

Approval to purchase real estate

Documents to be provided when applying to SACAT

Types of applications SACAT deals with

Private administrators appointed by SACAT, and the Public Trustee, must apply to the Tribunal for approval to purchase property on the behalf of a protected person.

In considering applications for approval, SACAT needs to be satisfied that an administrator will deal with a protected person's estate in an appropriate manner and for the benefit of the protected person. The foremost concern is to protect the assets of the protected person.

What do you need to provide to purchase real estate?

For the Tribunal to consider an approval to purchase real estate application, it will require the following documents to be provided with the application:

<input type="checkbox"/>	1. An application (Administration (existing orders) – request for purchase of real estate) completed online at www.sacat.sa.gov.au
<input type="checkbox"/>	2. A letter from the administrator detailing: <ul style="list-style-type: none"> • Details of the property to be purchased • Reasons for the purchase • The protected person's current attitude to the purchase • The protected person's attitude to purchasing property before suffering a loss of mental capacity • The name of the person that will be placed on the title of the new property • The portion of the property that is the protected person's and how they are paying for that portion • Any proposed mortgage arrangements for the protected person
<input type="checkbox"/>	3. A letter from the protected person's doctor advising: <ul style="list-style-type: none"> • Is there any likelihood of the protected person being able to manage their finances? • Will the protected person be capable of returning home to live (if relevant)? • Is the protected person capable of making a valid decision regarding the rent or sale and if so, what are their views? <p><i>Note: Regrettably, SACAT is not able to arrange for payment for the completion of this letter, or the provision of any other report. The completion of this letter will assist SACAT to make prompt and informed decisions without the necessity for professionals to give evidence in person. This is a protective jurisdiction and SACAT appreciates the assistance of health professionals. If a medical or health professional intends to charge a small fee for this service the account will need to be forwarded to the subject person or to their administrator, or to the applicant if this is a family member.</i></p>
<input type="checkbox"/>	4. A summary of the protected person's current assets and liabilities
<input type="checkbox"/>	5. A letter from immediate family and any potential beneficiaries under a Will and any joint proprietor relating to their views about the purchase of property
<input type="checkbox"/>	6. A copy of the protected person's last Will and testament

	<input checked="" type="checkbox"/> The administrator must not disclose the contents of the person’s Will to any other person other than the protected person except with the authority of the Tribunal (<u>see more below</u>)
<input type="checkbox"/>	<p>7. Valuation from an approved land valuer <u>OR</u> two appraisals from two real estate agents including the following:</p> <ul style="list-style-type: none"> • A copy of the Certificate of Title (no more than six months old, or whatever timeframe the Tribunal provides is appropriate) • A description of the property and state of repair / improvements needed • Market value • Details of any encroachments on the property • Details of any ongoing restrictions which may affect the use or development of the property • A copy of any proposed lease agreement

The Protected Person’s last Will and testament

For the Tribunal to consider the application for approval, it requires, amongst other things, a letter from **any potential beneficiaries under the protected person’s Will** relating to their views about the purchase of real estate.

Please note that, under section 40(3) of the *Guardianship and Administration Act 1993*, **an administrator must not, except with the authority of the Tribunal, disclose the contents of a Will** to which they have access under the Act.

Prior to contacting any person who is a potential beneficiary under the protected person’s Will to gain their views on the purchase of real estate, please contact the Tribunal via email at sacat@sacat.sa.gov.au or by phone on 1800 723 767 to seek approval to disclose the contents of the protected person’s Will.

On receipt of a protected person’s Will, the Tribunal will automatically make a confidentiality order to ensure that the contents of the Will are not disclosed to any person except as required by law or with the authority of the Tribunal.

What principles apply to SACAT’s decision?

SACAT must have regard to the guiding principles contained in section 5 of the *Guardianship and Administration Act 1993* which states:

5 – Principles to be observed

Where a guardian appointed under this Act, an administrator, The Public Advocate, the Tribunal or any court or other person, body or authority makes any decision or order in relation to a person or a person’s estate pursuant to this Act or pursuant to powers conferred by or under this Act-

- (a) *Consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and*
- (b) *The present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and*

- (c) *Consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing or informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and*
- (d) *The decision or order must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.*

Conflict transactions

An administrator is obliged to act in the best interests of the protected person, in a way that is consistent with what the person would want if he or she did not have a mental incapacity.

A 'conflict transaction' occurs where an administrator wants to buy a property jointly with the protected person. There is a 'conflict' between the administrator's duties to the protected person, and their own financial benefit. If a conflict of interest does arise, it does not mean the administrator has done anything wrong. An administrator should still seek the approval of SACAT to ensure the 'conflict transaction' is permissible.

If approval has not first been sought from SACAT, and after considering the statements filed as part of the reporting requirements of a private administrator, the Public Trustee can recommend that SACAT disallow the purchase. A hearing may be necessary to consider the issue.

To be permissible, the proposed transaction must be consistent with the proper care and protection of the protected person. The administrator should be prepared to show SACAT all details of the transaction and mortgage arrangements.

For advice on a conflict transaction, contact Public Trustee on 8463 7441 or PT.RegulatoryTeam@sa.gov.au.

What fees apply to an application for approval to purchase real estate?

There are no fees that apply to an application for approval to purchase real estate,

How to apply to SACAT

All applications to SACAT are completed through our online application form which you can find at our website: www.sacat.sa.gov.au.

If you are unable to complete the form online, you can contact the Tribunal for assistance on 1800 723 767. You can also visit SACAT's offices at Level 4 or 7, 100 Pirie Street, and use a computer at one of SACAT's public kiosks.

This information sheet does not constitute legal advice and does not relate to the circumstances of any individual matter. If you wish to have legal advice, you should seek that independently.