

1 **GUARDIANSHIP - RIGHT OF ASSOCIATION**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Uniform Probate Code in relation to association between an
10 adult ward and a relative of the adult ward.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ places limitations on the power of a guardian to prohibit association between an
15 adult ward and a relative of the adult ward;
- 16 ▶ provides for proceedings to alter or enforce the limitations described in this bill;
- 17 ▶ provides for the award of attorney fees and sanctions; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **75-5-312**, as last amended by Laws of Utah 2014, Chapter 142

26 ENACTS:

27 **75-5-312.5**, Utah Code Annotated 1953



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-5-312** is amended to read:

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) [~~Absent a specific limitation on the guardian's power in the order of appointment, the~~] 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 [except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship].

(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) 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

59 from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or
60 child have furnished the ward unless a charge for the service is approved by order of the court
61 made upon notice to at least one adult relative in the nearest degree of kinship to the ward in
62 which there is an adult. The guardian shall exercise care to conserve any excess for the ward's
63 needs.

64 (e) (i) A guardian is required to report the condition of the ward and of the estate which
65 has been subject to the guardian's possession or control, as required by the court or court rule.

66 (ii) A guardian is required to immediately notify all interested persons if the guardian
67 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

68 (A) the guardian's own observations; or

69 (B) information from the ward's physician or other medical care providers.

70 (iii) A guardian is required to immediately notify all interested persons of the ward's
71 death.

72 (iv) Unless emergency conditions exist, a guardian is required to file with the court a
73 notice of the guardian's intent to move the ward and to serve the notice on all interested persons
74 at least 10 days before the move. The guardian shall take reasonable steps to notify all
75 interested persons and to file the notice with the court as soon as practicable following the
76 earlier of the move or the date when the guardian's intention to move the ward is made known
77 to the ward, the ward's care giver, or any other third party.

78 (v) The guardian shall, for all estates in excess of \$50,000, excluding the residence
79 owned by the ward, send a report with a full accounting to the court on an annual basis. For
80 estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out
81 an informal annual report and mail the report to the court. The report shall include the
82 following: a statement of assets at the beginning and end of the reporting year, income received
83 during the year, disbursements for the support of the ward, and other expenses incurred by the
84 estate. The guardian shall also report the physical conditions of the ward, the place of
85 residence, and a list of others living in the same household. The court may require additional
86 information. The forms for both the informal report for estates under \$50,000, excluding the
87 residence owned by the ward, and the full accounting report for larger estates shall be approved
88 by the Judicial Council. This annual report shall be examined and approved by the court. If
89 the ward's income is limited to a federal or state program requiring an annual accounting

90 report, a copy of that report may be submitted to the court in lieu of the required annual report.

91 (vi) Corporate fiduciaries are not required to petition the court, but shall submit their
92 internal report annually to the court. The report shall be examined and approved by the court.

93 (vii) The guardian shall also render an annual accounting of the status of the person to
94 the court which shall be included in the petition or the informal annual report as required under
95 Subsection [~~(2)~~] (3)(e). If a fee is paid for an accounting of an estate, no fee shall be charged
96 for an accounting of the status of a person.

97 (viii) If a guardian:

98 (A) makes a substantial misstatement on filings of annual reports;

99 (B) is guilty of gross impropriety in handling the property of the ward; or

100 (C) willfully fails to file the report required by this subsection, after receiving written
101 notice from the court of the failure to file and after a grace period of two months has elapsed,
102 the court may impose a penalty in an amount not to exceed \$5,000. The court may also order
103 restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the
104 guardian and may not be paid by the estate.

105 (ix) These provisions and penalties governing annual reports do not apply if the
106 guardian is the parent of the ward.

107 (x) For the purposes of Subsections [~~(2)~~] (3)(e)(i), (ii), (iii), and (iv), "interested
108 persons" means those persons required to receive notice in guardianship proceedings as set
109 forth in Section [75-5-309](#).

110 (f) If a conservator has been appointed, all of the ward's estate received by the guardian
111 in excess of those funds expended to meet current expenses for support, care, and education of
112 the ward shall be paid to the conservator for management as provided in this code; and the
113 guardian shall account to the conservator for funds expended.

114 (4) (a) A court may, in the order of appointment, place specific limitations on the
115 guardian's power.

116 (b) A guardian may not prohibit or place restrictions on association with a relative of
117 an adult ward, unless permitted by court order under Section [75-5-312.5](#).

118 (c) A guardian is not liable to a third person for acts of the guardian's ward solely by
119 reason of the relationship described in Subsection (2).

120 [~~(3)~~] (5) Any guardian of one for whom a conservator also has been appointed shall

121 control the custody and care of the ward and is entitled to receive reasonable sums for services
122 and for room and board furnished to the ward as agreed upon between the guardian and the
123 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
124 may request the conservator to expend the ward's estate by payment to third persons or
125 institutions for the ward's care and maintenance.

126 Section 2. Section **75-5-312.5** is enacted to read:

127 **75-5-312.5. Association between an adult ward and a relative of the adult ward.**

128 (1) As used in this section:

129 (a) "Associate" or "association" means:

130 (i) visitation of an adult ward by a relative; or

131 (ii) communication between an adult ward and a relative in any form, including by
132 telephone, mail, or electronic communication.

133 (b) "Relative" means an adult ward's spouse, parent, step-parent, child, sibling,
134 half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.

135 (2) (a) Except as otherwise provided by court order, a guardian may not restrict or
136 prohibit the right of an adult ward to associate with a relative of the adult ward.

137 (b) A guardian may not permit a relative of an adult ward to associate with the adult
138 ward:

139 (i) if a court order prohibits the association;

140 (ii) in a manner prohibited by court order; or

141 (iii) if the adult ward expresses a desire to not associate with the relative.

142 (3) A guardian may, as part of the initial guardianship proceeding, petition the court to
143 issue an order:

144 (a) prohibiting or placing conditions on association between an adult ward and a
145 relative of the adult ward; or

146 (b) granting the guardian the authority to prohibit or place conditions on association
147 between an adult ward and a relative of the adult ward.

148 (4) A guardian may, at any time after the initial guardianship proceeding, petition the
149 court to issue an order described in Subsection (3) or to rescind or modify an order described in
150 Subsection (3).

151 (5) An adult ward or a relative of an adult ward may, at any time after the initial

152 guardianship proceeding, petition the court to rescind or modify an order described in
153 Subsection (3).

154 (6) If a guardian violates Subsection (2), the adult ward or a relative may do one or
155 more of the following, as applicable:

156 (a) petition the court to issue an order to show cause why the guardian should not be
157 held in contempt of court;

158 (b) seek an injunction to enforce compliance by the guardian with the law and any
159 applicable court order; or

160 (c) petition the court to have the guardian removed as guardian of the adult ward.

161 (7) For hearing on a petition filed under this section, a court:

162 (a) may appoint a court visitor to meet with the adult ward to determine the wishes of
163 the adult ward regarding association;

164 (b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and
165 the relative; and

166 (c) may order supervised visitation before the hearing.

167 (8) A court may not enter an order prohibiting or placing restrictions on association
168 between an adult ward and a relative, unless the court finds by a preponderance of the evidence
169 that:

170 (a) the adult ward desires the prohibition or restriction;

171 (b) if the adult ward had the capacity to make a knowing and intelligent decision
172 regarding the association, the adult ward would prohibit the association or impose the
173 restriction; or

174 (c) the prohibition or restriction is the least restrictive means necessary to protect the
175 health or welfare of the adult ward.

176 (9) In making the determination described in Subsection (8), the court may consider
177 any relevant evidence, including:

178 (a) the wishes of the adult ward, expressed during or before the guardianship;

179 (b) the history of the relationship between the adult ward and the relative;

180 (c) any history of criminal activity, abuse, neglect, or violence by the relative; or

181 (d) whether a protective order was ever issued against the relative with respect to the
182 adult ward.

183 (10) Except as provided in Subsection (11), the guardian shall have the burden of proof
184 when:

185 (a) seeking an order prohibiting association or placing restrictions on association with a
186 relative;

187 (b) modifying an order to place additional prohibitions or restrictions on association
188 with a relative; or

189 (c) opposing an action described in Subsection (6)(a) or (b).

190 (11) The relative shall have the burden of proof if the relative is seeking to modify an
191 order previously entered by a court under this section.

192 (12) (a) If, in a proceeding under this section, the court finds that the petition was filed
193 frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.

194 (b) If, in a proceeding under this section, the court finds that the guardian is in
195 contempt of court or has acted frivolously or in bad faith in prohibiting or restricting
196 association, the court:

197 (i) shall award attorney fees to the prevailing party; and

198 (ii) may impose a sanction, not to exceed \$1,000, against the guardian.

199 (c) A court shall prohibit attorney fees awarded under this section from being paid by
200 the adult ward or the adult ward's estate.

Legislative Review Note
Office of Legislative Research and General Counsel