



# PUBLIC TRUSTEE AND GUARDIAN POLICY

DOCUMENT PROPERTIES	
Name of Policy	<b>Safe Custody Policy</b>
PTG Policy Number	2017-1
Version/s	3 May 2017
Endorsed by SLG	3 May 2017
Authorised by	Andrew Taylor, Public Trustee and Guardian
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## LEGISLATION

S 22(2) of the *Public Trustee and Guardian Act 1985* (PTG Act) provides that the Public Trustee and Guardian (PTG) may accept a will for deposit with the PTG only where appointed as executor in the Will, whether as primary or secondary executor.

S 23(1) of the PTG Act provides that PTG may accept for safe custody, any trust instrument, a debenture or other security, any document of title to property, any other document and any chattel.

S 23(2)(a) of the PTG Act provides that where PTG charges a fee for safe custody his duties are that of a bailee for reward. This is a duty to protect the goods from theft or damage so as to be able to return the goods to the person.

S 23(2)(b) of the PTG Act provides that where PTG does not charge a fee for safe custody his duties are that of a gratuitous bailee. This is a duty to protect the goods from theft or damage so as to be able to return the goods to the person. In this case the liability for loss only arises where the loss is caused by PTG's gross negligence.

S 75(1) of the PTG Act provides that the Minister may determine fees and charges for the purposes of the PTG Act. The Minister has not determined a fee for safe custody. Therefore, s 23(2)(a) does not apply.

## DEFINITION/S

**Safe custody** - in accordance with s 23(1), encompasses holding by the PTG - a trust instrument; a debenture or other security; any document of title to property; any other document; and any chattels. This is very broad and brings in personal goods and property.

Historically, PTG would take in and store a broad range of documents and goods. This typically included valued documents such as title deeds and insurance policies and also Wills, where PTG is appointed as executor or as an executor. At one stage, PTG had a policy to hold guns and firearms in a "gun cupboard".

It is important to distinguish between what is referred to in the PTG Act as "safe custody" and the receipt of personal documents in the normal course of an estate administration or financial

management etc. In such cases, while these documents are received, they are not regarded as being held in safe custody. These may be retained for the specific purpose that they were provided to PTG but will be provided to beneficiaries/family/DFAT as the case may require upon completion of PTG's role.

The act of holding an original Will or EPA is not regarded as a safe custody as those documents remain the property of PTG unless and until provided to the client

In many cases PTG may decide to destroy documents relating to an estate upon completion where they have no ongoing value.

## **POLICY**

The provisions at s 22 & 23 of the PTG Act are "may" provisions, meaning that it is optional for PTG to store a thing in safe custody.

Developments in the insurance industry are now such that, it is extremely difficult to obtain insurance to cover the value of items stored in safe custody by PTG.

Historically, PTG's policy has created a risk in that we do not inquire of the client what is stored in a safe custody packet.

The Registrar-General (RG) will now also accept a hard copy (ACT) title deed into safe custody. In doing so, the RG will destroy the Certificate of Title (C/T) and note the land title register, that no C/T was issued and note the register as to the name of the entitled person. The Registrar-General will provide a copy of the deed to the entitled person upon request.

### **Documents and chattels received into safe custody before the date of this policy**

PTG policy is to retain all safe custody packets created prior to the date of this policy.

### **Sealed envelopes for Will Clients**

In the process of making a will, PTG may advise that the testator to prepare a statement or letter relating to possible Family Provision claims, in which the testator sets out why the possible claimant has not been provided for or why provision has been limited. The contents of the document may be highly sensitive. There is no requirement for PTG to read or view the document. The document is to be placed into an envelope that is then sealed and marked "Only to be opened on my death" OR "Only to be opened should a Family Provision claim be made against my estate". The sealed envelope is placed in PTG's Safe Custody and its existence is to be recorded in TACT.

The testator should be advised that -

1. PTG will not release the sealed envelope to any person, including an attorney or Manager (ACAT appointed) without the testator's written authority.
2. PTG will release the sealed envelope as directed by the executor of the testator's last will.

### **Documents and chattels not related to an estate**

PTG policy is to refrain from accepting any document, instrument or chattel into safe custody other than an escrow. It is PTG's practice to retain the original Will where PTG prepared the Will and is nominated as an executor, Power of Attorney where PTG is nominated as an Attorney or Advance Care Directive, where PTG is the nominated medical guardian. This is not however regarded as safe custody.

### **Documents and chattels related to an estate**

As executor in an estate, PTG has an obligation to take in the assets in an estate and to administer them in accordance with the will until completion. This may involve bringing assets into the office or

storing them, or maintaining them in real estate being part of the estate or entrusting them to a third party to value or to sell or dispose of.

PTG policy in respect to such items is to ensure that -

- Where real estate is an asset of the estate, retain documents and chattels in the property and ensure that the property and its contents are insured. In some cases, it may be necessary to bring documents into the office to sort or to remove valuables (including jewellery, medals, art etc) from the client's premises either to the office to sort or to a valuer or dealer. Additionally it is entirely inappropriate that valuables be left in a property where it may be unattended or attended by cleaners/tradespersons without the presence of PTG staff. Care should be taken to ensure that these items are properly removed, receipted (in the presence of another PTG officer) and appropriately stored. The critical issue is that the storage of these items at PTG in the medium or longer term is not insurable and should be avoided.
- Where documents and chattels are brought into the office, this should be in the short term and retained in a secure facility built for that purpose either in the office or at the PTG warehouse, and not adjacent to workplaces and desks.
- In some cases, vehicles and other assets will need to be sold or disposed of. PTG staff should only use reputable organisations that are registered by PTG as service providers and are appropriately insured (eg Auctioneer in respect to vehicle and goods to be auctioned).
- Where there is a need to have valuables (e.g. jewellery) valued, special arrangements need to be made for safe and secure transport, insurance and storage.

### **Documents and chattels relating to Management or Guardianship matters**

PTG has also taken into safe custody, for Financial Management clients, documents in the form of C/Ts, original birth/marriage certificates, passports, citizenship certificates etc. PTG policy is to refrain from taking these document into safe custody, however those already in safe custody will be retained.

### **Documents received in the normal course of business**

PTG often receives or acquires documents including personal documents eg BDM Certificates, certificates of title, credit cards, passports etc in the course of estate administration or financial management. The receipt and holding of these documents is not regarded as safe custody. These documents should however be properly receipted using the Receipt Books provided and then recorded by Reception (see Policy of Receipt of Cards, identification documents etc)

### **Documents held in escrow**

It is a common role for Trustees to hold documents in escrow. An escrow is a financial instrument held by a third party on behalf of the other two parties to a transaction. In respect to the escrow, funds are held by the trustee until it receives instructions or until obligations have been fulfilled.

Where PTG is requested to hold in escrow, it will treat the instrument as being a document held in safe custody. A packet will be created.

### **DOCUMENTS AND CHATTELS HELD IN SAFE CUSTODY**

The following applies in respect to documents and chattels held in safe custody

#### **Wills where PTG is nominated as executor**

PTG may only prepare a Will where nominated as executor or as an executor. Where PTG drafts a will for a client nominating PTG as executor, practice is to retain the copy of the Will original of the Will at PTG and to provide the original to the client. The original is provided to the client in a packet clearly marked that it should be retained in a safe place. As PTG retains the copy, if the client loses the original, PTG will provide a further certified copy at no charge. For purposes associated with discovery of the Will on death, it is optimal that the original Will not be stored in the same place (PTG Office) as the copy.

## **Title Deeds**

The ACT Registrar-General (RG) provides a service under which a person named as the registered proprietor or mortgagee can request the RG not to issue a C/T and instead retain the C/T in safe custody. In such cases, upon application, the RG will note the land title register that the CT did not issue along with the name of the person/organisation entitled to have a copy. The RG will provide a copy of the C/T, on application, to the entitled person at any time.

Item 49.7 of the ACT Land Title Practice Manual (published online) sets out the procedure. A Land Title Production Form - Form 051 - PROD in the Legislation Register - must be completed. A small fee is payable for lodgement of the form. On completion, the form together with the Certificate of Title should be lodged at Access Canberra.

Item 49.9 of the Land Titles Practice Manual sets out the procedure for withdrawing C/Ts that have been placed in safe custody.

## **Signing documents and packets out to client**

A book register of safe custody packets is retained in the PTG strong room along with all safe custody packets. This records the packet only and not its contents, along with the date, number, and signature of the client and the person signing in. The packet is sealed with a legal seal over which a signature is affixed and should never be opened unless in the presence of the person entitled. Signing out of existing safe custody packets must involve at least two PTG Officers and the packet should be opened in the presence of the client or person receiving them. The book register should be appropriately signed as to delivery of packets.

## **Where the client dies**

It is PTG practice, on the death of a will/estate client to first determine whether a safe custody packet is being held and to access and sign out that packet from safe custody. TACT records whether we are holding a packet in safe custody.

It is PTG policy, as executor, to retain the packet and open it immediately. If however, PTG is not the executor, or has renounced the role, the packet may be signed out unopened to the executor on production of evidence of death and appointment or authority will release a packet.

## **END OF POLICY**