WATSON LAW INCORPORATED

FAMILY & ESTATES INSIGHT

When Dad Can No Longer Decide

Curatorship in South Africa

Roelien Watson, Esq.
LLB (UP) · New York State Bar Member No: 5993381
Executive Director, Watson Law Incorporated · November 2026

The man who always knew what to do

For forty years, Dad was the person everyone phoned.

He built the business. He signed every cheque. He knew which insurance policy covered what, when the rates account was due and where every important document was kept. When a family member needed advice, he had an answer.

Then the small things started.

A municipal account went unpaid for three months. He asked the same question twice in the same conversation. He became confused about transactions he would once have understood immediately. Then a stranger persuaded him, over the telephone, to transfer a substantial amount of money into an “investment”.

Eventually, the doctor said the word the family had been avoiding: **dementia**.

For many families, that diagnosis raises an immediate and uncomfortable question:

Who is now legally entitled to make decisions and manage his affairs?

Loving someone and protecting them can sometimes require legal steps that initially feel intrusive. But curatorship is not about taking someone's life away from them. Properly used, it is a protective mechanism intended to safeguard a person who is no longer able to safeguard his or her own affairs.

The family in this article is a composite drawn from situations commonly encountered in practice. It does not describe any particular client.

"But Dad gave me power of attorney"

This is often the first thing families tell us.

Dad may have signed a general power of attorney years ago authorising his spouse or one of his children to deal with his bank, investments or property.

That power of attorney can be extremely useful **while Dad still has the legal capacity to authorise those acts**.

The difficulty arises once he loses that capacity.

Under South African common law, an ordinary power of attorney does not continue indefinitely after the person who granted it becomes mentally incapable of performing the relevant acts himself. The authority of the agent falls away when the principal no longer has the legal capacity on which that authority depends.

Unlike some other jurisdictions, South Africa does not presently have a generally available statutory "lasting" or "enduring" power of attorney which can simply be signed while a person is well and continue operating after incapacity.

That distinction matters.

A family member who continues transacting under an old power of attorney after the person granting it has lost the necessary capacity may find that the authority on which those transactions were based is no longer valid.

So, if Dad can no longer manage his own affairs, the answer is not simply to carry on signing for him.

A formal legal mechanism may be required.

What are the options?

Broadly speaking, South African law provides two principal mechanisms for the administration of the financial affairs of a person who has lost the ability to manage them:

the appointment of an administrator under the Mental Health Care Act 17 of 2002; or

the appointment of a curator through the High Court.

They are not interchangeable, and the appropriate route depends on the person's condition and circumstances.

An administrator under the Mental Health Care Act

Chapter VIII of the **Mental Health Care Act 17 of 2002** permits the Master of the High Court to appoint an administrator to manage the property of a person who falls within the requirements of the Act.

This procedure is directed specifically at the property of a person who is **mentally ill or has a severe or profound intellectual disability** and who is incapable of managing his or her property.

The process begins with an application to the Master rather than an ordinary High Court curatorship application. The application must contain prescribed information and supporting evidence, including available medical reports relevant to the person's mental health and ability to manage his or her property.

Importantly, an administrator deals with **property and financial affairs**. The appointment does not amount to a general authority to make every personal decision on someone's behalf.

A curator

The High Court may appoint a curator where a person is incapable of managing his or her affairs because of a relevant mental or physical disability.

The procedure is governed principally by **Rule 57 of the Uniform Rules of Court**.

Depending on what protection is actually required, different forms of curatorship may arise.

A **curator bonis** administers the person's property and financial affairs.

A **curator personae** may, in an appropriate case, be appointed in relation to the person's care and personal welfare.

The appointment of a curator personae is significant because it can substantially affect a person's autonomy. A court will therefore not lightly interfere with someone's ability to make personal decisions merely because assistance with financial affairs is required.

For many families dealing with dementia, it is the appointment of a **curator bonis** that is principally required.

Which route is better?

There is no universal answer.

An administrator application may, in an appropriate case, provide a less cumbersome route than a full curatorship application. But it is important not to assume that it is available merely because someone has become old, frail or unable to manage complex finances. The statutory requirements of the Mental Health Care

Act must be met.

A High Court curatorship may be more appropriate where the person's circumstances are complex, for example, where there are businesses, substantial investments, numerous properties, ongoing litigation or complicated financial arrangements.

It may also provide a particularly important safeguard where family members disagree about whether assistance is necessary, who should control the assets, or how the person's affairs should be managed.

The objective is not to select the mechanism with the greatest amount of authority.

It is to select the mechanism that provides **the protection actually required, while interfering as little as reasonably possible with the person's independence and dignity**.

How does a curatorship application work?

A Rule 57 curatorship application contains several safeguards precisely because the consequences are serious.

The court is being asked to place another person's affairs, and sometimes aspects of that person's life, under the control of somebody else.

The procedure therefore usually unfolds in stages.

1. The evidence is gathered

The process begins with a detailed examination of the person's circumstances.

The founding papers ordinarily explain the person's medical condition, financial affairs, family circumstances and the events demonstrating why assistance has become necessary.

Medical evidence is important.

This is not simply a question of whether Dad has been diagnosed with dementia. The real issue is the effect of his condition on his ability to understand and manage his affairs.

Rule 57 also requires medical evidence meeting the requirements of the Rule.

2. The court appoints a curator ad litem

The first court application ordinarily seeks the appointment of a **curator ad litem**.

This person is independent of the family and is appointed to investigate the circumstances and protect the interests of the person who is the subject of the application.

Where practicable, the curator ad litem is an advocate, although the Rule also makes provision for an attorney where appropriate.

3. The curator ad litem investigates

The curator ad litem does not simply accept the family's version of events.

The curator conducts an independent investigation.

Where appropriate, this includes interviewing the person concerned, considering the medical evidence, investigating his financial and personal circumstances and considering whether curatorship is actually necessary.

The curator ad litem then reports to the court.

This is one of the central safeguards in the process: the person whose independence may be affected has someone independently examining whether the proposed intervention is justified.

4. The Master considers the matter

The papers and the curator ad litem's report are also considered by the **Master of the High Court**, who reports to the court on matters including the proposed administration of the estate and the suitability of the proposed curator.

5. The court decides

The matter returns to court.

The High Court considers all the evidence, including the medical evidence, the curator ad litem's investigation and the Master's report.

If the court is satisfied that the person is incapable of managing his or her affairs and that curatorship is appropriate, it may appoint a curator and determine the curator's powers.

Those powers matter.

A curator does not simply receive unrestricted control over everything belonging to the person. The curator acts subject to the court order, the applicable law and the supervision of the Master.

6. The curator receives authority to act

Once the court has made the appropriate order, the curator must comply with the Master's requirements before taking control of the estate. This may include furnishing security where required.

The Master then issues the documentation authorising the curator to act.

7. The curator remains accountable

Appointment is only the beginning.

A curator assumes a fiduciary responsibility.

The person's property must be identified and safeguarded. Money must be properly managed. Records must be maintained. Accounts must be rendered to the Master as required.

Transactions outside the curator's ordinary powers may require further authority or the consent of the Master.

> *Curatorship is therefore not ownership of Dad's assets. It is stewardship of them for Dad's benefit.*

The difficult part is often not the law

The affidavits can be drafted. Medical reports can be obtained. Applications can be issued.

The difficult part is often sitting across from the man who raised you and explaining that the family is asking a court to allow somebody else to manage his money.

There are ways to handle that process with dignity.

Keep him involved

Loss of capacity is not necessarily absolute or immediate.

A person may struggle profoundly with sophisticated financial decisions while still being perfectly capable of expressing preferences, understanding family relationships and participating meaningfully in decisions about his life.

Do not speak about Dad as though he has disappeared simply because his abilities have changed.

Where circumstances permit, explain what is happening and why.

Speak to the family early

Sibling conflict can turn an otherwise protective application into expensive litigation.

If possible, discuss the problem before anyone approaches court.

What is happening?
What has the doctor said?
What risks currently exist?
Who would be an appropriate curator?
Is everyone comfortable with that person?

Not every disagreement can be resolved around a dining-room table. But identifying the issues early is considerably better than discovering them for the first time in opposing affidavits.

Consider whether a family member should be curator

Being the eldest child does not create an automatic entitlement to manage a parent's estate.

Nor does being the child who lives closest to Dad.

The question is who is **suitable**.

In some families, a spouse or adult child is entirely appropriate.

In others, appointing one sibling creates suspicion, resentment or an impossible administrative burden.

Where the estate is substantial or family relationships are strained, an independent professional curator may sometimes be the better solution.

Remember that appointment is a responsibility, not a reward

A curator must keep records, account for money, comply with the Master's requirements and act in the protected person's interests.

The role carries responsibility.

It should never be treated as an entitlement to control the family assets or as an advance on an inheritance.

Dad's money remains **Dad's money**.

The purpose of curatorship is to protect it so that it can continue serving him.

What if the diagnosis is still early?

An early diagnosis can provide something enormously valuable: **time**.

Capacity is not determined merely by the existence of a diagnosis. A person in the early stages of dementia may still have capacity to make some or many legal and financial decisions.

Where capacity remains, it is worth using that window carefully.

Review the will

An outdated will can create unnecessary difficulty later.

While the person still has testamentary capacity, consider whether the will accurately reflects his present wishes and family circumstances.

Do not wait until capacity becomes questionable.

Get the paperwork in order

Create a proper record of:

- bank and investment accounts;
- immovable property;
- companies and trusts;
- insurance policies;
- pension and retirement benefits;
- debts and suretyships;
- recurring expenses;
- important advisers; and
- the location of original documents.

In many families, the biggest problem following incapacity is not deliberate secrecy. It is that one person carried decades of financial information in his head and nobody else knew where to find it.

Simplify unnecessarily complicated arrangements

Multiple dormant accounts, outdated debit orders, forgotten insurance policies and scattered investments become much more difficult to manage once capacity deteriorates.

Where appropriate, simplify the administration while the person can still participate in the decisions.

Consider estate-planning structures carefully

Trusts and other estate-planning arrangements may sometimes form part of sensible long-term planning.

But a trust is **not a substitute for curatorship in every case**, and transferring assets into a trust has significant legal, tax, estate-planning and control consequences.

It should therefore never be done simply because somebody has recently been diagnosed with dementia.

Any restructuring must take place while the person has the required capacity and only after proper legal and tax advice.

Record important decisions properly

Where substantial transactions or changes to a will or estate plan are made after an early diagnosis, it may be prudent to obtain appropriate contemporaneous medical evidence regarding capacity.

That evidence can become extremely important if the transaction is challenged years later.

Ask the questions while Dad can still answer them

There is also a conversation that no legal document can replace.

Who does he trust?
What worries him?
What does he want to happen to the business?
Where would he prefer to live if he eventually requires assistance?
What is important to him about his care?
Who would he want involved in important decisions?

Those conversations may later become invaluable.

Do not wait for the crisis

Families often seek advice only after something has gone seriously wrong.

Money has disappeared.

Property needs to be sold but nobody has authority to sign.

The bank has frozen access to an account.

An elderly parent is entering transactions he plainly does not understand.

Siblings are accusing one another of taking money.

By then, the legal problem is accompanied by a financial and family crisis.

If there are genuine concerns about a parent's diminishing ability to manage his or her affairs, obtain advice early.

Sometimes the conclusion will be that no formal intervention is yet justified.

Sometimes relatively simple planning will be enough.

And sometimes the safest course will be an administrator or curatorship application.

The important thing is to understand the options **before an emergency chooses one for you**.

How Watson Law can assist

Watson Law assists families where a parent or other loved one is no longer able to manage his or her own affairs.

We can advise on the appropriate legal mechanism, assist in obtaining and organising the necessary evidence, prepare administrator or curatorship applications where appropriate, liaise with medical practitioners, counsel and the Master of the High Court, and guide the family through the process.

We can also assist families who are confronting an early diagnosis and want to put sensible legal and estate-planning arrangements in place while the person still has capacity.

These matters require more than paperwork.

They require legal protection that respects the dignity of the person at the centre of the process.

If you are concerned that a parent, spouse or other loved one can no longer safely manage their own affairs, email us at **theoffice@watsonlaw.co.za** to arrange a confidential consultation.

Contact Watson Law

Email **theoffice@watsonlaw.co.za**

Telephone +27 12 804 0748

Website www.watsonlaw.co.za

Office Ground Floor, Block B, Boardwalk Office Park, Cnr Solomon Mahlangu & Haymeadow Crescent, Faerie Glen, Pretoria

Legal sources

- Uniform Rule 57 of the Uniform Rules of Court: appointment of curators in respect of persons under disability and release from curatorship.
- Mental Health Care Act 17 of 2002, Chapter VIII, particularly sections 59 to 65.
- Master of the High Court: *Curators and Tutors*.

This article provides general information about South African law as at November 2026 and does not constitute legal advice. Capacity and the appropriate protective mechanism depend on the circumstances of each individual case. Legal advice should be obtained before acting.