

**Affidavit in support of appointment
to administer property**
The Protection of Personal and Property Rights Act 1988

In the Family Court

FAM No:

at
[place]

.....
[full name]

.....
[address]

.....
[occupation]

Applicant

.....
[full name]

.....
[address]

.....
[occupation]

Person this application is about

[Set out full description of document (including whether it is made with or without notice), its date, and, in the case of an affidavit or affirmation, the name of the deponent and in whose support it is filed.]

This document is filed by

[name and address for service and, if filed by lawyers, the name and telephone number of the acting lawyer]

I,
[name]

of
[address]

.....
[occupation]

swear (or affirm):

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”).

2. My relationship with the person is as follows:

.....

3. I confirm the contents of my application for:

[select and complete the option that applies]

an order to administer.

a review of an order to administer made on *[date]*

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 20 years or is or has been married, and
- is not already the subject of a property order.

6. To the best of my knowledge and belief I confirm that the person

[select the option that applies]

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:

[Set out factual basis including reference to any medical reports/evidence.]

7. *[select and complete the option that applies]*

To the best of my belief the person is neither a patient nor proposed patient 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 *[place]*

on *[date]* and that order still continues. The person receives treatment from:

.....
[name of hospital or service provider]

To the best of my belief, the person is not subject to any such Order under the Mental Health (Compulsory Assessment and Treatment) Act 1992, but is currently receiving treatment/assessment from:

.....
[name of hospital or service provider]

8. In the information sheet that accompanies this application I have named the following as people/organisations affected by this application. I have obtained consents from the following:

[set out]

I consider service should be effected on the following: *(See Note 1)*

[set out names/organisations]

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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. *[select and complete if applies]*

I do not believe the person should be served with the application for the following reasons:

[set out reasons]

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10. *[select and complete if applies]*

I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons:

[set out reasons]

--

11. I consider that I am a suitable person to be appointed by the Court as a property administrator for the following reasons:

[Set out your reasons. The Court needs to be satisfied that the applicant is a person who can be entrusted with the statutory obligations set out in s11 and that there are no factors – legal or otherwise- that would stand in the way of an appointment. Therefore you need to cover the following:

- *Are you or have you ever have been the subject of a bankruptcy order made under the Insolvency Act 1967? and/or;*
- *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 one or more applies, applicant to set out reasons why he/she should be appointed]

12. 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 such capacity as the person may have to the greatest extent possible;
- 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. *[select and complete the option that applies]*

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:
(see s.11(2))

[set out property]

15. I confirm that I am aware that I am not entitled to any remuneration for my services.
16. I confirm that all expenses properly 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.
17. At this stage I envisage that the following expenses are likely to be incurred:

[set out – if none, write none]

18. *[select and complete if applies]*

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:

[set out reasons]

Sworn (or Affirmed) at *[place]*

this day of 200

before me.

.....
Applicant

.....
Signature of person administering oath/affirmation who shall add his/her office

Note 1

As a minimum requirement service should be effected on the following persons:

- *Person in respect of whom the application is made (unless the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or exceptional circumstances exist to justify dispensing with service);*
- *Each parent or guardian of that person;*
- *If the person is not living with either his or her parents or guardians, any person with whom the person is living;*
- *If a welfare guardian is acting for the person, that welfare guardian*

(If applicant does not seek service, reasons to be given – e.g. family member whereabouts unknown)