# Administrators video 3 - Wills and decision-making

*[Text: Administrator’s Wills and Decision-making: When more than one administrator is appointed, how wills are managed, gifts and loans.]*

Hello.

I’m Member Tantau, and like Member Page and Member Perera, I am one of the members who work on the Guardianship list with a specialist knowledge in the financial matters that administrators may have to deal with.

I am going to cover the specific issues such as the decisions the administrators may have to make about whether to give gifts or loans from the represented person’s funds, and also cover some issues about the last will of the represented person and joint administration orders.

Member Page has explained that when you make decisions for a represented person you must give practical and appropriate effect to their will and preferences and you can only override the person’s will and preferences if it is necessary to prevent serious harm to the person. If you are not able to determine the represented person’s will and preferences, then you must make the decision which promotes the represented persons personal and social wellbeing.

This is very important when you look at decisions around gifts and loans, and you must also take action to manage any conflict of interest issues that arise when you are making these decisions.

These considerations are very important when making decisions about using the represented persons funds to make gifts and loans. So, let’s deal with gifts first…

Under section 47 of the Act, you have the power to make gifts. The gifts must be reasonable (both in amount and to whom they’re given, and the circumstances under which they’re given). You can gift RP’s funds to close friends and to family. The gift should be seasonal in nature, or for a special event such as a wedding, engagement, birthday, or for a cultural or religious event that is special or appropriate to the represented person. You can also make donations to charities. It should be the type of donation that the represented person made previously, or a charity that is meaningful or special to the represented person.

VCAT recommends that the administrator request approval prior tomaking any significant gifts or donations, and be aware that Centrelink have rules about gifting amounts from the represented person’s funds or anybody’s funds. However these rules may not necessarily be approved by VCAT.

The actual amounts that Centrelink allow you to gift are up to $10,000 a year or $30,000 over 5 years.

However, these are significant amounts and that is why we recommend that you do get approval prior to making gifts of that nature.

As administrator you should keep in mind that gifts that may have been appropriate or reasonable in the past may no longer be appropriate now. And also, if the gift is made to the administrator, or a close friend or a relative of the administrator, and the gift is over $100, the gift must be reported to VCAT. Generally this can be done in the annual Account by Administrator, but we do recommend that you obtain prior approval if the gift is significant.

I’ll move on now to the topic of wills, specifically the last will of the represented person.

As the administrator, you might have a copy of the represented person’s last will. If you do, you should keep it safe and secure.   
As the administrator, under section 49 of the Act, you have the power to open the will of the represented person and to read the will.

You may also send VCAT a copy of the will and we will keep it on file.

And VCAT also has the power to open and read the will.

Prior to making some decisions, for example whether to approve the sale of a property, VCAT may request a copy of the will to read as we would want to check whether there were special provisions in the will about the property that was about to be sold.

Under section 53 of the Act, the administrator cannot make a will for the represented person.

Section 53 states that the administration order does not give the administrator the power to make or revoke a will or to make or revoke a power of attorney. So, can a represented person make a will?

This may not be possible given that the represented person has a disability and is not able to make financial-handling decisions for themselves. However, there may be instances where the represented person can make a will. For example, they may have the decision making capacity to make a will. They must be aware of and appreciate the significance of making a will, and they must be able to understand the affects of the contents of the will. If the represented person is going to make a will, as the administrator, you should ensure that there’s a medical practitioner present for the making of the will and that the medical practitioner certifies in writing that the represented person has the decision making capacity to make a will.

In some circumstances, the administrator may consider it prudent to getting legal advice and in looking into the possibility of making what is known as a statutory will. The administrator should seek independent legal advice and guidance if they wish to pursue that option.

Now I would like to speak briefly on joint appointments. Where there are two or more administrators appointment on an order, they may be appointed either jointly or jointly and severally. If you read your order it would state clearly if you’re appointed jointly or jointly and severally.

So if you’re appointed jointly, then you must all act together at all times, that includes all transactions, all decisions, and all reporting.

If you’re appointed jointly and severally, you can act independently when undertaking normal day-to-day transactions, and you may be able to divide up the tasks between the two or three or however many administrators there are. However we would expect that you act jointly when making a major decision for example selling a property or investing in certain investments. And also when compiling the Financial Statement and Plan and the Accounts by Administrator and lodging those, it’s important that you all sign those or that you are all named on those, so that we know that they’ve been prepared jointly.

If disagreement soccur between the administrators and these becomes unmanageable, then you should seek advice from VCAT as to how to manage those disagreements

And finally, I would like to discuss loans. The administrators can make loans on behalf of the represented person. It’s recommended that the administrators always seek VCAT approval prior to making loans. The loans must be reasonable after accessing the represented person’s financial circumstances. And we recommend that there are some formalities around the loans that they’re agreed and set up on a commercial basis, that they’re documented and that they are commercial terms applied to it wherever possible.

For example, interests should be payable and repayments should occur periodically, and there should be a defined end date for the loan. One of the things that you should consider when considering loans are they’re often to family members, and so there might be a conflict of interest because often the family member who is the potential borrower is the relative of the represented person but also a relative of the administrator, or it may be the administrator themselves. So where those conflict of interest do arise, it is more important to put the loan on a commercial footing.

And the administration should also consider whether it would be prudent to have some security against the loan to ensure the represented person’s funds are secured.

Just a note on verbal agreements. Verbal agreements regarding loans tends to be interpreted differently by the different parties. The borrower might have a different interpretation on what they thought the terms were than the lender and that’s why we do require that the loans are documented.

When you seek VCAT approval for the loan, we will sit down with you and understand the term of the loan. If we approve the loan, we will require you to send in the documentation shortly after.

*[On-screen visual: VCAT logo]*

*[On-screen text: For more information about Administrators visit* [*vcat.vic.gov.au/administrators*](https://www.vcat.vic.gov.au/administrators)*]*