

Wards of Court

When a person is rendered incapable they cannot open or close bank accounts, buy or sell property etc.

In the absence of an enduring power of attorney it will be necessary to make the person a ward of court in order to protect them.

TWO CATEGORIES

There are two categories of wards.

Adults who have been brought into wardship because of mental incapacity.

Minors (persons under eighteen years of age) who are taken into wardship as for particular reasons.

In some cases it may be necessary for minors to be brought into wardship as minors e.g. where damages have been awarded to a person under eighteen years of age who has special housing, medical or other needs. If a house is bought for the minor it must be registered in his own name and it is therefore necessary for him to be taken into wardship for the legal formalities in this regard to be complied with. On the minor coming of age and having full mental capacity he may apply to the President of the High Court for payment out to him of any funds in court.

A distinction must be made between the above and a person under eighteen years of age who is awarded damages. In that case the money is paid into court and invested on his behalf until he reaches the age of eighteen. The fact that this is done does NOT make him a ward of court.

WARDSHIP

The principal purpose of wardship is to protect the property of the ward and to manage it for his benefit and that of his dependants (if he has any). When a person has been taken into wardship it means that the President of the High Court is satisfied on the basis of the medical evidence available to him that the person should be deemed to be of unsound mind and is incapable of managing his affairs.

PROCEDURE

If a person considers that there are grounds for someone being made a ward of court that person should instruct a solicitor to take the necessary steps in this regard. Alternatively, if he does not wish to be involved in the application himself, he should write to the Registrar of wards of court asking that proceedings be instituted.

SALE OF PROPERTY ACCESSING A BANK ACCOUNT ETC

In either event, it will be necessary for the solicitor or the Registrar of Wards of Court, as the case may be, to be furnished with all available details in relation to the medical condition, next-of-kin, assets and income of the proposed ward.

When a person is taken into wardship the Court appoints a committee to manage the wards affairs.

The Committee means the person(s) to whom the affairs of a ward of court are committed. The committee is therefore the person appointed by the President of the High Court to act on behalf of the ward. The committee can only do what the court authorises him to do, a committee has no inherent authority or power. Typically, a committee will be authorised by the court to carry out such functions as collecting a ward's pension, letting his farm or selling his house.

The person appointed committee is usually, but not always, the person who made the wardship application. In some cases, for example, where there is no suitable relative who is prepared to act or where there is disagreement among a ward's relatives about how his affairs should be managed, the court may appoint the General Solicitor for Minors and Wards of Court to act as committee.

On the death, resignation or replacement of a committee a new committee is appointed by the court.

Is the committee accountable?

Yes. Where a committee is authorised to receive income for a ward the committee must enter into security with an approved insurance company and file annual accounts in the Office of Wards of Court for all sums received and disbursed.

When money has been paid into court how are the ward's bills paid?

When payments are required for the maintenance and benefit of the ward and his dependants the committee writes to the case officer. In a majority of cases nursing home maintenance accounts are paid directly by the Office of Wards of Court from the funds in court.

Who can apply to make a person a ward of court?

An application to bring a person into wardship is usually but not always made by a member of his family. The application does not however have to be made by a family member and it can be made by the proposed ward's solicitor or his doctor or by the hospital authorities if the ward is a patient in a hospital. As outlined above the person who notifies the Registrar of Wards of Court of the need to bring somebody into wardship does not necessarily have to make the actual wardship application.

How long does it take to bring a person into wardship?

The time taken can vary but in the vast majority of cases it should be possible to have this done within three to six weeks after the initial documentation has been lodged in the Office of Wards of Court. Delays may sometimes arise due to difficulties in effecting service of the proceedings on the proposed Ward or in obtaining medical evidence.

The proposed ward can resist the application.

COST

The legal costs of a wardship application and of on-going wardship proceedings are in most cases paid out of the ward's estate. These costs include such items as the solicitor's fee, fees for medical reports and [stamp duty](#) which is charged when the declaration order is made. Costs can be taxed by the Taxing Master or assessed (measured) by the Registrar of Wards of Court.

The legal costs are usually paid when all of the ward's assets have been brought under the control of the court. Depending on the necessity for the continued involvement of a solicitor further legal costs may arise at a later date.

The Office of Wards of Court is part of the High Court and there is a levy charged on all wards' incomes (known as a court percentage) which is paid to the State. The rate of court percentages is €750.00 per annum but this rate only applies if the ward's net income in the preceding tax year was €18,750.00 or more.

Is there any alternative to taking a person into wardship for dealing with his property?

No. Unless the person prior to becoming mentally incapacitated has made alternative arrangements for example by having entered into an [enduring power of attorney](#).

What happens to a ward's property?

After the President of the High Court has made an order bringing a person into wardship he appoints a committee to act on behalf of the ward and gives directions to bring the ward's assets under the control of the court and make them available for his maintenance and benefit.

EXAMPLES

HOUSE

Where it is necessary to sell a house to provide for nursing home expenses or to prevent it being vandalised, the committee will be authorised by the court to put the property on the market. The sale will be subject to the approval of the court which would

have the benefit of an independent valuation. The net proceeds of sale are lodged in court, invested and made available for the maintenance and benefit of the ward.

Bank or building society accounts:

These accounts are usually closed and the proceeds lodged in court and invested for the benefit of the ward so that they can be made available for his maintenance and benefit.

Farms or commercial property:

This type of property is generally let subject to the approval of the court and the income is applied for the maintenance and benefit of the ward. In some cases it may be necessary for the court to authorise a sale of land to meet nursing home expenses and where this is done similar arrangements are made as for the sale of a residence.

Pension or trust income:

The President of the High Court usually authorises the committee to collect this type of income and apply it for the maintenance and benefit of the Ward

General:

The committee of the ward will correspond with the case officer (i.e. a member of the staff of the Office of Wards of Court to whom the case is assigned) in relation to the management of the ward's affairs. The case officer will take the directions of the President of the High Court where required.

It is most unusual for any further court hearing to be necessary during the course of the wardship, after the order taking the person into wardship has been made. Money which is lodged in court for a ward is invested by the court in Trustee Authorised Securities.

Where the ward is living at home periodical payments can be made on a regular basis to the committee or to the person with whom the ward is residing to meet his living expenses. The level and frequency of payments will, of course, depend upon the ward's needs and income and this is a matter which the committee should discuss in detail with the case officer.

From time to time additional payments may be needed for clothing, holidays etc. and again the committee should write to the case officer in this regard. If a ward is in a nursing home or hospital, the staff may write directly to the Office of Wards of Court with regard to these expenses.

People who provide services e.g. contractors or workmen can also be paid but the committee should obtain the prior approval of the court before incurring expenses so as

to remove any doubt about having those expenses repaid or being reimbursed if he pays the expenses himself.

How is provision made for a ward's dependants?

The case of each ward is considered on its own merits. A ward who has dependants e.g. a spouse and/or children has a legal duty to maintain them and the Office of Wards of Court will make arrangements to provide for their maintenance and benefit according to their needs and the ward's means. This includes providing for their accommodation, medical and educational expenses and holidays where appropriate.

Is the ward liable for income tax?

Wards have the same liability and are entitled to the same reliefs as other citizens. The principal reliefs are where exemption is granted by the Chief Inspector of Taxes under section 189 of the Taxes Consolidation Act, 1997 and medical expenses.

Wards have the same liability to submit income tax returns as other tax payers but the return is signed by the committee on behalf of the ward. If the ward had an accountant dealing with his tax affairs prior to being brought into wardship the committee could be authorised to continue instructing that accountant if he so wished.

If the committee is bonded and filing annual accounts in the Office of Wards of Court, the court can authorise him to receive any tax refunds to which the ward is entitled, otherwise these must be paid into court.

Can a ward buy a house?

Property cannot be bought on behalf of a ward as an investment because this does not at present constitute an authorised trustee security.

If a ward is able to reside in the community and has sufficient means and if he does not have adequate or suitable accommodation his funds can be used to purchase a house in his name. If the house which he already owns needs to be extended or modified e.g. for a wheelchair user and the ward's means are sufficient the court can authorise the committee to arrange for any necessary works to be carried out and provide for payment of the cost of doing so.

If the ward owns a house which is no longer suitable for his needs and which cannot for some reason be modified to meet his needs, the court can authorise the committee to arrange for the sale of the existing house and the purchase of another.

Where a house is bought with the ward's funds the ward must be registered as owner.

If the ward is in residential care and his dependants need to be housed, and if the ward's means are sufficient, property can be bought in the name of the ward for the accommodation of his dependants.

If a ward lives in a relative's house can his funds be used to extend it?

Where a ward has sufficient means and funds are required to be used to extend or modify a house which he does not own, the court will usually require that an interest in the house be transferred to the ward in consideration of his funds being used for such purpose. Any proposals in this regard should be discussed by the committee with the case officer. The matter may be dealt with in a number of ways, including the ward buying out the owner of the house and then funding the extension or modification.

Medical care for wards:

In former years most wards were patients in hospitals or nursing homes but nowadays many live in the community or in sheltered accommodation.

If a ward needs medical treatment for which a consent form is required by the hospital the approval of the President of the High Court should be obtained. However, it is accepted that emergencies will arise where it is not possible to obtain approval and in those circumstances normal medical considerations should apply.

Can a ward marry?

A person who is a ward because of mental incapacity cannot marry although being taken into wardship after marriage does not necessarily invalidate the marriage.

Can a ward travel abroad?

A ward of Court may not leave the jurisdiction (the Republic of Ireland) without the consent of the President of the High Court. In practice, permission to leave the jurisdiction is usually granted as a matter of course. However, medical or safety considerations may have to be taken into account.

Can the ward return to managing their affairs?

Yes. Any application by a ward to be discharged from wardship must be made to the Registrar of Wards of Court in writing by the ward or by a solicitor on his behalf. The application should be based on medical evidence to the effect that the ward is now of sound mind and capable of managing his affairs. The President of the High Court will consider the application on the basis of the medical evidence available to him.

Can a ward make a will?

Yes. The President of the High Court may permit a ward to make a will if:

1. The ward expresses the wish to make a will.
2. There is medical evidence to the effect that the ward has testamentary capacity.
3. The solicitor instructed by the ward is satisfied that the ward has testamentary capacity.

What happens to a ward's property when he dies?

There is a common perception that on the death of a ward his estate becomes the property of the State. This is not so.

On the death of a ward, after the discharge of his debts and when a grant of probate or Administration has issued, his estate is distributed amongst the persons entitled either in accordance with the terms of the ward's will or under the rules of intestate succession.

It is necessary for a formal application to be made to conclude the wardship proceedings. Pending this, funds are made available by the court to pay such expenses as funeral expenses, nursing home charges and probate expenses.