

Short notes on:

CURATOR BONIS VS CURATOR AD LITEM

Under South African law, certain factors affect a person's capacity to act on his/her behalf and manage his/her affairs. For example, factors such as age in the case of minors or mental illness can render persons 'incapable'. Under these circumstances, an application to court may be brought to have a curator appointed to manage that person's affairs or act on his/her behalf.

What Is A Curator Bonis And A Curator Ad Litem?

A curator bonis is appointed to manage the financial affairs on behalf of a person who has diminished mental capacity or who is mentally ill. A court will be required to rule that the relevant person is unable to manage his/her own financial affairs and will have to appoint the relevant curator to manage such affairs.

A curator bonis may perform the following functions amongst others:

- Manage the maintenance or support of the relevant person,
- Purchase or acquire immovable property on behalf of the relevant person,
- Manage the relevant person's business affairs, and
- Administer the relevant person's estate or assets.

A curator ad litem is appointed to act on behalf of a mentally ill person or a person who has diminished mental capacity. Additionally, they may be appointed on behalf of a minor. A curator ad litem is appointed for the conclusion of legal transactions or to act on behalf of the minor or mentally incapacitated person during legal proceedings.

Appointing A Curator

Rule 57 of the Uniform Rules of Court dictates the process for the appointment of curators and indicates that any person seeking to have another person declared incapable of managing his/her own affairs must make an ex parte application to court.

The application must fully set out the grounds for declaring the person incapable, including a description of the person's state of health and the facts that are relied on to show that the person is incapable of managing his/her affairs.

In addition, the application must be supported by an affidavit of at least one other person to whom the person subject to the litigation is well known, as well as affidavits of medical practitioners.

The application must also set out the person who is suggested to be appointed as the curator. Generally, a legal practitioner (attorney or advocate) will be suggested for an appointment as a curator.

Conclusion

The decision to declare a person incapable of managing his/her own affairs is not taken lightly by the courts. The application for the appointment of a curator needs to show proper cause for it to be granted.

In saying that, however, the appointment of a curator is a mechanism available to protect the interests of society's most vulnerable and should be utilised where necessary.

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