



Associazione
per l'Amministrazione di Sostegno
APS



Caring
with residual capacity for the ward
(CRCW)

Published by

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Caring with residual capacity for the ward ("Amministrazione di sostegno" in Italian) has seen an exponential increase at national level since 2004. It is presently the **main measure of legal protection** for all the persons who are in a state of fragility, and hence unable to care about their own rights by themselves.

Right from its foundation, the "Associazione per l'Amministrazione di Sostegno" has produced information materials to raise awareness about the institution of the caring with residual capacity for the ward (CRCW hereafter).

The Association considers as fundamental that **accessible information** is made available to all those who, for various reasons, need to interface with the institution of CRCW.

Such is the aim of this brochure, intended as a **user-friendly tool** to inform, train and help fragile persons, families, volunteers, and social as well as health services. This new version, compared to the previous edition published in 2015, reflects the willingness to facilitate its reading by anyone interested, thanks to a challenging task of translating from a more technical language to a simpler one.

It is structured in **nine parts** and also features illustrations.

After a brief introduction of the activities promoted by the Association, the second part presents and compares the legal protection measures set out in Italian law and provides some statistical data at national and provincial levels. There is a vigorous debate at international level about the legal protection of fragile persons, to the extent that it was the subject of a world conference with the participation of professionals from all over the planet. This is illustrated in the third part of the brochure. Part 4 then covers the persons concerned by CRCW. The fifth part is entirely dedicated to the process of nominating a carer: each phase, from writing the application form to the carer's oath, is explained so as to give readers a clearer and more detailed picture of the provision set to support the fragile person. The sixth part describes the duties and powers of the carer, and topics such as the initial inventory of property and affairs, the periodic accountability report, the responsibility, the actions of extraordinary administration, the replacement of the carer and the possibility of revoking this measure of protection.

Part 7 deals with the early appointment of a carer, a key subject: each of us can appoint someone we trust as our carer right now, for any future need. The system of information exchange between the Council of Notaries and the Court of Bolza-

no, unique in Italy, is also illustrated here.

Part 8 is a presentation, using infographics, of the provincial law for the promotion of CRCW introduced in July 2018.

The key topic of part 9 is the model of CRCW through an association, i.e. the case where the administrator of an institution, such as the "Associazione per l'Amministrazione di Sostegno", directly assumes the role of carer.

Forms are the subject of the tenth and final section of this brochure, which we hope can help all those who seek information and wish to learn about an important instrument like CRCW.

The Chairman
Werner Teutsch



The Director
Roberta Rigamonti



The “Associazione per l’Amministrazione di Sostegno”



Based in Bolzano, the Association is a **non-profit organization** with legal personality. It was founded in **late 2010** at the initiative of a group of professionals working in various fields, such as medicine, economics, law and social services, to promote **a place of counselling and support** to families, carers and those who benefit from this legal protection measure.

In the past few years, the Association has gained **a valuable know-how about the legal protection of fragile persons**, allowing it to offer a service that is more complete and better targeted for families, social and health services, and carers who may or may not be family members.

The Association offers a **first consultation free** of charge to anyone interested in applying for **CRCW** and to those who have already been appointed as carers.

The Association promotes a number of **services** for its members, such as **guidance in the procedure of nominating** a carer, **professional assistance** in writing and presenting the documents that the carer must submit to the tutelary judge (financial reports, applications and assessments), **peer consulting meetings**, promotion of **specific projects, publications and information materials**.

As far as **awareness and training** are concerned, conventions and courses are organized every year to analyse specific topics related to CRCW.



Free training courses are organized all over the territory of the province.

The Association, legally recognized, is registered in the **Provincial Register of Associations for Social Promotion and in the guild of associations of the City of Bolzano**. The transparency and reliability of its activities are certified by **the Italian Donation Institute and by its "Safe Donation" certification (Italian: "Donazioni sicure", German: "Sicher Spenden")**.

The Association is also an active member of the **International Guardianship Network**.





The measures of legal protection for the fragile persons

Any of us can experience a **period of serious difficulty** because of events that affect us personally or affect others close to us (partners, children, friends, etc.). People who are in a state of discomfort, either physical or mental, may lack the capacity to look after their personal or financial interests by themselves, even for a short period.

Law number 6, introduced in 2004, defines the role of the carer with CRCW.

The tutelary judge appoints the carer to support the fragile person by assisting him/her closely in the activities of daily life.

CRCW has profoundly changed our legal system. Its purpose is to **value and support fragile persons, also called beneficiaries, to satisfy their needs and requests.**

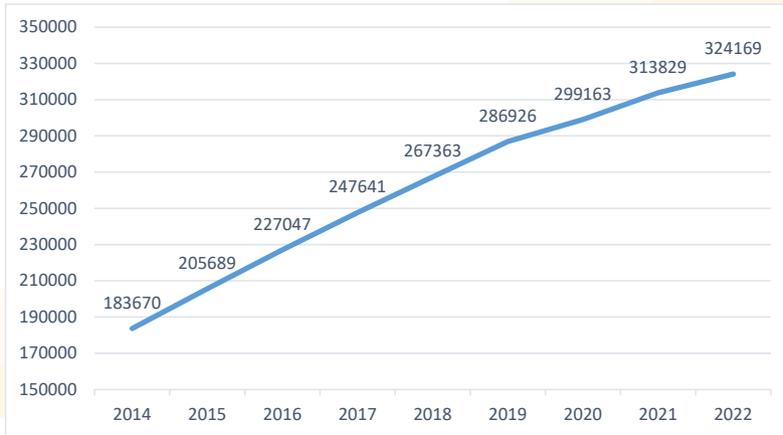
Beneficiaries maintain their own capacity to complete the activities of daily living, in which the the carer has no exclusive involvement or need to assist.

CRCW is a **very flexible instrument that can be adapted to any individual case:**

- the **tasks** of the carer can concern the areas of finance, administration and bureaucracy, or health issues, or both, and can be modified over time
- it can be decided for **a definite or indefinite period**
- it can be **revoked if the beneficiary no longer needs it**

The whole CRCW process, from appointment to termination, is subject to the constant **supervision of the tutelary judge for the location where the beneficiary is resident**.

CRCW in Italy | 2014-2022



Besides CRCW, there are 2 other legal measures that already existed before 2004: **full guardianship (“interdizione”)** and **limited guardianship (“inabilitazione”)**, by which a ward can lose his/her partial or total capacity to fulfil legal actions validly. **Full guardianship** is adopted for persons affected by a lasting mental impairment preventing them from fulfilling legal actions (similar to the incapacity of a minor). **The legal guardian replaces that person in all the actions that concern him/her.** **Limited guardianship** is adopted in some cases set by article 415 of the Italian Civil Code:

- for adults whose mental impairment is not so severe as to require full guardianship
- in cases of prodigality, or addiction to alcohol or drugs
- for persons who are deaf-mute, born blind or blind since early childhood.

In such cases, the guardian's responsibility is limited to **actions of extraordinary administration on behalf of the ward.**

Although full and limited guardianships are contained in the Italian Civil Code, **their use has constantly declined in the past few years**, proof that several courts prefer to use CRCW instead of these two measures that have already been abolished in many other countries.

The legal protection of adults at international level

The legal protection of adults is a widely discussed issue at **international level**. Actions taken over the past years have in fact led to the signature of important agreements, to guarantee more protection and the equality of rights for persons who benefit from a legal protection measure, allowing them to fully participate in all aspects of life in their communities.

The United Nations Convention on the rights of persons with disabilities represents a fundamental pillar. This tool of international action, adopted by the UN in 2006, has since then been ratified by more than 150 countries all over the world, including Italy and the European Union, as an affirmation of their commitments to the question of disability.

Article 12 of the Convention, in particular, affirms that persons with disabilities have *"the right to recognition everywhere as persons before the law"* and *"enjoy legal capacity on an equal basis with others in all aspects of life"*.

Indeed, the motto at international level is **"a maximum autonomy, a minimum intervention"**, i.e. the legal protection measures of each country must include **wide autonomy** for fragile persons, with the aim of setting limits only in those aspects of their lives in which they cannot provide by themselves and therefore need external support.

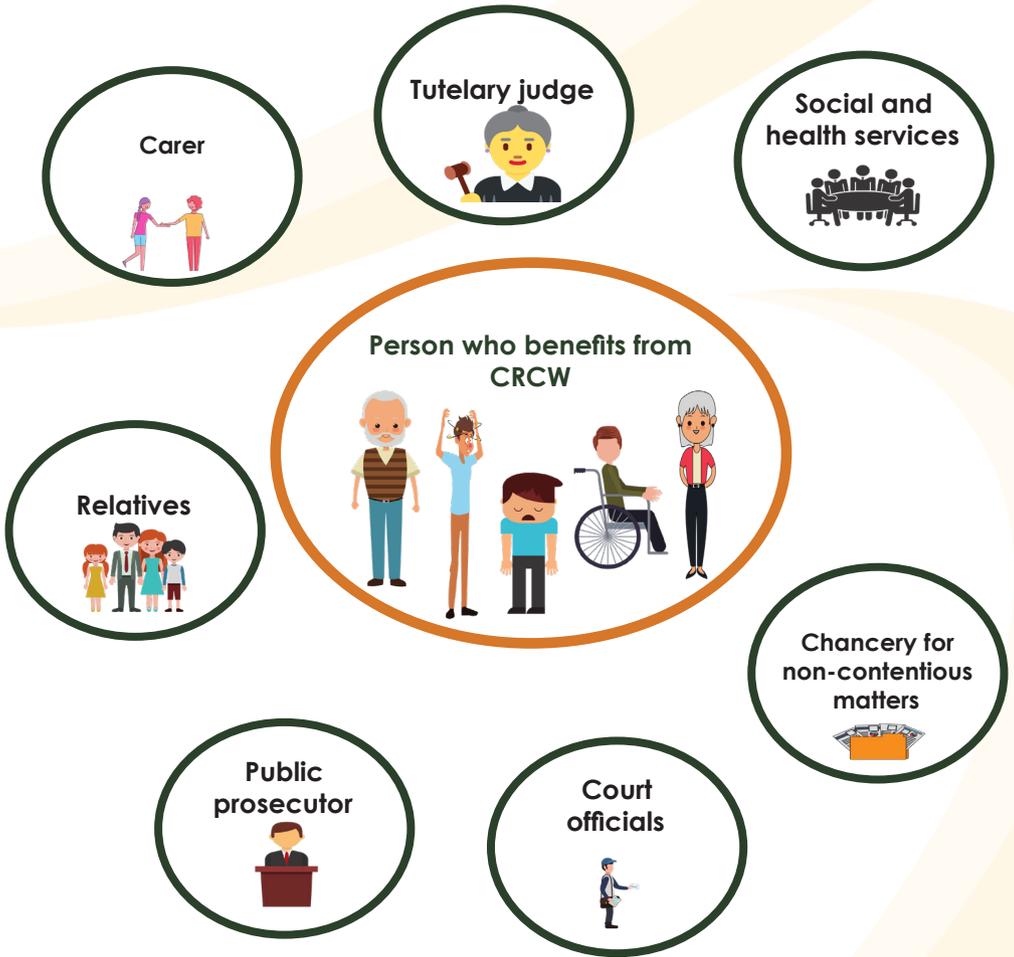
Another important milestone is the **Yokohama Declaration**, a chart of the ethical values of guardians approved in 2010 and reviewed in 2016, which reaffirmed the commitment at international level to the promotion of legal measures that guarantee, as much as possible, the autonomy of the fragile person.

The **International Guardianship Network (IGN)** was created to enforce the Convention of the United Nations and foster the sharing of best practices. The IGN, a non-profit organization, promotes a joint effort network between organizations and professionals at global level, and also organizes the World Congress on Adult Guardianship, held every two years.

The *"Associazione per l'Amministrazione di Sostegno"* became a member of the IGN in 2016.

Who is concerned by CRCW

CRCW is a process involving **different parties**, as explained below.



The person who benefits from CRCW

CRCW can be granted to adult persons who are **unable to care for their personal and/or financial interests by themselves, even for a short period of time, owing to health issues, age or other reasons.**

The probate judge can appoint a caretaker to support a person who is particularly vulnerable, i.e. *"who, because of an infirmity or a physical or mental impairment, has no capacity, even partially or temporarily, to care for his/her own interests"* (article 404 of the Italian Civil Code). Typical cases are persons affected by dementia, Alzheimer's disease, cognitive disability, psychic distress, degenerative disease, coma, addiction (e.g. to drugs, alcohol, gambling) or social marginalization. The law has set an extended definition of the cases concerned with the intention of granting this protection measure to all of them.

It is possible to apply for the assignment of a carer in the year *If the beneficiary is still a minor* in which a fragile person reaches the **age of 17**. This frequently happens in the case of parents of disabled children wanting to protect them when they are about to become adults. In such cases the process will be followed as described further in this text, and the carer will start acting from the day that the beneficiary becomes an adult.

CRCW can also be applied to **adult foreigners with disabilities.** *If the beneficiary is a foreigner* The applicable law for this case is Law no. 218/1995 which, besides temporary and urgent cases, grants CRCW if a similar measure of protection does not exist by law in the country of origin of the beneficiary. Stateless persons and refugees can also benefit from CRCW.

If the person interested is subject to either **full or limited guardianship**, it is possible to apply for a carer but with a different process. The tutor or attorney of that person will have to ask the tutelary judge for authorization to nominate a lawyer, who will represent the person before the civil court to revoke the full or limited guardianship. Only after such a step will the decision of the court be forwarded to the tutelary judge for the assignment of a carer. *The assistance of a lawyer is necessary to apply for the revocation of full or limited guardianship.*



The tutelary judge is a magistrate present in every court who is responsible for various important functions regarding the protection of fragile persons, such as minors, beneficiaries of CRCW, or persons subject to full or limited guardianship.

Applications for CRCW must be presented to the tutelary judge, who is competent to issue all the related decisions, such as decrees to appoint a carer, authorizations to execute certain acts, approval of financial reports, etc.

The carer can be **summoned** at any time by the tutelary judge to provide information, explanations or updates about the guardianship, or receive instructions aimed at defending the interests of the beneficiary in the best possible way.

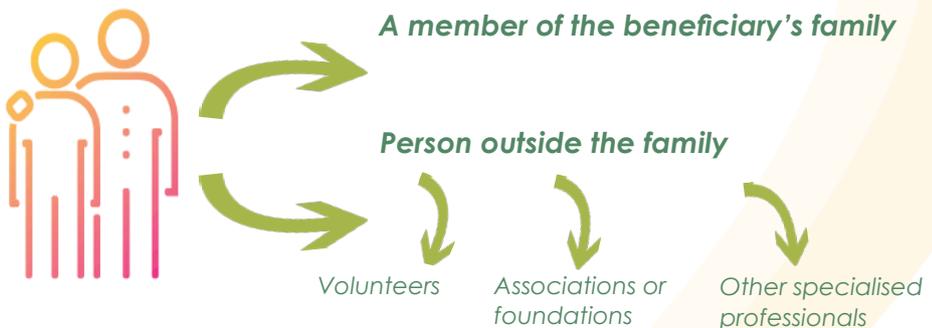
The carer

The carer is a person appointed by the tutelary judge to assist someone who is in **difficulty and unable to care for his/her personal and/or financial interests**, even temporarily.

Anyone may assume the role of carer, except in some cases of incompatibility set by law (see explanations below in the document).

As set out in article 408 of the Italian Civil Code, the **choice** of a carer must be exclusively **aimed at the beneficiary's care and interests**. The beneficiary has the right, whenever possible, to suggest the name of a trusted person to be appointed as his/her carer.

Anyone can name a person as carer against the possibility of a future incapacity. In such case, the appointment is made via a public legal document or a private authenticated document (see part 7).



The following persons can be appointed as carers:

A member of the beneficiary's family

In most cases, the tutelary judge appoints a member of the fragile person's family as carer.

A person outside the family

The tutelary judge appoints a person who is a **third party** and not connected to the family circle of the beneficiary in the following **situations**:

- permanent conflicts in the family
- the beneficiary has no relatives or acquaintances
- the persons close to the beneficiary are unwilling to become carers
- suggestions, often made by doctors, that the beneficiary's relatives are unsuitable as carers
- concrete difficulty in managing the beneficiary's property and affairs
- in all cases deemed appropriate by the tutelary judge.

The third party to be appointed can be one of the following:

Volunteers



The tutelary judge can appoint friends or acquaintances directly suggested by the beneficiary, or other volunteers.

In 2009, the Province of Bolzano introduced the provincial list of carers for the registration of all those interested in becoming carers for persons not belonging to their families.

The Association keeps an internal register of its associates willing to volunteer as carers.

Associations or foundations



Associations or foundations, acting as institutions, can assume the role of carer.

In this case, the tutelary judge can appoint the legal representative of the institution (i.e. the President), who can then delegate an associate or a co-worker to assume the role of carer.

The direct appointment as carer is expressly listed in the statutory objectives of the Association.

The model of CRCW through an association is further explained in part 9.



Other specialised professionals

In situations that are in certain aspects particularly complex (legal, financial, personal or health), the tutelary judge can appoint **other specialists**, such as lawyers, accountants, doctors, notaries, etc.

Note that, in Italy, the role of carer is not a profession. As per article 379 of the Italian Civil Code, such a role is voluntary and mostly without compensation.



As per article 408 of the Italian Civil Code, the role of carer may **not be given to professionals working for public or private services that provide care to the beneficiary of CRCW.**

Certain cases of incompatibility set out for legal carers are also applicable to the role of carer, such as:

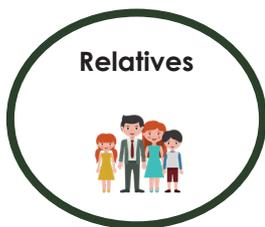
- persons who have no free access to their possessions
- persons who have been deliberately excluded in writing from their parent's testaments
- persons who are in litigation with the beneficiary
- persons whose role of carer has been revoked, or who have lost their parenthood rights
- persons who have been declared bankrupt.



Social and health services



If the **administrators of social and health services** (e.g. the director of a rest home) **directly caring for a person** become aware of facts implying the need to appoint a carer, they must by law present a **request** of appointment to the tutelary judge or inform the office of the Public Prosecutor. The above **legal obligations** of the administrators of social and health services, with respect to the living conditions of the beneficiary, remain in force even **after the appointment of the carer.**



Relatives



The members of the beneficiary's family **are entitled to apply for the appointment of a carer.**

The tutelary judge, having considered the needs and wishes of the beneficiary, will frequently **appoint a family member as carer.**

Chancery for non-contentious matters



This auxiliary office to the tutelary judge is in charge of various **support activities**, such as creating and archiving dossiers, producing certified copies of deeds, and communicating the decisions (e.g. the dates of hearings) to applicants and carers.

The chancery also has the duty to record the dates of the beginning and end of CRCW in a dedicated register, and to communicate them within 10 days to the registry office for their registration in the beneficiary's birth certificate.

Court officials



These public servants have supporting functions at the office in charge of notifications, writs and debt suits (UNEP in Italian). Such offices exist in every Italian court as per article 3 of the Italian Judicial System.

As far as CRCW is concerned, the court officials are in charge of **notifying** the start of the process to the person interested and to others according to the decisions of the tutelary judge.

Public prosecutor



The public prosecutor is the magistrate in charge of monitoring "the respect of the law, the prompt and regular administration of justice, the protection of the State's rights, of legal persons and of the disabled" (article 73 of the Italian judicial regulations).

In a case of CRCW, the public prosecutor has the **capacity to apply** for the appointment of a carer when such need has been raised by social or health services, or by others with no legitimate right to request the appointment directly to the tutelary judge (e.g. neighbours, acquaintances, etc.).

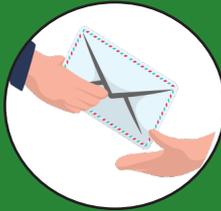
The public prosecutor has also duties of **supervision** after the appointment of the carer, such as approving all the deeds related to CRCW (e.g. authorization decrees) forwarded by the tutelary judge.



Drafting of application



Submission of application



Notification



Hearing before tutelary judge



Appointment of temporary carer



Appointment of carer

In emergency

within 60 days

The process of appointment of a carer

The request to appoint a carer must be **presented in writing** (in Italian: "ricorso") to the **tutelarj judge**.

The process is relatively quick: the tutelary judge appoints the carer **within 60 days** from the presentation of the application form to the chancery after personally hearing the beneficiary and assessing his/her needs and health conditions.



If the interested person is not able to be present in court (due to illness, for instance), the probate judge will have to make the hearing in the place where that person is.

For **urgent cases**, the tutelary judge can appoint a **temporary carer** a few weeks after the presentation of the request. This is possible in cases where immediate action is necessary to protect the fragile person, such as signing a consent form for medical reasons, to make a non-deployable payment, if there is risk of abuse from third parties, etc.



The reason for urgency must be given in the application form.

The temporary carer can only execute the deeds specifically listed in the decree issued by the tutelary judge until the date of the hearings, to which he/she will be summoned together with the beneficiary and the family members (if any). On that occasion, the tutelary judge can confirm the carer or appoint a different one.

A citizen can apply for CRCW by him/herself and may also request the assistance of specialized services.

The assistance of a **lawyer** is necessary only in those cases where the **highly personal rights** of the interested person are affected by the legal measure (e.g. getting married, acknowledging a natural child, making a will and testament, etc.).

In any case, it is the responsibility of the tutelary judge to decide whether legal assistance is necessary for the appointment of a carer.

It is possible to request the State to bear the legal costs of CRCW proceedings, as set forth in ruling no. 15179/19 of the Corte di Cassazione (the Italian Supreme Court).

Those interested must present a specific request to the Council of Lawyers of Bolzano.

The appointment process involves various phases:

Drafting of the application form



Where to present it



The judge competent for the appointment of the carer is the **tutelar judge** of the place where the beneficiary is legally resident or domiciled. If such places don't match, the domicile is to be preferred.

Persons presenting the form



The persons who have the right to present the application form (called "legittimati" in Italian) are the following, as specifically listed in article 406 of the Italian Civil Code:

- the beneficiary, even if a minor or a person subject to full or limited guardianship
- the beneficiary's spouse
- a person who lives permanently with the beneficiary
- relatives of the beneficiary up to the fourth degree of kinship
- persons up to the second degree of kinship to the beneficiary
- the carer of the beneficiary
- the attorney of the beneficiary
- the public prosecutor
- the administrators of social and health services acting for the care and assistance of the beneficiary.

Persons not listed above cannot present the application form directly to the tutelary judge, but they can **send an notification to the public prosecutor** of the court with competence for the place where the beneficiary is resident or domiciled. In this case and if deemed necessary, the public prosecutor will present the request to the tutelary judge.

The content



The application form must contain **information about the beneficiary**, such as personal details, place of residence (e.g. house or institution), health conditions, family situation, social situation, work situation, and the reasons for requesting the appointment of a carer. The application form can be the starting point of a person's life project, especially if the beneficiary is a young person. It is actually a sort of identity card that summarizes the past events, needs and aspirations of the fragile person, to be taken into account by the carer who will be appointed.

The state of fragility of the beneficiary (for instance, due to an illness) can be documented by a medical certificate or a statement from a social service.

If the beneficiary is physically unable to reach the court, this must be declared in the medical certificate.

In order to prevent the process from becoming too lengthy, the name of the person willing to take the role of carer should preferably be already indicated in the request.

If the form is not properly documented, the tutelary judge can officially **order medical enquiries and examinations**; the judge may also use any other legal measures deemed necessary to reach a decision.



Submitting the form

The application form must be submitted to the **chancery for non-contentious matters**, where a new dossier will be opened and forwarded to the tutelary judge.



Setting the date of the hearing

After verifying that all the requirements for the opening of the proceedings are met, the tutelary judge issues **a decree that sets the date and time** of the hearing, which the beneficiary and the proposed carer must attend.

The invitation to attend is also extended to other applicants (other persons who have signed the application form) and any relatives close to the beneficiary. For the latter, the tutelary judge can order that a notification be sent to tell them of the opening of the proceedings (as explained below).

In urgent cases the tutelary judge will immediately appoint the temporary carer, who is summoned to the hearing set in the decree.

The tutelary judge can also **reject the request if the necessary requirements are deemed unmet**. The applicant may appeal against such decision to the Court of Appeal, assisted by a lawyer, within 10 days of the communication of the decree.

The notifications



The tutelary judge may, in the decree setting the hearing, order the applicant to notify (communicate) the **decree to the beneficiary and to any other person that the tutelary judge deems necessary to hear during the proceedings**. The order will include the timeframe permitted for such communication.

The notification consists in **forwarding, through the court officials or by certified mail, an authenticated copy of the application form and of the decree setting the hearing to the persons indicated by the tutelary judge, who also decides how such notifications should be made**.

The number of authenticated copies to be requested to the chancery will therefore be equal to the number of persons to be notified, plus an additional copy to be used as the original.

All of the copies obtained must be taken to the office of the court officials.

The applicant must then obtain the original copy certifying that the notification was executed and present it to the tutelary judge on the day of the hearing.

It is not necessary to make notifications if the beneficiary and his/her close relatives have personally signed the application form or are certain to attend the hearing.

The hearing



The beneficiary and the proposed carer must **appear before the tutelary judge in his/her office at the court**. Other applicants and relatives can also attend the hearing if they were previously notified.

The tutelary judge can appoint the carer on the same day of the hearing if someone present is willing to assume the role, or decide to suspend the proceedings in order to obtain further information or to find a carer.



The oath taken by the carer

All of the carer's functions will be assumed **once the oath is taken**: this is done on the day of the hearing or on another day.

The tutelary judge provides a statement form and the chosen person repeats aloud the formula:

"I swear to perform the duty of carer with loyalty and diligence".

From that moment on the person will be a carer in all respects.



The decree of appointment

The tutelary judge issues a **decree of appointment** indicating the following:

- **the duration** of the appointment, which may be definite or indefinite
- **the scope of the appointment**, i.e. the actions that the carer can perform on behalf of the beneficiary and the actions that the beneficiary can perform personally but with a need for the carer's assistance
- the maximum expenses (if any) permitted by the carer
- the schedule of the reporting that the carer must present to the tutelary judge about his/her activity (a report must be presented every year).

The decree also states that the **carer's name must be registered on the beneficiary's bank or postal current account**, with power of signature.

If the beneficiary is the owner of or has rights over real estate assets in the Province of Bolzano, the carer must present **a request to the land registry office for the registration of the decree**.

The carer's tasks, powers and duties



The tasks of the carer are listed in **the decree of appointment** and in any following decrees that modify the content of the original. Written requests must be presented to the tutelary judge in order to **modify the powers of the carer**.

If, for instance, the health of the beneficiary should gradually improve, it would be possible to present a request to the tutelary judge to reduce the powers initially assigned to the carer. If, on the contrary, the beneficiary's health should worsen, it could become necessary to increase such powers.



In the decree of appointment, the tutelary judge decides if the **duties of the carer relate to the beneficiary's health and well-being, or to financial and administrative assistance, or both**.

In the definition of the powers of the carer, the tutelary judge must aim at **preserving the beneficiary's maximum capacity to act independently** (according to the principle of the maximum protection of self-determination).

It must be specified that **all the activities not expressly assigned to the carer are to be considered inherent to the beneficiary's rights and to his/her exclusive execution**.

The following **powers** can be assigned to the carer:



Power of assistance

The carer **assists the beneficiary closely, without totally replacing him/her**, to execute certain actions.

For instance, in cases of assistance for financial or asset-related purposes: the carer goes to the bank with the beneficiary to withdraw money or order payments, thus contributing to the building of consent between them.

In cases of assistance for actions of a personal nature: the carer and the beneficiary, together, sign a consent form to accept a medical treatment.



Power of representation



The carer can execute actions alone, without the presence of the beneficiary. In such cases, the carer becomes a sort of active substitute who performs activities on behalf of the beneficiary, who might not be able to perform them independently.

In the so-called **exclusive representation**, the actions can be validly executed solely and exclusively by the carer.

Power of healthcare



The carer can be assigned tasks of caring for the beneficiary's health. If expressly authorized by the judge, the carer may obtain **any medical reports, records or other information related to the beneficiary's health**.

The carer may have to **coordinate with health or social services** in the case of treatments needed to help in the cure of the beneficiary, including diagnostic tests and applicable therapies.

The carer could, for example, coordinate with health services for the admittance of the beneficiary to an appropriate hospital.



The carer might in limited cases need to **sign a consent form** for medical treatment on behalf of the beneficiary:

- when the beneficiary lacks the capacity to take a decision with conscious awareness;
- when the prospective medical treatments are essential to keep the beneficiary alive.

Power of administration and management of assets



A carer may also have to **manage the beneficiary's administrative and financial interests**. The carer's action can concern different matters, such as:

- the management of a bank account to pay bills or expenses due by the beneficiary
- handing cash to the beneficiary
- filing tax declarations (e.g. for income tax)
- presenting forms to public services to apply for economic and/or health benefits (e.g. allowances for medical treatment or disability)
- the renewal of personal documents
- managing the beneficiary's real estate assets.

Power of representation in court



The tutelary judge can assign powers of representation to the carer for the execution of actions related to **a civil or criminal court case** to which the beneficiary is party.

The duties of the carer



Article 410 of the Italian Civil Code sets out the **basic duties** of the carer towards the beneficiary.

Persons undertaking this delicate role must consider **the needs and aspirations of the fragile person** and strive to engage him/her in a constant sharing of information about the activities that need to be done.

The carer must act as a **spokesperson** for all the interests of the person assisted, with the obligation to notify any changes in the beneficiary's life conditions and autonomy.

The carer **must promptly inform the tutelary judge in the event of any dispute with the beneficiary.**

The carer also has a duty to submit **regular reports** to the tutelary judge on all of the activities performed (see also "The accounting report").

Responsibilities



In 2014 the Italian Supreme Court ruled that carers, in the same way as guardians, are **public servants**, with all the obligations and legal responsibilities deriving from such a position.

Carers can therefore be accused of crimes that are considered specific to those holding a public office (e.g. embezzlement, abuse of office, forgery, etc.).

In case of severe failing in their duties, they are held responsible for any prejudice caused to the beneficiary or to third parties.

Actions by a carer that are in breach of the law or exceed the powers granted by the tutelary judge can be nullified within five years of the end of the appointment. The request for nullification can be presented by the carer, the public prosecutor, the beneficiary or his/her heirs and successors in title (as per article 412 of the Italian Civil Code).

Since the beneficiary maintains the capacity to execute all those actions not expressly requiring representation or assistance by the carer, the latter will have no liability for such actions nor for any criminal offences committed by the beneficiary (criminal liability is always personal, as set out by article 27 of the Italian Constitution).



The insurance coverage for the carer

Voluntary carers (including members of the beneficiary's family) can presently take out an **insurance policy** that covers all the risks connected with such role (need for legal assistance, public liability towards pecuniary losses, accidents, illness). To take out such a policy it will be necessary to join the "Associazione per l'Amministrazione di Sostegno".

Among the support measures set out by **Provincial Law no. 12/2018**, the Province of Bolzano may bear the cost of an insurance policy for the carer against claims from third parties not belonging to the beneficiary's family.



The inventory

Upon their appointment, carers may be ordered by the tutelary judge to present an **inventory of the beneficiary's possessions**.

The deadline for presenting the inventory may be specified by the tutelary judge in the decree of appointment. Otherwise, the legal term of 30 days from the date of the carer's oath can be applied by analogy, as set out in the article 562 of the Italian Civil Code.

The inventory must show the beneficiary's actual possessions on the date of appointment of the carer, including real estate, personal registered assets, funds on bank accounts and similar, or securities.

The inventory must be presented to the chancery for non-contentious matters.



The accountability report

The carer must keep **orderly accounts** and report them periodically to the tutelary judge who will supervise the activity.

In the decree of appointment, the tutelary judge sets the deadline by which the carer must present the accountability report, generally **one year from the date of the oath**.

The report must contain information about **the position of the beneficiary, his/her health and the management of his/her assets**. The carer must declare the initial inventory, the movements over the year (i.e. credits and debits) and the final in-

ventory.

Preferably, a brief summary should be attached to the report, describing the activities performed as carer.

In case of a revocation of CRCW, the replacement of the carer or the death of the beneficiary, the final report must be presented within two months following the end of the appointment.

A temporary carer, including if not confirmed, must present the report for the period of his/her appointment.

The Court of Bolzano has prepared a template for the report that is available to carers.

The report (yearly or final) must be presented to the chancery for non-contentious matters.

Fair compensation



As per article 379 of the Italian Civil Code, carers perform their duties **without pay**. However, the tutelary judge can award “**fair compensation**” to the carer on the following basis:

- the extent of the beneficiary's property and assets;
- the difficulty of the management tasks, estimated according to the type and frequency of the activities performed over the year.

To apply for fair compensation, the carer will need to present **a written request together with the accounting report**.

Concerning the nature of the fair compensation, in 1988 the Italian Constitutional Court ruled that **it should not be considered as a remuneration** but rather as compensation for the burdens and expenses that were not easily documented but nevertheless borne by the carer, who might not have been fully able to look after his/her own interests.

The law provides no **precise criteria** to quantify fair compensation. Only a few courts, such as those of Varese and Pordenone, have signed certain agreement protocols that set out such criteria.

Provincial Law no. 12/2018 sets out that the Province of Bolzano may directly **bear the costs of paying fair compensation to the carer**, providing that he/she is not a relative of the beneficiary and that the latter has limited means.



Care of an extraordinary nature

Care of an extraordinary nature refers to **acts with a considerable impact on the life and the assets of the beneficiary.**

The following are a few examples:



- *purchasing or selling **real estate***
- *accepting or renouncing an **inheritance***
- *cancelling or raising a loan or **mortgage***
- *investing or divesting **capitals***
- *accepting **donations***
- *signing **rental contracts** of a term greater than nine years*

If the decree of appointment limits the capacity of the beneficiary for such acts, as set out by the **articles 374 and 375 of the Italian Civil Code**, they must always be previously authorized by the tutelary judge, as neither the carer nor the beneficiary are allowed to execute them of their own will.



The replacement of the carer

If the beneficiary wishes to have a different person as carer, or if the current carer can no longer hold the position, **a written request must be presented to the tutelary judge.**

To avoid a long wait, the request form should already indicate the name of the person willing to take on the role of carer.

If the carer has not properly fulfilled his/her duties, or is in disagreement with the beneficiary, **the tutelary judge may on his/her own motion dismiss the carer** and appoint another suitable person.

The termination of CRCW



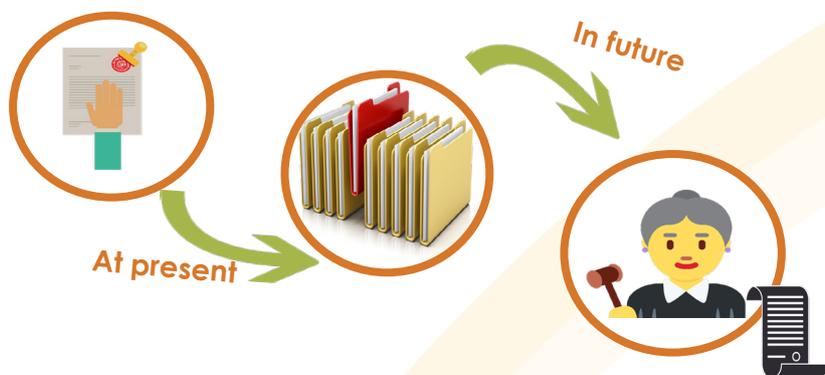
CRCW will be terminated in the following cases:

- **death of the beneficiary;**
- **if the tutelary judge has set a term for the assignment of the carer (in cases where CRCW is for a definite period);**
- if the persons who are legally entitled to present the application for CRCW consider that **the beneficiary no longer needs it**. In such cases a written request form must be presented to the tutelary judge;
- If the tutelary judge deems **CRCW to be inadequate to protect the beneficiary**. To instigate full or limited guardianship, the tutelary judge must inform the public prosecutor.

The early appointment of a carer

Article 408 of the Italian Civil Code permits anyone to **name a carer for a future physical and/or mental incapacity**.

Such appointment must be made via **a public legal document or a private authenticated document** (hence the need for a notary acting as a public official).



To guarantee that the document of appointment is legally registered, the Council of Notaries and the Court of Bolzano have signed a **memorandum of agreement to promote a system of information exchange** between the chancery for non-contentious matters and the Council of Notaries.

More precisely, at the start of CRCW the chancery will communicate the name of the beneficiary to the secretariat of the Council of Notaries, which in turn sends a dedicated communication to all notaries asking if the beneficiary has appointed a carer in the past.

This process tells **the tutelary judges the name of any person that the beneficiary might have appointed in the past**. In this case, the tutelary judge will be able to ignore such choice only on serious and justified grounds.

Early appointments can be revoked at any time by those who made them, but only via the same procedure used for the appointment.

Provincial Law for the promotion of CRCW



Provincial Law no. 12 came into effect in July 2018 with the purpose of promoting the institution of CRCW in South Tyrol.

The introduction of this law, combined with national legislation, expressly underlines the political will to support the role of CRCW, by incentivizing the territorial services of information and consultancy throughout the Province of Bolzano and the networking of all institutions concerned.

The law is the **result of intense work between the “Associazione per l’Amministrazione di Sostegno” and the “Federazione per il Sociale e la Sanità”**. For years both organizations have been asking for a law that would promote the importance of CRCW and introduce measures to support those willing to accept such a delicate role.

In fact, when compared to local laws passed by other Italian regions and provinces, Law no. 12/18 sets out some **important supporting measures for voluntary carers who are not part of the beneficiary’s family**, such as:

- the activation of an **insurance policy** covering the carer and paid by the Province;
- the payment by the Province of the **fair compensation** decided by the judge for the benefit of carers who assist persons in precarious financial situations. Such compensation was confirmed by the Provincial Council on 11 November 2019 as a new social benefit to a maximum of € 1,200 a year.

CRCW via an association

The most recent statistics show that our society is undergoing **profound changes**: the number of elderly people is increasing every year, with such persons often facing residual mobility and cognitive impairment; families have become much smaller (one or two members); assistance to fragile persons (often provided directly by women) can no longer be sought within the family and must be delegated to specially trained personnel.

There are **increasing numbers of cases where fragile persons who need a carer cannot rely on a network of relatives and friends**.

In this context, there is a growing relevance for the **model of CRCW via an association**, where the role of the carer is directly assumed by an institution such as an association or a foundation.

As already explained in part 4, the tutelary judge can in fact appoint an association as carer with the same duties as a physical person.

As set out in the article 408 of the Italian Civil Code, the tutelary judge appoints **the legal representative of the institution**, who can in turn delegate the role to a co-worker or associate who will take the oath and assume the functions of carer.



This model is notable for the **shared management of care** between the various professionals involved in specific aspects of CRCW (e.g. legal, financial, social) and the volunteers working in the organization.

The model can be applied only with efficient networking with other organizations, through joint agreements or conventions to activate procedures that are increasingly digitalized and to find new volunteers.

The "Associazione per l'Amministrazione di Sostegno" was founded in 2010 with the aim of **itself providing care services** as in other European countries, where such practice has been current for years. The project, which includes introducing the model of CRCW via an association, was named "**Egida**" and the pilot phase began in 2019.

This project will have an **increasing social importance** in the next few years. The Association will offer trusted counselling to fragile persons and their families, to assistance and health services, or to the courts, with the ability to guarantee maximum transparency regarding its activities and intervening in cases where it is difficult to find persons who are willing to assume the role of carers.





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