of the medical practitioners or the dentists or the dentist and medical practitioner referred to in paragraph (a);

a medical practitioner or dentist may, without the consent of any person, examine the person, prescribe treatment for the person and provide the person with the medical, surgical or obstetrical treatment or with the dental treatment, as the case may be, in the manner and to the extent that is reasonably necessary and in the best interests of the person examined or treated, in the same way that the medical practitioner or dentist could have acted if the person had been an adult of full legal capacity who consented to the examination or treatment.

(2) Subsection (1) does not apply to a dependent adult who is the subject of an order under section 6 appointing a guardian with the power and authority to consent to health care for that dependent adult.

PART 3

TRUSTEESHIP

Division 1

Application for Trusteeship Order

Application for trusteeship order

18. (1) Subject to this section and section 19, any interested person may apply to the Court for an order appointing a trustee in respect of the estate of an adult person.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied with a report in the prescribed form of a medical practitioner, social worker or a psychologist.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as trustee to the effect that the person is willing to act as the trustee of the estate of the person in respect of whom the application is made.

Form and service of application

19. (1) An application for an order appointing a trustee may be made in accordance with the Rules of the Eastern Caribbean Supreme Court.

(2) The interested person making the application must serve a copy of the application and the report referred to in section 18 on—

(a) the person in respect of whom the application is made;

(b) the person living in Anguilla who is—

(i) the nearest relative of the person in respect of whom the application is made, or

(ii) if the nearest relative referred to in subparagraph (i) is the applicant, the next nearest relative of the person in respect of whom the application is made;

(c) the person proposed as the trustee of the person in respect of whom the application is made if the person is not the applicant or the nearest relative served pursuant to paragraph (b);

(d) if the person in respect of whom the application is made is a resident of an institution, the person in charge of the institution;

(e) any guardian of the person in respect of whom the application is made if the guardian is not the applicant or a person served pursuant to this subsection; and

(f) any other person that the Court may direct.

(3) A person who is served with a copy of the application under subsection (2) may, within 10 days after being served, file a notice of objection with the Registrar of the High Court.

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

(5) If no notice of objection is filed within 10 days after service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

(7) The Court may, if it considers it appropriate to do so—

(a) shorten the time for service on all or any of the persons referred to in subsection (2);

(b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2); or

(c) dispense with the requirement for service on all or any of the persons referred to in subsection (2).

Inquiry by Court and report

20. (1) When considering an application for an order appointing a trustee, the Court shall inquire as to whether—

(a) the person in respect of whom the application is made is in need of a trustee; and

(b) it is in the best interests of the person in respect of whom the application is made for a trustee to be appointed for the person.

(2) If—

(a) the Court has any doubt as to whether a trustee should be appointed; or

(b) a trusteeship order is being reviewed by the Court;

the Court may appoint a person to prepare a report on the person in respect of whom the application is made with respect to any or all of his or her physical, mental, social, vocational, residential, educational or other needs both present and future and generally his or her ability to make reasonable judgements with respect to matters relating to his or her estate.

Persons at hearing

21. If a hearing is held in respect of an application for an order appointing a trustee or on a review of a trusteeship order—

(a) any person served pursuant to section 19(2) or (6); and

(b) any other person who wishes to make representations and whom the Court agrees to hear;

may appear and make representations.

Division 2

Trusteeship Order and its Effect

Appointment of trustee

22. (1) When the Court is satisfied that a person in respect of whom an application for an order appointing a trustee is—

(a) an adult;

(b) unable to make reasonable judgements in respect of matters relating to all or any part of his or her estate; and

(c) in need of a trustee;

the Court may make an order appointing a trustee.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

(3) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 19(2) or (6).

Persons eligible as trustee

23. (1) The Court may appoint as a trustee of the estate of a dependent adult—

(a) any adult individual who consents to act as trustee and in respect of whom the Court is satisfied that the individual—

(i) will act in the best interests of the dependent adult,

(ii) will not be in a position where the individual's interests will conflict with the dependent adult's interests,

(iii) is a suitable person to act as the trustee of the estate of the dependent adult, and

(iv) is a resident of Anguilla; or

(b) a trust corporation.

(2) Notwithstanding subparagraph (1)(a)(ii), an individual shall not be considered to be in a position where his or her interests will conflict with the dependent adult's interests by reason only of the fact that the individual is a potential beneficiary or a relative of the dependent adult.

(3) The Court may require an individual proposed as trustee or, in the case of a trust corporation proposed as trustee, an individual representing the trust corporation, to attend and answer questions that will enable the Court to determine whether the proposed trustee will be able, in the opinion of the Court—

(a) to carry out the duties of the trustee; and

(b) in the case of an individual proposed as trustee, to meet the requirements of paragraph (1)(a).

Review of trusteeship order

24. (1) In making or reviewing a trusteeship order, the Court may make its order subject to any conditions or restrictions it considers necessary.

(2) On making or reviewing a trusteeship order, the Court shall specify—

(a) the time within which the order must be reviewed by the Court, which shall not be later than 6 years after the date of the order or the date of the review of the order, as the case may be;

(b) the person required to apply to the Court for the review; and

(c) any requirement to be complied with by the trustee or any other person with respect to a review of the circumstances of the dependent adult.

Authority of trustee

25. Subject to this Act, when the Court makes a trusteeship order, the trustee, with respect to the estate or that part of the estate under the trustee's trusteeship—

(a) has the right to, and may take possession and control of, all the real and personal property of the dependent adult; and

(b) may—

(i) safely keep, manage, preserve and protect the property or interests of the estate, and

(ii) in any other case, manage, handle, administer, sell, dispose of or otherwise deal with the estate in accordance with section 26 and an authorization under section 27 or an order under section 28.

Additional authority of trustee

26. Subject to any restriction or condition imposed by the Court, a trustee may, in respect of the estate of the dependent adult under the trustee's trusteeship and without obtaining the authority or direction of the Court, do all or any of the following—

(a) grant or accept leases of real or personal property for a term not exceeding 3 years;

(b) invest any money in investments in which trustees are authorized to invest trust money under the Schedule to the Trustee Act;

(c) transfer property held in trust by the dependent adult, either solely or jointly with another, to the person beneficially entitled to it;

(d) give a consent to the transfer or assignment of a lease if the consent is required;

(e) perform a contract entered into by the dependent adult or by the dependent adult's guardian;

(f) draw, accept and endorse Acts of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action;

(g) give or receive a notice on behalf of the dependent adult that relates to his or her estate;

(h) sell or otherwise dispose of personal property having a fair market value that is not greater than the prescribed amount;

(i) commence, compromise or settle a claim or court action that relates to the estate;

(j) if land in which the dependent adult has a beneficial interest is held by the personal representative of the estate of a deceased person, consent to the sale of that land by the personal representative of the deceased's estate.

Authority conferred on trustee by Court

27. The Court may, on any terms and conditions it considers appropriate, authorize a trustee to do all or any of the following in respect of the estate of a dependent adult under the trustee's trusteeship—

(a) purchase, sell, mortgage, grant or accept leases for more than 3 years or otherwise dispose of real property or personal property having a fair market value that is greater than the amount prescribed for the purposes of section 26(h);

(b) exchange or partition real or personal property and give or receive money for equality of exchange or partition;

(c) carry on the trade or business of the dependent adult;

(d) surrender a lease, with or without accepting a new lease, or accept a surrender of a lease;

(e) exercise a power or give a consent required for the exercise of a power vested in the dependent adult;

(f) exercise a right or obligation to elect, belonging to or imposed on the dependent adult;

(g) compromise or settle a debt;

(h) notwithstanding the Schedule to the Trustee Act, invest funds in any securities and assets that the Court approves;

(i) do any other thing approved by the Court.

Ademption not applicable

28. (1) A trustee may make an *ex parte* application, unless directed otherwise by the Court, for an order authorizing the trustee to sell property belonging to the dependent adult and directing the trustee to place the proceeds of the sale into an identifiable trust account, to be administered as the Court directs having regard to the present and future needs of the dependent adult.

(2) If a trustee complies with an order under subsection (1) and if any property sold pursuant to the order is the subject of a devise or bequest in the last will of the dependent adult, that devise or bequest of the property does not fail under the doctrine of ademption.

Division 3

Duties of Trustee

Filing of inventory and accounts

29. (1) When a trustee of the estate of a dependent adult is appointed or when an alternate trustee takes office by reason of the death of the previous trustee, the following provisions apply unless the Court modifies, alters or dispenses with some or all of them—

(a) the trustee, at the time of the application under section 18 or within 6 months of being appointed or taking office, shall file in the office of the Registrar of the High Court a true inventory and account of the assets and liabilities of the estate of the dependent adult in respect of which the trustee is appointed trustee;

(b) if any asset or liability of the estate of the dependent adult is discovered after the filing of the inventory and account, the trustee shall file a true inventory and account of the asset or liability on its discovery;

(c) every inventory and account shall be verified by the oath of the trustee or of some person in a position to verify it.

(2) Any interested person may apply to the Court for an order that the trustee—

(a) bring in and pass the trustee's accounts;

(b) file an inventory of the assets and liabilities of the estate of the dependent adult; or

(c) do some other thing that the circumstances may require.

(3) A trustee shall, at least once every 2 years, file the trustee's accounts with the Registrar of the High Court and apply to the Court, on any notice that the Court may direct, for an order passing the trustee's accounts and for any further or other order or direction that circumstances require.

(4) Notwithstanding subsection (3), the Court may dispense with the requirement for passing the accounts of the trustee and—

(a) permit the trustee to file the trustee's accounts with the Registrar of the High Court and where the Court is satisfied that it is in the best interests of the estate and the dependent adult, approve the trustee's accounts in the form in which they are filed; or

(b) dispense with accounting for a period not exceeding 4 years from the date of the order.

(5) Notwithstanding subsection (3), having regard to the size of the estate, the amount of income generated or the nature of the assets, the Court may—

(a) dispense with the requirement for the passing of accounts for a period not exceeding 12 years from the date of the order if the trustee maintains accounts and files a summary accounting statement in the form required by the Court with the Registrar of the High Court at least once every 6 years or on review of the trusteeship order; and

(b) order the trustee to do any other thing that the circumstances may require.

(6) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 19(2).

(7) Notwithstanding subsection (6), the Court may, if it considers it appropriate, dispense with the requirement for service on all or any of the persons who are required to be served with an application under section 19(2), except the dependent adult and the nearest relative of the dependent adult who is living in Anguilla if that relative is not the trustee.

Accounting on discharge of trustee

30. When the Court terminates a trusteeship order or discharges a trustee from the trustee's office, the Court shall—

(a) direct the trustee to pass the trustee's accounts;

(b) where it is satisfied that it is in the best interests of the estate and the dependent adult, direct the trustee to file the trustee's accounts with the Registrar of the High Court and approve the trustee's accounts in the form in which they are filed; or

(c) direct that accounting be dispensed with.

Accounting on death of dependent adult

31. (1) On the death of a dependent adult, the trustee shall account to the legal representative of the estate of the dependent adult.

(2) If the trustee does not provide an accounting under subsection (1) to the satisfaction of the legal representative, the legal representative may apply to the Court for an order requiring the trustee to bring in and pass the trustee's accounts relating to the estate or that part of the estate formerly under the trustee's trusteeship.

Exercise of authority by trustee

32. (1) A trustee shall, subject to this Act, exercise his or her authority for the maintenance, education, benefit and advancement of the dependent adult in respect of whose estate the trustee is trustee.

(2) A trustee may, subject to this Act and with respect to the estate under the trustee's trusteeship, exercise his or her authority for the maintenance, education, benefit and advancement of any or all of the following—

(a) the spouse or partner of the dependent adult, if any;

(b) any minor child of the dependent adult;

(c) any adult child of the dependent adult who by reason of physical or mental disability is unable to earn a living;

(d) any adult person for whose maintenance, education, benefit and advancement the dependent adult is responsible by law;

(e) with the consent of the Court, any other person.

Division 4

Other Trusteeship Provisions

Application for review

33. (1) Nothing in this Act or in any order of the Court made under this Act prevents a dependent adult or any interested person on the dependent adult's behalf from applying to the Court in accordance with the Rules of the Eastern Caribbean Supreme Court for a review of a trusteeship order at any time.

(2) A person making an application for a review of a trusteeship order must serve a copy of the application on—

(a) the dependent adult;

(b) the person living in Anguilla who is—

(i) the nearest relative of the dependent adult in respect of whom the application is made, or

(ii) if the nearest relative referred to in subparagraph (i) is the applicant, the next nearest relative of the person of the dependent adult;

(c) the trustee of the dependent adult if the trustee is not the applicant or the nearest relative served pursuant to paragraph (b);

(d) if the dependent adult is a resident of an institution, the person in charge of the institution;

(e) any guardian of the dependent adult if the guardian is not the applicant or a person served pursuant to this subsection; and

(f) any other person that the Court may direct.

(3) A person who is served with a copy of the application under subsection (2) may, within 10 days after being served, file a notice of objection with the Registrar of the High Court.

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

(5) If no notice of objection is filed within 10 days after service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

(7) The Court may, if it considers it appropriate to do so—

(a) shorten the time for service on all or any of the persons referred to in subsection (2);

(b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2); or

(c) dispense with the requirement for service on all or any of the persons referred to in subsection (2).

Court order after review

34. On hearing an application for review of a trusteeship order, the Court may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

Appointment of alternate trustee

35. (1) On making a trusteeship order or on a review of a trusteeship order, the Court may appoint an alternate trustee if—

(a) the person proposed as alternate trustee has given his or her written consent to act as trustee of the estate of the dependent adult in the event of the death or temporary absence or inability to act of the trustee; and

(b) it is satisfied that the persons on whom the application for a trusteeship order or a review of a trusteeship order is served pursuant to section 33(2) or (6) have had sufficient notice of the willingness of the person proposed as alternate trustee to act as an alternate trustee.

(2) Section 23 applies to the person proposed as alternate trustee.

Authority of alternate trustee

36. (1) If an alternate trustee is appointed, the alternate trustee shall take over the office of trustee without further proceedings—

(a) in the event of the death of the trustee; or

(b) if authorized in writing by the trustee, during the temporary absence or inability to act of the trustee.

(2) An authorization under paragraph (1)(b) shall indicate the period during which the alternate trustee may act as trustee and terminates—

(a) at the end of the period indicated on the authorization; or

(b) when revoked in writing by the previous trustee;

whichever is earlier.

(3) The alternate trustee shall notify the Registrar of the High Court in writing of the death of the previous trustee and send the Registrar of the High Court a certified copy of the death certificate of the previous trustee.

(4) On the appointment of the alternate trustee becoming effective, the authority of the alternate trustee is the same as that of the trustee replaced by the alternate trustee.

(5) When the alternate trustee takes over the office of trustee because of the death of the previous trustee, the alternate trustee may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the dependent adult.

(6) If the legal representative of the previous trustee does not provide an accounting under subsection (5) to the satisfaction of the alternate trustee, the alternate trustee may apply to the Court for an order requiring the legal representative to bring in and pass the accounts of the previous trustee with respect to the estate of the dependent adult.

Discharge of trustee

37. (1) The trustee or any interested person may apply to the Court for an order discharging the trustee from the trustee's office.

(2) An application pursuant to subsection (1) shall be made in accordance with the Rules of the Eastern Caribbean Supreme Court.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 19(2), and section 19(7) applies.

(4) When the Court considers that the estate of a dependent adult is no longer in need of a trustee or if the Court is satisfied that a trustee—

(a) is unable or unwilling to continue to act as trustee;

(b) refuses to act or to continue to act as trustee;

(c) fails to act as trustee or fails to act in accordance with a trusteeship order;

(d) acts in an improper manner or in a manner that has endangered or that may endanger the estate of the dependent adult;

(e) has been guilty of a breach of trust;

(f) is no longer a suitable person to act as trustee; or

(g) is no longer a resident of Anguilla;

the Court may make an order discharging the trustee from the trustee's office or make any other order it considers appropriate in the circumstances.

(5) Before making an order under subsection (4), the Court shall satisfy itself that, if necessary—

(a) suitable arrangements have been or will be made in respect of the estate of the dependent adult; or

(b) an application for another trusteeship order will be made.

Estate reimbursed

38. (1) The Court, on passing the accounts of a trustee, on review of a trusteeship order or during an application to remove a trustee, may—

(a) inquire into and adjudicate on a complaint or claim by an interested person of misconduct, neglect or default on the part of the trustee; and

(b) order that the trustee reimburse the estate to the extent of the loss suffered.

(2) The Court may order the trial of an issue of a complaint or claim under paragraph (1)(a) and may make all necessary directions with respect to it.

Possession of last will

39. (1) A trustee may call in or receive an original will made by a person who is a dependent adult from any person, including a lawyer, who has possession of it, and that person shall surrender the will to the trustee.

(2) A person who had possession of the will before surrendering it under subsection (1) may retain a copy.

PART 4

COMMON GUARDIANSHIP AND TRUSTEESHIP PROVISIONS

Signing by guardian or trustee

40. A guardian or trustee may on behalf of a dependent adult sign and do all things necessary to give effect to any power or authority vested in the guardian or trustee.

No payment to guardians

41. A guardian is not entitled to any remuneration, compensation, fees or allowance for effort made or for time expended on behalf of the dependent adult.

Trustee's compensation

42. (1) A trustee is entitled to be compensated from the estate of the dependent adult for the trustee's efforts, care, responsibility and trouble and for the time expended as trustee on behalf of the dependent adult, as authorized by the Court.

(2) At a hearing to pass interim or final accounts or on an application for compensation made under the Rules of the Eastern Caribbean Supreme Court, the Court may set the compensation for the trustee and give directions with respect to it.

Trustee's expenses

43. A trustee is entitled to be reimbursed for the direct expenses incurred and disbursements made on behalf of the dependent adult.

Purchase of necessaries

44. (1) A guardian, subject to any provision contained in the guardianship order appointing the guardian, may purchase necessaries for the dependent adult without the consent of the dependent adult or the trustee of the dependent adult's estate, if any.

(2) When a guardian purchases necessaries for the dependent adult—

(a) the dependent adult is liable to pay for them or reimburse the guardian for any money expended by the guardian in the purchase of the necessaries; or

(b) if there is a trustee of the estate of the dependent adult, the trustee shall, out of the estate, pay for the necessaries or reimburse the guardian for any money expended by the guardian in the purchase of the necessaries.

Contracts binding

45. When a guardian or a trustee enters into a contract on behalf of a dependent adult, the contract is binding on the dependent adult after the guardianship order or trusteeship order is terminated in the same manner and to the same extent as if the dependent adult had made the contract and the dependent adult had been an adult capable of making the contract.

Application for direction of Court

46. (1) A guardian or trustee may apply for the opinion, advice or direction of the Court on any question respecting a dependent adult or respecting the management or administration of the dependent adult's estate.

(2) The guardian or the trustee acting on the opinion, advice or direction given by the Court is deemed, so far as the guardian's or trustee's own responsibility is concerned, to have discharged the guardian's or trustee's duty as guardian or trustee, as the case may be, in respect of the subject-matter of the opinion, advice or direction.

(3) Subsection (2) does not operate to indemnify a guardian or trustee in respect of any act done in accordance with the opinion, advice or direction if the guardian or trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

Testamentary disposition

47. A guardianship order or a trusteeship order is not of itself sufficient to establish that a dependent adult does not have legal capacity to make a testamentary disposition.

Foreign orders

48. (1) In this section, "foreign order" means an order made by a court outside Anguilla that appoints a person having duties comparable to those of a guardian or trustee with respect to a person who is 18 years or older or with respect to the estate of such a person.

(2) If a foreign order is approved by regulation by the Governor in Council, the foreign order may be resealed on an order of the Court and, on resealing, the foreign order—

(a) is of the same force and effect in Anguilla as if it were issued by the Court;

(b) is as regards an estate in Anguilla, subject to any order of the Court to which a trusteeship order is subject, and is, as regards a person in Anguilla, subject to any order of the Court to which a guardianship order is subject; and

(c) is as regards an estate in Anguilla, subject to appeal and review in the same manner as a trusteeship order and is, as regards a person in Anguilla, subject to appeal and review in the same manner as a guardianship order.

(3) When the Court makes an order under subsection (2), it shall set a date for the review of the resealed order and the date for review shall be—

(a) the date provided for review by the terms of the resealed order; or

(b) the date for review required by this Act;

whichever date is sooner.

(4) A duplicate of a foreign order sealed with the seal of the court that sealed it or a copy of a foreign order certified by or under the direction of the court that granted it is as effective as the original.

(5) A foreign order shall not be resealed under this section until—

(a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign order to the effect that the order is wholly unrevoked and of full effect; and

(b) security has been given to the Court in Anguilla to cover the part of the estate in Anguilla of the person in respect of whom it was made, unless the Court dispenses with security.

(6) An application to reseal a foreign order and a copy of the resealed order shall be served on the persons referred to in section 3 or 19, whichever is appropriate.

Order re costs

49. The High Court, in respect of any application or report made to it under this Act, or the Court of Appeal in respect of a matter arising under this Act that is appealed to it, may order that the costs—

(a) be paid by all or any of the following—

(i) the person making the application, where it is satisfied that it would not be a hardship to do so,

(ii) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship to do so,

(iii) the estate of the dependent adult, where it is satisfied that it would not be a hardship to do so;

(b) be paid by a trustee if the trustee has been ordered to reimburse the estate under section 38; or

(c) be paid by the person making the application or a person opposing the application, where it is satisfied that the application or the opposition to the application, as the case may be, is frivolous or vexatious.

PART 5

REGULATIONS

Regulations

50. The Governor in Council may make regulations for the better administration of this Act including regulations—

(a) prescribing forms necessary for the purposes of this Act and the regulations;

(b) designating establishments or classes of establishments as institutions for the purposes of this Act and the regulations;

(c) prescribing the fair market value of personal property for the purpose of section 26(h);

(d) approving jurisdictions outside Anguilla for the purposes of section 48;

(e) designating other places of care in which dependent adults may be confined pursuant to a compulsory care order;

(f) governing procedures respecting applications under this Act;

(g) respecting the manner of service of documents.

PART 6

CITATION AND TRANSITIONAL PROVISIONS

Citation

51. This Act may be cited as the Dependent Adults Act, Revised Statutes of Anguilla, Chapter D8.

Transitional regulations

52. The Governor in Council may, in the one year period after 30 November 2006, make such transitional regulations as he or she considers appropriate and may make them retroactive to 30 November 2006.

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