

Practice Direction Gifts and Settlements



Guidelines for Applicants and Template for Applications

Last Revised 6 July 2011
Guardianship and Administration Board, Tasmania

PRACTICE DIRECTION

This practice direction is issued pursuant to section 7A of the *Guardianship and Administration Act 1995* (the Act).

Anita Smith, President

Date:

1. Form of Application:

Gifts or settlements over \$5000 in one reporting year: An application by an administrator pursuant to section 58 of the Act shall be in writing and provide the information required in paragraph 2, below. Such application may be made on the form at ‘Attachment A’.

Gifts or settlements under \$5000 in one reporting year: Where the application is for the administration of token gifts (i.e. small cash gifts to family members of a seasonal nature on the occasion of a special event, including a birth or marriage) and do not exceed \$5000.00 in any reporting year, the application may be made in person by the administrator during a hearing of an application or review or otherwise by completing ‘Attachment B’.

A “reporting year” means the period between annual reports submitted by an administrator upon the anniversary of the order.

2. Requirement for information:

Where insufficient information is provided in support of an application for a gift or settlement, the application may be rejected pursuant to the new section 11(13) of the Act without a hearing.

An administrator applying for a gift or settlement of a sum or sums greater than \$5000 in any reporting year must supply the following information:

- (a) *The history of the represented person’s pattern of giving:* This will require the provision of statements of any witnesses to historical giving behaviour of the represented person, including if relevant the administrator.
- (b) *The present wishes of the represented person towards the gift if they can be ascertained:* If the represented person has requested the gift, details of when and how that request was made. If the request has been suggested to the represented person, details of their response.
- (c) *The history of any previous applications for gifts made to the Board and any future gift applications:* The Board will be interested in whether the approval of a gift will ‘open the floodgates,’ meaning whether granting a gift to one family member will cause other family members to feel entitled to a similar gift or whether the application for the gift may become an annual event.

- (d) *The purpose to which the gift or settlement will be applied and how that gift or settlement will maintain of benefit the donee:* Mere financial enrichment is not sufficient to establish maintenance or benefit. It is reasonable for the Board to examine the purpose to which the gift will be applied. It would also be advantageous to provide any evidence of the represented person previously supporting the purpose or similar purposes to which the gift or settlement will be applied.
- (e) *Alternatives:* The applicant should examine whether there are alternative means of providing that benefit from the estate, e.g. a loan, interest free loan etc. and inform the Board as to the preference for a gift rather than some other form of settlement.
- (f) *The effect upon the represented person's estate:* Where a sum of money would otherwise have been earning interest in the represented person's estate, a calculation of the value lost to the estate should be included with the application. Where there are numerous beneficiaries under the represented person's will, the loss of capital and interest has ethical implications for other beneficiaries who are not receiving an early grant. Further, some gifts may have an effect upon a person's entitlement to Commonwealth benefits. The size of the proposed gift relative to the represented person's estate is also relevant. If the gift or settlement will materially and negatively affect the represented person's quality of life it would not be approved.

Anita Smith
PRESIDENT

Attachment A.

Application for a gift or settlement OVER \$5000 p.a., section 58 *Guardianship and Administration Act 1995* (To be completed by the represented person's administrator)

1. Who will benefit or be maintained by this gift or settlement?

Name: Relationship to Represented Person:
.....
.....
.....
.....

**2. Has the represented person been consulted with regard to this application?
YES / NO**

(If "Yes" please provide details of their response:)

.....
.....
.....

**3. Is this the first application for a gift or settlement from this estate?
YES / NO**

(If "No" please provide details of previous applications:)

.....
.....
.....
.....

**4. Do you anticipate future applications for a gift or settlement from this estate?
YES / NO**

(If "Yes" please provide details:)

.....

.....
.....
.....

5. What is the purpose of the settlement or gift? (*i.e. how will the gift benefit or maintain the beneficiary?*):

.....
.....
.....
.....
.....
.....
.....
.....

6. What evidence exists to suggest that the represented person supports or would have supported the purpose outlined above?

.....
.....
.....
.....
.....
.....
.....
.....
.....

7. Are there any alternative means to effect the purpose of the gift or settlement other than from this estate? (*e.g. could the beneficiary support a personal loan, or enter into a loan agreement with the administrator of the estate?*)

.....
.....

8. What financial affect will the gift or settlement have upon the represented person's estate? *(Please calculate any interest lost or pension benefits gained)*

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

9. Is there any further information relevant to the Board's consideration of the application for a gift or settlement?

.....

.....

.....

.....

.....

.....

Signed (*Administrator*):

.....

Date:

Enclosures:

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
.....
.....
.....
.....
.....
.....

Attachment B.

Application for a gift or settlement UNDER \$5000 p.a., section 58 *Guardianship and Administration Act 1995* (To be completed by the represented person's administrator)

1. Who will benefit or be maintained by this gift or settlement?

Name:

Relationship to Represented Person:

.....

.....

.....

.....

**2. Has the represented person been consulted with regard to this application?
YES / NO**

(If "Yes" please provide details of their response:)

.....

.....

.....

3. What is the purpose of the settlement or gift? (i.e. how will the gift benefit or maintain the beneficiary?):

.....

.....

.....

.....

.....

4. What evidence exists to suggest that the represented person supports or would have supported the purpose outlined above?

.....

.....

.....

.....

.....

.....

.....

.....

.....

5. Is there any further information relevant to the Board’s consideration of the application for a gift or settlement?

.....

.....

.....

.....

.....

.....

Signed (*Administrator*):

.....

Date: