

Dutch Civil Code

Book 1 Law of Persons and Family Law

Title 1.16 Guardianship of adults

Article 1:378 Grounds for ordering an adult guardianship

- **1.** An adult may be placed under guardianship by the Subdistrict Court, when he is temporary or permanently not looking properly after his interests or when he is temporary or permanently endangering his own safety or that of others, as a result of:

a. his physical or mental condition, or;

b. a habit of alcohol or drugs abuse;

and it is not possible to look after those interests properly by means of a more suitable and less far-reaching measure;

c. habitual alcohol abuse, as a result of which:

1 °. his interests are not properly taken care for;

2°. he repeatedly has given offense in public, or

3 °. he endangers his own safety or that of others.

- **2.** If it is to be expected that one of the above grounds for adult guardianship will apply to a minor at the moment on which he will reach the age of legal majority, then an adult guardianship order may be given even before this minor has reached adulthood.

- **3.** Where legal proceedings are pending at court to obtain a provisional or conditional authorisation, an authorisation for a medical observation, an authorisation for a continued stay under the Reception into Psychiatric Hospitals Act or an authorisation under Article 33, first paragraph of that Act, that court shall have jurisdiction as well over a request to place the involved adult under adult guardianship.

Article 1:379 Request for an adult guardianship order

- **1.** An adult guardianship may be requested for by the adult involved, his spouse, registered partner or other life companion, one of his blood relatives in the direct line and in the collateral line up to and including the fourth degree, the person who under Article 1:253t or 1:253SA exercises authority over the adult concerned, his legal guardian, his legal administrator as meant in Title 1.19 and his legal mentor as provided for in Title 1.20.

- **2.** An adult guardianship may be requested for, furthermore, by the Public Prosecution and by the institution where the adult concerned is looked after or that provides guidance to the adult concerned. In the latter event, the application also states why the persons mentioned in paragraph 1 – not including blood relatives in the direct line and in the collateral line to the third and fourth degree – have not made such an application.

Article 1:380 Interim administration

- **1.** The court where the application for an adult guardianship is pending or was last pending, may, upon request or of its own motion, appoint an interim administrator; the court order shall specify the date as from which this interim administration will take effect.

- **2.** The court shall specify in its court order the powers of the legal administrator. It may charge the legal administrator with exercising interim administration in regard of specific assets or all assets of the adult. The court may provide the legal administrator with other powers, but not with those which the legal guardian of an adult under guardianship does not have. As far as the court has not provided otherwise, the adult whose placement under adult guardianship has been requested, cannot, without the approval of the legal administrator, administer or dispose of those assets [under interim administration], nor enter into an agreement necessarily implying a disposal of those assets.

- **3.** The court order may also stipulate that the debts which the involved adult has incurred after the publication of the appointment of a legal administrator cannot be recovered from the assets which are put under administration as long as this interim administration or, if it is followed by an adult guardianship order, that adult guardianship is in effect.

- **4.** The court where an application for an adult guardianship is pending or was last pending,

may at all times change or revoke a court order as meant in the present Article.

- **5.** The legal administrator is entitled to a remuneration in conformity with the rules set for this purpose by the Minister of Security and Justice.

Article 1:381 Start of adult guardianship and of the legal incapacity of the adult

- **1.** An adult guardianship takes effect as from the day of the court order in which the adult is placed under guardianship. In the situation referred to in Article 1: 378 paragraph 2 it will take effect as from the day on which the involved person has reached the age of legal majority.

- **2.** As from these moments the adult under guardianship misses the legal capacity to perform juridical acts as far as the law does not provide otherwise.

- **3.** An adult under guardianship still has the legal capacity to perform juridical acts with approval of his legal guardian as far as this legal guardian himself has the power to perform these juridical acts for the adult under guardianship. The legal guardian may only grant his approval where it is related to a specific juridical act or to juridical acts within the framework of a specific cause. His approval for juridical acts within the framework of a specific cause must be given in writing.

- **4.** Articles 1:453 and 1:454 apply accordingly to matters relating to care, nursing, treatment and support of an adult under guardianship.

- **5.** An adult under guardianship still has the legal capacity to dispose of funds which his legal guardian has put at his disposal in order to provide in his costs of living, on the condition that he uses these funds for this purpose.

- **6.** In legal proceedings relating to his guardianship the adult has the legal capacity to act in court and to appeal against a court order.

Article 1:382 Performing acts of family law

An adult placed under guardianship on account of a habit of alcohol or drugs abuse still has the legal capacity to perform acts of family law insofar the law does not provide otherwise.

Article 1:383 Appointment of a legal guardian over an adult

- **1.** The court that orders an adult guardianship, shall at the same time, or as soon as possible thereafter, appoint a legal guardian for the adult involved. It shall ascertain the willingness of the person to be appointed and shall assess that person's suitability.

- **2.** When appointing a legal guardian the court shall follow the explicit preferences of the involved adult, unless there are profound reasons to object to the appointment he proposed.

- **3.** If the adult under guardianship is married or registered as partner under a registered partnership or if he maintains another close personal relationship with a life companion, then preferably his spouse, registered partner or that other life companion is to be appointed as his legal guardian, unless paragraph 2 has been applied. If the preceding sentence is not applicable, then preferably one of his parents, children, brothers or sisters is to be appointed as his legal guardian. When the adult under guardianship after sometime enters into a marriage or registered partnership or finds a life companion with whom he starts to maintain a close personal relationship, then each of these persons may request the court to be appointed as legal guardian in replacement of the current legal guardian.

- **4.** Legal persons with full legal capacity can be appointed as legal guardian over an adult.

- **5.** The following persons cannot be appointed as legal guardian over an adult:

a. natural persons without legal capacity (minors and adults under guardianship)

b. persons on whose behalf a protective mentorship has been established;

c. the legal administrator of an adult under guardianship in the sense of Article 287, paragraph 3, of the Bankruptcy Act;

d. an immediately involved or attending relief or care worker;

e. persons forming a part of the management or personnel of the institution where the adult under guardianship is looked after or that offers guidance to the adult under guardianship;

f. persons tied to the institution where the adult under guardianship is looked after or that offers guidance to the adult under guardianship, because:

1° the institution or persons forming a part of the management of the institution, may exercise, solely or jointly with others, more than one half of the voting rights in the General Meeting of the legal person or may appoint or discharge more than one half of the Directors or Supervisory Directors of the legal person;

2° the person and the institution form a part of a group as meant in Article 2:24b;

3° the Director of the legal person also forms a part of the management or personnel of the institution.

- **6.** Persons of whom one or more assets are placed under a fiduciary administration as

meant in Title 1:19, persons who are in bankruptcy and persons to whom the Debt Repayment Scheme for Natural Persons applies, cannot be appointed as legal guardian over an adult, unless it concerns a person as referred to in paragraph 3 and the administration of the property of the adult under guardianship is exercised by a co-legal guardian.

- **7.** Another person than those meant in paragraph 3, who already is a legal guardian of an adult, a legal administrator or a legal mentor on behalf of three or more persons, is only eligible for an appointment if he, where it concerns his conduct of business or education, and, where applicable, the recruitment, training and guidance of and the supervision over the persons due to which he performs the tasks of a legal guardian over an adult, meets the quality standards set by Order in Council as well as the requirements meant in Article 1:386, paragraph, and in Article 3:15i.

- **8.** The person referred to in paragraph 7, shall submit to the court appointing him:

a. his declaration from which follows that he meets the quality standards and requirements meant in paragraph 7;

b. a report of an auditor as meant in Article 2:393, paragraph 1, of his opinions in regard of the way in which the standards and requirements are met, and;

c. a declaration of the auditor about the balance sheet and the profit and loss account (income statement) meant in Article 2:10 or, where applicable, about the annual accounts in conformity with Title 2.9. Article 2:396, paragraph 7, does not apply in regard of Article 2:393, paragraph 1.

Further rules may be set by Order in Council with respect to the layout and content of the declarations and reports and with regard to the way of submitting them. Where the person shows that he has already submitted the declarations and report to a court in the twelve months prior to his appointment, he is exempted from such submission.

- **9.** Exempted from the obligation to submit a declaration of an auditor as meant in paragraph 8 are:

a. those who have a financial enterprise which under the Financial Supervision Act may pursue the business of a bank;

b. notaries,

c. bailiffs;

d. auditors (accountants).

The enterprises and natural persons acting in the course of a professional practice referred to in the previous sentence may be exempted in full or in part by Order in Council from the requirements meant in paragraph 7 in respect of recruitment, training and the conduct of business.

- **10.** The court may appoint two legal guardians over an adult, unless valid reasons appose to such appointment. When there are two legal guardians, each of them may solely perform the tasks which belong to a legal guardian. If necessary, the court may establish a division of duties between the legal guardians. In the event of a difference in opinion between the legal guardians, the Subdistrict Court shall decide upon a request of one of them or of an institution referred to in Article 1:379, paragraph 2. This court may also determine the division of the remuneration.

- **11.** The duties of the legal guardian start on the day following the one on which the court order, in which he has been appointed as legal guardian, has been handed over or sent out to him. As from that day a possibly ordered interim administration ends. The interim administrator has to render account for his administration to the legal guardian before the Subdistrict Court. Where the interim administrator himself is appointed as legal guardian, he must directly render account to the Subdistrict Court. If the legal guardian has been appointed prior to the moment on which the person under adult guardianship has reached the age of legal majority, then his duties will start on the day on which the adult guardianship shall take effect.

- **12.** If the court rejects the request for an adult guardianship, then the interim administration shall end on the day following the one on which the court has given its court order in which it rejected the requested adult guardianship, unless the court has specified otherwise, but in any event it will end on the day following the one on which that court order has become final and binding.

Article 1:384 Legal effects of a revision of an adult guardianship order

Where the Court of Appeal or the Supreme Court has reversed the court order in which the adult was placed under guardianship, so that, as a result, the request for adult guardianship in the end has been rejected, the duties of the legal guardian shall end on the day following the one on which the Court of Appeal or Supreme Court has given its revising decree. All acts

performed prior to this moment, either by the legal guardian or by the involved adult himself with approval of his legal guardian, remain valid and binding for the adult.

Article 1:385 Statutory provisions for guardianship of minors that apply accordingly to an adult guardianship

- **1.** Except where it concerns a matter for which Articles 1:383 and 1:384 provide a specific regulation, the statutory provisions for guardianship of minors as laid down in Articles 1:250, 1:280 under point (b), 1:281 paragraph 1, under point (a) and paragraph 2, 1:322, paragraph 1, under point (a) and (c), 1:324, 1:336 and 1:372-1:377 apply accordingly to an adult guardianship, on the understanding that:

a. when one of the parents is appointed as legal guardian of the adult a declaration as meant in Article 1:280 is not required;

b. the words 'District Court' and 'court' must be read as 'Subdistrict Court';

c. the Child Protection Board shall have no power or authority;

d. the legal guardian of an adult at all times, either upon his own request or for compelling reasons or because he no longer meets the requirements to become a legal guardian, may be discharged by the Subdistrict Court, and this upon request of his co-legal guardian or of the person who is entitled to request for an adult guardianship as meant in 1:379, or by the Subdistrict court of its own motion;

e. the adult's legal guardian whose right of administration has ended, as referred to in Article 1:374, renders account before the Subdistrict Court having jurisdiction over this matter at the end of his administration.

- **2.** Each time after a period of five years, or so much sooner as the Subdistrict Court has decided, the legal guardian shall report to the Subdistrict Court about the development of the adult guardianship. He especially shall give his opinion in regard of the question whether the adult guardianship has to be continued or can be replaced by measures less far-reaching. Facts of importance for the adult guardianship or the continuation thereof, shall be mentioned immediately by him to the Subdistrict Court.

Article 1:386 Right of administration of and remuneration for the legal guardian

- **1.** The statutory provisions for the right of administration of the guardian of a minor apply accordingly to the right of administration of the legal guardian of an adult. However, the legal guardian shall annually submit a rendering of account of his administration during the adult guardianship, except if the Subdistrict Court has decided that this may occur at another time. The Minister of Security and Justice may establish a model according to which the account rendered must be drawn up. The legal guardian meant in Article 1:383, paragraph 7, shall submit annually the declarations and report referred to in Article 1:388, paragraph 8. If asked for, the legal guardian shall give an account of his activities to the Subdistrict Court. The legal guardian is entitled to a remuneration in conformity with the rules set for this purpose by the Minister of Security and Justice.

- **2.** The legal guardian takes care of an efficient investment of the property of the adult placed under guardianship to the extent that the adult's property does not have to be used to provide adequate care for the adult under guardianship.

- **3.** Unless the Subdistrict Court provides otherwise, the legal guardian of an adult has to open as soon as possible an account at a financial enterprise which under the Financial Supervision Act may pursue the business of a bank in the Netherlands; furthermore, the legal guardian is obliged to use that bank account only and as much as possible for payments he makes or receives in the performance of his duties.

- **4.** For the purposes of Articles 1:365 up to and including 1:367 the public prosecutor takes the place of the Child Protection Board and a discharge as meant in Article 1:385 paragraph 1, under point (d) takes the place of the removal of a guardian of a minor from guardianship pursuant to Article 1:327 paragraph 1, under point (b). The clerk of the Court shall only make a notification as referred to in Article 1:371a and shall only send the documents meant in that Article when the involved adult guardianship is not effected by the provisions of Article 1:12 paragraph 4.

- **5.** If a married or registered partner is placed under adult guardianship and the administration of the private property of the involved spouses or registered partners or of their community of property is distributed differently than under the rules of law and, where relevant, the rules of a nuptial agreement, then the court shall determine, when ordering the adult guardianship, whether and to what extent this deviant distribution shall apply for the legal guardian as well.

- **6.** The Subdistrict Court may demand from the legal guardian of an adult that he provides

insight in his books, documents and other data carriers. It may furthermore demand a copy thereof.

Article 1:387 *[repealed on 17.01.1994]*

Article 1:388 *[repealed on 17.01.1994]*

Article 1:389 End of an adult guardianship

- **1.** An adult guardianship ends:
 - a.** at the expiration of the period for which it was established;
 - b.** at the death of the adult involved;
 - c.** if on behalf of the adult involved a fiduciary administration as meant in Title 1.19 or a protective mentorship as meant in Title 1.20 has been established by means of a final and binding court order as to replace the adult guardianship.
- **2.** The Subdistrict Court may, if an adult guardianship is no longer necessary or a continuation thereof has appeared to be not sensible, abolish that adult guardianship, this upon the request of the legal guardian or of the person entitled to request for an adult guardianship as meant in Article 1:379 or of its own motion. The court order shall enter into force as soon as it has become final and binding.
- **3.** The persons entitled to request for an adult guardianship as meant in Article 1:379 and the legal guardian may request for a prolongation of an adult guardianship established for a specific period of time. The Subdistrict Court shall decide within two months after the petition (request) was lodged. Article 1:384 applies accordingly. No legal remedy is available against a denial of a request for a prolongation.

Article 1:390 Publication of judicial decisions concerning adult guardianships

All judicial decisions through which an adult guardianship is established or ended or through which a court order for establishing an adult guardianship is nullified (reversed), as well as court orders as meant in Article 1:380 (interim administration), must be published by the clerk of the court in the Government Gazette within ten days after the aforementioned judicial decisions have become enforceable.

Article 1:391 Public register for adult guardianships

- **1.** A public register is held by a governmental body pointed out by Order in Council for this purpose in which legal facts are registered relating to an adult guardianship and a fiduciary administration as meant in Title 1.19. In that public register will be registered, for each adult guardianship and for each to be registered fiduciary administration, with mention of the date:
 - 1° the name and date of birth of the adult and proprietor;
 - 2° an abstract of judicial decisions in which the adult guardianship or fiduciary administration is established, continued (prolonged) or ended on account of squander (reckless spending) or the presence of problematic debts;
 - 3° an abstract of judicial decisions in which, to the extent that this is determined as such by the court in agreement with Article 1:436, paragraph 3, third sentence, the fiduciary administration is established, continued (prolonged) or ended on account of a physical or mental condition;
 - 4° the reason on account of which the adult guardianship is established;
 - 5° where applicable, the date on which the adult guardianship or fiduciary administration ends;
 - 6° an abstract of judicial decisions in which a legal guardian of an adult or a legal administrator is appointed, suspended or discharged;
 - 7° the name and place of residency of the legal guardian or legal guardians and the legal administrator or legal administrators and, where the court has determined so, the division of duties;
- **2.** Everyone may inspect the public register free of charge and may request, against payment, for an abstract therefrom, with due observance of what is provided by or pursuant to the Act Court Fees in Civil Proceedings.
- **3.** The clerk of the District Court shall pass on the data mentioned in paragraph 1, under 1° up to and including 7°, and the announcement about the death of the adult under guardianship or the proprietor to the governmental body meant in paragraph 1 on behalf of the public register meant in paragraph 1.
- **4.** The ending of an adult guardianship or fiduciary administration due to the expiration of

the period of time for which the measure was established, shall lead to a deletion of the registration in the public register on the day after the expiration of that period of time. A court order ending an adult guardianship or fiduciary administration shall lead to a deletion of the registration in the public register on the date on which the court order has become final and binding. The death of an adult under guardianship or proprietor shall lead to a deletion of the registration in the public register one day after the clerk of the District Court has received the announcement in regard of that death.