

Effective 5/7/2025

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

- (1)
 - (a) A guardian of an incapacitated person shall diligently and in good faith carry out the specific duties, powers, and rights that the guardian is granted:
 - (i) in an order of appointment by a court under Section 75-5-304; and
 - (ii) under this section.
 - (b) A court may, in the order of appointment, place specific limitations on the guardian's power, duties, and rights.
 - (c)
 - (i) Except as provided in this Subsection (1), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor.
 - (ii) 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 (1)(c)(i).
 - (d) In carrying out duties, powers, and rights that a guardian is granted, the guardian shall encourage the ward, to the extent practicable, to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.
 - (e) To the extent known, a guardian, in making decisions about the ward, shall consider the expressed desires, preferences, and personal values of the ward.
- (2) Except as modified by an order of appointment under Section 75-5-304, a guardian has the following duties and powers:
 - (a) to the extent that it is consistent with the terms of any order by a court relating to detention or commitment of the ward, a guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within, or outside of, this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5;
 - (b) if a guardian is 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;
 - (c) without regard to custodial rights of the ward's person, a 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;
 - (d) a guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service, except that the guardian must:
 - (i) give consideration to the ward's current and previously stated desires for health care and medical treatment in accordance with Section 75-5-301.5; and
 - (ii) respect the ward's right to receive timely, effective, and appropriate health care in accordance with Section 75-5-301.5;
 - (e) a guardian is required to notify any interested person named in the order of appointment under Subsection 75-5-304(4) of any significant health care or treatment received by the ward;
 - (f) a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:
 - (i) the ward's admission to a hospital for three or more days or to a hospice program;
 - (ii) the ward's death; or
 - (iii) the arrangements for the disposition of the ward's remains;

- (g) 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 10 days, based on:
 - (i) the guardian's own observations; or
 - (ii) information from the ward's physician or other medical care providers;
 - (h) a guardian is required to:
 - (i) unless emergency conditions exist:
 - (A) file with the court a notice of the guardian's intent to move the ward; and
 - (B) serve the notice on all interested persons at least 10 days before the day on which the guardian moves the ward; or
 - (ii) take reasonable steps to:
 - (A) notify all interested persons of the guardian's intent to move the ward; and
 - (B) file the notice of the move 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;
 - (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives, or friends;
 - (j) if no conservator for the estate of the ward has been appointed, a 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, except that:
 - (A) the guardian may not use funds from the ward's estate for room and board that the guardian or 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; and
 - (B) the guardian shall exercise care to conserve any excess for the ward's needs;
 - (k) if no conservator for the estate of the ward has been appointed:
 - (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a guardian shall send a report with a full accounting to the court on an annual basis; or
 - (ii) for estates less than \$50,000 excluding the residence owned by the ward, a guardian shall fill out an informal annual report and mail the report to the court;
 - (l) a guardian shall provide an annual accounting of the status of the ward, including a report of the physical and mental condition of the ward, the ward's estate that has been subject to the guardian's possession, the ward's place of residence and others living in the same household, to the court in the petition or the annual report as required under Subsection (2)(k); and
 - (m) a guardian shall comply with standards set by the National Guardianship Association for guardians to the extent that the standards are applicable to the guardian.
- (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person required to receive notice in guardianship proceedings as described in Section 75-5-309.
- (4)
- (a) An accounting report under Subsection (2)(k) shall include a statement regarding:
 - (i) all assets at the beginning and end of the reporting year;
 - (ii) any income received during the year;
 - (iii) any disbursements for the support of the ward;
 - (iv) any investments or trusts that are held for the ward's benefit;
 - (v) any expenditures or fees charged to the ward's estate; and

- (vi) any other expenses incurred by the ward's estate.
- (b) The court may require additional information in an accounting report under Subsection (2)(k).
- (c) The Judicial Council shall approve forms for the accounting reports described in Subsection (2)(k).
- (d) An annual accounting report under Subsection (2)(k) shall be examined and approved by the court.
- (e) 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 accounting report under Subsection (2)(k).
- (f)
 - (i) A corporate fiduciary is not required to petition the court, but shall submit the corporate fiduciary's internal report annually to the court.
 - (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.
- (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an accounting of the status of a ward under Subsection (2)(l).
- (h) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection 75-5-301.5(3)(l).
- (5) If a conservator has been appointed for a ward:
 - (a) 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 chapter; and
 - (b) the guardian shall account to the conservator for funds expended.
- (6)
 - (a) Any guardian of a person for whom a conservator has been appointed:
 - (i) shall control the custody and care of the ward; and
 - (ii) 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.
 - (b) 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.
- (7)
 - (a) The court may impose a penalty in an amount not to exceed \$5,000 if a guardian:
 - (i) makes a substantial misstatement on filings of annual reports;
 - (ii) is guilty of gross impropriety in handling the property of the ward; or
 - (iii) willfully fails to file the report required by this section after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed.
 - (b) The court may order restitution of funds misappropriated from the estate of a ward.
 - (c) A penalty under this Subsection (7) shall be paid by the guardian and may not be paid by the ward or the ward's estate.
 - (d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.
- (8) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the ward after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

Amended by Chapter 533, 2025 General Session