# Administrators video 4 - Frequently Asked Questions

*[Text: Administrator’s Frequently Asked Questions: Managing bank accounts, making financial decisions and dealing with banks, buying or selling property, assets or shares. Providing loads to friends and family members from managed assets.]*

## Questions and answers

### Question 1

Some banks advise on setting up bank accounts in trust for the represented person, is that okay?

### Answer

VCAT has determined that the represented person’s assets including bank account should properly reflect the ownership by the represented person and show that the asset is in the name of the represented person, VCAT has taken this view as to ensure correct legal ownership of the bank account and reflect the represented person’s independence and dignity

### Question 2

What do I do if the bank does not understand or accept the VCAT order?

### Answer

 This is a common problem administrators experience. The VCAT order states that a decision maker, the administrator, has been appointed to make decisions regarding the represented person’s finances, and to manage the represented person’s finances. This situation now precludes the represented person from accessing their funds at the bank or making withdrawals at the bank. The bank staff are generally not familiar with a VCAT order. It is advised that administrators request the bank staff seek assistance from the bank’s financial orders department. The administrator should persist and ask the bank to take a copy of the order, and ensure the bank systems reflects the order and ensure the staff understand the implications and power of the order.

### Question 3

Another question for Member Page, if I may. Are there circumstances in which a family member who is an administrator can purchase a represented person’s house.

### Answer

Yes, a family member can buy a represented person’s property. However, to avoid a conflict of interest, the administrator should provide to VCAT 3 market appraisals from local real estate agent, and the Tribunal will average the appraisal and that average will be accepted as the selling price by the represented person.

### Question 4

As an administrator, can I purchase a pre-paid funeral for the represented person?

### Answer

Yes, as an administrator you are able to purchase a prepaid funeral for the represented person but ensure the funeral contract is in the sole name of the represented person.

### Question 5

As an administrator, can I acquire shares in the represented person’s name without VCAT’s approval?

### Answer

Yes, normally the administrator can acquire assets without restrictions from the Tribunal. However, you can seek the approval of the Tribunal to support your decisions and actions. Investment decisions should be consistent with decisions made previously by the represented person. If the represented person only invested in term deposits, it may not be appropriate to risk their capital by acquiring shares, if the represented person is advancing in age. In this instance, the administrator should focus on maintaining capital rather than seek to earn a higher return.

### Question 6

This is a question about a joint bank account. My husband and I have been married for 35 years, and we’ve got all our money in joint accounts, and I’m finding it very unfriendly filling out the Financial Statement and Plan having to split everything up. What should we do in this situation?

### Answer

That’s a very good question, ideally it would be best that if the accounts could be separated so that it makes reporting a lot easier because you’re abstracting the details, income and expenditures from a single account. If on the other hand you still want to keep it as a joint account, you may need to first of all have a chat with your accountant and talk about splitting your assets and your income. Having got that, you will finally still have to get approval from VCAT. So you would need to write in with reasons why you would like to keep it as a joint account. If we allow that, you will then have to submit copies of that bank account as well as keep receipts for all expenditures and details of all income, so that the division can be easily traced and reconciled.

### Question 7

I’m an administrator for my sister, and I went down to the bank to get details of her finances and they wouldn’t give me any information or access to her finances, they said it wasn’t any of my business, and they wouldn’t accept the bank order. What can I do about that?

### Answer

In that instance the VCAT order is easy enough authority to operate the account. If there is still a problem, then as member Page mentioned earlier, it might be best to deal with the Bank’s audit team or their legal department and ask them to resolve the issue.

### Question 8

So, I live a really long way away from my sister, and travelling back and forth can be difficult and takes a lot of time, can I transfer her money into my account and make payments from there?

### Answer

In this instance, again, all payments should really be paid and received into the represented person’s bank account. If due to the reason you have stated, and money was transferred out into your own account then firstly, you will require approval from VCAT. Secondly, it would be best if you can set up direct debits, to be put in place for any regular payments, like accommodation or rent, and wherever possible keep receipts for any of the payments. Finally, you need to submit full copies of your bank accounts when submitting the ABA.

### Question 9

Sir, am I allowed to allow the represented person access to cash or a bank account set up for their normal day-to-day expenses, if so, how should I control this, and record it?

### Answer

Yes you can, provided the sums are small and having done that, you would need to submit a copy of those bank statement together with the ABA.

### Question 10

The represented person’s son is in financial difficulty, and the represented person has the funds to help him out. Is that okay? Can we make a gift or a loan to son?

### Answer

This is a question that we often get asked where the represented person is older. They’ve often accumulated quite some savings, or they might have sold their home to pay a refundable accommodation deposit and they have funds left over in bank accounts in term deposits.

There’s a couple of issues here and one is to remember that you must first of all consider the represented person’s will and preferences. This comes before and above the needs of the son who is in financial trouble. You must also manage any conflict of interest yourself as the represented and their son might be relatives of your own. In managing conflict of interest, you should avoid family members to help them out, because often those with their own problems have the loudest and most consistent voice, and remember that the represented person’s savings if they’re in bank savings accounts and term deposits, with approved deposit institutions, are guaranteed and secure, but as soon as you distribute them as a loan for example, they become more risky those funds might not be repaid. And if you’re looking at a gift, then you will need to take into consideration whether it is appropriate to give that gift.

You should write in and request for approval of VCAT before giving a gift or loan of that nature, and when you do, please include details of how you’ve considered how the represented person’s will and preferences and why this is an appropriate decision for their funds.

### Question 11

So represented person is my brother, and he’s getting very low interest from money saved in his bank, can we lend funds to family members who are willing to pay higher interest than the banks are paying for a major purchase, or to finance their business, surely that’s a good investment for my brother?

### Answer

### In answer to that question, I would say that a loan from the represented person’s funds to someone in business or to make a major purchase, is probably putting the represented person’s funds at a higher risk than if they were held in a bank, in savings or in term deposit, and therefore the extra interests that they might receive for it is not really the main consideration. It is preserving the represented person’s capital that is more important. Another thing to look at is whether the borrower is a good credit risk. Would they have borrowed the money from the bank? Would the bank have approved the loan or is it likely that they may be unable to meet the repayments over the long term?You should write into VCAT and request for approval before making a loan like that. And also we would require you to document the loan and have the documents signed by both parties. Question 12

The represented person had loaned money to family members before the administration order was made, those ones weren’t documented so what should we do about it?

### Answer

Well as the administrator, it is your duty to ascertain the assets of the represented person and to ensure that you have proof or documentation of those assets. So, we will ask you to confirm the borrowing arrangements in writing with the parties, if you are aware of the details of the arrangements yourself, you could have drawn up a confirmation of the loan, detailing the approximate date, the amount, any interests payable, the repayment terms, and when the loan is to be repaid in full, and have both the lender and borrower sign.

As the administrator, you will sign the acknowledgement for the borrower. If the terms of the loan are not agreed upon that is if the borrower is saying the terms of the loan is somehow different to what your understanding is, and they won’t sign a confirmation agreement, then you can ask them to make a statutory declaration outlining their understanding of the situation and detailing all of those things that I’ve just mentioned before and that will at least some acknowledgement from them of the loan existing, and what the terms of the loan are.

### Question 13

With all of this COVID stuff going on at the moment, we’ve got a family member who has lost their job and is looking for a short term loan to tie them over until they can get back into work. Can they get a loan form the represented person’s funds and if they can, what do they have to do to put that into affect?

### Answer

Considerations for this type of loans will be the same as for any type of loan. Have the represented person’s will and preferences been taken into account? Would they want to make a loan if they can make that decision for themself? I would consider that this type of loan would not be to make a major purchase, and therefore it’s unlikely that there would be any security provided, and also the person is obviously suffering from financial hardship, and therefore it places them in that risky category and may end up being more of a gift than a loan. However, we will require you to write into VCAT and request approval first and outline any interests payable. We would expect a loan like this to not be longer than say 12 to 24 months and be repaid in full at the end, but before the administrator did that, I would recommend that they considered whether the person had gone through the normal channels and tried to access any of the relief packages that are around and they are relief packages that are around for people who have lost their jobs and they are quite generous at the moment as well. However, if VCAT did approve the loan, we would require a written loan agreement to be signed and sent in to us as well, and the loan should also be included in any Account by Administrator as an asset of the represented person.

### Question 14

As the administrator, I’ve sought the advice of a financial planner that suggested that we sell the represented person’s house, pay all the refundable accommodation deposit and start gifting up to $10,000 per year, up to a total of $30,000 over the course of 5 years , because there’s an increase of pension entitlement, are we okay to go ahead with this?

### Answer

Well, as I said earlier, Centrelink has their own rules about what they allow before to be gifted, before the asset or the income test is affected, and this is an example for that. We would ask that you write into VCAT for approval before making those gifts, even though they came on the advice of a financial statement of advice. So we would ask you to send in the statement of advice, and we would want to see what the benefit was in their Centrelink pension, we would want to see that quantified, we would want to see in dollar terms how much more that is going to be per fortnight. Sometimes the actual amount is not significant, considering that you’ve given away such large amounts. So we’d like to see how the will and preferences of the represented person had been taken into account in making this decision, and then we would consider giving approval. If gifts are made without approval of VCAT and we find that when you report them in the Account by Administrator, and if we find that they’re excessive, we may ask the administrator to recover the amounts.

We’ve now come to the end of the information session for new administrators. Thank you all for attending, and we hope that we’ve helped you all to understand your role as administrator and some of the things you would be required to do.

Don’t forget that you can call VCAT if you have any further questions or you can email us an enquiry. The contact details are on all of our correspondences out to you, but they are: telephone 1300 01 8228 or email humanrights@vcat.vic.gov.au.