



macadamia care

po box 895, white river, 1240
macadamia village, impala road, white river
telephone 080 622 2273
facsimile 086 762 8733
email info@macadamiacare.com
www.macadamiacare.com

PROCESS FOR THE APPOINTMENT OF A CURATOR *BONIS*

Macadamia Care has approached an attorney for guidance for clients of the organisation facing the need to appoint curators for their family members who are no longer capable of managing their own affairs. This is a common requirement when dealing with dementia, and the following process may be useful to you. Please consult with your own attorney and confirm the process to your own satisfaction.

Rule 57 of the Uniform Rules of the High Court govern the process and it prescribes as follows:

1. An application must be made to the High Court by a person who is usually next-of-kin of the subject person (hereinafter "Person"). If the Person does not have any relatives in South Africa then the application may be brought by any person with a sufficient interest in the Person.
2. The application is in the first instance for the appointment of a curator ad litem for the Person.
3. The function of the curator ad litem who is usually an advocate, is to investigate the matter by conducting an interview with the Person who must be informed of the purpose and nature of the application. This requirement may be dispensed with if, after having consulted with a medical practitioner, the curator ad litem is satisfied that it would be detrimental to the Person's health should such an interview be conducted.
4. The curator ad litem must also make such further enquiries as is necessary or required and must thereafter file with the Registrar of the High Court and also with the Applicant a copy of the report.
5. The report must contain such facts as the curator ad litem ascertained in regard to the Person's mental condition, means and circumstances.
6. The application must set out fully: -
 - a. The grounds upon which the applicant claims to have the necessary standing to make the application;
 - b. The grounds upon which the Court has jurisdiction and this is usually the case because the Person ordinarily resides within the jurisdiction of the Court;
 - c. The Person's age, gender and full particulars of his means and general state of physical health;
 - d. The relationship if any between the Person and the applicant and the duration and intimacy of their association if any;
 - e. The facts and circumstances arrived at to show that the Person is incapable of managing his or her own affairs; and
 - f. The name, occupation and address of the persons suggested to be appointed by the Court as the curator ad litem and curator bonis to the Person's personal property and a

statement that these persons have been approached and that they are willing to act as such.

7. The application must be supported by an affidavit by at least one person to whom the Person is well known and containing such facts and information that are within the deponents own knowledge concerning the Person's mental condition.
 8. The application must further be supported by two medico legal reports by medical practitioners of which one must be either a psychiatrist or psychologist who conducted recent examinations of the Person to ascertain and report regarding his or her mental condition. The medico legal reports must also contain details of the mental disorder, the duration thereof and the probable possibility of recovery. The medical practitioners must reach the conclusion that the Person is incapable of managing his or her own affairs.
 9. The Court will then consider the reports of the curator ad litem and the application itself and if satisfied that the Person is unable to manage his or her own affairs will appoint a curator bonis.
 10. Once a curator is appointed he takes control of the Person's financial means and sees to it that the Person's financial affairs are taken care of. In practice, this means that he must investigate the total means of the Person, and administrate the affairs of the Person with due regard to his or her life expectancy. In most instances, this would entail liquidating sufficient assets for the Person's immediate financial requirements and the investment on the medium to long term of such funds as may be necessary for future maintenance and costs.
 11. The curator is obliged to file with the Master of the High Court on an annual basis a liquidation and distribution account of the financial affairs of the Person and to report to the Master thereon.
 12. The curator bonis is usually a professional such as an attorney because they must have fidelity fund insurance to protect the Person against any theft of monies that has been entrusted to the curator bonis.
 13. The curator bonis is entitled to the fees prescribed by Regulation promulgated in terms of the Administrating of Estates Act 66 of 1965 and is based on a percentage of the gross value or me assets and the income received during the period of the curatorship.
 14. The cost of the application to appoint a curator, which will include the attorney fees, fees of the curator ad litem and medico legal reports, will vary but I suggest that at least R 35 000,00 must be budgeted for such an application provided it remains unopposed. The costs are subject to taxation at the Taxing Master of the High Court before such fees will be paid over to the applicant's attorneys and are paid out of the estate of the Person.
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*This information is provided free of charge to the clients and family of Macadamia Care clients in the interests of assistance. While the source of this information is a qualified attorney, Macadamia Care accepts no responsibility for the accuracy or completeness of the information contained in this leaflet. **Seeking independent legal advice in relation to these matters is advisable, so please consult with your own attorney and confirm the process to your own satisfaction.***