

OFFICE OF THE VULNERABLE PERSONS' COMMISSIONER
GUIDELINES, POLICIES AND PROCEDURES
ON BONDS AND SURETIES
FOR SUBSTITUTE DECISION MAKERS FOR PROPERTY

1.0 Overview

The Vulnerable Persons' Commissioner may require a proposed substitute decision maker for property, other than the Public Trustee, to provide a bond – either a personal bond with or without sureties, or a bond issued by a surety company licensed to carry on business in Manitoba. Where a personal bond is required, it must be accompanied with evidence of unencumbered assets equal to or greater than the value of the vulnerable person's estate.

The purpose of the bond is to provide assurance that the substitute decision maker will properly administer the vulnerable person's financial affairs. If the vulnerable person's financial affairs are mismanaged, the Vulnerable Persons' Commissioner may look to the substitute decision maker, the sureties and/or the surety company to compensate the vulnerable person.

Where a bond is required, the substitute decision maker's authority does not begin until the bond is approved by the Vulnerable Persons' Commissioner.

2.0 Definitions

Asset – Any item of economic value owned by an individual, especially that which could be converted to cash. Examples are cash, real estate, vehicles, jewelry, investments, and other property.

Bond – A binding agreement by which a person guarantees his or her actions in relation to the financial responsibility undertaken.

Surety – A person or company that guarantees payment of the amount in the bond by pledging his or her own property.

Fiduciary – A trustee of funds or securities given in trust.

Unencumbered assets – Assets that are free of any claim.

3.0 Vulnerable Persons with Assets under \$5,000

A bond is not required in cases where the assets of the vulnerable person are valued at less than \$5000. However, where, during the term of the substitute decision maker's appointment, the value of the vulnerable persons' assets increases to \$5,000 or more, a bond may be required in accordance with the guidelines set out below. This would normally be assessed at the time the substitute decision maker's annual accounting report is being reviewed by the Vulnerable Persons' Commissioner's office. The substitute decision maker will be advised accordingly.

4.0 Vulnerable Persons with Assets between \$5,000 - \$50,000.

In cases where the assets of a vulnerable person are valued between \$5,000 - \$50,000, substitute decision makers for property must provide a personal bond. (see “Substitute Decision Maker for Property Bond” form and 7.0 below for information on completing the form).

The substitute decision maker(s) and surety(s) must execute the [Substitute Decision Maker For Property Bond](#). See 7.0 below for information on completing these forms.

Where a bond is in place and the value of the vulnerable person’s assets increases beyond the value of the bond, the substitute decision maker(s) and surety(s) may be required to execute a new bond that reflects the increase in value of the vulnerable person’s assets. This would normally be assessed at the time the substitute decision maker’s annual accounting report is being reviewed by the Vulnerable Persons’ Commissioner’s office. The substitute decision maker will be advised accordingly.

5.0 Vulnerable Persons with Assets greater than \$50,000 - \$100,000.

In cases where the assets of a vulnerable person are valued greater than \$50,000 - \$100,000, substitute decision makers for property must provide:

- (a) Evidence of unencumbered assets equal to or greater than the value of the vulnerable person’s assets; and
- (b) A personal bond (see “Substitute Decision Maker for Property Bond” form and 7.0 below for information on completing the form).

Examples of “evidence of unencumbered assets” include (but are not limited to):

- copy of a property title and the associated notice of assessment,
- copy of a recent pay stub,
- copy a recent financial investment statement, etc.

A surety will be required where the substitute decision maker does not possess unencumbered assets equal to or greater than the value of the vulnerable person’s assets or as otherwise may be required by the Vulnerable Persons’ Commissioner. More than one surety will be required if the first surety is unable or unwilling to be responsible for the remainder of the value of the vulnerable person’s property.

The substitute decision maker(s) and surety(s) must execute the *Substitute Decision Maker For Property Bond*. See 7.0 below for information on completing these forms.

Where a bond is in place and the value of the vulnerable person’s assets increases beyond the value of the bond, the substitute decision maker(s) and surety(s) may be required to execute a new bond that reflects the increase in value of the vulnerable person’s assets. This would normally be assessed at the time the substitute decision maker’s annual accounting report is being reviewed by the Vulnerable Persons’ Commissioner’s office. The substitute decision maker will be advised accordingly.

6.0 Vulnerable Persons with Assets over \$100,000

In cases where the assets of a vulnerable person exceed \$100,000, the substitute decision maker(s) for property must secure a bond issued by a surety company licensed to carry on business in Manitoba. The costs of securing a bond issued by the surety company will be covered by the vulnerable person’s assets.

An equivalent alternate form of security will also be considered.

Where a bond is in place and the value of the vulnerable person's assets increases beyond the value of the bond, the substitute decision maker may be required to secure a new bond issued by a surety company to reflect the increased value of the vulnerable person's assets. This would normally be assessed at the time the substitute decision maker's annual accounting report is being reviewed by the Vulnerable Persons' Commissioner's office. The substitute decision maker will be advised accordingly.

7.0 Completing the Schedule Form titled "Substitute Decision Maker for Property Bond"

1. The substitute decision maker(s) (and sureties where required) must complete and sign the form and have their signature(s) witnessed.
2. The witness of the substitute decision maker signature(s) must then complete the "Affidavit of Execution of Bond" and then either affirm or take an oath in the presence of a Commissioner of Oaths or Notary Public.
3. Where one or more sureties are required, each surety must complete the "Affidavit of Justification by (Surety or Sureties)" and then affirm or take an oath in the presence of a Commissioner of Oaths or Notary Public.

8.0 Obtaining approval and written authorization from the Commissioner:

The completed Schedule Form "[Substitute Decision Maker For Property Bond](#)", and evidence of unencumbered assets to support the bond where required, are to be provided to the Vulnerable Persons' Commissioner (examples of evidence of unencumbered assets are outlined in 5.0 above).

Upon approval of the bond, the Vulnerable Persons' Commissioner will provide the substitute decision maker with written authorization setting out what the powers and terms of the of the substitute decision maker appointment will be ([Appointment Document](#)). The substitute decision maker will then assume the duties of his or her appointment and take control of and manage the property of the vulnerable person to the extent of his or her power.

A copy of the approved personal bond will be provided to the substitute decision maker and each surety.

9.0 Duties of Substitute Decision Maker for Property

The general duties of a substitute decision maker for property include the following:

1. To take possession and control of the real and personal property of the vulnerable person that is under the power of the substitute decision maker.
2. To manage, handle and administer the property referred to in paragraph #1.
3. To make an inventory of the property of the vulnerable person and to file an accounting of the property, debts, liabilities, receipts and disbursements of the vulnerable person in accordance with *The Vulnerable Persons Living With A Mental Disability Act* and regulations thereunder.

4. As a fiduciary, to perform the duties and exercise the functions of a substitute decision maker diligently, with honesty and integrity and in good faith, for the benefit of the vulnerable person.

For a detailed explanation of the duties of the Substitute Decision Maker for Property, please refer to the SDM Duties and Responsibilities section of our website (<http://www.gov.mb.ca/fs/vpco>), or *The Vulnerable Persons' Living With A Mental Disability Act*, S.M. 1993, c. 29 – Cap. V90, *The Vulnerable Persons' Living With A Mental Disability Regulation*, Manitoba Regulation 208/96 (1 October 1996), or request a hard copy by contacting the Office of the Vulnerable Persons' Commissioner at phone number: 945-5039.