

Part 2

Guardians of Minors

75-5-201 Status of guardian of minor -- General.

- (1)
 - (a) A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a local school board under Section 53A-2-202, or upon appointment by the court.
 - (b) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.
- (2)
 - (a) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in the state of Utah until reviewed and approved by a Utah court.
 - (b) The procedure for obtaining approval of a guardianship under Subsection (2)(a) shall be identical to the procedure required under this part for obtaining a court appointment of a guardian.

Amended by Chapter 124, 1998 General Session

75-5-202 Appointment of guardian of minor.

- (1) The parent of a minor may appoint a guardian of an unemancipated minor by will, as provided in this section, or by other written instrument as provided in Section 75-5-202.5.
- (2) Subject to the rights of the minor and others under Section 75-5-203, an appointment by will or written instrument becomes effective upon filing the guardian's acceptance in the court in which the will is probated or the document is filed, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated.
- (3) If both parents are dead, an effective appointment by the parent who died later has priority.
- (4) This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.
- (5) Upon acceptance of appointment, written notice of acceptance shall be given by the guardian to the minor and to the person having his care, or to his nearest adult relative.

Amended by Chapter 41, 1985 General Session

75-5-202.5 Appointment of guardian by written instrument.

- (1) The parent of an unemancipated minor may appoint a guardian by written instrument designating the guardian. An appointment by written instrument becomes effective where:
 - (a) the written instrument is filed with the petition for appointment of guardian in the court having probate jurisdiction in the county of residence of the last parent to die, if death occurred in the state, and otherwise in the court having probate jurisdiction in the county in which the minor resides in the state; and
 - (b) the person appointed as guardian filed in the court having jurisdiction an affidavit of acceptance which states:
 - (i) the name, address, and age, or birthday if known, of the minor;
 - (ii) the name, address, and telephone number of the appointee-guardian;

- (iii) the names of the parents of the minor and that both are dead or that any surviving parent has been adjudged incapacitated;
 - (iv) the name of the parent who was last to die and the county where that parent resided at the date of his death;
 - (v) that the appointee-guardian knows of no other appointment of a guardian which supersedes the appointment by written instrument;
 - (vi) that the appointee-guardian accepts the appointment.
- (2) The latest document appointing a guardian, whether will or written instrument, which is executed by the last parent to die has priority.
- (3) Upon acceptance of an appointment, written notice of acceptance shall be given by the guardian to the minor, if he is 14 years of age or older, and to the person having his care or to his nearest adult relative.
- (4) For purposes of this chapter, "instrumental" refers to a written instrument as described in this section.

Enacted by Chapter 41, 1985 General Session

75-5-203 Objection to appointment.

Any person interested in the welfare of a minor, or a minor of 14 years or older, may file with the court in which the will is probated or the written instrument is filed a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude, after a hearing on the objection, appointment by the court in a proper proceeding of the testamentary or instrumental nominee, or any other suitable person.

Amended by Chapter 41, 1985 General Session

75-5-204 Court appointment of guardian of minor -- Conditions for appointment.

The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

Amended by Chapter 41, 1985 General Session

75-5-205 Court appointment of guardian of minor -- Venue.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

Enacted by Chapter 150, 1975 General Session

75-5-206 Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.

- (1)

- (a) The court may appoint as guardian any person whose appointment would be in the best interests of the minor.
- (b) In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.
- (2) Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
- (3) The court may deny the appointment of a guardian for a minor of school age if it finds that:
 - (a) if the minor is older than 11 years of age:
 - (i) the minor has not secured a certificate from the local police authority in the jurisdiction where the minor has lived during the past two years stating that there have been no criminal charges filed against the minor and the minor is not the subject of a criminal investigation in that jurisdiction and given a copy of the certificate to the superintendent of the school district in which the minor would attend school in Utah; or
 - (ii) a release has not been given by or on behalf of the minor to the superintendent of the school district in which the minor would attend school in Utah within a reasonable time prior to the guardianship hearing, allowing the superintendent full access to all criminal records of the minor in those jurisdictions outside the state where the minor has resided during the previous two years, which release remains part of the minor's school records together with verification of residence for the previous two years, except that information disclosed in the criminal records may not be made a part of the minor's school record;
 - (b) the school district has proven by a preponderance of the evidence that the primary purpose for the guardianship is to avoid the payment of tuition, which a school district may assess against a nonresident for attendance at a Utah public school; or
 - (c) after consideration of relevant evidence, including any presented by the school district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.
- (4) If a school district files an objection for reasons described in Subsection (3)(b), and the court does not find in favor of the school district, the court may award the petitioner attorney fees and costs if the court finds that the school district's arguments lack a reasonable basis in law or fact.

Amended by Chapter 392, 2010 General Session

75-5-207 Court appointment of guardian of minor -- Procedure.

- (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by Section 75-1-401 to:
 - (a) the minor, if the minor is 14 years of age or older;
 - (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
 - (c) any living parent of the minor;
 - (d) any guardian appointed by the will or written instrument of the parent of the minor who died last; and
 - (e) the school district in which the petitioner resides and a representative of the school district may participate in the hearing.
- (2)
 - (a) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of Sections 75-5-204 and 75-5-206

have been met, and the welfare and best interests of the minor will be served by the requested appointment, it may make the appointment.

- (b) In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.
- (3)
 - (a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor.
 - (b) The authority of a temporary guardian may not last longer than six months.
- (4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Amended by Chapter 156, 1995 General Session

75-5-208 Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

Amended by Chapter 41, 1985 General Session

75-5-209 Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.

- (1) For purposes of this section, "residual parental rights and duties" is as defined in Section 78A-6-105.
- (2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's unemancipated minor, including the powers and responsibilities described in Subsection (3).
- (3) A guardian of a minor:
 - (a) must take reasonable care of the personal effects of the guardian's ward;
 - (b) must commence protective proceedings if necessary to protect other property of the guardian's ward;
 - (c) subject to Subsection (4)(b), may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of a:
 - (i) statutory benefit or insurance system;
 - (ii) private contract;
 - (iii) devise;
 - (iv) trust;
 - (v) conservatorship; or
 - (vi) custodianship;
 - (d) subject to Subsection (4)(b), may receive money or property of the ward paid or delivered by virtue of Section 75-5-102;
 - (e) except as provided in Subsection (4)(c), must exercise due care to conserve any excess money or property described in Subsection (3)(d) for the ward's future needs;

- (f) unless otherwise provided by statute, may institute proceedings to compel the performance by any person of a duty to:
 - (i) support the ward; or
 - (ii) pay sums for the welfare of the ward;
 - (g) is empowered to:
 - (i) facilitate the ward's education, social, or other activities; and
 - (ii) subject to Subsection (4)(d), authorize medical or other professional care, treatment, or advice;
 - (h) may consent to the:
 - (i) marriage of the guardian's ward, if specifically authorized by a court to give this consent; or
 - (ii) adoption of the guardian's ward if the:
 - (A) guardian of the ward is specifically authorized by a court to give this consent; and
 - (B) parental rights of the ward's parents have been terminated; and
 - (i) must report the condition of the minor and of the minor's estate that has been subject to the guardian's possession or control:
 - (i) as ordered by court on petition of any person interested in the minor's welfare; or
 - (ii) as required by court rule.
- (4)
- (a) Notwithstanding Subsection (2), a guardian of a minor is not:
 - (i) legally obligated to provide from the guardian's own funds for the ward; and
 - (ii) liable to third persons by reason of the guardian's relationship for acts of the ward.
 - (b) Sums received under Subsection (3)(c) or (d):
 - (i) may not be used for compensation for the services of a guardian, except as:
 - (A) approved by court order; or
 - (B) determined by a duly appointed conservator other than the guardian; and
 - (ii) shall be applied to the ward's current needs for support, care, and education.
 - (c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the ward, the excess shall be paid over at least annually to the conservator.
 - (d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.
- (5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.
- (6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:
 - (a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;
 - (b) intervene in the adoption; and
 - (c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78B-6-110(11).
- (7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Amended by Chapter 3, 2008 General Session

75-5-210 Termination of appointment of guardian -- General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and

assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Enacted by Chapter 150, 1975 General Session

75-5-211 Proceedings subsequent to appointment -- Venue.

- (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of an appointment by will or written instrument was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.
- (2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-212 Resignation or removal proceedings.

- (1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.
- (2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.
- (3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

Enacted by Chapter 150, 1975 General Session