

## • TUTELLES: LOOKING AFTER A CHILD'S BEST INTERESTS

### WHAT HAPPENS WHEN A CHILD INHERITS MONEY, PROPERTY OR SOME OTHER ASSETS?

**If you have children or grandchildren under the age of 18, as well as making provision for them in your will, you should also consider who you would like to help them with those assets until they come of age.**

A Tutelle is formed when a minor inherits property or assets under a will or, in some instances, by way of compensation or gift. When drafting your will, and where provisions have been made for minors, it is wise to have a Tutelle letter in place.

In Jersey, even when a minor inherits a small amount of money, the law dictates that before any funds can be paid over, a Tutelle has to be in place.

In many cases this is not practical as the cost of setting up the Tutelle can very well exceed the value of the bequest and for this reason, the necessity for Tutelles has been under review for some time. Many people would prefer to mirror the UK set up locally, in which the parent or guardian would have the capacity to take control of the minor's assets.

Collas Crill has been in lengthy discussions with the Probate Registrar regarding two estates we have recently been involved with. We are pleased to say that, as a result of the Probate Registrar's subsequent discussions with the Bailiff, it has been agreed that the new concessional net value limit under which the formation of a Tutelle can be dispensed with is £5,000.

With this new concession in place it means that we retain the best aspects of the Tutelle: its liability to the court (and of course to the minor) to manage the minor's assets in a

good and proper way, while easing the onus on an executor where the assets in question have a value of less than £5,000, thus enabling him to complete the administration of the estate without the formality of setting up a Tutelle.

"You swear and promise by the faith and vow which you owe to God, that you will well and truly carry out the office of tuteur... that you will increase [the minor's] property, dignity and benefit like your own, ... that you will be guided by the good council and advice of your electeurs ... and that you will generally perform all the other duties of the said office".

This is the oath a tuteur has to swear before the court when taking office. It's quite onerous and something the tuteur, and those appointing him, need to take into consideration before undertaking the office.

A Tutelle is essentially a guardianship committee consisting of seven people; six electeurs and a tuteur (or tutrice if she is female). The tuteur (or chairperson) is chosen from among the seven. The Tutelle as a whole must be sworn in before the Royal Court before it can begin to manage the affairs of a minor. A Tutelle has its origins in customary law and the law relating to Tutelles dates back to 1862.

Your Tutelle letter will indicate to the court the people you wish to sit on the Tutelle, although the ultimate acceptance of those people is down to the court. In cases where a Tutelle letter is not in place, the court will appoint the members of the Tutelle.

In most cases the Tutelle will consist of family members, however in instances where there may be friction within the family, the court has the discretion to appoint individual third

parties, which can be members of the legal profession. If family members are appointed, it is normal practice to have four members from the paternal line and three from the maternal. This can include the mother or father where appropriate.

The tuteur must make decisions in the best interests of the minor at all times and the electeurs are jointly and severally liable with the tuteur for any losses to the Tutelle. The principal purpose of the Tutelle is to preserve the assets of a minor and this has been repeated by the court in a recent case regarding maladministration of a Tutelle.

The tuteur must be resident in Jersey, however should he need to leave Jersey for a short period he can, with the consent of the electeurs, appoint an attorney to act on his behalf. The electeurs do not need to be Jersey resident however they will have to attend Court in person on the day of the swearing in. The electeurs are jointly and severally liable with the tuteur for any losses to the Tutelle. The cost for setting up the Tutelle will be deducted from the minor's assets.

Within three weeks of the appointment, the tuteur must prepare an inventory of all the movable property and a statement of all the immovable property owned by the minor and this must be dated and signed by the members of the Tutelle. The tuteur must also prepare annual accounts which must be approved by the electeurs. Failure to take an inventory and pass accounts renders the tuteur and electeurs liable to a fine, liability in damages for any loss to the minor and dismissal.

The Tutelle may not dispose of the minor's immovable property without obtaining the permission of the Court. In some cases it may be necessary to sell the property inherited by the minor in order to pay off debts of the estate inherited by the minor, or to provide funding for the minor. The law also states that the tuteur can only apply the interest realised on the minor's assets for the benefit of the minor, however if the tuteur feels that there is an urgent need for capital to be spent, then provided that the majority of the electeurs agree the payment, he may do so for the benefit of the minor.

The Tutelle comes to an end when the minor reaches 18 or on his death, should he die before the age of 18.

**FOR MORE INFORMATION,  
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