

INTRODUCTION

Buying a property is a major financial commitment. This is especially so if the cost is to come from a beneficiary's funds in Court which are also intended to provide for their long-term daily living expenses.

Cost of buying a dwelling not usually included in compensation

Beneficiaries and their families should be aware that, usually, compensation for personal injury does not include any allowance for the purchase of a property, only for the additional costs of modifications incurred as a result of the disability caused by the injury. The purpose of compensating an injured person is to place them, as nearly as possible, in the same position as if they had not sustained the injuries. So, if an injured person did not own a property prior to the injury, the compensation received will not, as a rule, include an amount for the purchase of a property.

Therefore, the Court is **under no obligation** to approve the purchase of a property. Indeed to do so will mean other savings will have to be observed.

You must not commit to buying a property without Court's approval

Consequently, **under no circumstances** should a beneficiary enter into any contract, make any offers to purchase, or in any way commit themselves with respect to a property which they hope will be funded, even partially from the funds in Court, unless the Court has expressly approved such action beforehand.

If beneficiaries or others act without the Court's express prior approval, they may find that they are not indemnified or reimbursed from the funds in Court for any liability they have created.

SIX MONTH WAITING PERIOD

Irrespective of whether or not the compensation included an amount for the purchase of a property, the Court will not approve a purchase within six months of a beneficiary's funds being paid into Court. This is so that beneficiaries and their Trust Officers have sufficient time to attend to any urgent payments and establish what regular expenditure is needed to be paid from the funds. It is also required to pay out any debts or liabilities, including costs payable to solicitors.

Such continuing expenditure will need to be considered when a decision is being made by the Court as to whether or not to approve the purchase of a property.

MATTERS TO CONSIDER BEFORE SEEKING APPROVAL TO PURCHASE A PROPERTY

Speak to Trust Officer first

Beneficiaries and/or their families should first speak to their Trust Officer **before** making **any** decision about a property.

A beneficiary's Trust Officer can help to work out whether:

- A property or property is affordable
- The beneficiary can afford to pay ongoing costs such as council rates and insurances



The Trust Officer will also be able to discuss:

- What type of property is needed
- Where the beneficiary wants to live
- If there are other options available
- Property maintenance
- Periodic building and pest inspections

Carefully consider the type of property and its location

It is crucial that careful consideration is given to the kind of property that is to be purchased, especially:

- Size and layout
- Suitability to a person with restricted mobility or other special needs
- Proximity to transport and amenities
- Distance from friends and relatives
- Location on a main road or near an airport or industrial area

Often the Court will require evidence that any proposed property is suited to the needs of the beneficiary. For example, a report from an occupational therapist or from one of the Court's Client Liaison Officers may be required by the Court.

It is important to note that, once a property has been purchased and occupied, the Court will expect that beneficiaries and/or their families will live in it for a significant period of time (i.e. at least 10-15 years) if not permanently. Selling and buying a property involves significant expenditure - such as government charges, agent's fees, removalist costs etc. - and the Court will need to have **very good** reasons to buy a new property after a short period of time. If sold, another property may **not be purchased** again.

Is the property being purchased for a child?

In particular, if the beneficiary is a child, the Court expects that the parents will contribute to the upkeep of the property and the usual purchase of white goods, furniture etc. just as they would have to do for their family if the beneficiary did not have funds in Court.

Therefore, the parents will need to indicate to the Court, for example, who will pay when the interior needs painting, who will buy the new fridge or washing machine, who will maintain the garden, who will pay if the hot water service breaks down?

Please note that the Court **will not** give approval 'in principle' unless these matters are first clarified.

Financial consequences of buying a property must be carefully considered

Purchasing a property where an allowance was not made in the compensation received means the amount originally awarded for a beneficiary's continuing daily expenses is significantly reduced. However, the completion of the purchase does not signal an end to the expenditure required to own a property. There are recurrent costs, such as building and contents insurance, maintenance and repairs, periodic inspections etc. Also, a beneficiary will continue to have day-to-day living expenses.

Where a beneficiary has no other source of income, such as a job, the fact that buying a property will result in not enough money being left in their funds for daily expenses, will mean that the Court will be reluctant to



approve a property purchase.

Often, in such situations, beneficiaries and/or their families will be required to give an “undertaking” that no other requests would be made on the funds in consequence of the purchase of the property.

Prior to giving any such undertaking, it is important to consider very carefully:

1. Whether those making the undertaking are now, and will continue to be, in a financial position to cover all of the beneficiary’s expenditure that will no longer be paid from the funds.
2. The Court’s primary duty is to ensure that a beneficiary’s funds can continue to pay for their daily living expenses. If this is no longer possible, the Court will have no alternative than to order that the property be sold.

Court will not approve purchase of property subject to a mortgage

As a general rule the Court will not invest a beneficiary’s funds in Court in a property that is subject to a mortgage. This is because if the loan repayments are not made and the property is sold by the mortgagee (usually a bank), the beneficiary’s contribution to the property may be lost leaving the beneficiary with nothing to show for his or her funds. Investing funds in Court in this way is an unacceptable risk to the beneficiary.

CRIMINAL RECORDS CHECKS

Any property purchased from the funds in Court must be insured. Many insurance

companies decline to provide insurance if an occupant of a property has convictions for particular offences. Therefore, the Court requires criminal records checks (a National Police Certificate) for all proposed occupants of a property to be purchased from the funds.

Please note that, unless a National Police Certificate is supplied, an application to purchase a property will not be considered.

Prerequisites to Consideration of Property Purchase

Satisfying the following prerequisites means that the threshold of a property purchase request being considered has been reached. Satisfying the prerequisites does not necessarily mean a property will be purchased.

1. Affordability:

- Immediate impact of purchase cost on funds in Court
- Funds in Court [FIC] FIC capacity to pay recurrent expenses and maintenance
- Other foreseeable expenditure
- Ability of beneficiary/family to cover day-to-day living expenses
 - IF NOT: external income (of beneficiary or others)
- Other relevant considerations

2. Insurability:

Police check for ALL occupants

3. Demonstrated independent living skills (if an adult):

Important that beneficiary has shown that he/she can live independently or



has a funded care plan.

4. Demonstrated family support (if minor):

It is expected that the family can show that a sufficient level of support will be provided. This does not only mean financial support but also the ability to coordinate the day-to-day care of the beneficiary.

Entering into an Undertaking

All persons for whom a property is to be purchased (where able to understand), namely, parents when a beneficiary is under the age of 18 years or the beneficiary when aged greater than 18 years, are required to enter into an “Acknowledgement and Undertaking”.

ANY PROPERTY PURCHASED FROM FUNDS IN COURT REMAINS UNDER THE COURT’S CONTROL

All properties purchased from the funds in Court are held in ‘trust’ for the beneficiary. Whilst a property will be held in the name of trustees, who own it for the beneficiary, any property purchased from the funds remains under the complete control of the Court and, in effect, represents an investment of the funds in Court held for a beneficiary. This means that beneficiaries and their families/carers - where they live with them in a trust property - have a number of responsibilities and obligations to the Court in respect of those properties.

Properties must be properly maintained

Properties must not be allowed to fall into disrepair. Not only may this reduce the value of the property, it may affect the

health and safety of the beneficiary and others who live in the property.

Beneficiaries/parents must not enter into repairs or improvements without prior approval

Although it is important to keep the property maintained, repairs should not be carried out without the Court’s prior approval. This is particularly so if it is expected that the cost of the repairs or improvements will be reimbursed from the beneficiary’s funds.

All repairs must comply with standards and regulations

Not only must any major repairs or works be carried out only after receiving approval from the Court, where appropriate, they must comply with Council building regulations or the relevant building, plumbing or electrical standards.

Failure to do so may mean that any building or contents insurance may be voided and the property **will not be** insured for any damage. More importantly, improper work done gives rise to safety concerns and the possibility of causing serious harm to people and property.

Allowing property inspections

The Court is sensitive to the fact that trust properties are peoples’ homes and will do its best not to unnecessarily disturb beneficiaries and their families.

However, the Court has an overriding responsibility to ensure that the value of the trust property and beneficiaries’ interests are protected. As such, from time



to time, beneficiaries and others will be asked to permit inspections of the property by FIC's Client Liaison Officers or FIC appointed property inspectors and Valuers.

One of the main reasons the Court does this is to make sure that the property can continue to be covered by insurance and that the amount for which it is covered is appropriate. Every few years the Court will arrange for the property to be re-valued so that the insurance cover can be kept up to date. The property is an investment of beneficiaries' funds in Court and the Court has an obligation to ensure that it is kept in good order. The Court will require that a Property Facilitator visit the property from time to time. This will be an opportunity for beneficiaries to discuss any maintenance or other property related issues. It is a condition of the purchase of a property that beneficiaries and/or their families will allow access to the property to Funds in Court representatives when asked to do so.

Whilst the Court will always respect people's privacy, it serves no worthwhile purpose to make it difficult or impossible for the trust property to be visited by Court staff or Valuers.

CONTINUING OCCUPATION OF THE PROPERTY BY THE BENEFICIARY

Whether the beneficiary occupies the property alone or with family, the overriding purpose of purchasing a property is to accommodate the beneficiary.

Other persons not contemplated or mentioned when the property was purchased entering into occupation

No person can be allowed to enter into

occupation of a trust property without the matter first being discussed with the beneficiary's Trust Officer and the Court giving approval for such occupation. There are a number of reasons for this requirement.

First, any property purchased from the funds in Court must be insured. Many insurance companies decline to provide insurance if an occupant of a property has convictions for particular offences. Therefore, the Court requires criminal records checks for all proposed occupants of a property to be purchased from the funds.

Secondly, the Court needs to satisfy itself that the person proposed to enter into occupation will not do so at the expense of the amenity of the beneficiary, nor give rise to unnecessary expenditure from the beneficiary's funds.

Entering into legal arrangements (leasing, or licensing others to occupy)

Beneficiaries and/or the families or carers **cannot** enter into any legal arrangements to rent the trust property to another or license to a person to occupy the trust property. Although the beneficiary enjoys the benefit of living in and using the property, neither the beneficiary nor anyone else is the legal owner of the property. As such, only the trustees have the legal authority, subject to direction from the Court, to enter into such arrangements. Therefore, all arrangements that have not been entered into by the trustees are illegal and unenforceable.

Additionally, the Court will rarely give its approval for the trust property to be



vacated by the beneficiary and leased. If, for whatever reason, the beneficiary no longer wishes to live in the trust property, the Court may order that the property be sold.

These requirements apply also to contracts to maintain or improve the property. These must first be approved by the Court and, if authorised by the Court, should be signed only by the trustees of the property.

Beneficiary no longer living in the trust property

The Court **must** be notified if the beneficiary no longer lives in the trust property, irrespective of whether the beneficiary's family continues to reside there.

CONTACT DETAILS:

Located at:

Level 5, 469 La Trobe Street,
Melbourne, Victoria

Postal address:

Funds in Court
Supreme Court of Victoria
210 William Street, Melbourne
Victoria 3000

Phone: 1300 039 390

Fax: 1300 039 388

From overseas:

Phone: 61 3 9032 3777

Fax: 61 3 9032 3700

Email: requests@fundsincourt.vic.gov.au

Website: www.fundsincourt.vic.gov.au