

Effective 5/10/2016

75-5-312 General powers and duties of guardian -- Penalties.

- (1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.
- (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.
- (3) In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:
 - (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.
 - (b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.
 - (c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
 - (d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.
 - (e) If no conservator for the estate of the ward has been appointed, the guardian may:
 - (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;
 - (ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and
 - (iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but the guardian may not use funds from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult. The guardian shall exercise care to conserve any excess for the ward's needs.
 - (f)
 - (i) A guardian is required to report the condition of the ward and of the estate which has been subject to the guardian's possession or control, as required by the court or court rule.
 - (ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
 - (A) the guardian's own observations; or
 - (B) information from the ward's physician or other medical care providers.
 - (iii) A guardian is required to immediately notify all interested persons of the ward's death.
 - (iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party.

- (v) The guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council. This annual report shall be examined and approved by the court. If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.
 - (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
 - (vii) The guardian shall also render an annual accounting of the status of the person to the court which shall be included in the petition or the informal annual report as required under Subsection (3)(f). If a fee is paid for an accounting of an estate, no fee shall be charged for an accounting of the status of a person.
 - (viii) If a guardian:
 - (A) makes a substantial misstatement on filings of annual reports;
 - (B) is guilty of gross impropriety in handling the property of the ward; or
 - (C) willfully fails to file the report required by this subsection, after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000. The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.
 - (ix) These provisions and penalties governing annual reports do not apply if the guardian is the parent of the ward.
 - (x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-309.
 - (g) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and the guardian shall account to the conservator for funds expended.
- (4)
- (a) A court may, in the order of appointment, place specific limitations on the guardian's power.
 - (b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.
 - (c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).
- (5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request

the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Amended by Chapter 293, 2016 General Session