



Abbreviated Guide for Private Guardian

Duties of the guardian

1. A guardian has to make decision on behalf of the person concerned in accordance with the power(s) conferred in the guardianship order, with an aim to promote and protect the concerned person's interests.
2. If the Guardianship Board has made **specific conditions** in the order, the guardian should observe and comply with such conditions.
3. A guardian should also perform the following duties as required by the Mental Health (Guardianship) Regulations, which is a subsidiary legislation to the Mental Health Ordinance:
 - (a) to permit access to the person concerned of visits by or on behalf of the Director of Social Welfare;
 - (b) to notify the Director of Social Welfare not later than 14 days of any changes of place of residence of him/her or the person concerned;
 - (c) to notify the Director of Social Welfare when the person concerned has been absent for a continuous period of 28 days from the place last notified to the Director as the concerned person's place of residence as soon as possible and in any event not later than 14 days after the end of the continuous period of 28 days;
 - (d) to furnish the Director of Social Welfare with such reports or information on the person concerned as the Director may require;
 - (e) to notify the Director of Social Welfare within 14 days if he/she will be unable to discharge the duties of guardian for any period of time;
 - (f) If the concerned person passed away: -
 - (i) to notify the Director of Social Welfare not later than 14 days after the concerned person's death; also to report the death to the Coroner via the Commissioner of Police; and
 - (ii) immediately inform the hospital of the subject's guardianship status in order that the funeral can be arranged smoothly;
 - (g) to notify the Director of Social Welfare not later than 14 days of the marriage or intended marriage of the person concerned;
 - (h) to notify the Director of Social Welfare not later than 14 days when there is changes in the nature and location of employment, training or educational course being taken up by the person concerned;
 - (i) to give the Director of Social Welfare at least 2 weeks' notice of the concerned person's intended departure from Hong Kong;
 - (j) to take all reasonable steps to ensure the safety and welfare of the concerned person and to arrange for the provision of adequate care for him/her.
4. If the guardian without reasonable excuse contravenes or fails to comply with the duties lists in the Mental Health (Guardianship) Regulations [state under para. 3], he/she **commits an offence** and is liable to a fine at level 1 and to imprisonment for 3 months.

Rights of the guardian

5. A guardian also has the following legal rights:

5.1 To appeal to Court

- (a) A guardian may appeal to the High Court under s. 59W of the Mental Health Ordinance from any decision of the Guardianship Board on a question of law on the Guardianship Board's proceedings.
- (b) Such appeal should be made within 28 days of receipt of the order issued by the Guardianship Board.
- (c) Appeal on any other question would need leave of Court of First Instance.

5.2 To apply for review

A guardian is entitled to apply for review of guardianship order with an aim of varying or revoking the order.

5.3 To apply for directions

A guardian can apply for guardianship directions to the Guardianship Board in accordance with s. 11 of the Mental Health Guardianship Board Rules to seek clarification on the nature and extent of the order or on the exercise, extent and duration of any particular powers and duties.

5.4 To relinquish the function of guardian

- (a) If the guardian desires to relinquish his functions of guardian, he can give notice in writing to the Guardianship Board on such intention under s. 59T of the Mental Health Ordinance.
- (b) Under such circumstances, the functions of guardian will be transferred to the Director of Social Welfare until a review by the Guardianship Board.
- (c) In any other events that the guardian is incapacitated by illness or any other causes from performing the function of guardian of the person concerned, these functions shall be temporarily transferred to the Director of Social Welfare or any other person approved by the Guardianship Board.

Assistance from the Social Welfare Department

6. If the guardian encounters any problems or difficulties in performing his functions, the staff of the Social Welfare Department will be most happy to render assistance and advice. A caseworker is assigned to follow-up on a person concerned received into guardianship and the caseworker will maintain close contacts with the guardian and assist as appropriate.

For more information, contact the Guardianship Board:

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