

Managing the financial & property affairs of a missing person (NSW Trustee and Guardian Act 2009 (s.54))

What does the act do?

When a person is missing there can be difficulties in managing the missing person's financial and property affairs. For example the person may have a rental lease on a property or have bills that need to be paid.

Under the *NSW Trustee and Guardian Act 2009* an application can be made to the Supreme Court to have someone appointed to manage the estate of the missing person.

The court can make a declaration that a person is missing and appoint a person (for example a family member) or the NSW Trustee and Guardian as the manager of the person's estate.

How is a person defined as 'missing'?

The court may be satisfied a person is missing if all reasonable efforts have been made to locate the person and people with whom the person would be likely to communicate have not heard from, or of, the person for at least 90 days.

The court can make a declaration and estate management order if the person is missing and:

- the person's usual place of residence is in NSW
- it is in the best interests of the person to do so.

The court can then appoint any suitable person, or the NSW Trustee and Guardian, to manage and administer the estate of the missing person.

By definition, if a person is known to be alive but does not want to be found, they may not be defined as a 'managed missing person'. This is because it isn't an offence to be missing, despite the obvious heartache it can cause family and friends.

Who can make an application to the Supreme Court?

An application to the Supreme Court can be made by:

- the spouse or de facto of the person
- a relative of the person
- a business partner or employee of the person
- the Attorney General
- the NSW Trustee and Guardian
- any other person who has an interest in the estate of the person.

How to make an application?

An application is made by way of Summons in the Protective List of the Supreme Court. An applicant can be legally represented. The applicant should prepare the Summons and any Affidavit material in support of the application. Filing and other fees may be applicable.

What are the powers of family members or other persons in managing an estate?

Orders can be made for family members or other relevant persons to manage the estate of the missing person. The Act allows these people all power necessary to manage the estate, with the NSW Trustee and Guardian providing direction, supervision and support.

What are the powers of the NSW Trustee and Guardian?

If a family member or other relevant person is not appointed, the NSW Trustee and Guardian can be appointed to manage the estate of the missing person.

Are there fees for the functions of the NSW Trustee and Guardian?

Fees can be prescribed for functions exercised by the NSW Trustee and Guardian. The same fees will be charged as are currently charged for other protected persons.

Can an order be terminated?

The Act provides for orders for managed missing persons to be terminated. An application can be made to the Supreme Court for the revocation of a declaration and order where there is evidence that the protected missing person is alive.

The NSW Trustee and Guardian can terminate the management of the estate of a protected missing person when he or she is satisfied that the person is alive.

Will families be consulted?

The NSW Trustee and Guardian will normally consult with the relatives of a missing person when making decisions about financial affairs unless it is considered inappropriate to do so.

Contact details

Families and Friends of Missing Persons Unit

Phone: (02) 8688 8173 / 1800 227 772 (Freecall)

Email: ffmpu@justice.nsw.gov.au

Web: www.missingpersons.justice.nsw.gov.au

Address: 160 Marsden Street, Parramatta 2150

LawAccess NSW

Phone: 1300 888 529

Web: www.lawaccess.nsw.gov.au

Supreme Court of NSW

Phone: (02) 9230 8111

Email: supreme_court@justice.nsw.gov.au

Web: www.supremecourt.justice.nsw.gov.au

NSW Trustee and Guardian

Phone: 1300 360 466

Web: www.tag.nsw.gov.au

Contact details

For further information about this material or other topics, please call us on:

Phone (02) 8688 8173 or 1800 227 772 • **National Relay Service** 1800 555 677

Facebook www.facebook.com/missing.501 • **Email** ffmpu@justice.nsw.gov.au

www.missingpersons.justice.nsw.gov.au

© State of New South Wales through Families and Friends of Missing Persons Unit, Department of Justice, February 2016. This work may be freely reproduced for personal, educational and government purposes. Permission must be received from the Department for all other uses.

Alternative formats of this information are available.

This document has been prepared by Families and Friends of Missing Persons Unit for general information purposes.

(FMP • 02/2016)