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Capacity

Looking after those who can no longer look after themselves

There may come a time when a person is no longer able to manage their own financial affairs or welfare, whether due to illness, mental disability or as the result of injury and the appointment of someone to manage their affairs will become necessary.

The law has recently changed, and where in the past a “curator” would have been appointed, with effect from **1 October 2018** one or more “delegates” can be appointed by the Court.

What is a Delegate?

A “Delegate” is someone appointed by the Royal Court under the Capacity and Self-Determination (Jersey) Law 2016 (“Law”) or someone who was appointed a Curator under the previous law.

How is a Delegate appointed?

The initial recommendation for a Delegate will be made to the Probate & Capacity division of the Royal Court.

The application must be accompanied by various documents including

- a form completed by each proposed Delegate;
- a draft inventory of the assets of the incapacitated person (“P”);
- 2 character references for each proposed Delegate;
- a capacity assessment for P;
- a basic criminal record check for each proposed Delegate; and
- Letters from all close relatives of P approving the appointment.

If the proposed appointee does not live in the Island then a security bond will be required.

If the Registrar or the Court is satisfied that a Delegate is required, and that the proposed Delegate is suitable, then the Court will fix a date for the proposed Delegate to take the oath of office when the appointment is made.

Who will be appointed as Delegate?

The Court will first look to appoint a member of the family who is willing and capable of undertaking the role of Delegate. Only if that is not possible or practicable would an independent, professional Delegate be appointed.

The Court can appoint more than one Delegate and can appoint them as joint, or joint and several, so that they can each make specified decisions.

A Delegate can be appointed either for property and affairs or health and welfare or both.



What powers does a Delegate have?

A Delegate for property and affairs has power to do or arrange for all such things to be done in relation to the property and affairs of P as appear to the Delegate to be necessary having regard to P's best interests and views and wishes. This may include making provision for P's family, or other people for whom P might be expected to provide, and otherwise for the management and administration of P's property and affairs.

The Delegate can engage a professional person to undertake work on P's behalf, dissolve a partnership of which P is a member, carry out the terms of a contract entered into by P and pay P's debts or expenses from P's property.

The powers of a Delegate for health and welfare will be specified by the Court.

Are there any limitations on a Delegate's powers?

There are certain circumstances where a Delegate for property and affairs must make application to the court and certain areas where he or she may need to do so.

There are certain circumstances where a Delegate for health and welfare must make applications to the court.

Is a Delegate able to charge for their services?

The Law allows for the Delegate for property and affairs to be paid his or her expenses and the Court may on appointment of a Delegate direct that he or she can be remunerated from P's property for acting subject to any limitations imposed by the court in regulations or otherwise.

Accountability

A Delegate for property and affairs must submit an Inventory of Assets and Liabilities within 90 days of their appointment. In every subsequent year, annual accounts must be prepared detailing P's income and expenditure during the last 12 month period, and include an updated list of P's capital assets. The Delegate must also provide a report setting out what actions have been taken in the past year and explaining why and how decisions were reached including the involvement of P. The report must also set out what the Delegate envisages may need to be done in the next year and how P was involved in the decision. The accounts will include any fees charged by the Delegate.

Delegates are subject to regulation by the Viscount.

Voisin's Estate Planning & Capacity team provide expert guidance in all matters concerning capacity issues. If you would like to have an informal discussion about these matters, please contact Kylie Young, Eliana Lennon and Angela Roscouet at probate@voisinlaw.com.

This note is intended to provide a brief rather than a comprehensive guide to the subject under



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consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.