Curatorship or administration? Two routes when someone loses capacity

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A stroke, advancing dementia, or a serious accident can leave someone unable to manage their own finances overnight, without any warning to plan around. When that happens, family members are often surprised to learn that they cannot simply step in — South African law requires someone to be formally appointed before they may deal with another person's assets on their behalf. There are two distinct legal routes to get there: curatorship, and the statutory administration application. They are often confused, but they differ in cost, process, and when each one applies.

Why an old power of attorney won't help

Many families assume a power of attorney signed years earlier will solve the problem. It won't. An ordinary power of attorney is only valid for as long as the person who signed it still has the mental capacity to understand what they authorised — the moment that capacity is lost, the power of attorney automatically lapses. South African law does not currently recognise an "enduring" power of attorney that survives incapacity, unlike some other countries. This is precisely why curatorship and administration orders exist: they are what the law requires once a power of attorney can no longer do the job.

Curatorship: The High Court route

Curatorship is a common law process brought before the High Court under Rule 57 of the Uniform Rules of Court. An application is made asking the court to declare the person incapable of managing their own affairs, supported by affidavits from two medical practitioners — typically a psychiatrist or neurologist, plus a general practitioner. The court appoints a curator ad litem, usually an advocate, to independently investigate and report back before any final order is made. Once satisfied, the court appoints a curator bonis to manage the person's property (and, where needed, a curator personae for personal and healthcare decisions), who must then account annually to the Master of the High Court.

Curatorship applies regardless of the cause of incapacity — mental illness, physical incapacity, a coma, or brain injury all qualify — and there is no ceiling on the value of the estate involved. That flexibility comes at a cost: legal fees, medical reports and the curator ad litem's costs typically bring a curatorship application to somewhere between R50,000 and R100,000, sometimes more, before ongoing curator's fees are even considered.

The administration application: a statutory shortcut

Where the person's incapacity stems specifically from a mental illness or a severe or profound intellectual disability — dementia and Alzheimer's disease are the most common examples — Section 60 of the Mental Health Care Act 17 of 2002 offers a considerably faster and cheaper alternative. Instead of a full High Court application, a written application under oath is made directly to the Master of the High Court, supported by medical certificates, a summary of the person's assets and income, and evidence of efforts made to involve the spouse or next of kin.

This route works best for smaller estates: the Master's guideline threshold is R200,000 in assets. Above that, the Master may appoint an independent investigator (whose fee is capped, but paid by the estate or applicant) before deciding whether to proceed. Once appointed, an administrator's powers are more limited than a curator's — immovable property, for example, cannot be sold or mortgaged without the Master's or a court's separate consent.

Comparing the two

- Cause of incapacity: curatorship covers any cause; administration is limited to mental illness or severe/profound intellectual disability.
- Authority: curatorship is granted by the High Court; an administrator is appointed by the Master of the High Court.
- Estate size: curatorship has no ceiling; administration is intended for estates up to roughly R200,000, with extra scrutiny above that.

- Cost and speed: curatorship is slower and considerably more expensive; an administration application is quicker and more affordable.
- Powers granted: a curator bonis has broader powers; an administrator faces tighter restrictions, particularly around immovable property.

Planning ahead

Because neither process can be avoided entirely once incapacity has already occurred, the real opportunity lies in planning before it happens. Not everyone needs, or has, a trust — so it's worth knowing that a properly structured plan, put in place while you still have full capacity, can take more than one form. The common thread is that whoever you've chosen — co-trustees, co-owners, or fellow directors — can keep managing those assets seamlessly if you later lose capacity, without needing to approach the Master or the High Court at all. Depending on how your affairs are structured, that could mean:

- A trust, where co-trustees simply continue administering trust assets on your behalf.
- Assets genuinely co-owned with a spouse or family member, who can keep dealing with them in their own right.
- A family company or similar entity, where fellow directors can keep the underlying business and assets running.

Which of these fits depends entirely on how your assets are already held today. Reviewing that, and who is positioned to step in, is worth doing at the same time as your will.

If a family member's capacity has already changed, or you'd like to put structures in place before that ever becomes a concern, contact a fiduciary practitioner from FISA who can help you work out which route applies and guide you through it.

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