

Chapter 14

Office of Public Guardian Act

62A-14-101 Title.

This chapter is known as the "Office of Public Guardian Act."

Enacted by Chapter 69, 1999 General Session

62A-14-102 Definitions.

As used in this chapter:

- (1) "Conservator" is as defined in Section 75-1-201.
- (2) "Court" is as defined in Section 75-1-201.
- (3) "Estate" is as defined in Section 75-1-201.
- (4) "Guardian" is as defined in Section 75-1-201.
- (5) "Incapacitated" means a person who has been determined by a court, pursuant to Section 75-5-303, to be incapacitated, as defined in Section 75-1-201, after the office has determined that the person is 18 years of age or older and suffers from a mental or physical impairment as part of the prepetition assessment in Section 62A-14-107.
- (6) "Office" means the Office of Public Guardian.
- (7) "Property" is as defined in Section 75-1-201.
- (8) "Ward" means an incapacitated person for whom the office has been appointed as guardian or conservator.

Amended by Chapter 364, 2013 General Session

62A-14-103 Office of Public Guardian -- Creation.

- (1) There is created within the department the Office of Public Guardian which has the powers and duties provided in this chapter.
- (2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 69, 1999 General Session

62A-14-104 Director of the office -- Appointment -- Qualifications.

- (1) The director of the office shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning guardianship and conservatorship.
- (3) The director is the administrative head of the office.

Amended by Chapter 75, 2009 General Session

62A-14-105 Powers and duties of the office.

- (1) The office shall:
 - (a) before January 1, 2000, develop and operate a statewide program to:
 - (i) educate the public about the role and function of guardians and conservators; and

- (ii) serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment;
 - (b) possess and exercise all the powers and duties specifically given to the office by virtue of being appointed as guardian or conservator of a ward, including the power to access a ward's records;
 - (c) review and monitor the personal and, if appropriate, financial status of each ward for whom the office has been appointed to serve as guardian or conservator;
 - (d) train and monitor each employee and volunteer, and monitor each contract provider to whom the office has delegated a responsibility for a ward;
 - (e) retain all court-delegated powers and duties for a ward;
 - (f) report on the personal and financial status of a ward as required by a court in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their Property;
 - (g) handle a ward's funds in accordance with the department's trust account system;
 - (h) request that the department's audit plan, established pursuant to Section 631-5-401, include the requirement of an annual audit of all funds and property held by the office on behalf of wards;
 - (i) maintain accurate records concerning each ward, the ward's property, and office services provided to the ward;
 - (j) make reasonable and continuous efforts to find a family member, friend, or other person to serve as a ward's guardian or conservator;
 - (k) after termination as guardian or conservator, distribute a ward's property in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their Property;
 - (l) submit recommendations for changes in state law and funding to the governor and the Legislature and report to the governor and Legislature, upon request; and
 - (m) establish, implement, and enforce rules.
- (2) The office may:
- (a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, to be appointed an incapacitated person's guardian, conservator, or both after conducting a prepetition assessment under Section 62A-14-107;
 - (b) develop and operate a statewide program to recruit, train, supervise, and monitor volunteers to assist the office in providing guardian and conservator services;
 - (c) delegate one or more responsibilities for a ward to an employee, volunteer, or contract provider, except as provided in Subsection 62A-14-107(1);
 - (d) solicit and receive private donations to provide guardian and conservator services under this chapter; and
 - (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) effectuate policy; and
 - (ii) carry out the office's role as guardian and conservator of wards as provided in this chapter.

Amended by Chapter 75, 2009 General Session

62A-14-107 Prepetition assessment and plan.

- (1) Before the office may file a petition in court to be appointed guardian or conservator of a person, the office shall:
 - (a) conduct a face-to-face needs assessment, by someone other than a volunteer, to determine whether the person suffers from a mental or physical impairment that renders the person substantially incapable of:

- (i) caring for his personal safety;
 - (ii) managing his financial affairs; or
 - (iii) attending to and providing for such necessities as food, shelter, clothing, and medical care, to the extent that physical injury or illness may result;
- (b) assess the financial resources of the person based on information supplied to the office at the time of assessment;
 - (c) inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the person's guardian or conservator; and
 - (d) determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least intensive form of guardianship or conservatorship, consistent with the best interests of the person.
- (2) The office shall prepare an individualized guardianship or conservator plan for each ward within 60 days of appointment.

Enacted by Chapter 69, 1999 General Session

62A-14-108 Office volunteers.

- (1) A person who desires to be an office volunteer shall:
 - (a) possess demonstrated personal characteristics of honesty, integrity, compassion, and concern for incapacitated persons; and
 - (b) upon request, submit information for a background check pursuant to Section 62A-1-118.
- (2) An office volunteer may not receive compensation or benefits, but may be reimbursed by the office for expenses actually and reasonably incurred, consistent with Title 67, Chapter 20, Volunteer Government Workers Act.
- (3) An office volunteer is immune from civil liability pursuant to Title 63G, Chapter 8, Immunity for Persons Performing Voluntary Services Act.

Amended by Chapter 382, 2008 General Session

62A-14-109 Contract for services.

- (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the office may contract with one or more providers to perform guardian and conservator duties.
- (2) The office shall review and monitor the services provided by a contract provider to a ward for whom the office has been appointed guardian or conservator.

Amended by Chapter 347, 2012 General Session

62A-14-110 Court, legal, and other costs.

- (1) The office may not be appointed as the guardian or conservator of a person unless the office petitioned for or agreed in advance to the appointment.
- (2) Except as provided in Subsection (4), the court shall order the ward or the ward's estate to pay for the cost of services rendered under this chapter, including court costs and reasonable attorneys' fees.
- (3) If the office recovers attorneys' fees under Subsection (2), the office shall transmit those fees to the attorneys who represented the ward or the office in connection with the ward's case.
- (4) If a ward is indigent, the office shall provide guardian and conservator services free of charge and shall make reasonable efforts to secure pro bono legal services for the ward.
- (5) Under no circumstances may court costs or attorneys' fees be assessed to the office.

Enacted by Chapter 69, 1999 General Session

62A-14-111 Duty of the county attorney or district attorney.

- (1) The attorney general shall advise the office on legal matters and represent the office in legal proceedings.
- (2) Upon the request of the attorney general, a county attorney may represent the office in connection with the filing of a petition for appointment as guardian or conservator of an incapacitated person and with routine, subsequent appearances.

Enacted by Chapter 69, 1999 General Session