

GUARDIANSHIP AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions related to guardianships.

Highlighted Provisions:

This bill:

- ▶ addresses powers or duties of a guardian;
- ▶ provides for appointment under certain circumstances of one or more individuals as guardians of a minor becoming an adult; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

⤴→ ~~None~~ This bill provides a special effective date. ←⤵

Utah Code Sections Affected:

AMENDS:

75-5-312, as last amended by Laws of Utah 2017, Chapter 403

ENACTS:

75-5-317, Utah Code Annotated 1953

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

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



28 **75-5-312. General powers and duties of guardian -- Penalties.**

29 (1) A guardian of an incapacitated person has only the powers, rights, and duties
30 respecting the ward granted in the order of appointment under Section 75-5-304.

31 (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and
32 duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

33 (3) In particular, and without qualifying [~~the foregoing~~] Subsections (1) and (2), a
34 guardian has the following powers and duties, except as modified by order of the court:

35 (a) To the extent that it is consistent with the terms of any order by a court of
36 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled
37 to custody of the person of the ward and may establish the ward's place of abode within or
38 without this state.

39 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,
40 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and
41 education. Without regard to custodial rights of the ward's person, the guardian shall take
42 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
43 commence protective proceedings if other property of the ward is in need of protection.

44 (c) A guardian may give any consents or approvals that may be necessary to enable the
45 ward to receive medical or other professional care, counsel, treatment, or service.

46 (d) A guardian may not unreasonably restrict visitation with the ward by family,
47 relatives, or friends.

48 (e) If no conservator for the estate of the ward has been appointed, the guardian may:

49 (i) institute proceedings to compel any person under a duty to support the ward or to
50 pay sums for the welfare of the ward to perform that duty;

51 (ii) compel the production of the ward's estate documents, including the ward's will,
52 trust, power of attorney, and any advance health care directive; and

53 (iii) receive money and tangible property deliverable to the ward and apply the money
54 and property for support, care, and education of the ward[~~, but~~], except that the guardian may
55 not use funds from the ward's estate for room and board [~~which~~] that the guardian, the
56 guardian's spouse, parent, or child have furnished the ward unless a charge for the service is
57 approved by order of the court made upon notice to at least one adult relative in the nearest
58 degree of kinship to the ward in which there is an adult. The guardian shall exercise care to

59 conserve any excess for the ward's needs.

60 (f) (i) A guardian is required to report the condition of the ward and of the estate
61 [~~which~~] that has been subject to the guardian's possession or control, as required by the court or
62 court rule.

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

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

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

67 (iii) A guardian is required to immediately notify [~~all interested persons of~~] persons

68 ~~who~~ request notification and are not restricted in associating with the ward pursuant to Section
68a 75-5-312.5 ~~of~~ of:

69 (A) the ward's admission to a hospital ~~for three or more days~~ or ~~to a~~
69a hospice program;

70 (B) the ward's death[-]; and

71 (C) the arrangements for the disposition of the ward's remains.

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) (A) If no conservator for the estate of the ward has been appointed, the guardian
79 shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a
80 report with a full accounting to the court on an annual basis.

81 (B) For estates less than \$50,000, excluding the residence owned by the ward, the
82 guardian shall fill out an informal annual report and mail the report to the court.

83 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at
84 the beginning and end of the reporting year, income received during the year, disbursements for
85 the support of the ward, and other expenses incurred by the estate. The guardian shall also
86 report the physical conditions of the ward, the place of residence, and a list of others living in
87 the same household. The court may require additional information.

88 (D) The forms for both the informal report for estates under \$50,000, excluding the
89 residence owned by the ward, and the full accounting report for larger estates shall be approved

90 by the Judicial Council.

91 (E) An annual report shall be examined and approved by the court.

92 (F) If the ward's income is limited to a federal or state program requiring an annual
93 accounting report, a copy of that report may be submitted to the court in lieu of the required
94 annual report.

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

97 (vii) The guardian shall also render an annual accounting of the status of the person to
98 the court [~~which~~] that shall be included in the petition or the informal annual report as required
99 under Subsection (3)(f). If a fee is paid for an accounting of an estate, no fee shall be charged
100 for an accounting of the status of a person.

101 (viii) If a guardian:

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

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

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

109 (ix) The provisions and penalties in this Subsection (3)(f) governing annual reports do
110 not apply if the guardian or a coguardian is the parent of the ward.

111 (x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons"
112 means those persons required to receive notice in guardianship proceedings as set forth in
113 Section [75-5-309](#).

114 (g) If a conservator has been appointed:

115 (i) all of the ward's estate received by the guardian in excess of those funds expended
116 to meet current expenses for support, care, and education of the ward shall be paid to the
117 conservator for management as provided in this code; and

118 (ii) the guardian shall account to the conservator for funds expended.

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

121 (b) A guardian may not prohibit or place restrictions on association with a relative or
 122 qualified acquaintance of an adult ward, unless permitted by court order under Section
 123 [75-5-312.5](#).

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

126 (5) Any guardian of one for whom a conservator also has been appointed shall control
 127 the custody and care of the ward and is entitled to receive reasonable sums for services and for
 128 room and board furnished to the ward as agreed upon between the guardian and the
 129 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
 130 may request the conservator to expend the ward's estate by payment to third persons or
 131 institutions for the ward's care and maintenance.

132 (6) A person who refuses to accept the authority of a guardian with authority over
 133 financial decisions to transact business with the assets of the protected person after receiving a
 134 certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages
 135 if the court determines that the person did not act in good faith in refusing to accept the
 136 authority of the guardian.

137 (7) A guardian shall, to the extent \hat{H} → [feasible] **practicable** ← \hat{H} , encourage the ward to
 137a participate in
 138 decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the
 139 capacity to manage the ward's personal affairs. To the extent known, a guardian, in making
 140 decisions, shall consider the expressed desires and personal values of the ward.

141 Section 2. Section **75-5-317** is enacted to read:

142 **75-5-317. Guardianship proceedings for minor becoming an incapacitated adult.**

143 (1) As used in this section:

144 (a) "Incapacitated" means the same as that term is defined in Section [75-1-201](#).

145 (b) "Joint legal decision-making" means parents or two individuals, regardless of
 146 whether they are married, sharing legal decision-making and no individual's rights or
 147 responsibilities being superior except with respect to specified decisions set forth by the court
 148 or the individuals in a final judgment or order.

149 (c) "Legal decision-making" means the legal right and responsibility to make all
 150 nonemergency legal decisions for a minor including those regarding education, health care,
 151 religious training, and personal care decisions.

152 (d) "Minor" means the same as that term is defined in Section [75-1-201](#).

153 (e) "Physician" means an individual:

154 (i) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

155 (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical

156 Practice Act.

157 (f) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist

158 Licensing Act, to engage in the practice of psychology as defined in Section [58-61-102](#).

159 (g) "Sole legal decision-making" means one parent or one individual having the legal

160 right and responsibility to make major decisions for the minor child.

161 (2) (a) Notwithstanding the other provisions of this part, a person who may be a

162 guardian of an incapacitated person under Section [75-5-301](#) may initiate guardianship

163 proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six months of

164 age and who is alleged to be incapacitated and request that a guardianship order take effect

165 immediately on the day the minor turns 18 years of age.

166 (b) The petitioner shall provide with the petition a written report of an evaluation of the

167 minor by a physician or psychologist that meets the requirements of Subsection (2)(c). If the

168 evaluation is conducted within six months after the date the petition is filed with the court, the

169 petitioner may ask in the petition that the court accept this report in lieu of ordering any

170 additional evaluation and the court may grant the request.

171 (c) A written report filed pursuant to this section by a physician or psychologist acting

172 within that person's scope of practice shall include the following information:

173 (i) a specific description of the physical, psychiatric, or psychological diagnosis of the

174 person;

175 (ii) a comprehensive assessment listing any functional impairments of the alleged

176 incapacitated person and an explanation of how and to what extent these functional

177 impairments may prevent that person from receiving or evaluating information in making

178 decisions or in communicating informed decisions $\hat{S} \rightarrow$, **with or without assistance**, $\leftarrow \hat{S}$ regarding

178a that person;

179 (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable

180 of performing $\hat{S} \rightarrow$ [~~without direction or with minimal direction~~] **independently or with assistance**

180a $\leftarrow \hat{S}$;

181 (iv) a list of the medications the alleged incapacitated person is receiving, the dosage of

182 the medications, and a description of the effects each medication has on the person's behavior

183 to the best of the declarant's knowledge;

184 (v) a prognosis for improvement in the alleged incapacitated person's condition and a
 185 recommendation for the most appropriate rehabilitation plan or care plan; and

186 (vi) other information the physician or psychologist considers appropriate.

187 (3) (a) Notwithstanding the priorities in Section 75-5-311, if the petition for
 188 appointment of a guardian for the incapacitated person is filed pursuant to Subsection (2) or
 189 within two years after the day the incapacitated person turns 18 years of age, unless the court
 190 finds the appointment to be contrary to the incapacitated person's best interest:

191 (i) the court shall appoint as the incapacitated person's guardian any person who, by
 192 court order, had sole legal decision-making of the incapacitated person when the incapacitated
 193 person attained 17 years, six months of age; or

194 (ii) if two individuals had joint legal decision-making of the incapacitated person when
 195 the incapacitated person attained 17 years, six months of age, the court shall appoint both
 196 individuals as the incapacitated person's coguardians.

197 (b) If under Subsection (3)(a) the court finds the appointment of an individual
 198 described in Subsection (3)(a) is contrary to the incapacitated person's best interest $\hat{S} \rightarrow$ or if the
 198a individual is unwilling to be appointed or serve as a guardian $\leftarrow \hat{S}$, the court
 199 may apply the priorities in Section 75-5-311 in appointing a guardian.

200 (4) The court may appoint more than one person as the incapacitated person's
 201 coguardians if the appointment is required by Subsection (3) or the court finds that the
 202 appointment is in the incapacitated person's best interest. If the court appoints coguardians, the
 203 coguardians shall share legal decision-making for the incapacitated person and neither
 204 coguardian's rights or responsibilities are superior except as otherwise ordered by the court.

$\hat{H} \rightarrow$ **Section 3. Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override. $\leftarrow \hat{H}$

Legislative Review Note
Office of Legislative Research and General Counsel