

Guidance Notes for Application by Financial Guardian for Consent to Purchase or Sell an Adult's Dwelling House



1.1 Is the financial guardian able to sell the adult's dwelling house or purchase accommodation?

This will depend on whether authority has been granted by the court to do so. The guardianship order granted by the court specifies the powers a financial guardian has in relation to heritable property.

Where guardianship relates to heritable property, the property(s) will have to be identified in the Court Order. The court document containing the order (interlocutor) requires to be registered in the General Register of Sasines or in the Land Register of Scotland. This can not be done until caution, if required, has been found.

Once registered, the endorsed interlocutor or updated Land Certificate issued by the Keeper of the Registers of Scotland must be sent to the Public Guardian.

1.2 What if the guardianship order does not contain the powers necessary to deal with heritable property on behalf of the adult?

If the guardianship order is inadequate an application will require to be made to the court to have the order varied or for an intervention order to be granted.

1.3 Is Legal Advice necessary?

If the financial guardian is not legally qualified, it would be advisable to seek legal advice whenever the question of the sale or purchase of heritable property arises.

1.4 What happens next?

If the financial guardian has powers to deal in heritable property, prior consent must be obtained from the Public Guardian to sell accommodation used for the time being as the adult's dwelling house, or to buy accommodation for the adult.

1.5 Is there an application form?

Yes, the Public Guardian has devised forms for this purpose. Forms are available to:

- sell accommodation used as the adult's dwelling house or
- to purchase accommodation on behalf of the adult.

1.6 Why is the consent of the Public Guardian necessary?

This is a requirement of the Adults with Incapacity (Scotland) Act 2000 (the Act). Schedule 2 of the Act deals with the management of estate of an adult and sets out at paragraph 6 the requirements relating to the purchase and sale of accommodation. It provides that the Public Guardian must give consent to the sale and purchase of accommodation and describes a 2-stage process.

1.7 Is there a fee payable to the Public Guardian?

Yes. This fee must be sent along with the application required at the first stage. All prescribed fees can be found in the fees order a copy of which can be accessed on the website, www.publicguardian-scotland.gov.uk, or by telephoning the OPG.

1.8 What is the first stage?

An application to the Public Guardian for the **consent in principle** to buy or sell accommodation. By completing the application form the financial guardian is fulfilling this requirement. The Public Guardian will consider the reasons given for wanting to buy or sell accommodation and will want to be satisfied that any intervention is in the best interests of the adult. The Public Guardian will seek the views of other relevant parties by informing them of the application and their right to lodge objections to it.

1.9 Who can object to the application?

The Public Guardian is required to intimate receipt of the application to:

- the adult (subject to section 11 of the Act);
- the adult's nearest relative;
- the adult's primary carer;
- the adult's named person (if they have one); and
- any one else the Public Guardian considers has an interest.

The above person(s) are given sight of the application and should they wish to do so have 21 days to make an objection. Objections must be made in writing.

1.10 What happens if there are no objections?

If no objections are received the Public Guardian may consent in principle to the sale or purchase of accommodation. The financial guardian will be informed of this decision in writing.

The Public Guardian may propose to refuse the application even where no objections have been lodged. The financial guardian will be informed of this decision in writing and given the opportunity to object to the proposed refusal of the application. The letter from the Public Guardian will give details of how to go about this. An appeal may be made against the Public Guardian's decision to the Sheriff, whose decision shall be final.

The Public Guardian may refer the matter to the Sheriff even where no objections have been received.

1.11 What happens if someone objects?

The Public Guardian will refer any objection(s) received to the Sheriff who will make a decision. The Sheriff's decision will be final. The Sheriff will decide whether to uphold or dismiss the objection.

Where the court upholds the objection, the Public Guardian shall refuse the application. If the court dismisses the objection, the Public Guardian will grant the application.

1.12 What is the second stage?

If the Public Guardian has agreed in principle to the sale or purchase of accommodation, the financial guardian must then seek authority from the Public Guardian to the actual sale or purchase price.

1.13 Why does the Public Guardian have to give consent to the sale or purchase price?

This is a legal requirement. The Act makes provision for this at Schedule 2 paragraph 6(1)(b) and paragraph 7. The Public Guardian will want to be satisfied that the best interests of the adult continue to be served and that the purchase/sale price is fair and reasonable.

1.14 How is an application made for consent to the sale/purchase price?

There is not an application form for this part of the process but the Public Guardian will require the financial guardian to submit their proposals in writing.

In terms of selling price, the Public Guardian will require to see a copy of the offer that the financial guardian intends to accept along with information about any other offers received. An up to date valuation report should also be provided so that the Public Guardian can be satisfied that the sale price is fair and reasonable under the circumstances. If necessary, the Public Guardian may ask for additional information before making a decision.

In terms of consent to purchase price, an up to date valuation report should be provided along with details of the amount the financial guardian intends to offer. If necessary, the Public Guardian may ask for additional information before making a decision.

1.15 Does this application need to be intimated to anyone?

No. There is no legal requirement to intimate the application for consent to the sale/purchase price of accommodation. This differs from the process described previously when consent in principle was being sought.

1.16 What happens now?

The Public Guardian will make a decision based on the information and evidence provided as to whether the proposed purchase/sale price is acceptable. The financial guardian will be advised of the decision in writing.

1.17 Can the Public Guardian's decision be appealed?

The Public Guardian's decision is final and there is no appeal to the court.

1.18 Is there anything else the financial guardian is required to do?

The financial guardian is required to keep records of any transactions or interventions made on behalf of the adult. The financial guardian must also let the Public Guardian know if and when the adult changes address.

Further information is available from:

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The Office of the Public Guardian is open to the Public from: 09:00-17:00 Mondays to Friday.