

# Leaflet for custodians

## 1. General remarks

Within the scope of the responsibilities transferred to you, you must support the person who is under your custodianship in their legal capacity so that this person may shape their life according to their wishes within the framework of their abilities. That means that personal contact, and in particular conversations **in person** with the person under custodianship is of major importance. The custodianship court supervises compliance with necessary contact with the person under custodianship.

The wishes of the person under custodianship must typically be fulfilled. Exempt from this are wishes which would significantly harm the person under custodianship, and which are an expression of their disease, or where fulfilment cannot be expected from you. If you are unable to identify the wishes of the person under custodianship, or may not fulfil them, you must find out their probable will, respect it, and decide accordingly. If the person under custodianship has made an advance decision, you must advocate for the will of the person under custodianship contained therein, using all means available to you. You are also to assist the person under custodianship using possibilities to restore or improve the ability to take care of their own affairs.

You are legally authorised to represent the person under custodianship in and out of court. However, the person under custodianship remains legally capable of acting. You may only use your representation authority where this is required.

You may **not represent** the person under custodianship in **legal transactions** or **legal proceedings**

- if you would have to represent the person under custodianship on the one hand, and yourself or a third party on the other hand; or
- if you would have to represent the person under custodianship vis-à-vis your spouse, civil partner, or your direct relatives (e.g. grandparents, parents, descendants).

If asset management affairs have been transferred to you, you must duly manage any assets, and have to invest such assets taking the wishes of the person under custodianship into consideration.

## 2. Approvals from the custodianship court

In cases that are legally important for the person under custodianship you will often require an approval from the custodianship court. That means that you cannot act effectively without such an approval.

An agreement concluded without the required approval from the custodianship court is “provisionally invalid.” It will only become valid after final approval from the custodianship court, and corresponding notification of the contractual partner. You must notify the contractual partner about the final approval.

In case of unilateral legal transactions (e.g. terminating the tenancy agreement for the flat of the person under custodianship), this approval must be obtained **prior to** performing the legal transaction.

Approvals from the custodianship court are required, for instance,

- **if the person is placed in custodial accommodation,**
- for approving a **medical coercive measure,**
- for **measures depriving of liberty**, such as installing bed-rails, administering certain medication, or other measures depriving of liberty over a prolonged period,
- **approving a medical examination, treatment, or intervention**, if there is a justified risk that the person under custodianship may die from it or suffer extended harm to their health, unless in a case of imminent danger or if you agree with the attending physicians that this would be the will of the person under custodianship as expressed in their patient decree, or even where no patient decree is present (Section 1827 German Civil Code (BGB));
- **Refusing approvals for a medical examination, treatment, or intervention**, if the intervention is medically advisable and there is a reasonable risk that the person under custodianship may die if the intervention is not performed or cancelled, or may suffer major and extended harm to their health, unless you agree with the attending physicians that this would be the will of the person under custodianship as expressed in their patient decree, or even where no patient decree is present (Section 1827 German Civil Code);
- Revoking an advance decision,
- Terminating and repealing a tenancy agreement for the flat used by the person under custodianship,
- Concluding a tenancy agreement if you are to let residential space originally used by the person under custodianship, or another tenancy or lease agreement, if the agreement is to be concluded for more than four years,
- real estate transactions, such as selling or charging a property,
- refusing to accept an inheritance or a legacy, as well as in case of a distribution of inheritance agreement, but also when disposing of an inheritance or a future inheritance or compulsory part of an inheritance;
- Taking out a loan;
- Investing money, unless it is not paid into a bank account appropriate for fixed-interest investment belonging of the person under custodianship (section 1848 BGB),
- Negotiating a settlement, unless the value in dispute is less than EUR 6,000 or a court proposed or recorded the settlement in writing;

This list is incomplete. If you require supplemental information, please contact the custodianship court.

### **3. General responsibilities vis-à-vis the custodianship court**

At the beginning of the custodianship, an initial report must be submitted to the custodianship court. This does not apply if you perform the custodianship on a *pro bono*-basis and have a family or personal relationship with the person under custodianship. However, the

custodianship court must be informed about the personal circumstances of the person under custodianship at least once annually.

To illustrate the personal contact with the person under custodianship, it must be detailed:

- how often you are in personal contact;
- what form the personal contact takes; and
- reasons why such regular contact is not impossible.

If you have been made responsible for asset management for the person under custodianship, a register of the assets of this person (**asset register**) with appropriate proof must be submitted to the custodianship court at the beginning of the custodianship (section 1835 BGB). The asset register must include information about regular income and expenses of the person under custodianship.

Furthermore, if asset management is one of your responsibilities, you must **render an account** on income and expenses annually. Income and expenses are to be sorted and must be accompanied by receipts where those are regularly issued. Receipts are to be numbered serially, corresponding to the income or expense in the account. To facilitate your work, you may obtain the required forms from the custodianship court.

If you are the mother, father, brother or sister, spouse, civil partner, or a descendant of the person under custodianship, or a custodian appointed by an association or authority, you are generally exempt from rendering an annual account, however, you must submit an annual **assets overview** (section 1859 subsection 1 BGB). This assets overview must include the inventory of the assets of the person under your custodianship subject to your management.

The custodianship court may always require subsequent reporting. You should therefore keep all statements of accounts and records as a precautionary measure, even if you have initially been exempted from reporting duty.

In line with sections 1831 - 1833, 1864 BGB, the custodianship court must be informed **immediately**, if

- the personal and economic circumstances of the person under custodianship change significantly;
- cancelling or limiting the custodianship is possible, or an extension is required;
- an order reserving consent (i.e. the person under custodianship needs your explicit approval for any own declarations of will) is required or can be cancelled;
- another custodian must be appointed;
- custodial accommodation, or a measure depriving of liberty may be terminated or has been terminated without the knowledge of the custodianship court;
- if you have revoked an approval for a medical coercive measure; or
- if your address or that of the person under custodianship has changed.

#### **4. Remuneration, allowance, and compensation of expenses**

Typically, custodianship is without payment (section 1876 BGB). However, the custodianship court may grant remuneration if the person under custodianship is affluent, and the scope or difficulty of taking care of the affairs justify it.

If your custodianship involves **expenses**, you may take a reasonable amount from the assets of the person under custodianship after consultation with the custodianship court. If there are no assets, you will be reimbursed by the state treasury following a corresponding application.

In place of reimbursement of actual costs, an **allowance flat rate** may be asserted; information about the amount can be obtained from the custodianship court. An allowance flat rate may be paid out for the first time one year after appointment as custodian, and annually after that (section 1878 subsection 3 BGB).

The claim will lapse if it has not been asserted **by 30 June of the following year**.

#### **5. Further information, advice, and support**

The custodianship court and - if requested - the authority responsible for custodianship will provide advice and support during your activity. You may also order an information brochure on custodianship law free of charge via the mailing service for publications by the Federal Government.