



# Emergency Guardianship Order

## Protecting abused mentally incapacitated adults

### Has the Guardianship Board power to urgently protect the person concerned against abuse or harm?

Yes, section 59Q of the Mental Health Ordinance gives power to the Guardianship Board to make an Emergency Guardianship Order where it has reason to believe that: -

- (a) a person concerned is in danger, or is being, or likely to be, maltreated or exploited;
- (b) the person concerned is incapable of making reasonable decisions in relation to his personal circumstances; and
- (c) it is necessary to make immediate provision to protect him.

Emergency Guardianship Order is widely recognized as an effective intervention on financial abuse or exploitation or other forms of abuse including self-neglect.

There are some examples:

#### Example 1

A Social Welfare Department's caseworker is called to Ms WONG's flat by a neighbour who has not seen her for days. Ms WONG suffers from dementia. The caseworker, accompanied by the police, looks through the keyhole and sees Ms WONG lying on the floor, apparently unconscious, next to an overturned chair. The police call an ambulance and then break into the house to take Ms WONG to hospital.

The doctors advise that Ms WONG will be at risk of further injury or deterioration in her health if she goes back to live on her own at home. Ms WONG insists that she is well able to look after herself. The caseworker applies for an Emergency Guardianship Order so that she can arrange urgent alternative accommodation for Ms WONG.

#### Example 2

Ms LI is a mentally handicapped young woman who sometimes runs away from home. Her mother lives with her new boyfriend, who Ms LI dislikes. Ms LI is found wandering and distressed by the police who bring her to the Accident and Emergency Department of the local hospital. They suspect that Ms LI has been sexually abused, but they are not sure who is the abuser. Her mother arrives at the hospital, and angrily blames Ms LI for getting herself into trouble, and wants her to come home immediately. The medical social worker obtains an Emergency Guardianship Order and the Director of Social Welfare is appointed as the guardian. Ms LI goes to stay in temporary emergency accommodation.

#### Example 3

The subject has dementia. She was admitted to hospital for inpatient care in psychiatric ward before the application. The applicant is subject's husband, who alone migrated to Canada, found that the subject sold her properties and raising substantial loans from mortgages. The sale proceeds were put into her joint account with the subject's co-habitant. He also found that the subject had owed large sums of money to credit card companies. He confirmed with the bank that there was only little credit balance in subject's sole name account.

After the hearing, the Board was not satisfied with the cohabitant's explanation that substantial portions of the sales proceeds and mortgage loans were gifts to him by the subject.

The medical evidence showed that the subject did not have capacity to manage her finance. The Board seriously doubted her capacity to (inter alia) enter into the two several mortgage transactions and the opening of her joint account with the co-habitant.

The propriety of circumstances pointed strongly towards a planned and premeditated scheme of illegally abusing the assets of the subject by co-habitant.

The Board appointed the Director of Social Welfare as the guardian and recommended the social worker to report the matter to the police for investigation.

The Board also recommended the co-habitant to pay back into the subject's sole name account the various alleged gifts of monies to him by the subject totalling over \$1 million (he actually paid back \$600,000 into the subject's sole name account in the morning of the hearing).

## What are the procedures for applying for an Emergency Guardianship Order?

The applicant is more likely to be a social worker, doctor, or perhaps a family member. **An application for normal guardianship order must first or simultaneously file.** You can obtain the forms from the office or website of Guardianship Board. The applicant completes the application form (Form 4), setting out the reasons for the application. The applicant sends or delivers Form 4 with supporting documents to the Guardianship Board during office hours.

Regarding procedure for applying a normal guardianship order, please see leaflets "Application Procedure for a Guardianship Order", "Flow chart for a normal guardianship application" and "This Guide helps you to fill out the application form for guardianship".

## How does the Guardianship Board handle emergencies?

The applicant can telephone the Guardianship Board at **2369 1999** for assistance. The Board's staff will guide you through the application process. Three members of the Guardianship Board must decide whether to grant an Emergency Guardianship Order or not. A hearing of the three members will be organized as soon as practicable.

## Who will be the guardian under Emergency Guardianship Order?

The law provides that the Guardianship Board must assess the suitability of the proposed guardian, unless it is the Director of Social Welfare. Because of the urgency of the application, the Board may not be able to interview or assess the suitability of the proposed guardian or interview the person concerned. Therefore, it is most likely that the Director of Social Welfare will be the emergency guardian pending an application for a normal guardianship order.

## How long does the order last?

The Emergency Guardianship Order lasts for a maximum of three months. The Guardianship Board will then decide whether to grant a Guardianship Order, which can last up to 12 months.

### For more information, contact the Guardianship Board:

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Tsimshatsui Kowloon, Hong Kong

Tel : 2369 1999

Fax : 2739 7171

E mail : [gbenquiry@adultguardianship.org.hk](mailto:gbenquiry@adultguardianship.org.hk)

Webstie : [www.adultguardianship.org.hk](http://www.adultguardianship.org.hk)

**Important notes :** The information in this leaflet is for general guidance only and does not purport to be legal advice given by the Guardianship Board.

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