

1 **GUARDIANSHIP AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: V. Lowry Snow

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to guardianships.

10 **Highlighted Provisions:**

11 This bill:

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

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **75-5-312**, as last amended by Laws of Utah 2017, Chapter 403

23 ENACTS:

24 **75-5-317**, Utah Code Annotated 1953

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

27 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
69 75-5-312.5 of:

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

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

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

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

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

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

84 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at
85 the beginning and end of the reporting year, income received during the year, disbursements for

86 the support of the ward, and other expenses incurred by the estate. The guardian shall also
87 report the physical conditions of the ward, the place of residence, and a list of others living in
88 the same household. The court may require additional information.

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

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

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

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

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

102 (viii) If a guardian:

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

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

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

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

112 (x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons"
113 means those persons required to receive notice in guardianship proceedings as set forth in

114 Section 75-5-309.

115 (g) If a conservator has been appointed:

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

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

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

122 (b) A guardian may not prohibit or place restrictions on association with a relative or
123 qualified acquaintance of an adult ward, unless permitted by court order under Section
124 75-5-312.5.

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

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

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

138 (7) A guardian shall, to the extent practicable, encourage the ward to participate in
139 decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the
140 capacity to manage the ward's personal affairs. To the extent known, a guardian, in making
141 decisions, shall consider the expressed desires and personal values of the ward.

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

143 **75-5-317. Guardianship proceedings for minor becoming an incapacitated adult.**

144 (1) As used in this section:

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

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

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

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

154 (e) "Physician" means an individual:

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

156 (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
157 Practice Act.

158 (f) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist
159 Licensing Act, to engage in the practice of psychology as defined in Section [58-61-102](#).

160 (g) "Sole legal decision-making" means one parent or one individual having the legal
161 right and responsibility to make major decisions for the minor child.

162 (2) (a) Notwithstanding the other provisions of this part, a person who may be a
163 guardian of an incapacitated person under Section [75-5-301](#) may initiate guardianship
164 proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six months of
165 age and who is alleged to be incapacitated and request that a guardianship order take effect
166 immediately on the day the minor turns 18 years of age.

167 (b) The petitioner shall provide with the petition a written report of an evaluation of the
168 minor by a physician or psychologist that meets the requirements of Subsection (2)(c). If the
169 evaluation is conducted within six months after the date the petition is filed with the court, the

170 petitioner may ask in the petition that the court accept this report in lieu of ordering any
171 additional evaluation and the court may grant the request.

172 (c) A written report filed pursuant to this section by a physician or psychologist acting
173 within that person's scope of practice shall include the following information:

174 (i) a specific description of the physical, psychiatric, or psychological diagnosis of the
175 person;

176 (ii) a comprehensive assessment listing any functional impairments of the alleged
177 incapacitated person and an explanation of how and to what extent these functional
178 impairments may prevent that person from receiving or evaluating information in making
179 decisions or in communicating informed decisions, with or without assistance, regarding that
180 person;

181 (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable
182 of performing independently or with assistance;

183 (iv) a list of the medications the alleged incapacitated person is receiving, the dosage of
184 the medications, and a description of the effects each medication has on the person's behavior
185 to the best of the declarant's knowledge;

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

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

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

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

196 (ii) if two individuals had joint legal decision-making of the incapacitated person when
197 the incapacitated person attained 17 years, six months of age, the court shall appoint both

198 individuals as the incapacitated person's coguardians.

199 (b) If under Subsection (3)(a) the court finds the appointment of an individual
200 described in Subsection (3)(a) is contrary to the incapacitated person's best interest or if the
201 individual is unwilling to be appointed or serve as a guardian, the court may apply the priorities
202 in Section [75-5-311](#) in appointing a guardian.

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

208 **Section 3. Effective date.**

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