



# Application Procedure for a Guardianship Order

## STEP ONE

### APPLICANT'S RESPONSIBILITY BEFORE FILING AN APPLICATION

#### *The application form*

The Board have prepared a “Guide helps you to fill out application form for guardianship”. It will help you to complete the application form. If you have any problems in completing the application form, please contact us for assistance.

#### *Medical reports*

The law provides that two medical reports **MUST** be enclosed with the application form. One of the medical reports must be prepared by an “approved” doctor. The Hospital Authority is the approving authority for the doctor as having special experience in the diagnosis or treatment of mental disorder, or special experience in the assessment or determination of mental handicap. Both standard medical report forms and “approved” doctor list can be obtained from the Guardianship Board or downloaded from our website.

## STEP TWO

### SUBMISSION OF THE APPLICATION FORM AND MEDICAL REPORTS

#### *Applicant's responsibility to meet time deadlines*

The law requires that the applicant must complete the application form (Form 1) **within the period of 14 days** after he has last seen the person concerned. Also the two medical reports must be sent to the Board **within 14 days** of the second medical examination date of the person concerned.

## STEP THREE

### PROCESSING BY BOARD'S SECRETARIAT

The Secretariat of the Board will check Form 1 and the two medical reports to ensure that they are accurately and fully completed in accordance with the law. If they are not properly completed, the Board will contact the applicant to offer assistance in completing them fully and accurately. Once completed, the guardianship application will be processed. A copy of Form 1 and medical reports must be sent to the person concerned and the Director of Social Welfare.

The applicant will receive an acknowledgment letter from the Board that the Secretariat received the application and that it is being processed. The applicant will also receive a set of our leaflets as well as a notice under the Personal Data (Privacy) Ordinance (Cap 486). This explains that steps will be taken to protect the applicant and the person concerned's privacy but that certain information must be given to other organizations, e.g. the Social Welfare Department.

The Guardianship Board may also decide to send a copy of the application to such relatives of the person concerned, as they think fit. So, the applicant may receive a call from Board staff or a letter seeking contact details of the nearest relatives of the person concerned.

### Social Enquiry Report

By law the Board **MUST** request the Social Welfare Department to prepare a social enquiry report on the person concerned and his/her family. They have four weeks to prepare it. A social worker from Social Welfare Department will interview the applicant and the person concerned and seek their views and wishes.

The family of the person concerned, if any, will also be contacted by the social worker. The social worker has the legal right to seek information on the family background, social and financial situation of the person concerned. It will assist the social worker if you have financial information of the person concerned, such as bank books, ready for the interview.

## STEP FOUR

### ARRANGING THE HEARING DATE

When all the documents are in order, and the social enquiry report has been filed in the Board, the Secretariat will arrange a date for the hearing. It will notify the parties, who are the applicant, the person concerned, and the Director of Social Welfare. The Board will also notify the proposed guardian, and other relevant persons such as relatives, doctors, social workers, and carers.

According to section 22, Mental Health Guardianship Board Rules, if the applicant submits a request in writing to withdraw the guardianship application, the Board will still need to hold a hearing to determine on such request.

The venue of the hearing is usually at the Guardianship Board's office in Tsimshatsui.

### Average processing time

The normal processing time for an application, from the date of receipt of a duly completed Form 1 and the actual hearing, will be about 3 to 9 months (the actual time will depend on complexities of the case and the current caseload of the secretariat during that period). This is because it is mandatory to give four weeks to the Social Welfare Department to prepare the social enquiry report, and to give two weeks notice to the parties of the hearing date, unless they all agree to a shorter time.

### Applications for an urgent hearing

If the applicant requests the Board to proceed with the application on an urgent basis, the grounds for urgency must be stated in Form 1. You may read the leaflet "*Guide helps you to fill out the application form for guardianship*" and particularly the notes to blank (18) to Form 1.

**Example:** the person concerned needs surgery, which will not be given unless a guardian is appointed to consent.

Ask for the "*Flow Chart for URGENT guardianship hearing*".

While you are waiting for the medical reports, you should telephone the Board to let us know in advance that an urgent application is about to be filed.

Once such urgent application is filed with the two medical reports, the Board will decide whether they agree that the case is urgent. They can reduce the normal time of four weeks to prepare the mandatory social enquiry report. The mandatory two-week period for the notice of hearing can only be shortened if all parties agree. Once this is done, the Board will give an urgent date for the hearing.

### Hearing

At least three members of the Board will conduct the hearing, and they will do so independently and without a conflict of interests. They will independently assess the medical reports, social enquiry report and the oral information given at the hearing. To learn more about the hearing, see the leaflet "*Hearing Process for Guardianship*".

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

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**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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