

ORDERS UNDER THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT

In the past I have recommended that readers complete enduring powers of attorney to be effective in the event that they suffer head injury, stroke or some illness which means that they are no longer able to make or communicate decisions or manage their own affairs. While it is correct that a husband or wife, parent or other person who is close to us, can make some decisions on behalf of someone who cannot make them for themselves there are a lot of matters which require an official enduring power of attorney or a Court order. In this article we will take a look at what happens if people do not have an enduring power of attorney for such purpose.

Where no enduring power of attorney exists in respect of a mentally incapable person an application must be made to the Court, usually by a relative, for authority to attend to whatever is required to be done. There are two types of order, one relates to personal care and welfare and the other relates to property.

On an application to the Court for an order in respect of personal care and welfare the Court considers the evidence and decides whether the order is necessary. If an order is made a welfare guardian is required to see to the care and welfare of the protected person.

An order in respect of a mentally incapacitated persons property can also be made on the application of another person who is usually close to the mentally incapacitated person. In respect of very small property holdings or income the Court may appoint one person to administer any property income or benefit belonging to the incapacitated person. The Court can also appoint a property manager, where necessary, to act in the best interests of the property of the person for whom they are appointed. A property manager is then in the position to make decisions about buying or selling property, carrying out repairs and similar day to day incidents of property ownership. However, the Court makes orders which empower the property manager to do certain things and the property manager is not permitted to act outside the Court order.

Where a property manager does not act in good faith and with reasonable care they may be legally liable for their actions to the mentally incapacitated person. A property manager is required to file statements annually containing details of the property managed at the Court.

It is also possible for a property manager to make a will for a mentally incapacitated person and the Court will take steps to find out the person's wishes and authorises the property manager to make the will in accordance with those wishes.

When an initial application is made to the Court the Court appoints a lawyer to report on the circumstances of the incapacitated person and makes recommendations to the Court.

All of the proceedings under the Protection of Personal and Property Rights Act 1988 take place in the Family Court which is not open to the public and the proceedings may not be reported on.

The above resumé sets out briefly the rigmarole which need to be waded through in the event of someone's incapacity. There is also a major cost involved in both time and finance. All of this can be avoided by the simple task of completing enduring powers of attorney for which most lawyers charge a fairly nominal fee.

This article has been prepared by Bessie Paterson, a Partner with Ronald Angland & Son solicitors, who may be contacted on Tel: 03 349-4708 or e-mail bessie@anglands.co.nz