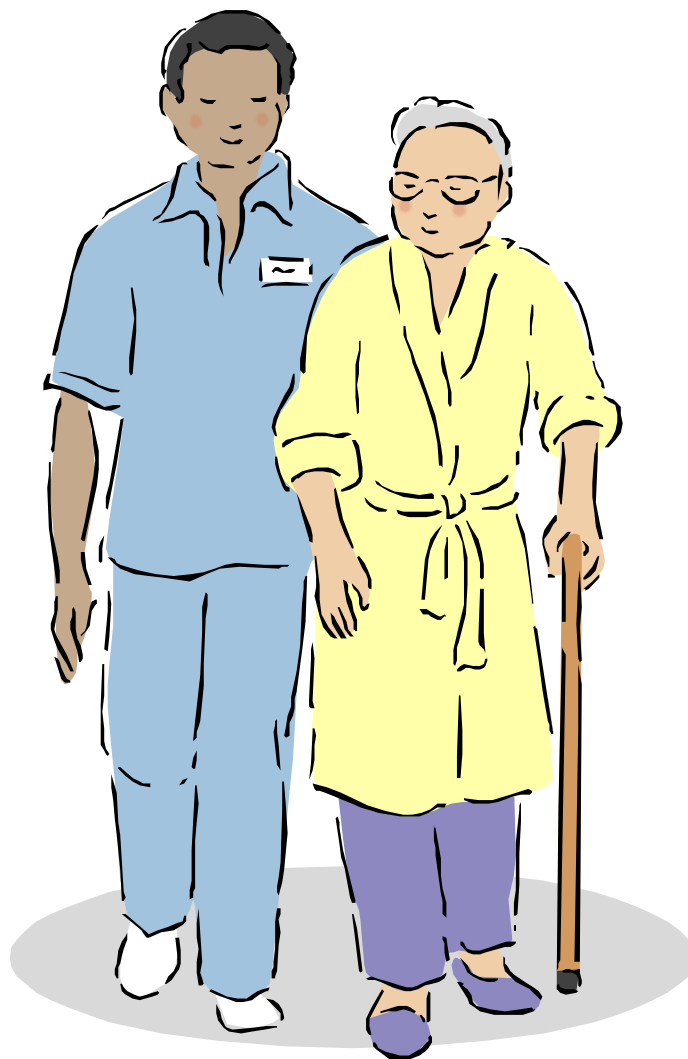


A Guide to Making Applications under the PPPR Act



Whitireia Community Law Centre Trust Incorporated

A Guide to making Applications under the PPR Act

Whitireia Community Law Centre Trust Incorporated

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The following publications have been consulted when creating this resource:

- Ministry of Justice (2004) *The Protection of Personal and Property Rights Act 1988* (COURTS044), available online at <http://www.courts.govt.nz/family/publications/pamphlets/default.asp>
- Ministry of Justice (2006) *Litigants in Person: Guidelines for Procedures in the Family Court*, available online at <http://www.courts.govt.nz/family/practice/self-litigants/default.asp>
- Social Work Services Northland Health (2001) *The Protection of Personal and Property Rights Act 1988: A resource pack and guide for those working with the Act*
- Wellington Community Law Centre and Age Concern New Zealand (2002) *Planning your future with the Protection of Personal and Property Rights Act 1988 and enduring powers of attorney*

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Section One: Introduction to the PPPR Act

Introduction

The Protection of Personal and Property Rights Act 1988 (“PPPR Act”) aims to protect the personal and property rights of people who cannot fully manage their own affairs.

The PPPR Act covers situations where a person is able to make their own decisions but may need some help dealing with their affairs now or in the future (through an enduring power of attorney) and also when the person has lost all mental capacity (Court orders).

This resource uses two case study examples to demonstrate how a person can make **an application to the Court for a personal order or property order when a relative has lost mental capacity**. It contains simple forms with examples filled in by the applicant to demonstrate how to complete the documents that need to be filed at the Family Court to make the order appointing a person welfare guardian, property manager or property administrator.

This resource is aimed at simple situations where it is unlikely there will be any objections to the application and all involved people agree that it is in the best interests of the affected person that the orders are made.



People who have been appointed welfare guardian or property manager have certain duties and there are important consequences to consider before making a PPPR Act application to the Family Court. It is advisable to talk to a lawyer or someone at a Community Law Centre before proceeding with any application. If an application is contested and a hearing is required, legal representation is highly recommended.

How is this resource organised?

There are a number of orders the Court can make under the PPPR Act to allow a person to make decisions on behalf of an incapacitated person. This booklet only concentrates on the three which cover the most common situations: applications to appoint a welfare guardian, property manager or property administrator.

Section One provides a brief overview of the PPPR Act and why applications are necessary.

Sections Two, Three and Four deal with separate applications to appoint a welfare guardian, property administrator and property manager as well as providing more information about what each role entails.

Two case studies are used to illustrate the differences between applying to be appointed a property administrator versus a property manager and the different rights and responsibilities that a person will have depending on which order is applied for.

The law relating to each order is set out along with examples drawn from the case studies to show how to fill in the forms needed to apply to the Family Court for these orders.

Section Five covers the process the Court takes once an application has been made and what happens after an order has been made.

At the end of Section Five are two appendices. Appendix One covers more information about property managers and the powers they can apply for and Appendix Two contains a glossary of terms used.

The blank forms required for each application are available in the following sections 7-10 and also from www.communitylaw.org.nz. They are intended to be printed out and written on, or amended using Microsoft Word. Everything you need to file an application is included in these packs, so you won't forget a vital form.

If you require further help or advice, contact a solicitor, Citizens Advice Bureau, disability support group or Community Law Centre.

Next of kin

Many people believe that the only thing they need to do to plan for the future is write a will. They assume that if they lose the capacity to make decisions about their needs, their "next of kin" or a partner, child or parent can automatically make those decisions for them and look after their affairs. This is not correct. **Being someone's next of kin does not give you any specific legal rights when that person is alive.** "Next of kin" is a term which is usually used in law to refer to the relatives who are entitled to a person's estate if they die without leaving a will.

When someone loses mental capacity, hospitals and retirement homes will ordinarily consult with their spouse or children about what is happening and will usually release information about their care to those people. Legally they do not have to do this and generally it will only happen because it is an emergency situation.

Institutions which deal with the incapacitated person's property or debts, such as banks, insurance companies and power companies, will be reluctant to deal with any other person unless there is specific, signed authority because of issues raised by the Privacy Act.

This can obviously lead to huge problems, especially if a person suddenly becomes very ill or has a serious accident and cannot make decisions for themselves. The best way of dealing with this situation is to have an enduring power of attorney ("EPA") in place before this happens. An EPA nominates another person to act on your behalf if you are unable to do so yourself. However, EPAs can only be made when a person is mentally capable and understands what they are doing.

In situations where the person lacks mental capacity and there is no EPA in place, an application to the Family Court under the Protection of Personal and Property Rights Act 1998 (“PPPR Act”) is necessary. These applications allow certain people to be appointed to look after the personal care and property affairs of the incapacitated person.

The PPPR Act

The PPPR Act exists to protect the personal and property rights of persons who are not fully capable of managing their own affairs.

This may include someone who is mentally ill, has dementia, is intellectually disabled or has had a sudden serious accident such as a head injury or stroke which has affected their mental capacity.

No one can lawfully make decisions on behalf of a mentally incapable person or relative without that person’s specific authorisation or the permission of the Court. This is where the PPPR Act comes in.



This also applies to parents of children who may not be mentally capable. Up until they turn 18, parents who are guardians can make decisions on behalf of their children. However, **once a child turns 18, the Care of Children Act says that parents are no longer guardians and they cannot make decisions for their children.**

Before the law changed in 2005, parents were guardians until their children turned 20. There is no legal rule that says parents can make decisions for their children until they turn 21, despite what many people believe. This applies to all children, including those born with disabilities which may affect mental capacity.

Property orders and personal orders

There are two different sorts of orders that can be made under the Protection of Personal and Rights Act – personal orders and property orders.

Property orders deal with situations where a property manager has been appointed by the Family Court. This resource looks at how to make an application for a property order to appoint a property manager.

Personal orders generally relate to the welfare of an incapacitated person. There are many types of personal orders, but this resource only deals with applications for personal orders to appoint a welfare guardian or property administrator.

There are other personal orders which may be made under section 10 of the PPPR Act and which may be more appropriate to your situation. The orders available include:

- that the incapacitated person receive appropriate remuneration for work performed;

- that any parent of the person must make suitable arrangements for the personal care of the person after the parent's death;
- that the arrangements made by any parent of the person for the personal care of the person after the parent's death be observed, or be varied;
- that the person shall enter, attend at, or leave an institution specified in the order (but not a psychiatric hospital or a licensed institution under the Mental Health Act 1969);
- that the person be provided with living arrangements of a specified kind;
- that the person be provided with medical advice or treatment of a specified kind;
- that the person be provided with educational, rehabilitative, therapeutic, or other services;
- that the person shall not leave New Zealand without the permission of the Court;
- an order appointing a person named in the order as guardian ad litem for the person for the purposes of any proceedings in a District Court.

If you wish to apply for one of these personal orders, you should speak to a Community Law Centre or solicitor before making an application.

Section Two: Application for welfare guardian

What is a welfare guardian?

A welfare guardian is someone appointed by the Family Court by a personal order under the PPPR Act to make decisions on behalf of a person in relation to all aspects of their personal care.

Examples of personal care include things like deciding where the person is going to live, consenting to standard medical care and dentistry and indicating to an institution whether resuscitation should be carried out in an emergency.

When will the Court appoint a welfare guardian?

The Family Court always aims to protect the basic human rights of all people. Wherever possible people should make their own decisions and manage their own affairs.

Sometimes a person may not have the ‘mental capacity’ to make decisions about their personal care. Often this may be as a result of a severe disability, or they may have suffered an accident which has affected their mental state. A welfare guardian may be appointed to assist that person to make decisions about their personal care.

The incapacitated person is referred to as “the person in respect of whom the application is made” in the PPPR Act. This term is used in this resource, along with the more general “incapacitated person”.

Before a welfare guardian can be appointed for someone, the Court must be satisfied that the person in respect of whom the application is made **fits the capacity test**. This means that they either:

- wholly or partly lack the capacity to understand the nature and to foresee the consequences of decisions in respect of matters relating to their personal care and welfare; or
- have the capacity to understand the nature and foresee the consequences of those decisions, but wholly lack the capacity to communicate these decisions.

Everyone is presumed to have the capacity to make their own decisions, until the Court determines otherwise. Deciding whether someone has mental capacity is a legal assessment based on all evidence available including medical reports.



The fact that the person has made or is intending to make a decision that a person “exercising ordinary prudence” would not make, is not grounds in itself for an order to be made. The Court will not make an order simply because the person is managing their life in a way that you believe is not right.

The Court will only appoint a welfare guardian if it is satisfied the following requirements are also met:

- Appointing a welfare guardian is the **only satisfactory way** to ensure that appropriate decisions relating to that particular aspect of the person's personal care and welfare are made; and
- Appointing a welfare guardian would be the **least restrictive intervention possible** by a Court in that person's life; and
- The welfare guardian **will enable or encourage that person to exercise and develop such capacity** as they have to the greatest extent possible; and
- The incapacitated person ordinarily lives in New Zealand and is at least 18 years old (or is over 16 and has been married, in a civil union or de facto partnership).

Powers and duties of a welfare guardian

The PPPR Act says that a welfare guardian has all the powers that are reasonably required to enable them to make and carry out decisions for the person for whom the welfare guardian is acting **in the areas specified in the Court order**, subject to the following exceptions.

A welfare guardian cannot:

- make any decision relating to entering into or dissolving a marriage/civil union for the person; or
- make any decision relating to the adoption of any child of that person;
- refuse consent to standard medical treatment or procedure intended to save that person's life or to prevent serious damage to their health;
- consent to electro-convulsive treatment being administered;
- consent to any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing behaviour; or
- consent to that person's taking part in any medical experiment other than one to be conducted for the purpose of saving that person's life or of preventing serious damage to that person's health.



Whenever the welfare guardian is exercising their powers under the order, **their first and paramount consideration must be the promotion and protection of the welfare and best interests of the person** for whom the welfare guardian is acting.

The law also says that the welfare guardian must also:

- encourage the person to act on his or her own behalf to the greatest extent possible; and
- integrate the person into the community to the greatest extent possible; and
- so far as practical, consult:
 - (a) the person for whom the welfare guardian is acting; and
 - (b) other persons who are (in the opinion of the welfare guardian) interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person; and
 - (c) a representative of any not-for-profit group that is engaged in the provision of services and facilities for the welfare of persons, and that, in the opinion of the welfare guardian, is interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person; and
 - (d) the property manager if there has been one appointed, in order to ensure that the interests of the person are not prejudiced through any breakdown in communication between the welfare guardian and the manager.



A welfare guardian is not entitled to be paid for being a welfare guardian. However all expenses which they reasonably incur in exercising their powers under the Act are payable out of the incapacitated person's property, unless a Court orders otherwise.

Who can be a welfare guardian?

If you are at least twenty years old, you can be appointed welfare guardian for someone else so long as the Court is satisfied that:

- you are capable of carrying out the duties of a welfare guardian satisfactorily, having regard to:
 - (a) the needs of the person in respect of whom the application is made, and
 - (b) the relationship between you and that person; and
- you will **act in the best interests of the person** in respect of whom the application is made; and

there is **unlikely to be any conflict** between your interests and those of the person in respect of whom the application is made.

Unless there are exceptional circumstances, **only one person can be appointed welfare guardian at a time.** A trustee corporation cannot be named welfare guardian.

There are a number of different people who can apply for a welfare guardian on behalf of someone else, including social workers, doctors and the managers of residential care facilities. This resource only deals with applications made by people applying to be named welfare guardian for a relative.

A relative is defined in the PPPR Act as:

- the spouse, civil union partner, or de facto partner of the incapacitated person;
- a parent or grandparent of that person, or of their partner;
- a child or grandchild of that person, or of their partner;
- a brother or sister of that person, or of their partner (whether full- or half-blood);
- an aunt or uncle of that person, or of their partner;
- a nephew or niece of that person, or of their partner.



‘Step’ relatives are not usually included in these definitions.

If you wish to apply for a welfare guardian to be appointed but want to name someone else as the welfare guardian or you are not a relative of the person, you should seek further advice from a Community Law Centre or solicitor before making an application.

People who are not relatives can still apply to be named welfare guardian, but will usually need special permission from the Court before doing so.

Can a welfare guardian be held personally liable for their actions?

When you are acting on behalf of someone as their welfare guardian, you will not usually be personally liable for anything you do or omit to do.

There are two exceptions to this. You may be personally liable if:

- it is shown that you acted in bad faith or without reasonable care, or
- you entered into a contract or arrangement or incurred a liability with a person without disclosing that you were acting in your capacity as a welfare guardian under the PPPR Act before entering into the contract or arrangement or incurring the liability.

Therefore it is important that if you acting as a welfare guardian that you inform the person you are dealing with of this. As discussed on page 7, you should also consult with other ‘interested’ people when making decisions.

How long does a welfare guardian order last for?

When an order appointing a welfare guardian is made, the Court will also set a date by which time the welfare guardian must apply for a review of the order. This date must be within three years from the date of the order.

If you do not apply for a review prior to the expiry of the order, the order and the powers you have under the order expire.



The Court does not have to remind you that the order is about to expire. It is your responsibility to apply for a review before the time period elapses.

If you already have an order and you are unsure when it needs to be reviewed, check with the staff at your local Family Court.

An order appointing a welfare guardian will also end if:

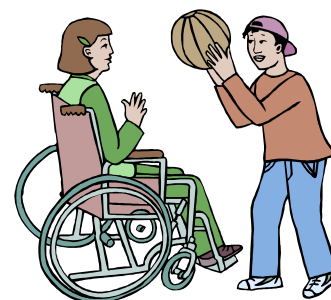
- the person for whom the welfare guardian is acting dies; or
- the welfare guardian dies; or
- the welfare guardian is made bankrupt; or
- the welfare guardian becomes a patient under the Mental Health Act 1969; or
- the welfare guardian becomes subject to a property order or becomes otherwise incapable of acting.

Applying the Law: Sarah and Claire

Sarah has cerebral palsy and autism. She is cared for at home by her mother and father, Claire and William. Claire cares for Sarah fulltime with William helping out when he's not at work. Sarah attends school at the special needs unit of the local high school. Claire and William have an older son, Allan, who also lives at home and an older daughter Elizabeth, who is flatting.

Claire and William talk everything through with Sarah but do make most of her decisions for her when they relate to her health or money. They deal with her doctor, the school and WINZ on her behalf. Sarah receives an invalids benefit which Claire and William use to pay for most of Sarah's expenses.

Sarah has just turned 18. Claire is involved with a disability support group and a friend at this group has suggested that she should speak to a lawyer to check if there's anything she needs to do now that Sarah is an adult.



If Claire and William want to continue making decisions about Sarah's personal care and welfare, one of them will need to apply to be appointed welfare guardian. They have decided that since Claire is Sarah's primary caregiver, it makes sense for Claire to apply to the Court to be appointed as welfare guardian.

How does Claire become a welfare guardian?

To apply to become a welfare guardian Claire will need to fill out the following forms:

- application for appointment of welfare guardian; and
- affidavit in support of application; and
- information sheet for the Family Court.

She will also need to provide an expert report from a medical practitioner and consents from family members. These documents all need to be filed in the Family Court and copies served on relevant people. More information about reports, filing and service is included in Section Five.

Filling in the forms:

1. Claire's application to be appointed welfare guardian

The application needs to be in the form shown in this resource. Blank forms are also available to download from www.communitylaw.org.nz. You can type your answers in and then print the pages, or you can use the blank forms in the back of this resource and handwrite your application.

An explanation of how Claire has completed this application is included by referring to the numbers in brackets, e.g. **(1)**, and the associated explanations following each part of the application.

In the Family Court
At Porirua (1)

PPPR No

Claire Jane Baker
35 Fitzpatrick Street, Porirua
Mother (2)

Applicant

Sarah Alice Baker
35 Fitzpatrick Street, Porirua
Student (3)

Person the application is about

APPLICATION FOR APPOINTMENT OF WELFARE GUARDIAN

Section 12, Protection of Personal and Property Rights Act 1988

Date: 25 June 2007

This document is filed by Claire Jane Baker whose address for service is 35 Fitzpatrick Street, Porirua.

(4)

APPLICATION FOR APPOINTMENT OF WELFARE GUARDIAN

I, Claire Jane Baker apply for an order appointing a welfare guardian for Sarah Alice Baker in relation to the following aspect(s) of her /his personal care and welfare:

All aspects of Sarah's personal care and welfare including medical treatment, medication, education and where she should live.

(5)

This application is made on the grounds that –

- a) Sarah Alice Baker wholly lacks the capacity to make or to communicate decisions relating to the aspects of her /his personal care and welfare specified above; and
- b) the appointment of a welfare guardian is the only satisfactory way to ensure that appropriate decisions are made relating to the aspects of her /his personal care and welfare specified above.

I make this application in my capacity as –

- *a) A parent of Sarah Alice Baker. (6)
- *b) The attorney of _____
- *c) ~~A social worker employed by the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.~~
- *d) ~~A medical practitioner.~~
- *e) ~~A representative of _____, being a group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the Court has jurisdiction in accordance with section 6 of the Act.~~
- *f) ~~The superintendent / licensee / supervisor / other person in charge of _____ being the hospital / home / other institution in which _____ is a patient / resident.~~
- *g) ~~the manager of the property of _____~~
- *h) ~~A person granted leave of the Court to make this application.~~

I say –

(7)

- *1 Sarah Alice Baker is of or over the age of 18 years.
- *1 ~~_____ is under the age of 18 years and is / has been married or in a civil union.~~
- *1 ~~_____ is under the age of 18 years, has never been married, or in a civil union and has no parent or guardian living / in regular contact with him/her.~~

2 The proposed appointee is Claire Jane Baker of 35 Fitzpatrick Street, Porirua, Mother. (8)

3 The proposed appointee is of or over the age of 20 years.

4 An affidavit is attached in support for this application. (9)

* Delete if inapplicable.

C J Baker (10)
Signature of applicant

25 June 2007
Date

Notes to Claire's application

- (1) Court Location: Claire has filled in the location of the Family Court where she will file the application. This should be the Court closest to where Sarah lives.
- (2) Applicant's details: Claire's full name, address and occupation.
- (3) Details of person the application is about: Sarah's full name, address and occupation.
- (4) Address for service: Claire must provide an address where the Court can send documents relating to the proceedings. If Claire had been using a lawyer to make the application, the law firm's details would be here.
- (5) Aspects of personal care and welfare: Claire must specify which aspects of Sarah's personal care and welfare she wishes to be appointed welfare guardian for. In this case, she is asking the Court to make her welfare guardian for all aspects of Sarah's care. She could just specify one such as 'determining residence' if that was all that was required.
- (6) Capacity of applicant: Claire is making the application as a relative of Sarah and she must specify what type of relative she is, using one of the terms listed on page 8 of this resource. Claire crosses out the other options which do not apply to her.
- (7) Age of person the application is about: Sarah must be at least 18 to have an application made for her, unless she has been married, in a civil union or de facto relationship or has no parent/guardian in regular contact with her. Claire crosses out the other options which do not apply.
- (8) Proposed appointee: Claire fills in her full name, address and occupation.
- (9) Documents in support: Claire needs to attach an affidavit. An expert report from Sarah's doctor supporting the fact that Sarah should have a welfare guardian appointed because of her lack of capacity will also be required.
- (10) Signature: Claire signs and dates the application.

2. Claire's affidavit in support

As well as the application form, Claire needs to provide an affidavit (evidence sworn on a Bible or Qur'an) or an affirmation (evidence affirmed as true and correct) to support her application.

This written statement must be sworn or affirmed in front of a Justice of the Peace, a lawyer or a Registrar of the Court. JPs can be found in the Yellow Pages and do not charge for this service.

The potential penalty for making a false affidavit or affirmation is found in section 110 of the Crimes Act 1961 which provides for a period of imprisonment of up to five years. **It is extremely important that details in the affidavit or affirmation are true and accurate.**

Claire's affidavit is made using the following example and notes are included to help with completing the affidavit.

AFFIDAVIT OF CLAIRE JANE BAKER IN SUPPORT OF APPLICATION FOR APPOINTMENT OF WELFARE GUARDIAN

- I, Claire Jane Baker of 35 Fitzpatrick Street, Porirua, Mother, swear: (1)
1. I confirm my consent to act as welfare guardian for the person in respect of whom the application is made ("the person") pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 ("the Act").
 2. My relationship with the person is as follows: (2)
I am her mother. Sarah lives at home and I care for her.
 3. I am aged twenty years or over.
 4. I confirm the contents of my application for (3)
 - a welfare guardianship order
 - ~~a review of the order dated _____ appointing _____ as welfare guardian.~~
 5. I confirm that I am familiar with the responsibilities and duties of a welfare guardian pursuant to the Act.
 6. I confirm that to the best of my knowledge the person is ordinarily resident in New Zealand and
 - is of or over the age of 18 years or is or has been married, or in a civil union, or in a de facto relationship, and
 - is not already the subject of a property order. (4)
 7. To the best of my belief I confirm
 - that the person wholly lacks the capacity to make or communicate decisions relating to any particular aspect(s) of the person's personal care and welfare; and
 - that my appointment as welfare guardian is the only satisfactory way to ensure that appropriate decisions are made relating to the particular aspect(s) of the personal care and welfare of the person;for the following reasons: (5)

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Sarah was born with cerebral palsy and autism. She is cared for at home by myself and her father, William. She needs supervision at all times and is unable to make appropriate decisions about her own care because she cannot appreciate the consequences of such decisions. A medical report from her doctor, Dr Joanne Border, is attached in support of this application.

8. *(Complete or delete if not applicable)* (6)
- To the best of my belief the person is neither a patient or proposed patient receiving treatment/assessment under and Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
 - ~~To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at _____ on _____ and that order still continues. The person receives treatment from _____.~~
 - ~~To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992, but is currently receiving assessment/ treatment from _____.~~

9. In the information sheet that accompanies this application, I have named the following people/organisations affected by this application. I have obtained consents from the following: (7)
- William Colin Baker, Allan John Baker and Elizabeth Ruth Baker.

I consider service should be effected on the following:
Capital Support Services

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

10. I do not believe the person should be served with the application for the following reasons: (8)
- I believe that Sarah wholly lacks the capacity to understand these proceedings.
11. I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (9)
- Sarah's autism makes it difficult for her to function in new environments. I believe that requiring her to attend court may cause her emotional and mental harm.
12. I consider that I am a suitable person to be appointed by the Court as welfare guardian for the following reasons: (10)
- I am Sarah's mother and have looked after her fulltime since she was born, with support from local agencies and her father, William. I believe that I am capable of carrying out the duties of a welfare guardian and I will continue to act in the best

CB
GG

interests of Sarah as I have always done. William and I talk to Sarah before making important decisions relating to her and I will still do so if appointed welfare guardian. I do not believe there is any conflict between my interests and Sarah's. I have one criminal conviction from 1978 for careless use of a motor vehicle. I do not believe this conviction impacts on my ability to act as a welfare guardian for Sarah, or on my suitability for this role. I have never been the subject of a bankruptcy order under the Insolvency Act 1967, a compulsory treatment order under the Mental Health Compulsory Assessment and Treatment) Act 1992 or an order under the Protection of Personal and Property Rights Act 1988.

13. I state as follows:

- That I am capable of carrying out the duties of a welfare guardian for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person; and
- That I will always act to protect and promote the welfare and best interests of the person; and
- That I will seek to encourage the person to develop and exercise such capacity as they have to understand the nature and foresee the consequences of decisions relating to their personal care and welfare, and to communicate such decisions; and
- That I will seek to encourage the person to act on his/her own behalf to the greatest extent possible; and
- That I will seek to facilitate to the greatest extent possible the integration of the person into the community; and
- That I will consult so far as is practicable with the person and such other persons or representatives of non-profit organisations as are, in my opinion, interested in and competent to advise me in relation to the personal care and welfare of the person; and
- That, if the person is or becomes subject to a property order, I will regularly consult with the property manager to ensure there is no breakdown in communication; and
- That there is unlikely to be any conflict between my interests and those of the person.

14. I confirm that I am aware that I am not entitled to remuneration for my services.

15. I confirm that I am aware that all expenses reasonably incurred by me as welfare guardian can be charged against and payable out of the property of the person. I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.

16. At this stage I envisage that the following expenses are likely to be incurred: **(11)**
None

CB
GG

17. ~~I seek an interim order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons:~~ (12)

SWORN at Porirua) (13)
this 29th day of June 2007) *C J Baker*
before me:)

G Geks
Justice of the Peace / ~~Solicitor of the High Court / Registrar~~

In the Family Court
At**Porirua**.....

PPPR No2007 092 564

Claire Jane Baker

35 Fitzpatrick Street, Porirua

Mother

Applicant

Sarah Alice Baker

35 Fitzpatrick Street, Porirua

Student

Person the application is about

REPORT OF REGISTERED MEDICAL PRACTITIONER PURSUANT TO THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988 TO ACCOMPANY APPLICATIONS UNDER THE ACT

Section 76, Protection of Personal and Property Rights Act 1988

Date: 20 June 2007

This document is filed by Claire Jane Baker whose address for service is 35 Fitzpatrick Street, Porirua.

Introduction

1 I am a registered medical practitioner:
(a) Holding the following qualifications**MD**.....;
and
(b) Practising as a **General Practitioner.**

2*(a) The abovenamed person in question (“the subject person”) is a patient of mine and has been since**January 1995**.....I last visited and/or examined him/her on the following date: **15 June 2007**

or
*(b) ~~I examined the subject person for the purposes of this application on the following date:.....~~
** delete if inapplicable*

3(a) At the time of the examination referred to in the preceding paragraph was the subject person on any medication likely to have a material impact upon your findings as outlined in this report?
~~Yes~~ / No

(b) If the answer to the preceding question is yes:
(i) What medication?
.....
(ii) Describe the nature and extent of the impact you believe it would have had:
.....

4 His/her general state of health is: **Fragile**
.....

5(a) She suffers from the following complaint(s) and/or disorder(s):
.....**Severe cerebral palsy and acute autism**.....

*(b) If any of the above complaints or disorders are sufficiently active and/or are not stabilised so as to require some form of prompt or urgent treatment:
(i) What is/are the complaint(s) or disorder(s) in question?
.....
(ii) What management (i.e. investigation and treatment) is necessary?
.....**No treatment currently for this condition**.....
(iii) ~~When is it necessary or desirable to commence such management and why?~~
.....

** delete if inapplicable*

Welfare guardian and personal order applications

*6(a) Does the subject person wholly lack capacity to understand the nature and foresee the consequences of decisions relating to his/her personal care and welfare or any particular aspect of his/her care and welfare?
Yes / ~~No~~

* (b) In relation to what aspects of his/her personal care and welfare does the subject person wholly lack capacity to understand the nature and foresee the consequences of decisions in respect of?
Sarah is unable to communicate effectively to any persons other than her close family and even this communication is extremely limited. She is totally reliant on her parents for all aspect of the care and has been since birth. There is no realistic hope of her ever achieving capacity to act or decide matters relating to her care and welfare.
[Put "all" or list aspects, depending on circumstances]

* (c) If the answer to 6(a) is no, does he/she partially lack such capacity?
 Yes / No

* (d) If the lack of capacity is partial, in what respects, or in relation to which aspects of personal care and welfare (e.g. medical care, living arrangements, provision or personal amenities, education or rehabilitation etc), does the subject person have partial capacity?

[Put "all" or list aspects, depending on circumstances]

*7(a) Is he/she wholly unable to communicate his/her own decisions relating to:
 (i) Welfare generally?
 Yes / ~~No~~
 (ii) Any particular aspects of his/her welfare (and if so, which)?

* (b) What further comments or explanations in relation to your answers to questions 6 and 7 do you have to assist the Court?
I fully support this application by her mother as Sarah is currently receiving the best care possible in a loving family environment

*8 In your opinion are the following measures likely to promote and/or protect the welfare and best interests of the subject person:
 (a) (i) Appointment of a welfare guardian in relation to all or any particular aspects of the subject person's personal care and welfare?
 **Yes**.....

 (ii) If in relation to any particular aspects only, in relation to which aspects?

 (b) (i) The making of a personal order in relation to any specific matter?

 (ii) If so, in relation to what?

** delete if inapplicable*

Questions to answer for all applications

9(a) If the subject person suffers from any degree of incapacity, is it possible that he/she might recover competence to manage his/her own affairs?
~~Yes~~ / No

- (b) If so:
 (i) Is such a recovery likely?

 (ii) Within such time period is such recovery possible?

- 10(a) If the subject person was served with this application under the Protection of Personal and Property Rights Act 1988 and its supporting documents would he/she be able to read and/or understand those documents?
 **no**
- (b) If a solicitor was appointed to represent him/her and to explain the nature of the present application would he/she be likely to:
 (i) Understand the nature of that advice?
 **no**
 (ii) Understand the purpose of these proceedings?
 **no**
 (iii) Foresee the consequences of any order made?
 **no**
- 11 In your opinion, would the subject person be likely to suffer any serious mental, emotional or physical harm from:
 (a) Notification of the existence of these proceedings?
 Yes / ~~No~~
 or
 (b) Participation in the proceedings?
 Yes / ~~No~~
 If so, what sort of harm do you consider the subject person is likely to suffer?
 **Sarah is severely physically and mentally disabled and it would serve absolutely no good purpose to either serve documents on her or require her to “participate” in the proceedings.**

- 12 Given that a primary object of the Court is to make the least restrictive intervention possible in the management of the subject person’s affairs, what limitations would you suggest could be made relating to the nature of the order (e.g. with regard to the type of person appointed, frequency or nature of contact with subject person, property affected, duration of order or anything else)?
 **No**
limitations as Sarah’s mother needs full powers and support to do a very difficult job.

- 13 What measure(s) would enable or encourage the subject person to exercise and to develop such competence as he/she may have to manage his/her own personal welfare and/or property affairs?

None

14 What further comments (if any) do you have to assist the Court?
..... **Please make this process as quick and painless as possible to assist this family with this difficult task.**

15 My comments and answers are as above.

J Border Signature **20/6/07**Date

Full name and work address of medical practitioner: **Dr Joanne Border, 54 the Road Porirua**

Notes to Claire's affidavit

- (1) Applicant's details: Claire fills in her full name, address and occupation.
- (2) Relationship with the person: Claire sets out her relationship with Sarah.
- (3) Application: The same affidavit is used for applying for appointment of welfare guardian and also reviewing current appointments. Claire crosses out whichever is not relevant.
- (4) Subject of property order: If Sarah is already subject to a property order (i.e. there is a property manager appointed) Claire should cross out this part of the statement.
- (5) Factual basis for application: Claire needs to set out the factual basis for the application, confirming that the appointment is the only satisfactory way of looking after Sarah's affairs. If she has any medical reports or evidence she should refer to them and attach them to this affidavit, marking each in alphabetical order (ie. "A", "B", etc).
- (6) Compulsory Treatment Order: Claire crosses out the options which do not apply to Sarah.
- (7) Consents and service: See page 51 of this resource for more information about this. If Claire doesn't have written consents from relevant family members and associated organisations, the Court will require that the application is served on those people to allow them the chance to respond to the application.
- (8) Service of the person the application is about: The Court requires Sarah to be served with the application unless she wholly lacks the capacity to understand the nature and purpose of the proceedings or there are exceptional circumstances exist of a nature to justify dispensing with service. As Claire believes Sarah should not be served, she gives the reason here.

- (9) Appearance in Court: Unless there is good reason, Sarah will have to appear in Court if the Judge requires it. The Court may excuse Sarah from appearing if it is satisfied that she wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause her serious mental, emotional, or physical harm. As Claire does not think Sarah is able to appear in Court, she has provided further information here.
- (10) Reasons for appointment: Claire needs to set out the reasons why she is a suitable person to be appointed welfare guardian. This should include the facts and her background with Sarah. The Court needs to be satisfied that the person can be entrusted with the statutory obligations (found in section 12 of the PPPR Act) and that there are no legal or other factors that would stand in the way of the appointment. Claire must also cover the following questions:
- Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967?
 - Are you presently subject to a compulsory treatment order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?
 - Have you any previous criminal convictions? If so, please list.
 - Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?
- If any of those questions apply, Claire must set out the reasons why she should be appointed.
- (11) Expenses: Claire must set out any expenses she envisages she is likely to incur as welfare guardian. If there are none, she needs to write “none”.
- (12) Interim order: An interim order can be made if there are reasons an immediate order is necessary e.g. emergency medical treatment. If the need for an interim order is extremely urgent, it may be necessary to apply to the Court without notice to other parties. If an interim order or a without notice order is required, you should seek advice from a solicitor. As this section does not apply, Claire crosses it out.
- (13) Witness: Claire has used a local Justice of the Peace to take her affidavit. A lawyer or Registrar of the Court could also do this. All pages need to be initialled by Claire and the witness.

3. Claire’s information sheet for the Family Court

The form on the next page is designed to give the Court the information it needs to process applications.

**INFORMATION SHEET TO ACCOMPANY APPLICATIONS UNDER
PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988**

In the Family Court
at Porirua

PPPR _____

This information sheet accompanies applications in respect of Sarah Alice Baker, Student

Home address: 35 Fitzpatrick Street, Porirua

Work address: N / A

Contact telephone numbers: Home: 04 238 6812

Work: N / A

Age: 18

Date of birth: 5 July 1989

Gender: Female

Country of residence: New Zealand

Ethnic group: New Zealand European
 Maori
 Samoan
 Cook Island Maori
 Tongan
 Niuean
 Chinese
 Indian
 Other [*Dutch, Japanese, Tokelauan etc*]

Please state: _____

Interpreter required: Yes / No

If yes, specify language: _____

Name and address of the lawyer of the person in respect of whom the application is made:
N/A

Nature of Applications

The applications are:

1. Application for appointment of welfare guardian
2. _____

Particulars of Applicant

The applicant is: Claire Jane Baker, Mother

Work address: N / A

Contact telephone numbers: Home: 04 238 6812

Work: N / A

Country of residence: New Zealand

Capacity in which application is made (as set out in application): Parent

Particulars of Other Persons or Organisations Affected

The following person(s) or organisation(s) may be affected by this application:

Full name: William Colin Baker
Address: 35 Fitzpatrick Street, Porirua
Occupation: Plumber
Relationship or status in relation to the person in respect of whom the application is made (e.g. spouse; relationship in the nature of marriage; parent; guardian; person with whom that person is living; proposed welfare guardian; proposed manager; welfare guardian; manager):
Parent

Full name: Allan John Baker
Address: 35 Fitzpatrick Street, Porirua
Occupation: Student
Relationship or status in relation to the person in respect of whom the application is made (e.g. spouse; relationship in the nature of marriage; parent; guardian; person with whom that person is living; proposed welfare guardian; proposed manager; welfare guardian; manager):
Brother

Full name: Elizabeth Ruth Baker
Address: 18 St John Street, Newlands, Wellington
Occupation: Student
Relationship or status in relation to the person in respect of whom the application is made (e.g. spouse; relationship in the nature of marriage; parent; guardian; person with whom that person is living; proposed welfare guardian; proposed manager; welfare guardian; manager):
Sister

Full name: Capital Support Services
Address: 156 Main Street, Berhampore , Wellington
Occupation: _____
Relationship or status in relation to the person in respect of whom the application is made (e.g. spouse; relationship in the nature of marriage; parent; guardian; person with whom that person is living; proposed welfare guardian; proposed manager; welfare guardian; manager):
Organisation having an interest in Sarah's care

Address for Service

The accompanying applications are filed by Claire Jane Baker whose address for service is at 35 Fitzpatrick Street, Porirua

This address must be a place in New Zealand where any document may be left for the applicant. It may not be the address of a Post Office box, document exchange, or rural delivery.

Previous applications: (Give the file number of any previous applications relating to the person in respect of whom the application is made, and the Courts where those applications were filed):
N/A

For Court Use:

Date Stamp:

Section Three: Application for property administrator

What is a property administrator?

An order to appoint a property administrator is a personal order under the PPPR Act. A property administrator is someone who has been appointed by the Family Court to administer any item of property specified in the order, on behalf of the person in respect of whom the application was made.

A personal order to administer property can only cover property where that item of property is worth less than \$5000 or the total income or benefit received is less than \$20,000 per year. If any item of property is worth more than \$5000 or the total income received in a year is more than \$20,000, a property order is required to appoint someone to manage that particular item of property (or benefit).

When will the Court appoint a property administrator?

Just like an application for a welfare guardian, when the Court is considering an application to appoint a property administrator it always aims to protect the rights of the person in respect of whom the application is made.

There is the same mental capacity test as for a welfare guardian (check this out on page 5). The Court will only appoint a property administrator if it is satisfied the following conditions are met:

- The person in respect of whom the application is made
 - (a) wholly or partly lacks the capacity to understand the nature and to foresee the consequences of decisions in respect of matters relating to their personal care and welfare; or
 - (b) has the capacity to understand the nature and foresee the consequences of those decisions, but wholly lacks the capacity to communicate these decisions; and
- Appointing a property administrator would be the **least restrictive intervention** possible by a Court in that person's life; and
- The property administrator will act in such a way as **to enable or encourage that person to exercise and develop such capacity** as they have to the greatest extent possible; and
- The incapacitated person ordinarily lives in New Zealand and is at least 18 years old (or is over 16 and has been married, in a civil union or de facto partnership); and
- The order is necessary in all the circumstances.

Only one person can be appointed property administrator at a time. A property administrator cannot be appointed if there is already a property manager in place.

Role of a property administrator

A person appointed under a personal order to administer any property, income or benefit, may only administer **the property which is specified in the order**.

The law says that the property administrator must administer the property in such a way as to enable or encourage the person for whom he or she is acting to exercise and develop such capacity as that person has to the greatest extent possible.

When administering the property, so far as practicable, the administrator will consult:

- the person for whom the property administrator is acting;
- other persons who are (in the opinion of the property administrator) interested in the welfare of the person and competent to advise the property administrator in relation to the management of the property; and
- a representative of any not-for-profit group that is engaged in the provision of services and facilities for the welfare of persons, and that, in the opinion of the property administrator, is competent to advise the property administrator in relation to the property.



If a welfare guardian has been appointed for the person, the property administrator must consult them on a regular basis to ensure that the person's interests are not prejudiced through any breakdown in communication between the property administrator and the welfare guardian.

You are not entitled to be paid for acting as a property administrator, but all expenses which you reasonably incur in exercising your powers are payable out of the property of the person, unless a Court orders otherwise.

Who can be a property administrator?

If you are at least twenty years old, you can be appointed property administrator for someone else so long as the Court is satisfied that:

- you are capable of carrying out the duties of a welfare guardian satisfactorily, having regard to:
 - (a) the needs of the person in respect of whom the application is made, and
 - (b) the relationship between you and that person; and
- you will **act in the best interests of the person** in respect of whom the application is made.

The Court also takes into account any likely conflict between your interests and those of the person in respect of whom the application is made.



If you wish to apply for a property administrator to be appointed but want to name someone else or you are not a relative of the incapacitated person, you should seek further advice before making an application as this resource does not deal with those situations.

Can a property administrator be held personally liable for their actions?

When you are acting on behalf of someone as their property administrator, you will not usually be personally liable for anything you do or omit to do.

There are two exceptions to this. You may be personally liable if:

- it is shown that you acted in bad faith or without reasonable care, or
- you entered into a contract or arrangement or incurred a liability with a person without disclosing that you were acting in your capacity as a property administrator under the PPPR Act before entering into the contract or arrangement or incurring the liability.

You may follow any advice given to you by any person consulted and you will not be liable for anything done when following that advice, unless it was done **in bad faith or without reasonable care.**



How long does an order to administer property last for?

When an order appointing a property administrator is made, the Court will also set a date by which time the property administrator must apply for a review of the order. This date must be within **three years** from the date of the order.

If you do not apply for a review prior to the expiry of the order, the order and the powers you have under the order will expire.

The Court does not have to remind you that the order is about to expire. It is your responsibility to apply for a review before the time period elapses.

The order will also end if:

- the person for whom the property administrator was acting dies; or
- the property administrator dies; or
- the property administrator is made bankrupt; or
- the property administrator becomes a patient under the Mental Health Act 1969; or
- the property administrator becomes subject to a property order or becomes otherwise incapable of acting;
- another person is appointed as property administrator or property manager by the Court.

Applying the law: Sarah and Claire

Claire's lawyer has told her that when Sarah turned 18, as well as losing the ability to make decisions for Sarah, she and William are no longer able to deal with her benefit or any other property on her behalf. Therefore, as well as the application to be welfare guardian, Claire will need to consider applying for another order to sort that out.

Sarah does not own any property such as a car. The only significant property she owns is the stereo her parents gave her for Christmas. This is worth about \$200. The only income she receives is the invalids benefit and disability allowance which amounts to about \$16000 a year. Her bank account has about \$300 in it.



Because there is no item of property worth more than \$5000 and the income Sarah receives is less than \$20,000 a year, Claire can apply for a personal order to **administer** Sarah's benefit and deal with her bank account on her behalf.

How does Claire apply to become a property administrator?

To apply to become a property administrator Claire will need to fill out the following forms:

- application for appointment of property administrator; and
- affidavit in support of application.

Because she has already applied for a order to appoint her as welfare guardian, she does not need to complete another information sheet or provide an expert report.

As well as the following forms, Claire will needs to fill in a cover page like she did on page 12 for the welfare guardian application. Instead of "Application for Appointment of Welfare Guardian", the cover page should say "Application for Order to Administer Property".

Filling in the forms:

1. Claire's application to be appointed property administrator

The application needs to be in the form shown in this resource. Blank forms are also available to download from www.communitylaw.org.nz. You can type your answers in and then print the pages, or you can use the blank forms in the back of this resource and handwrite your application.

An explanation of how Claire has completed this application is included by referring to the numbers in brackets, e.g. **(1)**, and the associated explanations following each part of the application.

APPLICATION FOR ORDER TO ADMINISTER PROPERTY

I, Claire Jane Baker apply for an order appointing a person to administer, on behalf of Sarah Alice Baker the following property (or income or benefit) belonging to Sarah Alice Baker or to which that person may become entitled: (1)

WINZ benefits, bank accounts in the name of Sarah Alice Baker and all property owned by Sarah Alice Baker

This application is made on the following grounds:

* Sarah Alice Baker wholly (or partly) lacks the capacity to understand the nature, and to foresee the consequences, of decisions relating to her /his personal care and welfare.

or

* ~~_____ has the capacity to understand the nature, and to foresee the consequences, of decisions relating to his / her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of those matters.~~

* *Delete one*

(2)

I make this application in my capacity as –

*a) A parent of Sarah Alice Baker.

(3)

~~*b) The attorney of _____~~

~~*c) A social worker employed by the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.~~

~~*d) A medical practitioner~~

~~*e) A representative of _____, being a group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the Court has jurisdiction in accordance with section 6 of the Protection of Personal and Property Rights Act 1988.~~

~~*f) The superintendent / licensee / supervisor / other person in charge of _____ being the hospital / home / other institution in which _____ is a patient / resident.~~

~~*g) A person granted leave of the Court to make this application.~~

I say –

(4)

*1 Sarah Alice Baker is of or over the age of 18 years.

~~*1 _____ is under the age of 18 years and is / has been married or in a civil union.~~

2 Sarah Alice Baker is not subject to a property order.

3 No item of property in respect of which an order is sought exceeds \$5000 in value.

4 No income or benefit in respect of which an order is sought exceeds \$20,000 in any 1 year.

5 The proposed appointee is Claire Jane Baker of 35 Fitzpatrick Street, Porirua, Mother. (5)

6 The proposed appointee is of or over the age of 20 years (or a trustee corporation).

7 The proposed appointee is not the superintendent, licensee, supervisor, or other person in charge of a hospital, home or other institution in which Sarah Alice Baker is a patient or resident.

8 An affidavit is attached in support for this application. (6)

* Delete if inapplicable.

C J Baker (7)

Signature of applicant

25 June 2007

Date

Notes to Claire's Application

- (1) Property or income to administer: Claire must specify which property or income of Sarah's she wishes to be appointed to administer. Anything not included in the application will not be covered by the order and Claire will not have the ability to act on Sarah's behalf with it.
- (2) Capacity of person the application is about: Sarah must fit within one of these categories. Claire crosses out the option which does not apply.
- (3) Capacity of applicant: Claire is making the application as a relative of Sarah and she must specify what type of relative she is, using one of the terms listed on p8 of this resource.
- (4) Age of person the application is about: Sarah must be at least 18 to have an application made for her, unless she has been married, in a civil union or de facto relationship. Claire crosses out the other options which do not apply.
- (5) Proposed appointee: Claire fills in her full name, address and occupation.
- (6) Documents in support: Claire needs to attach an affidavit and also an expert report from Sarah's doctor supporting the fact that Sarah should have someone appointed to administer her property because of her lack of capacity.
- (7) Signature: Claire signs and dates the application.

2. Claire's affidavit in support

As well as the application form, Claire needs to provide an affidavit or an affirmation to support her application.

Claire's affidavit is made using the following example and notes are included to help with completing the affidavit.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER TO ADMINISTER PROPERTY

I, Claire Jane Baker of 35 Fitzpatrick Street, Porirua, Mother, swear:

1. I confirm my consent to act under an order to administer property for the person in respect of whom the application is made (“the person”) pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 (“the Act”). (1)

2. My relationship with the person is as follows: (2)
I am her mother. Sarah lives at home and I care for her.

3. I confirm the contents of my application for (3)
 - an order to administer.
 - ~~• a review of the order made on _____.~~

4. I confirm that I am familiar with the responsibilities and duties pursuant to an order to administer property under the Act.

5. I confirm that to the best of my knowledge the person is ordinarily resident in New Zealand and
 - is of or over the age of 18 years or is or has been married, or in a civil union, or in a de facto relationship, and
 - is not already the subject of a property order.

6. To the best of my knowledge and belief I confirm that the person (4)
 - lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare; or
 - ~~• has the capacity to understand the nature and foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare but wholly lacks the capacity to communicate those decisions in respect of such matters.~~

The basis of my knowledge and belief is as follows:

Sarah was born with cerebral palsy and autism. She is cared for at home by myself and Sarah’s father, William. She has very limited understanding of money and financial decisions because of her medical conditions. She cannot foresee the consequences of any decisions she makes, whether about her own care, property or generally.
A medical report from her doctor, Dr Joanne Border, is attached in support of this application.

CB

GG

7. *(Complete or delete if not applicable)* (5)
- To the best of my belief the person is neither a patient or proposed patient receiving treatment/assessment under and Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
 - ~~To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at _____ on _____ and that order still continues. The person receives treatment from _____.~~
 - To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992, but is currently receiving assessment/ treatment from _____.
8. In the information sheet that accompanies this application, I have named the following people/organisations affected by this application. I have obtained consents from the following: (6)
- William Colin Baker, Allan John Baker and Elizabeth Ruth Baker.
- I consider service should be effected on the following:
Capital Support Services
- To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.
9. I do not believe the person should be served with the application for the following reasons: (7)
- I believe that Sarah wholly lacks the capacity to understand these proceedings.
10. I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (8)
- Sarah's autism makes it difficult for her to function in new environments. I believe that requiring her to attend court may cause her emotional and mental harm.
11. I consider that I am a suitable person to be appointed by the Court as a property administrator for the following reasons: (9)
- I am Sarah's mother and have looked after her fulltime since she was born, with support from local agencies and her father, William. I believe that I am capable of carrying out the duties of a property administrator and I will act in the best interests of Sarah. William and I talk to Sarah before making important decisions and relating to her care and when dealing with her finances and I will continue to do so if appointed property administrator. I do not believe there is any conflict between my interests and Sarah's. I have one criminal conviction from 1978 for careless use of a motor vehicle. I believe the nature of the conviction means it will have no effect on my ability to administer Sarah's property. CB
 GG

I have never been the subject of a bankruptcy order under the Insolvency Act 1967, a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or an order under the PPPR Act.

12. I state as follows:

- That I am capable of carrying out the duties under an order to administer property for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person;
- That I will always act in the best interests of the person;
- That I will carry out my duties in such a way as to enable or encourage the person to develop and exercise such capacity as the person may have to the greatest extent possible; and
- I acknowledge that during my appointment as far as it may be practicable I will consult with the person and such other persons or representatives from any non-profit group interested in the welfare of the person and are competent to advise in relation to management of the person's property. I acknowledge that there is power for me to apply to the Court for further directions where I have received advice which is in conflict with my duties as manager or is otherwise objectionable (s.43(3)). I also acknowledge that I will regularly consult with the person's duly approved welfare guardian (where appointed) if it is someone other than me (s.43(6)).

13. *(Complete one)*

(10)

I confirm that there is no conflict or is unlikely to be any conflict between my interests and those of the person.

or

~~I confirm that there is a conflict or is likely to be a conflict between my interests and those of the person but that conflict is unlikely to impinge upon my ability to carry out my duties under the order for the following reasons: *(set out circumstances of possible or actual conflict and reasons for being able to act)*~~

14. I seek an order to administer the following property of the person, acknowledging the restrictions on value of items which may be administered:

(11)

WINZ benefit, bank accounts in the name of Sarah Alice Baker and all other property of Sarah Alice Baker.

15. I confirm that I am aware that I am not entitled to any remuneration for my services.

16. I confirm that I am aware that all expenses reasonably incurred by me under the personal order can be charged against and payable out of the property of the person. I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.

CB

GG

17. At this stage I envisage that the following expenses are likely to be incurred: (12)
None

18. ~~I seek a temporary interim order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: (delete if inapplicable)~~ (13)

SWORN at Porirua) (14)
this 29th day of June 2007) C S Baker
before me:)

G Geks
Justice of the Peace / ~~Solicitor of the High Court / Registrar~~

Notes to Claire's affidavit (See page 17 for an example of a Medical Report from Dr Joanne Border)

- (1) Applicant's details: Claire fills in her full name, address and occupation.
- (2) Relationship with the person: Claire sets out her relationship with Sarah.
- (3) Application: The same affidavit is used for applying for appointment of a property administrator and also reviewing current appointments. Claire crosses out whichever is not relevant.
- (4) Capacity of person the application is about: Sarah must fit within one of these categories. Claire crosses out the option which does not apply. She must also set out the reasons why she believes this and set out any medical reports or evidence she has to support her belief.
- (5) Compulsory Treatment Order: Claire crosses out the options which do not apply to Sarah.
- (6) Consents and service: See page 51 of the resource for more information about this. If Claire does not have written consents from relevant family members and associated organisations, the Court will require that the application is served on those people to allow them the chance to respond to the application.
- (7) Service of the person the application is about: The Court requires Sarah to be served with the application unless she wholly lacks the capacity to understand the nature and purpose of the proceedings or there are exceptional circumstances exist of a nature to justify dispensing with service.

- (8) Appearance in Court: Unless there is good reason, Sarah will have to appear in Court if the Judge requires it. The Court may excuse Sarah from appearing if it is satisfied that she wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause her serious mental, emotional, or physical harm.
- (9) Reasons for appointment: Claire needs to set out the reasons why she is a suitable person to be appointed property administrator. This should include the facts and her background with Sarah. The Court needs to be satisfied that the person can be entrusted with the statutory obligations (found in section 11 of the PPPR Act) and that there are no legal or other factors that would stand in the way of the appointment. Claire must also cover the following questions:
- Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967?
 - Are you presently subject to a compulsory treatment order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?
 - Have you any previous criminal convictions? If so, please list.
 - Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?
- If any of those questions apply, Claire must set out the reasons why she should be appointed.
- (10) Conflicts: Claire must act in the best interests of Sarah and if there is likely to be any conflict between her interests and Sarah's, she must state these. An example of a conflict could be where a property administrator for a person is also a beneficiary under that person's will.
- (11) Property: Claire must set out each item of property, income or benefit she is applying to administer.
- (12) Expenses: Claire must set out any expenses she envisages she is likely to incur as property administrator. If there are none, she needs to write "none".
- (13) Interim order: An interim order can be made if there are reasons an immediate order is necessary. If an interim order is required, you should seek advice from a Community Law Centre or solicitor. As this section does not apply, Claire crosses it out.
- (14) Witness: Claire has used a local Justice of the Peace to take her affidavit. A lawyer or registrar of the Court could also do this. All pages need to be initialled by Claire and the witness.

Section Four: Application for property manager

What is a property manager?

An order to appoint a property manager is a property order under the PPPR Act. A property manager may be appointed to manage all of a person's property or only specified parts of it. A property manager may be an individual or it may be a trustee corporation such as the Public Trust. There is no limit on the number of property managers who may be appointed at a time.

For the purposes of this resource, it has been assumed that there will be only one property manager and that manager is an individual, not a trustee company. If this is not the situation, you should seek further legal advice.

Unless there are specific restrictions in the order, the manager has all the rights provided under the Act that the person for whom the application is made would have. These rights and responsibilities are covered in more detail later in this section.

When will the Court appoint a property manager?

The Court always aims to protect the rights of the person in respect of whom the application is made and will only appoint a property manager if it is satisfied the following conditions are met:

- The person in respect of whom the application is made **wholly or partly lacks the competence** to manage his or her own affairs in relation to his or her property.
- Appointing a property manager would be the **least restrictive intervention** possible by a Court in that person's life, having regard to that person's degree of competence; and
- The property manager will act in such a way as to enable or encourage that person to exercise and develop such capacity as they have to **manage their own affairs** to the greatest extent possible; and
- The incapacitated person ordinarily lives in New Zealand and is at least 18 years old (or over 16 and have been married, in a civil union or de facto partnership).

The capacity test is the same as that given on page 5 - the fact that the person is managing or intending to manage their property affairs in relation to the property in a manner that a "person of ordinary prudence" would not do is not grounds in itself for an order to be made.

The Court will not make an order simply because the person is managing their property affairs in a way that you believe is wrong or not sensible.



However, the Court may have regard to the degree to which the person is subject, or is liable to be subjected, to undue influence in the management of their property affairs.

The Court can also make an order for property manager in respect of someone who does not usually live in New Zealand if they have property in New Zealand. You should see a lawyer if you wish to make an application for someone who does not live in New Zealand.

Who can be a property manager?

There can be one or more property managers appointed by a Court. One may be a trustee corporation such as the Public Trust. If two property managers are appointed, they will act jointly.

If you are at least twenty years old, you can be appointed property manager for someone else so long as the Court is satisfied that:

- you are capable of carrying out the duties of a property manager satisfactorily, having regard to:
 - (a) the needs of the person in respect of whom the application is made, and
 - (b) the relationship between that person and the proposed appointee; and
- you will **act in the best interests of the person** in respect of whom the application is made.

The Court also takes into account any likely conflict between the interests of the proposed appointee and those of the person in respect of whom the application is made.

This resource only deals with applications made by relatives applying to be named property manager for another person. If you wish to apply for a property manager to be appointed but want to name a trustee corporation or you are not a relative of the incapacitated person, you should seek advice before making an application.



Responsibilities of a property manager

The first and paramount consideration of a manager must be to use the property in the “promotion and protection of the best interests of the person for whom the manager is acting”. At all times, you must encourage the person to manage their own property affairs as much as possible, including consulting with the person before making decisions.

If a welfare guardian has been appointed, you must consult with them on a regular basis to ensure that the interests of the incapacitated person are not prejudiced. **Your rights and powers in relation to the property are subject to the terms of any personal order, including an order for welfare guardian.**

So far as practical, you must also consult:

- other persons, as are, in your opinion, interested in the welfare of the person and competent to advise in relation to the management of the person's property; and
- a representative of any not-for-profit group that is engaged in the provision of services and facilities for the welfare of persons, and that, in your opinion, is competent to advise in relation to the property that is subject to the order.

You are not ordinarily entitled to be paid to act as property manager. The Court will consider whether the property manager should be paid. If this is required, you should include details in the original application and affidavit as to why it is necessary. Usually only trustee corporations or persons dealing with the property in a professional capacity (such as lawyers or accountants) would be entitled to remuneration for their time.

All expenses which you reasonably incur while exercising your powers as property manager are payable out of the property of the person.



One of the biggest responsibilities for property managers is that they must account for their actions and are required to file periodic financial statements in Court in relation to the person's property. Further information about these statements is found in Section Five

Powers of a property manager

In general, a property manager may apply to have the powers that the person for whom the application is made would normally have in relation to their property, but there are some specific limitations on these powers as set out below. The powers of a property manager are set out in extensive detail in Schedule 1 of the PPPR Act. The Act can be viewed online at www.legislation.govt.nz. A brief summary of each of the powers is included below.

The application must state the powers sought – remembering that not all the powers listed in the schedule will be needed to manage property in the least restrictive way possible. A comprehensive list of these powers is included in Appendix A.

The property of a person subject to a property order does not vest in the manager (i.e. ownership doesn't transfer), but the manager is entitled to the possession and management of the property included in the order, in accordance with the Act.

Specific limitations on the manager's power include:

- if you intend to use the incapacitated person's money to do or continue any act of charity which had been previously done, you will not be able to give more than \$5000 in any year without the Court's permission;

- if you intend to buy a house for the person, their spouse or child, you cannot spend more than \$120,000 doing so, unless the Court gives permission;
- if you intend to invest money belonging to the person, it must be invested in a trust fund as authorised by the Trustee Act 1956 unless the Court gives permission otherwise;
- if the person owns freehold or leasehold land, you will need the permission of the Court to sell it if the land is worth more than \$120,000;
- if there is no valid will, you need the Court's permission to make one for the person. More information about this is below.



The amounts given above are subject to change. You can check if the figures are still current by looking at Schedule 1 of the Protection of Personal and Property Rights Act 1988 on www.legislation.govt.nz or contacting a Community Law Centre.

Property orders do not apply to any interests or shares in kai tiaki trusts in Maori or general land.

If an application is made involving beneficial interests in Maori freehold land or shares in a Maori incorporation, the Court will refer the application to the Maori Land Court.

When determining an application, the Court may order that all or part of the property under management be put into trust for the benefit of the incapacitated person. It may also order that any of this property be given for the maintenance or benefit of members of that person's family.

When a property manager has been appointed, the Court's permission is required before:

- proceedings (apart from proceedings under the PPPR Act) can be brought against the person;
- any debt, judgment or order (apart from a judgment under the PPPR Act) can be enforced against the person;
- any creditor can foreclose, enter into possession, sell, appoint a receiver or exercise any power under a mortgage, charge or security instrument over the person's property; or
- a tenancy can be determined or any rights under a tenancy agreement be enforced.

What happens if the incapacitated person didn't have a will?

The Court will try and find out if a will was executed before the property order was made and if it was made at a time when the person was unable to manage his or her own affairs.

If the Court finds that the will was made in this situation, it can make further inquiries to decide whether the will is valid and whether a new will should be made. If a new will is required, or no will is in existence, the Court can authorise the lawyer for the subject person or the property manager to make a new will for the person.

If the Court authorises a will to be drawn up, it will hear any people who wish to be heard or whom the Court considers to have a proper interest in the matter.

Can a property manager be held personally liable for their actions?

You are not liable for anything done or omitted to be done by you while exercising your powers as a property manager, unless:

- it is shown that you acted in bad faith or without reasonable care; or
- you entered into a contract or arrangement or incurred a liability with a person without disclosing to that person that you were acting in your capacity as a property manager under the PPPR Act before entering into the contract or arrangement or incurring the liability.

You may follow any advice given to you by any person consulted and you will not be liable for anything done when following that advice, unless it was done **in bad faith or without reasonable care**.

How long does an order appointing a property manager last for?

When an order appointing a property manager is made, the Court will also set a date by which time the property manager must apply for a review of the order. This date must be within three years from the date of the order.

If you do not apply for a review prior to the expiry of the order, the order and the powers you have under the order expire. **The Court does not have to remind you that the order is about to expire. It is your responsibility to apply for a review before the time period elapses.**

The order will also end if:

- the person for whom the property manager is acting dies; or
- the property manager dies; or
- the property manager is made bankrupt; or
- the property manager becomes a patient under the Mental Health Act 1969; or
- the property manager becomes subject to a property order or becomes otherwise incapable of acting;
- another person is appointed as property administrator or property manager by the Court.

If there are two property managers acting jointly, an application to the Court is required to allow one to continue if one of the above situations occur.

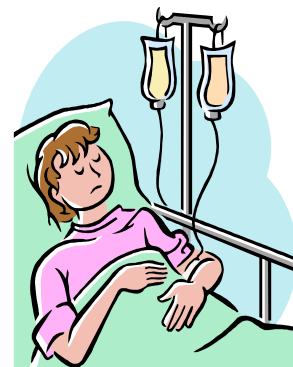
Applying the law: Jack and Diane

Jack and Diane have been married for thirty-five years and have two grown up children, Becky and Simon. Diane is a teacher and Jack is a car salesman.

A month ago Diane suffered a massive stroke when she was at home. She was taken to hospital and is now in the stroke unit.

The stroke has left Diane severely impaired. She cannot move her right side and can't speak. She may well recover as time passes but at the moment she is incapable of looking after herself or dealing with her property affairs.

Neither Jack nor Diane had an enduring power of attorney before Diane's stroke. Things have been pretty hectic for Jack over the past month and so he hasn't been thinking too much about what will happen in the future.



He and Diane both have separate bank accounts which their wages go into, as well as a joint account for the household expenses. Since Diane's stroke occurred, Jack has been using their joint savings or his account to pay for everything. He went to the bank today to find out what was in Diane's account and was told that he couldn't have access to it, even though he is her husband.

Jack will need to apply to become Diane's welfare guardian so that he can make decisions relating to her personal care and welfare. (In these circumstances the judge may decide to set a review period of one year rather than the normal three years, given that Diane's loss of capacity may only be temporary.) Jack also needs to apply for an order to look after her property affairs so he can access her bank account.

Jack and Diane have a house they own jointly, worth about \$300,000. They also have two cars which are worth about \$15,000 each and Diane has \$20,000 in her investment account. Because of the amount of property involved is more than \$5000, Jack will have to apply for a property order to be appointed property manager.

Jack will also need to apply to become welfare guardian and his application for this should be the same as Claire's was in Section Two.

Why does Jack need to apply to become a property manager and not a property administrator?

The PPPR Act is confusing because it sets out two different ways a person can apply to look after someone's property on their behalf. There is a personal order to administer property and a property order to manage property. The two different orders carry different responsibilities and so it's important to make sure the right order is sought.

A personal order to administer property can only be made where each item of property to be administered is worth less than \$5000 or any income or benefit is less than \$20,000 per year.

If any item of property is worth more than \$5000 or the income received in a year is more than \$20,000, a property order is required to appoint someone property manager.

Because the total amount of Diane's property is worth more than \$5000, Jack needed to apply to become a property manager. In Sarah's case, she owns no significant property and her only income is her benefit, which is less than the income threshold of \$20,000 so Claire was able to apply to become a property administrator.

How does Jack apply to become a property manager?

To apply to become a property manager he needs to fill out the following forms:

- application for appointment of property manager; and
- affidavit in support of application; and
- information sheet for the Family Court.

He will also need to provide an expert report from a medical practitioner and consents from family members. These documents all need to be filed in the Family Court and copies served on relevant people. More information about reports, filing and service is included in Section Five.

Filling in the forms:

1. Jack's application to be appointed property manager

The application needs to be in the form shown in this resource. Blank forms are also available to download from www.communitylaw.org.nz. You can type your answers in and then print the pages, or you can use the blank forms in the back of this resource and handwrite your application.

An explanation of how Jack has completed this application is included by referring to the numbers in brackets, e.g. **(1)**, and the associated explanations following each part of the application.

As well as the following forms, Jack will need to fill in a cover page like Sarah did on page 11 for the welfare guardian application. The cover page is included with the blank forms.

Jack will also need to complete an information sheet for the Court using Sarah's example on page 19.

APPLICATION FOR PROPERTY ORDER

I, Jack Simon Carpenter apply for an order appointing one or more suitable persons (whether or not the person or persons proposed in this application) to act as (1)

* the manager of the property of Diane Frances Carpenter. (2)

* ~~the manager of the following property of _____:~~

~~_____~~
~~_____~~

* *Delete one*

This application is made on the ground that Diane Frances Carpenter wholly (or partly) lacks the competence to manage her ~~his~~-own affairs in relation to the property.

I make this application in my capacity as –

*a) A spouse of Diane Frances Carpenter. (3)

~~*b) The attorney of _____~~

~~*c) A social worker employed by the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.~~

~~*d) A medical practitioner~~

~~*e) A trustee corporation.~~

~~*f) A representative of _____, being a group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the Court has jurisdiction in accordance with section 6 of the Protection of Personal and Property Rights Act 1988.~~

~~*g) The superintendent / licensee / supervisor / other person in charge of _____ being the hospital / home / other institution in which _____ is a patient / resident.~~

~~*h) The welfare guardian for _____.~~

~~*i) A person granted leave of the Court to make this application.~~

I say – (4)

*1 Diane Francis Carpenter is domiciled (or ordinarily resident) in New Zealand.

or

~~*1 _____ is neither domiciled nor ordinarily resident in New Zealand, but all of the property in respect of which the order is sought is situated in New Zealand.~~

*2 The proposed appointee is Jack Simon Carpenter of 70 Rawhiti Street, Porirua, Car Salesman. The proposed appointee is of or over the age of 20 years (or a trustee corporation). (5)

or

~~*2 The proposed appointees are _____ of~~

~~_____ and _____~~

of _____, _____
_____. The proposed appointees are of or over the age
of 20 years.

- 3 The proposed appointee is not the superintendent, licensee, supervisor, or other person in charge of a hospital, home, or other institution in which Diane Frances Carpenter is a patient or resident.
- 4 An affidavit is attached in support of this application. (6)

* Delete those which are inapplicable.

J Carpenter (7)
Signature of applicant

28 August 2007
Date

Notes to Jack's Application

- (1) Name of applicant: Jack fills in his full name.
- (2) Amount of property to manage: Jack must specify whether the application covers all of Diane's property or if there are specific items only.
- (3) Capacity of applicant: Jack is making the application as a relative of Sarah and he must specify what type of relative she is, using one of the terms listed on p38 of this resource.
- (4) Presence in New Zealand: The Court cannot make an order unless Diane lives in New Zealand or the property that is subject to the order is situated in New Zealand. Jack needs to cross out whichever option does not apply.
- (5) Proposed appointee: Jack fills in his full name, address and occupation.
- (6) Documents in support: Jack needs to attach an affidavit and also an expert report from Diane's doctor stating that he should be appointed to manage Diane's property. If he had any other documents in support of the application, he would state here what they were.
- (7) Signature: Jack signs and dates the application.

2. Jack's affidavit in support

AFFIDAVIT IN SUPPORT OF APPLICATION FOR PROPERTY ORDER

I, Jack Simon Carpenter of 70 Rawhiti Street, Porirua, Car Salesman, swear: (1)

1. I confirm my consent to act as manager of property or any specified part of that property of the person in respect of whom the application is made ("the person") pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 ("the Act").

2. My relationship with the person is as follows: (2)
I am her husband.

3. I am aged twenty years or over.

4. I confirm the contents of my application/co-application for (3)
• a property order.
~~• a review of the property order dated _____ appointing
_____ as property manager/s.~~

5. I confirm that I am familiar with the responsibilities and duties of a property manager pursuant to the Act.

6. I confirm that to the best of my knowledge the person
• is domiciled or is ordinarily resident in New Zealand;
• the person owns property situated in New Zealand.

7. To the best of my belief I confirm that the person lacks wholly or partly the (4)
competence to manage his/her own affairs in relation to his/her property for the following reasons:
Diane suffered a severe stroke four weeks ago. She is currently in the stroke unit at Memorial Hospital, Porirua and is likely to be there for another six months before being able to come home. She is paralysed down her right side and has trouble communicating. I believe that she lacks the competence and ability to manage her own Affairs. Attached is a medical report from the doctor treating her at the Hospital.

8. In the information sheet that accompanies this application, I have named the following (5)
people/organisations affected by this application. I have obtained consents from the following:
Rebecca Rose Carpenter, Simon Peter Carpenter, Patricia Florence Agnew,
Margaret Valerie Agnew.

JC GG

I consider service should be effected on the following:

Not required.

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

9. I do not believe the person should be served with the application for the following reasons: (6)

Diane wholly lacks the competence to understand this application and the purpose of it. Because of the stroke she has difficulty remembering events from one day to the next. If she were served with the application it is unlikely she would remember what it was about the next day or the following week. I believe it would cause unnecessary confusion to her if she were served with the application.

10. I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (7)

Diane wholly lacks the competence to understand this application and the purpose of it for the reasons set out above. I believe that she should be excused from appearing in Court as she is currently living in the stroke unit and it will be difficult to move her for the Court hearing and will likely cause physical harm to her.

11. *(Complete or delete if not applicable)* (8)

- To the best of my belief the person is neither a patient nor proposed patient receiving treatment/assessment under and Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- ~~To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at _____ on _____ and that order still continues. The person receives treatment from _____.~~
- To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992, but is currently receiving assessment/treatment from _____.

12. I consider that I am a suitable person to be appointed by the Court as a property manager for the following reasons: (9)

I am Diane's husband of thirty-five years. I believe that I am capable of carrying out the duties of a property manager and I will act in the best interests of Diane. I have no criminal convictions. I have never been the subject of a bankruptcy order under the Insolvency Act 1967, a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or an order under the Protection of Personal and Property Rights Act 1988.

JC GG

The person's major assets and liabilities are as follows:

Diane and I own our house at 70 Rawhiti Street, Porirua jointly. At the last valuation it was worth \$300,000. Diane also owns a 1999 Toyota Corolla, registration UCBF64 which is worth approximately \$15,000. She has a bank investment a/c which I believe has about \$20,000 in it. We have a joint bank account which has approximately \$10,000 in it. The only liability of Diane's that I know about is the \$534 balance on her VISA card. Our household expenses are all paid out of the joint account.

13. I state as follows:

- That I am capable of carrying out the duties of a property manager for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person;
- That I will always act in the best interests of the person;
- That I will seek to encourage the person to develop and exercise such competence as that person has, to manage his or her own affairs in relation to their property.

14. *(Complete one)*

(10)

I confirm that there is no conflict or is unlikely to be any conflict between my interests and those of the person.

or

~~I confirm that there is a conflict or is likely to be a conflict between my interests and those of the person but that conflict is unlikely to impinge upon my ability to carry out my duties as a property manager for the following reasons: *(set out circumstances of possible or actual conflict and reasons for being able to act)*~~

15. I ask that the order cover *(delete which does not apply)*

(11)

- all the property of that person, with the following rights and powers:
Schedule 1, Protection of Personal and Property Rights Act 1988:
(1)(a), (1)(b)(i), (1)(b)(ii), (1)(b)(iv) – (vii), (1)(g), (1)(j), (1)(n), (1)(q).
- ~~the following specified property of the person:~~

~~_____~~
~~_____~~
with the following rights and powers:
~~_____~~
~~_____~~

If I become aware of any further property of the person requiring management, I acknowledge the need to make a further application to vary the original order.

16. I am aware that I am not entitled to any remuneration for my services unless directed by the Court at the time of making this order or any subsequent order.

JC GG

17. (Complete one) (12)

I confirm that I do not seek remuneration for my services.

~~I seek remuneration for my services for the following reasons:~~

18. I confirm that all expenses properly incurred by me as manager can be charged against and payable out of the property of the person.

I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.

At this state I envisage that the following expenses are likely to be incurred in managing the person's property:

None

(13)

19. I acknowledge that during my appointment as far as it may be practicable I will consult with the person and such other persons or representatives from any non-profit group interested in the welfare of the person and are competent to advise in relation to management of the person's property.

I acknowledge that there is power for me to apply to the Court for further directions where I have received advice which is in conflict with my duties as manager or is otherwise objectionable (s43(3)).

I also acknowledge that I will regularly consult with the person's duly approved welfare guardian (where appointed) if it is someone other than me (s43(6)).

20. I confirm that I am aware of my responsibility to prepare and file in the Court statements containing prescribed particulars as referred to in s45 of the Act as to the person's property as follows:

- within 3 months of the date of the order;
- within 30 days following the expiry of each year during which my managership continues;
- within 30 days as at the date of my ceasing to be manager.

21. I confirm that I am aware that failure to file the statements is an offence and I am liable on summary conviction to a fine not exceeding \$1000.

I further confirm that I am aware that if I file a statement which includes any particular that I know to be false, I commit an offence and am liable on conviction on indictment to imprisonment for a term not exceeding 3 years.

JC GG

22. ~~I seek a temporary interim order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: (delete if inapplicable)~~ (14)

SWORN at Porirua) (15)
this 29th day of August 2007) *J Carpenter*
before me:)

G Geks
Justice of the Peace / ~~Solicitor of the High Court~~ / Registrar

Notes to Jack's affidavit

- (1) Applicant's details: Jack fills in his full name, address and occupation.
- (2) Relationship with the person: Jack sets out his relationship to Diane.
- (3) Application: The same affidavit is used for applying for a property manager and also reviewing current orders. Jack crosses out whichever is not relevant.
- (4) Capacity of person the application is about: Jack must also set out the reasons why he believes Diane does not have the capacity to make decisions about her property affairs.
- (5) Consents and service: See page 51 of the resource for more information about this. If Jack does not have written consents from relevant family members and associated organisations, the Court will require that the application is served on those people to allow them the chance to respond to the application. In this case, Jack has named their children Becky and Simon (who are both over 18), Diane's mother Patricia and her sister Margaret.
- (6) Service of the person the application is about: The Court requires Diane to be served with the application unless she wholly lacks the capacity to understand the nature and purpose of the proceedings or there are exceptional circumstances exist of a nature to justify dispensing with service. Jack has set out the reasons he believes Diane should not be served.
- (7) Appearance in Court: Unless there is good reason, Diane will have to appear in Court if the Judge requires it. The Court may excuse her from appearing if it is satisfied that she wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause her serious mental, emotional, or physical harm. Since Jack believes that Diane should not have to appear in Court, he provides the reasons here.

- (8) Compulsory Treatment Order: Jack crosses out the options which do not apply to Diane.
- (9) Reasons for appointment: Jack needs to set out the reasons why he is a suitable person to be appointed property manager. This should include the facts and his background with Diane. The Court needs to be satisfied that the person can be entrusted with the statutory obligations and that there are no legal or other factors that would stand in the way of the appointment. Jack must also cover the following questions:
- Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967?
 - Are you presently subject to a compulsory treatment order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?
 - Have you any previous criminal convictions? If so, please list.
 - Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?
- If any of those questions apply, Jack must set out the reasons why he should be appointed. He also needs to provide the Court with basic details of Diane's main assets and liabilities.
- (10) Conflicts: Jack must act in the best interests of Diane and if there is likely to be any conflict between his interests and Diane's, he must state these.
- (11) Property: Jack must specify if the order is sought for all Diane's property or just certain items. He also needs to specify which of the rights and powers of a property manager he wishes to have. He has listed the number of the clause for each of the powers. Check Appendix 2 to see exactly what each of these powers involves.
- (12) Remuneration: Property managers do not usually get remunerated for their work unless they are professionals such as lawyers, accountants or trustee corporations doing it as part of their work. Jack would not be entitled to remuneration.
- (13) Expenses: Jack must set out any expenses he envisages he is likely to incur as property manager. If there are none, he needs to write "none".
- (14) Interim order: An interim order or without notice order can be made if there are reasons an immediate order is necessary, (e.g. to complete sale and purchase arrangements on a house entered into before Diane had her stroke). If such an order is required, you should seek advice from a lawyer. As this section does not apply, Jack crosses it out.
- (15) Witness: Jack has used a local Justice of the Peace to take his affidavit. A lawyer or registrar of the Court could also do this. All pages need to be initialled by Jack and the witness.

Section Five: What next?

Understanding the Court process for an undefended application



Application, affidavit and information sheet completed by applicant. File in Court with medical report and consents.

The relevant application form, affidavit and information sheet should be filed with the Family Court closest to where the incapacitated person lives. The expert medical report should be filed at the same time if possible.

The Court requires a medical expert to advise whether the person in respect of whom the application is made is mentally incapable and whether the medical expert believes a PPPR Act order is necessary. If you do not provide this, the Court will order a report be provided before considering the application. This will delay the proceedings.

The report needs to have specific questions answered within it. The Family Court have developed a standard report for medical practitioners. A blank copy is contained at the back of this resource in the application packs for each order. It is also available from www.communitylaw.org.nz. Take it with you when you ask your doctor to provide the report as this will help direct them to the questions the Court needs to be answered.

The Act requires that all organisations and people who may be affected by the application must be notified of the application.

Providing consents from these people before the application is lodged is the easiest way to do this. If consents are not provided when the application is filed, the Court will require that the application is 'served' on those people who did not consent. This won't necessarily be a problem but will take time to do. If affected parties are living overseas, it is far easier to email a consent and wait for it to be posted back than to have the application formally served on that person.

As a minimum requirement in law, the following are people who will be affected by the application and who must be served with the application if they do not consent:

- each parent or guardian of that person
- if the person is not living with their parent/guardian, any person with whom the person is living
- a Property Manager/Administrator or Welfare Guardian if one has already been appointed.

In practice, the Court wants to ensure that all interested people, including the wider family, have an opportunity to comment on the application to ensure that the order sought truly is in the best interest of the person.

One of the compulsory clauses in the affidavits states that to the best of the applicant's knowledge and belief, there are no other persons including family who should be served with the application. If this is not the case and the affidavit is sworn, the applicant would be making a false declaration (which is a criminal offence).

It is sensible to include as many people's consent in the application as possible at the first instance. Where consents are not provided, the application will be served on other interested people and this will cause delays which may have been avoidable.

If you know that the application you are making is likely to be opposed by a family member, you should seek advice from a solicitor.

Completed consent forms should be provided when the application is filed, using the following as an example. A blank consent is included with the relevant forms for each application at www.communitylaw.org.nz and in the back of this resource.

**STATEMENT OF CONSENT OF FAMILY MEMBER
TO APPOINTMENT OF WELFARE GUARDIAN / ~~PROPERTY MANAGER~~
/ ~~PROPERTY ADMINISTRATOR~~**

Protection of Personal and Property Rights Act 1988

In the Family Court
At Porirua

PPPR No:

I, William Colin Baker of 35 Fitzpatrick Street, Porirua, Plumber consent to Claire Jane Baker of 35 Fitzpatrick Street, Porirua, Mother being appointed under the Protection of Personal and Property Rights Act 1988 as Welfare Guardian / ~~Property Manager / Property Administrator~~ for Sarah Jane Baker in relation to such respects or aspects of the personal care and welfare of that person as the Court specified in the order.

I am the father of the subject person.

Dated at Porirua this 26th day of June 2006

WC Baker

Signature

Witness: J C Norman
Witness Name: Johnathan Charles Norman
Address: 37 Fitzpatrick Street, Porirua
Occupation: Plumber



Documents filed in Court and served on the other parties

The application, with the affidavit, information sheet and any other documents, must be filed (in person or by post) in the Court nearest to the place where the person in respect of whom the application is made resides.

The Court will arrange for the documents to be served on other interested parties named in the application. This only applies so long as the other parties live in New Zealand – otherwise you will have to arrange service yourself and provide an affidavit of service to prove the other parties have received the documents. A Community Law Centre can help you do this.

The parties served will then have 21 days to file a Notice of Intention to Appear if they wish to oppose (or support) the application. This period may be longer if they live overseas.



Lawyer for the subject person investigates.

Once the court receives your application, a “lawyer for the subject person” is appointed by the Court to represent that person if they do not have a lawyer acting for them already. The Court pays for this lawyer.

The lawyer must make contact with the person and help them understand the application as much as is practicable. The lawyer will report on the circumstances of the application and make recommendations to the Court about things like the suitability of the orders sought, whether the subject person should be required to appear at a hearing, if any further medical evidence is required or any further family members ought to be consulted. The lawyer is also likely to speak to you and any other interested parties.

The lawyer usually reports back to the Court within 28 days of being appointed. You will receive a copy of his/her report.



Registrar’s List

The Registrar will place the matter on the ‘Registrar’s List’ to monitor progress. At this stage if the matter is not opposed by anyone and the lawyer for the subject

person agrees, the Registrar may recommend to the Judge that the application may be dealt with “on the papers” so that no hearing is required and the order can be made immediately.

The Judge will decide whether the order should be made or whether any further information or a pre-hearing conference is necessary.

If the application is opposed, a pre-hearing conference before a Judge will be arranged to identify the issues. These hearings take about fifteen minutes. The Court may then set the matter down for a mediation conference with a Judge to see if matters are able to be resolved by discussion and agreement. If this cannot occur a date will be set for a full hearing. You should speak to a family lawyer for representation if your application is opposed and a hearing is required.



Order made

If an application is unopposed the order can be made without a hearing.

At the mediation conference an order may be made by consent.

At a hearing, if the Judge considers the order is necessary based on all the information provided by the applicant, any other parties and the lawyer for the subject person, and that any problems have been resolved, the order will be made.

If the application is opposed

It is important to know and appreciate your own limitations. If the application is opposed and a hearing is required, you should seek advice from a Community Law Centre or representation from a specialist family lawyer – someone who is trained and qualified to deal with the Court.

Legal aid may be available for applications under the PPPR Act. If you are granted legal aid, the Legal Services Agency (LSA) will pay all your lawyer’s fees directly to the lawyer. However, it is not a free service and you are likely to have to repay the legal aid at a later stage. The LSA looks at the income and assets of the incapacitated person, not the applicant for the order. The threshold is about the same as for the Community Services Card. A family lawyer will be able to help you determine if legal aid is likely to be granted.

However, there is nothing to stop an applicant from appearing in the Family Court and representing themselves. If that is the case, the following information may be of some help when preparing for a hearing.

At a Court hearing

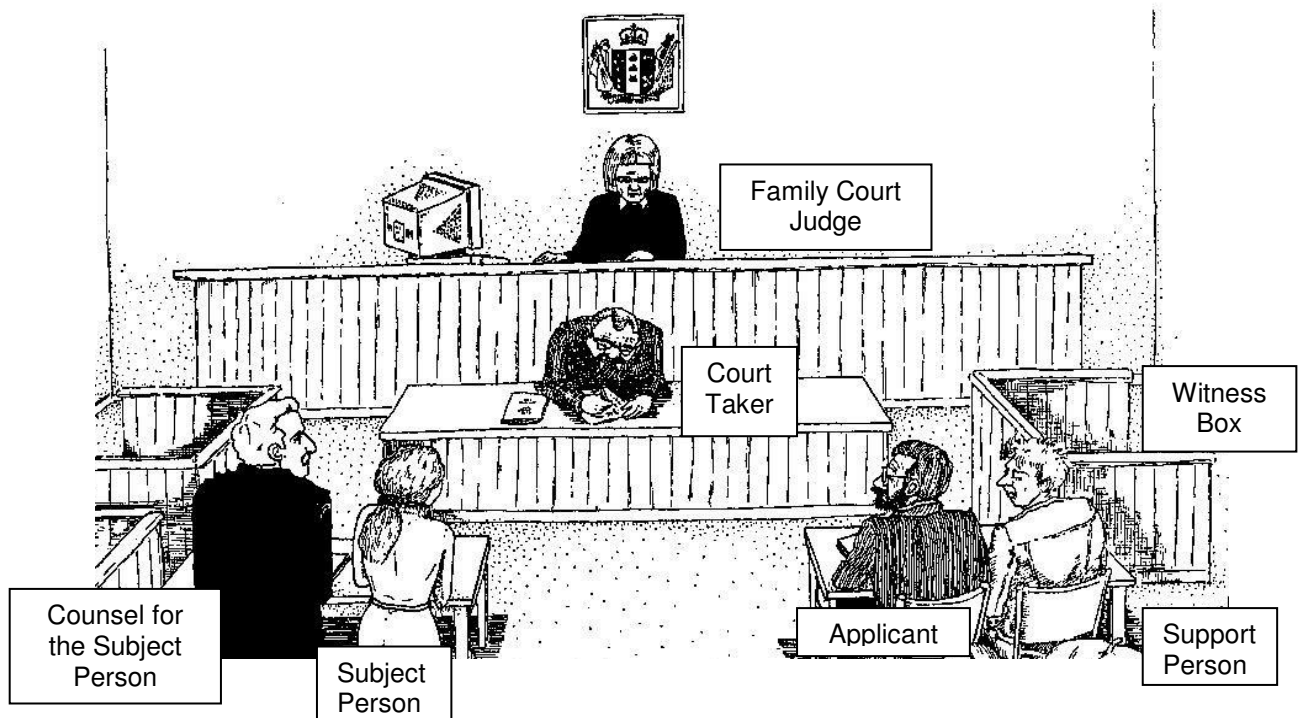
It is very important that you turn up at Court on the hearing date, and on time. If an emergency occurs, contact the Court office and see if the hearing can be adjourned. Bring all documents to the hearing that may be helpful to the Judge.

You will need to find the courtroom in which the case is being heard and wait outside until called. The Family Court is closed to anyone who is not directly involved in the proceedings. There are Court staff available if you are not sure where you should be going.

When the Judge enters the courtroom the Court taker will announce that the Court is in session and everyone must then stand. The Judge bows and then everyone in the Court sits down.

The Judge will look at the application and will probably ask questions about why the application has been made or about what is contained in an affidavit. You should address the Judge as “Your Honour” or “Ma’am” (pronounced “marm”) or “Sir” and be respectful at all times.

The Court taker is employed by the Ministry of Justice and responsible for the smooth running of the Court and ensuring that records of hearings are accurately kept. If you need to hand a document to the Judge during the course of a hearing the Court taker will pass the document to the Judge.



If anyone is required to give evidence on oath they will do it from the witness box. The Court taker will ask the witness to swear, or affirm, that the evidence they will give will be the truth. It is a criminal offence to lie in Court.

Members of the public are not allowed to be in the Family Court, unlike the High Court and District Court. The only people who are allowed to attend are the applicant and respondent, Court officials, any lawyers for the parties (including the subject person's lawyer) and in some cases, other support people. You can bring a support person to wait with you at Court but you will need to seek the Judge's permission to take them into the courtroom. These support people are sometimes called "lay assistants" or "MacKenzie friends". They cannot speak to the Court but can take notes and advise you of what to say and do. An application form must be filled in before a support person will be allowed into the Court. This form is found at your local Family Court and also on the Family Court website at <http://www.justice.govt.nz/family/self-litigants/lay-assistants-guidelines-judiciary-staff.html>

Generally all the evidence you intend to rely upon must be put into an affidavit which is filed and served on other parties before the Court hearing, in accordance with any timetabling directions which the Court may have made. You will have a limited right to give updated oral evidence at the hearing. Where the Court has made orders with time limits for filing documents, you must follow these.

At the beginning of your case you will be given an opportunity to outline your case, on the basis of the evidence. At the end of the hearing you will be given a further opportunity to summarise your case and make legal submissions. It is important for you to remember that anything you say when outlining or summarising your case must be in the evidence which the Court has to consider. You will have the right at the hearing to cross-examine the other witnesses if you tell the other side you require those witnesses for cross-examination at least three days before the hearing. Evidence which you seriously dispute should generally be the subject of cross-examination.

Urgent orders

The Court is able to make interim PPPR orders. Such orders cannot last for more than six months for a personal order and three months for a property order, and will be made if the Court feels it is necessary for an order to be put in place pending final determination of the application (e.g. where urgent medical treatment is required). There will be a hearing for an interim application if any of the parties involved requests it.

There is also power to make 'without notice' orders where there is urgency involved. If you are considering either of these orders, you should instruct a lawyer.

After an order is made - what controls are there over people acting under PPPR orders?

Persons named to act under a property or personal order must always act in the best interests of the person they are acting for. The person should act in such a way as to encourage the incapacitated person to exercise and develop such capacity as they have to make decisions about their own affairs.

The Court has the power to review personal and property orders as well as any decision made by a property manager or welfare guardian at any time an order is in place. An application to the Court will be needed to do this. You should speak to a lawyer about doing so, as this is a complex process.

The major control over property managers is that they must file periodic financial statements in Court in relation to the person's property.

Statements for Property Managers

Statements must be filed within:

- three months of the property manager commencing responsibility; and
- 30 days after the expiry of each year the managership continues; and
- 30 days after the date on which the manager ceases to hold office as manager.

The manager must file two copies of each statement. The Registrar of the Court will send one copy of the statement to Public Trust and the other to the person for whom the manager is acting.

Public Trust then examines the statement and prepares a report as to whether the statement is correct and, if not, in what respects it is deficient. The report will be filed with the Court and a copy given to the manager. Public Trust currently charges \$132.00 per hour (GST inclusive) to examine these statements and all these costs will come out of the property of the person for whom the manager is acting unless the Court orders otherwise. Public Trust has the right to access all the documents of the manager or held by the manager on account of the person for whom he or she is acting as manager and may require any information necessary.

It is a criminal offence not to file a statement as required and there is a possible fine of up to \$1000. If a manager fails to file a statement, the Registrar of the Court will draw the matter to the attention of a Judge who may make an order directing the manager to remedy the default. If an order is made, all costs relating to that application may be borne by the manager (not the person's estate).

Examples of each of the following statements are included using sample reports provided by the Porirua District Court. These sample statements are simple examples only and illustrate minimum requirements.

(i) Statement of property at commencement

This statement must have:

- (a) A description of the property to which the property order relates; and
- (b) An estimated value of the property and an indication of the method of valuation used to value the property; and
- (c) Particulars of the condition of the property; and
- (d) Particulars of rent, interest, and other income (if any) payable to the person for whom the manager is acting and derived from any property to which the property order relates; and
- (e) The names of the persons by whom any such rent, interest, or other income is payable; and
- (f) Particulars of the liabilities (whether present, future, or contingent) of the person for whom the manager is acting, being liabilities that the manager has power to meet.

STATEMENT OF PROPERTY

Section 45(2)(a) Protection of Personal and Property Rights Act 1998

Property Manager: Roger Bryan Farrow

Appointed by Porirua Court on 25 March 2006

For the property of Meryl Anne Farrow of 48 Seaship Drive, Porirua

This is the manager's statement of property required by section 45(2)(a) of the Protection of Personal and Property Rights Act 1998.

The manager states:

1. Description and estimated value of property

The property covered by the order is as follows:

Cash found in house	\$120.00
BNZ Accounts	
02-0526-0305775-02	\$5255.30
02-1232556-01	\$15,000.00
ANZ Accounts	
01-4629610-73	\$2000.00
01-4629610-74	\$4000.00

Bonus Bonds	\$500.00
48 Seaship Drive, Porirua	\$155,000.00
Solicitor's Trust Account	\$2030.00

2. Method of Valuation

The property valuation is the latest Government valuation as at 30.11.2004 for the house and the balances held for the other assets.

3. Condition of the property

The house property is in good condition having recently been repainted and there are no repairs needing to be done.

4. Rent, Interest and Other Income Payable

Normal interest on the savings accounts

NZ Superannuation \$391.58 per fortnight

Rent from the house \$400.00 per fortnight, payable by Robert Brown.

5. Liabilities

Solicitor's fee \$2,500.00

Dated at Porirua this 10th day of April 2006

Signed _____
Manager

(ii) Annual Statement

This statement must have:

- (a) A description of the property to which the property order relates; and
- (b) An estimated value of the property and an indication of the method of valuation used to value the property; and
- (c) Particulars of the liabilities (whether present, future, or contingent) of the person for whom the manager is acting, being liabilities that the manager has power to meet; and
- (d) Particulars of any changes that have occurred during the year or a statement that no changes have occurred during the year:
 - Relating to the condition of the property
 - Particulars of rent, interest, and other income (if any) payable to the person for whom the manager is acting and derived from any property to which the property order relates
 - The names of the persons by whom any such rent, interest, or other income is payable; and
- (e) Full and detailed accounts for the year, showing the receipts and payments for the year, and including the following matters:
 - The gross amounts received from the sale of any property to which the property order relates (including any sums received but retained or

deducted by any solicitor, auctioneer, commission agent, broker, or other agent)

- The gross income derived (whether by way of rent, interest, or otherwise) from each item of property to which the property order relates (including any sums received but retained or deducted by any solicitor, auctioneer, commission agent, broker, or other agent)
- Payments to or on behalf of the person for whom the manager is acting, and payments to or on behalf of the spouse or any child of that person
- Other disbursements, including any sums received but retained or deducted by any solicitor, auctioneer, commission agent, broker, or other agent.

ANNUAL STATEMENT OF PROPERTY

Section 45(2)(b) Protection of Personal and Property Rights Act 1998

Property Manager: Roger Bryan Farrow

Appointed by Porirua Court on 25 March 2006

For the property of Meryl Anne Farrow of 48 Seaship Drive, Porirua

This is the manager's statement of property required by section 45(2)(b) of the Protection of Personal and Property Rights Act 1998 in respect of the year ending 24 March 2007.

PART A

1. Description and estimated value of property

The property held at 24 March 2007 was

BNZ Accounts

02-0526-0305775-02	\$696.78
02-1232556-01	\$3000.00

Bonus Bonds	\$500.00
48 Seaship Drive, Porirua	\$155,000.00

2. Method of Valuation

The property valuation is the latest Government valuation as at 30.11.2004 for the house and the balances held for the other assets.

3. Condition of the property

The house property is in good condition and there are no repairs required.

4. Rent, Interest and Other Income Payable

The amounts now payable and the persons by whom they are to be paid are shown in the enclosed statement of account.

5. Liabilities

Nil

PART B

The accounts for the year 25.3.06 – 24.3.07:

Receipts

Balance at BNZ 02-0526-00305775-02	\$5,255.30
Cash banked	\$120.00
Account closed: ANZ 4629610-73	\$2,000.00
Account closed: ANZ 4629610-74	\$4,000.00
Solicitor's Trust Account	\$2,030.00
Ex term deposits	\$12,000.00
Net Interest: ANZ	\$605.00
Net Interest: BNZ	\$25.00
Rents received for the year	\$10,400.00
Net NZ Super	<u>\$10,183.68</u>
	\$46, 868.98

Payments

Tax terminal	\$754.38
Insurance on house	\$286.42
Rates on house	\$872.40
Rest Home fees	\$31,200.00
Pre-paid Funeral Trust	\$10,000.00
Dentist	\$275.00
Clothing	\$284.00
Solicitor's fees (PPPR Order)	\$2,500.00
Balance at BNZ 24.3.07	<u>\$696.78</u>
	\$46,868.98

BNZ 02-1232556-01 Term Deposits

Opening Balance 25.3.06	\$15,000.00
Less Transferred to BNZ 02-0536-0305775-02	<u>\$12,000.00</u>
BNZ 02-1232556-01 balance as at 24.3.07	\$3,000.00

Dated at Porirua this 5th day of April 2007

Signed _____
Manager

(iii) Final statement of management

This statement must have:

- (a) A description of the property to which the property order relates; and
- (b) An estimated value of the property and an indication of the method of valuation used to value the property; and
- (c) Particulars of the condition of the property; and
- (d) Particulars of rent, interest, and other income (if any) payable to the person for whom the manager is acting and derived from any property to which the property order relates; and
- (e) The names of the persons by whom any such rent, interest, or other income is payable; and
- (f) Particulars of the liabilities (whether present, future, or contingent) of the person for whom the manager is acting, being liabilities that the manager has power to meet; and
- (g) Full and detailed accounts for the period from the day after the last anniversary of the date on which the management commenced and ending on the date the managership ceased, showing the receipts and payments for the year, and including the following matters:
 - The gross amounts received from the sale of any property to which the property order relates (including any sums received but retained or deducted by any solicitor, auctioneer, commission agent, broker, or other agent)
 - The gross income derived (whether by way of rent, interest, or otherwise) from each item of property to which the property order relates (including any sums received but retained or deducted by any solicitor, auctioneer, commission agent, broker, or other agent)
 - Payments to or on behalf of the person for whom the manager is acting, and payments to or on behalf of the spouse or any child of that person
 - Other disbursements, including any sums received but retained or deducted by any solicitor, auctioneer, commission agent, broker, or other agent.

FINAL STATEMENT OF PROPERTY

Section 45(2)(c) Protection of Personal and Property Rights Act 1998

Property Manager: Roger Bryan Farrow

Appointed by Porirua Court on 25 March 2006

For the property of Meryl Anne Farrow of 48 Seaship Drive, Porirua

This is the former manager's statement of property required by section 45(2)(c) of the Protection of Personal and Property Rights Act 1998 in respect of the year ending

PART A

1. Description and estimated value of property

The property held at 30 June 2007 was

BNZ Account 02-0526-0305775-02	\$428.35
Bonus Bonds	\$500.00
48 Seaship Drive, Porirua	\$155,000.00

2. Method of Valuation

The property valuation is the latest Government valuation as at 30.11.2004 for the house and the balances held for the other assets.

3. Condition of the property

The house property is in good condition and there are no repairs required.

4. Rent, Interest and Other Income Payable

The amounts now payable and the persons by whom they are to be paid are shown in the enclosed statement of account.

5. Liabilities

Nil

PART B

The accounts for the year 25.3.07 - 30.6.07:

Receipts

Balance at BNZ 02-0526-00305775-02	\$696.38
Rents received for the year	\$2400.00
Net NZ Super	\$2350.08
Account closed: 02-1232556-01	<u>\$3000.00</u>
	\$8446.46

Payments

Rates on house (1 st quarter)	\$218.10
Rest Home fees	\$7800.00
Balance at BNZ 30.6.07	<u>\$428.35</u>
	\$8018.10

Dated at Porirua this 30th day of June 2007

Signed _____
Manager

Appendix A: Powers of a property manager

The following is a summary of the powers potentially provided by Schedule 1 of the Protection of Personal and Property Rights Act 1988 to a property manager. Because the Act is written in very technical language, these powers have been 'translated' to provide greater understanding. You will need to check the Act for the exact wording of each power.

Subject to the terms of the property order you may be able to -

- (a) Take possession of all the person's property and demand, receive, and recover possession of it from any person holding it, with further power to -
 - (i) Begin or defend any civil or criminal proceeding in relation to the property;
 - (ii) Take bankruptcy or liquidation proceedings against any person or company indebted to the incapacitated person;
 - (iii) Lodge a caveat under the Land Transfer Act 1952 or notice of claim under section 42 of the Property (Relationships) Act 1976;
 - (iv) Settle any claims or demands made by or against the person on such terms as you think fit;
 - (v) Give directions or consents in relation to a share or interest of the person under any trust, settlement, will, or intestacy;
 - (vi) Deal with any right, title, share, or interest of the person in or under any policy of assurance, or any pension, superannuation, benefit, benevolent, or other fund, or in any money arising from any such policy or fund;
 - (vii) Make an application under section 122 of the Land Transfer Act 1952 to have a transmission registered;
- (b) Spend to such extent as you think fit, any money belonging to the person (including any money borrowed) for any one or more of the following purposes:
 - (i) For the maintenance, education, advancement, or benefit of the person, or of his or her spouse, civil union partner, child, grandchild, or other relative, or of any person wholly or partially dependent on the person;
 - (ii) To continue any "acts of bounty or charity" previously done or promised to be done by the person, or that might reasonably be expected of the person, having regard to the circumstances and to the nature and value of the estate, as you consider proper and reasonable (up to a maximum amount of \$5000 in total in any 12 month period);
 - (iii) To acquire a home for the person or for his or her spouse or children (including purchasing freehold land, leasehold land, a flat or apartment or entering into a lease or licence to occupy) to a maximum amount of \$120,000;
 - (iv) To provide furniture, clothing, and other articles of personal or household use or ornament (including motor vehicles) to the person, their partner or children, as you consider proper and reasonable,

- having regard to the circumstances and to the nature and value of the estate;
- (v) To pay any debt, obligation, or liability of the person;
 - (vi) To pay all rates, taxes, rent, insurance premiums, or other outgoings payable in respect of the property of the person or under any policy of insurance of any kind;
 - (vii) To pay for the repair, maintenance, upkeep, or renovation of any property of the person;
 - (viii) To pay for the reinstatement or rebuilding of any property of the person destroyed or damaged by fire or otherwise;
 - (ix) To pay for the improvement or development of any property of the person by way of building or otherwise (so long as this does not cost more than \$120,000);
- (c) With the prior approval of the Court, invest any money belonging to the person. The Court's approval is not required if you intend to invest the money in trust funds as required by the Trustee Act 1956;
 - (d) Insure any of the property of the person subject to a property order against loss or damage to its full insurable value or for its full replacement value, or insure against any other risk or liability against which it would be prudent to insure;
 - (e) Carry out and perform contracts entered into by the person subject to a property order before the manager was appointed;
 - (f) Carry on any trade or business of the person subject to a property order or carry on the business of any partnership in which the person is a partner, for such period or periods, in either case, as the manager thinks fit, with further power—
 - (i) To employ any part of the property of the person in the trade or business and increase or diminish the part of the person's property so employed;
 - (ii) To purchase stock, machinery, plant, implements, and chattels for the purposes of the trade or business;
 - (iii) To employ such managers, agents, servants, clerks, workmen, and others as the manager thinks fit;
 - (iv) Subject to the Sharemilking Agreements Act 1937, to enter into any sharemilking agreement as the manager thinks fit;
 - (v) To agree on an alteration of the conditions of any partnership for the purpose of more advantageously carrying on the business;
 - (vi) To dissolve any partnership of which the person is a member;
 - (g) If the person is mortgagor or mortgagee of any land, agree to extend or vary the mortgage on such terms as the manager thinks fit;
 - (h) Exercise any power of sale or other power vested in the person subject to a property order as mortgagee, or as unpaid vendor, lessor, or bailee;
 - (i) Carry out all powers and privileges the person may have had in relation to any securities or investments;
 - (j) Dispose of any onerous property belonging to the person subject to a property order or any policy of life insurance;

- (k) Make an application to the Court under the Matrimonial Property Act 1963, the Property (Relationships) Act 1976, or any of the provisions of the Family Proceedings Act 1980 except Part 4;
- (l) Enter into an agreement under Part 6 of the Property (Relationships) Act 1976;
- (m) Enter into any scheme of family arrangement to which the person is a necessary or proper party;
- (n) Sell any of the property of the person subject to a property order valued at less than \$120,000 (property over \$120,000 requires the consent of the Court);
- (o) Dispose of any of the property by way of exchange for other property in New Zealand, so long as it is worth less than \$120,000;
- (p) Subdivide any freehold or leasehold land belonging to the person;
- (q) Grant, reserve, or acquire easements and profits a prendre, and enter into party wall agreements and agreements that relate to fencing;
- (r) Let or sublet or lease or sublease any property of the person, with rights to:
 - (i) Grant to a lessee or sublessee a right of renewal;
 - (ii) Grant a lease with an optional or compulsory purchasing clause;
 - (iii) Grant to a lessee or sublessee a right to claim compensation for improvements made or to be made by the lessee or sublessee in, upon, or about the property that is leased or subleased;
 provided that the lease or sublease is for a term of less than 10 years;
- (s) Accept the surrender of any lease, sublease, or tenancy;
- (t) Accept a lease, sublease, or tenancy of any property, or a renewal of a lease, sublease, or tenancy, at such rent, on such terms, and subject to such covenants and conditions as the manager thinks fit;
- (u) Surrender any lease, sublease, or tenancy;
- (v) Exercise any option to purchase property conferred on the person so long as the value of the property is less than \$120,000;
- (w) Settle or join with the person's spouse in settling any property as a joint family home under the Joint Family Homes Act 1964;
- (x) Grant powers of attorney to any person in or out of New Zealand to do any act or thing with respect to the property of the person subject to a property order that the manager of the estate of the person can do, during any temporary period of absence or incapacity of the manager or in any other circumstances specified by the Court;
- (y) Concur or join with any other person or persons in doing any one or more of the foregoing things.

Appendix B: Glossary of terms

Address for service	This is a nominated street address where documents relating to a court proceeding can be delivered and served on someone who is involved in the proceeding. (See “service”).
Affidavit	A written statement on oath (or affirmation) sworn (or affirmed) before someone who has authority to administer oaths and affirmations e.g. a registrar of a court, a lawyer or a Justice of the Peace (JP).
Applicant	A person who makes an application to the court.
Application	A formal request to a court for an order (court order), direction or decision under a particular Act.
Capacity	The person is capable of understanding the nature and effect of what they are doing or the decision they are making.
Certified copy	A copy of a document signed and certified as true by someone who has the legal authority to do so. (Justices of the Peace and solicitors can do this).
Enduring Power of Attorney	This is when someone authorises another person or persons to act on their behalf to manage their affairs. An enduring power of attorney may relate to the person’s property or to their personal care and welfare or both and precludes the need for a court application under the PPPR
Filing	Lodging an application or other document at a court. This can be done in person or by mail.
Hearing	The consideration of an application by a court.
Incapacitated	The person does not fully understand the nature or effect of what they are doing or the decision they are making.
Interim Order	A Court order that lasts for a limited period or until a further or final order is made.

Judicial conference	A hearing before a Judge to discuss the issues of a case and what needs to be done to bring the case to resolution.
Kai tiaki trust	A trust incorporated under the Te Ture Whenua Maori / Maori Land Act 1993.
Leave of the Court	Permission by the court to do something.
Party	A person who is an applicant or respondent in any proceedings.
Pre-hearing conference	A conference with a Judge attended by parties and/or their lawyers to try to resolve matters by discussion.
Registrar's list	A list of cases with issues, usually relating to procedure, that is dealt with by a registrar to progress.
Service (of documents)	The formal delivery of a document e.g. an application, to a person who will be affected by it. There are rules about service of documents (for example, service may have to be personal, rather than by post or fax).