

GUARDIANSHIP AND CONSERVATORSHIP AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill amends provisions related to guardianships and conservatorships.

Highlighted Provisions:

This bill:

- ▶ amends the duties of the Office of Public Guardian;
- ▶ addresses a guardian's authority to make and assist with a ward's health care decisions;
- ▶ amends provisions related to the termination, removal, or resignation of a guardian of an incapacitated person;
- ▶ amends the duties and responsibilities of a guardian of an incapacitated person;
- ▶ amends provisions relating to a proceeding addressing a guardian restricting or prohibiting a ward's associations; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[62A-14-105](#), as last amended by Laws of Utah 2009, Chapter 75

[75-5-304](#), as last amended by Laws of Utah 2017, Chapter 403

[75-5-312.5](#), as last amended by Laws of Utah 2018, Chapter 244

30 REPEALS AND REENACTS:

31 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194

32 **75-5-307**, as last amended by Laws of Utah 2012, Chapter 274

33 **75-5-312**, as last amended by Laws of Utah 2018, Chapters 244 and 294



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

36 Section 1. Section **62A-14-105** is amended to read:

37 **62A-14-105. Powers and duties of the office.**

38 (1) The office shall:

39 (a) [~~before January 1, 2000,~~] develop and operate a statewide program to:

40 (i) educate the public about the role and function of guardians and conservators; [~~and~~]

41 (ii) educate guardians and conservators on:

42 (A) the duties of a guardian and a conservator; and

43 (B) standards set by the National Guardianship Association for guardians and

44 conservators; and

45 [(fi)] (iii) serve as a guardian, conservator, or both for a ward upon appointment by a
46 court when no other person is able and willing to do so and the office petitioned for or agreed
47 in advance to the appointment;

48 (b) possess and exercise all the powers and duties specifically given to the office by
49 virtue of being appointed as guardian or conservator of a ward, including the power to access a
50 ward's records;

51 (c) review and monitor the personal and, if appropriate, financial status of each ward
52 for whom the office has been appointed to serve as guardian or conservator;

53 (d) train and monitor each employee and volunteer, and monitor each contract provider
54 to whom the office has delegated a responsibility for a ward;

55 (e) retain all court-delegated powers and duties for a ward;

56 (f) report on the personal and financial status of a ward as required by a court in
57 accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their

- 58 Property;
- 59 (g) handle a ward's funds in accordance with the department's trust account system;
- 60 (h) request that the department's audit plan, established pursuant to Section 63I-5-401,
- 61 include the requirement of an annual audit of all funds and property held by the office on behalf
- 62 of wards;
- 63 (i) maintain accurate records concerning each ward, the ward's property, and office
- 64 services provided to the ward;
- 65 (j) make reasonable and continuous efforts to find a family member, friend, or other
- 66 person to serve as a ward's guardian or conservator;
- 67 (k) after termination as guardian or conservator, distribute a ward's property in
- 68 accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their
- 69 Property; and
- 70 (l) submit recommendations for changes in state law and funding to the governor and
- 71 the Legislature and report to the governor and Legislature, upon request[~~;~~ and].
- 72 [~~(m) establish, implement, and enforce rules.~~]
- 73 (2) The office may:
- 74 (a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under
- 75 Disability and Their Property, to be appointed an incapacitated person's guardian, conservator,
- 76 or both after conducting a prepetition assessment under Section 62A-14-107;
- 77 (b) develop and operate a statewide program to recruit, train, supervise, and monitor
- 78 volunteers to assist the office in providing guardian and conservator services;
- 79 (c) delegate one or more responsibilities for a ward to an employee, volunteer, or
- 80 contract provider, except as provided in Subsection 62A-14-107(1);
- 81 (d) solicit and receive private donations to provide guardian and conservator services
- 82 under this chapter; and
- 83 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
- 84 Rulemaking Act, to:
- 85 (i) effectuate policy; and

86 (ii) carry out the office's role as guardian and conservator of wards as provided in this
87 chapter.

88 Section 2. Section **75-5-304** is amended to read:

89 **75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.**

90 (1) The court may appoint a guardian as requested if [it] the court is satisfied that [the]:

91 (a) the person for whom a guardian is sought is incapacitated [and that the]; and

92 (b) the appointment is necessary or desirable as a means of providing continuing care

93 and supervision of the incapacitated person.

94 (2) (a) (i) The court shall prefer a limited guardianship and may only grant a full
95 guardianship if no other alternative exists.

96 (ii) If the court does not grant a limited guardianship, a specific finding shall be made
97 that nothing less than a full guardianship is adequate.

98 (b) (i) An order of appointment of a limited guardianship shall state the limitations of
99 the guardianship.

100 (ii) Letters of guardianship for a limited guardianship shall state the limitations of the
101 guardianship unless the court determines for good cause shown that a limitation should not be
102 listed in the letters.

103 (3) ~~[A]~~ (a) Except as provided in Subsection (3)(b), a guardian appointed by will or
104 written instrument, under Section **75-5-301**, whose appointment has not been prevented or
105 nullified under Subsection **75-5-301**(4), has priority over any guardian who may be appointed
106 by the court~~[, but the court may proceed with an appointment upon].~~

107 (b) Upon a finding that the testamentary or instrumental guardian has failed to accept
108 the appointment within 30 days after notice of the guardianship proceeding~~[. Alternatively, the~~
109 ~~court may], the court may:~~

110 (i) dismiss the proceeding ~~[or]; or~~

111 (ii) enter any other appropriate order.

112 (4) If the court grants a guardian with the power to make or assist with health care
113 decisions for an incapacitated person, the court shall include in the order of appointment the

114 name of any interested person for whom the guardian must notify of any significant health care
115 or treatment received by the incapacitated person.

116 Section 3. Section [75-5-306](#) is repealed and reenacted to read:

117 **75-5-306. Termination of guardianship for incapacitated person -- Termination of**
118 **authority and responsibility of guardian.**

119 (1) (a) Except for the time period described in Subsection (1)(b), the ward or any
120 person interested in the ward's welfare may petition for an order:

121 (i) that the ward is no longer incapacitated; and

122 (ii) for removal or resignation of the guardian in accordance with Section [75-5-307](#).

123 (b) In an order adjudicating capacity, a court may specify a minimum period of time,
124 not exceeding one year, during which no petition for an adjudication that the ward is no longer
125 incapacitated can be filed without leave from the court.

126 (c) A request for the order described in Subsection (1) may be made by informal letter
127 to the court.

128 (d) Any person who knowingly interferes with a request described in Subsection (1)(a)
129 may be sanctioned by the court.

130 (2) The authority and responsibility of a guardian for an incapacitated person
131 terminates upon:

132 (a) the death of the guardian or the ward;

133 (b) the determination that the guardian is incapacitated; or

134 (c) the removal or resignation of the guardian in accordance with Section [75-5-307](#).

135 (3) Resignation of a guardian does not terminate the guardianship until the resignation
136 has been approved by the court.

137 (4) Testamentary appointment of a guardian under an informally probated will
138 terminates if the will is later denied probate in a formal proceeding.

139 (5) Termination of a guardian does not affect the guardian's liability for the guardian's
140 prior acts or the guardian's obligation to account for funds and assets of the guardian's ward.

141 (6) On a petition to order that a ward's incapacity is terminated, the court shall follow

142 the same procedures to safeguard the rights of the ward for a petition for appointment of a
143 guardian under Section 75-5-303.

144 Section 4. Section 75-5-307 is repealed and reenacted to read:

145 **75-5-307. Removal or resignation of guardian.**

146 (1) On a petition of resignation from a guardian, the court may:

147 (a) accept the guardian's resignation; or

148 (b) make any other order that is appropriate.

149 (2) On a petition of removal of a guardian from the ward or any person interested in the
150 ward's welfare, the court may remove a guardian if:

151 (a) the guardian obtained the appointment by fraud, deceit, or gross misrepresentation;

152 (b) the guardian fails to perform the guardian's duties described in Section 75-5-312;

153 (c) the guardian is unable to perform the guardian's duties, described in Section
154 75-5-312, due to incapacity or illness;

155 (d) the guardian fails to use reasonable care and diligence in the management of the
156 ward's estate;

157 (e) the guardian is found by the court to have filed a petition frivolously or in bad faith
158 under Section 75-5-312.5;

159 (f) the guardian's interests have become adverse to the faithful performance of the
160 guardian's duties and there is a risk that the guardian will fail to faithfully perform the
161 guardian's duties; or

162 (g) removal of the guardian would be in the best interest of the ward.

163 (3) If the court removes a guardian under Subsection (2), the court may:

164 (a) appoint a successor guardian; or

165 (b) make any other order that is appropriate.

166 (4) On a petition of resignation or removal of a guardian, the court shall follow the
167 same procedures to safeguard the rights of the ward for a petition for appointment of a guardian
168 under Section 75-5-303.

169 (5) The court is not required to appoint an attorney to represent the ward if the case is

170 uncontested and the ward's incapacity is not at issue.

171 Section 5. Section **75-5-312** is repealed and reenacted to read:

172 **75-5-312. General powers and duties of guardian -- Penalties.**

173 (1) (a) A guardian of an incapacitated person shall diligently and in good faith carry out
174 the specific duties, powers, and rights that the guardian is granted:

175 (i) in an order of appointment by a court under Section **75-5-304**; and

176 (ii) under this section.

177 (b) A court may, in the order of appointment, place specific limitations on the
178 guardian's power, duties, and rights.

179 (c) (i) Except as provided in this Subsection (1), a guardian has the same powers,
180 rights, and duties respecting the ward that a parent has respecting the parent's unemancipated
181 minor.

182 (ii) A guardian is not liable to a third person for acts of the guardian's ward solely by
183 reason of the relationship described in Subsection (1)(c)(i).

184 (d) In carrying out duties, powers, and rights that a guardian is granted, the guardian
185 shall encourage the ward, to the extent practicable, to participate in decisions, exercise
186 self-determination, act on the ward's own behalf, and develop or regain the capacity to manage
187 the ward's personal affairs.

188 (e) To the extent known, a guardian, in making decisions about the ward, shall consider
189 the expressed desires, preferences, and personal values of the ward.

190 (2) Except as modified by an order of appointment under Section **75-5-304**, a guardian
191 has the following duties and powers:

192 (a) to the extent that it is consistent with the terms of any order by a court relating to
193 detention or commitment of the ward, a guardian is entitled to custody of the person of the
194 ward and may establish the ward's place of abode within, or outside of, this state;

195 (b) if a guardian is entitled to custody of the ward, the guardian shall provide for the
196 care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's
197 training and education;

198 (c) without regard to custodial rights of the ward's person, a guardian shall take
199 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
200 commence protective proceedings if other property of the ward is in need of protection;

201 (d) a guardian may give the consent or approval that may be necessary to enable the
202 ward to receive medical or other professional care, counsel, treatment, or service;

203 (e) a guardian is required to notify any interested person named in the order of
204 appointment under Subsection 75-5-304(4) of any significant health care or treatment received
205 by the ward;

206 (f) a guardian is required to immediately notify persons who request notification and
207 are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:

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

209 (ii) the ward's death; or

210 (iii) the arrangements for the disposition of the ward's remains;

211 (g) a guardian is required to immediately notify all interested persons if the guardian
212 reasonably believes that the ward's death is likely to occur within the next 10 days, based on:

213 (i) the guardian's own observations; or

214 (ii) information from the ward's physician or other medical care providers;

215 (h) a guardian is required to:

216 (i) unless emergency conditions exist:

217 (A) file with the court a notice of the guardian's intent to move the ward; and

218 (B) serve the notice on all interested persons at least 10 days before the day on which
219 the guardian moves the ward; or

220 (ii) take reasonable steps to:

221 (A) notify all interested persons of the guardian's intent to move the ward; and

222 (B) file the notice of the move with the court as soon as practicable following the
223 earlier of the move or the date when the guardian's intention to move the ward is made known
224 to the ward, the ward's care giver, or any other third party;

225 (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or

226 prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives, or
227 friends;

228 (j) if no conservator for the estate of the ward has been appointed, a guardian may:

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

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

233 (iii) receive money and tangible property deliverable to the ward and apply the money
234 and property for support, care, and education of the ward, except that:

235 (A) the guardian may not use funds from the ward's estate for room and board that the
236 guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for
237 the service is approved by order of the court made upon notice to at least one adult relative in
238 the nearest degree of kinship to the ward in which there is an adult; and

239 (B) the guardian shall exercise care to conserve any excess for the ward's needs;

240 (k) if no conservator for the estate of the ward has been appointed:

241 (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a
242 guardian shall send a report with a full accounting to the court on an annual basis; or

243 (ii) for estates less than \$50,000 excluding the residence owned by the ward, a guardian
244 shall fill out an informal annual report and mail the report to the court;

245 (l) a guardian shall provide an annual accounting of the status of the ward, including a
246 report of the physical and mental condition of the ward, the ward's estate that has been subject
247 to the guardian's possession, the ward's place of residence and others living in the same
248 household, to the court in the petition or the annual report as required under Subsection (2)(k);
249 and

250 (m) a guardian shall comply with standards set by the National Guardianship
251 Association for guardians to the extent that the standards are applicable to the guardian.

252 (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person
253 required to receive notice in guardianship proceedings as described in Section 75-5-309.

254 (4) (a) An accounting report under Subsection (2)(k) shall include a statement of assets
255 at the beginning and end of the reporting year, income received during the year, disbursements
256 for the support of the ward, and other expenses incurred by the estate.

257 (b) The court may require additional information in an accounting report under
258 Subsection (2)(k).

259 (c) The Judicial Council shall approve forms for the accounting reports described in
260 Subsection (2)(k).

261 (d) An annual accounting report under Subsection (2)(k) shall be examined and
262 approved by the court.

263 (e) If the ward's income is limited to a federal or state program requiring an annual
264 accounting report, a copy of that report may be submitted to the court in lieu of the required
265 annual accounting report under Subsection (2)(k).

266 (f) (i) A corporate fiduciary is not required to petition the court, but shall submit the
267 corporate fiduciary's internal report annually to the court.

268 (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.

269 (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an
270 accounting of the status of a ward under Subsection (2)(l).

271 (5) If a conservator has been appointed for a ward:

272 (a) all of the ward's estate received by the guardian in excess of those funds expended
273 to meet current expenses for support, care, and education of the ward shall be paid to the
274 conservator for management as provided in this chapter; and

275 (b) the guardian shall account to the conservator for funds expended.

276 (6) (a) Any guardian of a person for whom a conservator has been appointed:

277 (i) shall control the custody and care of the ward; and

278 (ii) is entitled to receive reasonable sums for services and for room and board furnished
279 to the ward as agreed upon between the guardian and the conservator if the amounts agreed
280 upon are reasonable under the circumstances.

281 (b) The guardian may request the conservator to expend the ward's estate by payment

282 to third persons or institutions for the ward's care and maintenance.

283 (7) (a) The court may impose a penalty in an amount not to exceed \$5,000 if a
284 guardian:

285 (i) makes a substantial misstatement on filings of annual reports;

286 (ii) is guilty of gross impropriety in handling the property of the ward; or

287 (iii) willfully fails to file the report required by this section after receiving written
288 notice from the court of the failure to file and after a grace period of two months has elapsed.

289 (b) The court may order restitution of funds misappropriated from the estate of a ward.

290 (c) A penalty under this Subsection (7) shall be paid by the guardian and may not be
291 paid by the ward or the ward's estate.

292 (d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do
293 not apply if the guardian or a coguardian is the parent of the ward.

294 (8) A person who refuses to accept the authority of a guardian with authority over
295 financial decisions to transact business with the assets of the ward after receiving a certified
296 copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the
297 court determines that the person did not act in good faith in refusing to accept the authority of
298 the guardian.

299 Section 6. Section **75-5-312.5** is amended to read:

300 **75-5-312.5. Association between an adult ward and a relative or acquaintance of**
301 **the adult ward.**

302 (1) As used in this section:

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

304 (i) visitation of an adult ward by a relative or qualified acquaintance; or

305 (ii) communication between an adult ward and a relative or qualified acquaintance in
306 any form, including by telephone, mail, or electronic communication.

307 (b) "Qualified acquaintance" means an individual, other than a relative of the adult
308 ward, who:

309 (i) has established a significant, mutual friendship with the adult ward; or

310 (ii) is clergy in the adult ward's religion or religious congregation.

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

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

317 (b) If an adult ward is unable to express consent to visitation by a relative or a qualified
318 acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of
319 a prior relationship between the adult ward and the relative or qualified acquaintance of the
320 adult ward.

321 (c) A guardian may not permit a relative or qualified acquaintance of an adult ward to
322 associate with the adult ward:

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

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

325 (iii) if the adult ward expresses a desire to not associate with the relative or qualified
326 acquaintance.

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

329 (a) prohibiting or placing conditions on association between an adult ward and a
330 relative or qualified acquaintance of the adult ward; or

331 (b) granting the guardian the authority to prohibit or place conditions on association
332 between an adult ward and a relative or qualified acquaintance of the adult ward.

333 (4) A guardian may, at any time after the initial guardianship proceeding:

334 (a) petition the court to issue an order described in Subsection (3) or to rescind or
335 modify an order described in Subsection (3); or

336 (b) petition, subject to notice, the court on an emergency basis to issue a temporary
337 order until further order of the court described in Subsection (3) or to rescind or modify an

338 order described in Subsection (3).

339 (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult
340 ward may, at any time after the initial guardianship proceeding, petition the court to rescind or
341 modify an order described in Subsection (3).

342 (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or
343 a qualified acquaintance of the adult ward may [~~do one or more of the following~~], as
344 applicable:

345 [~~(a) petition the court to issue an order to show cause why the guardian should not be
346 held in contempt of court;~~]

347 (a) file an ex parte motion to enforce an order or to obtain sanctions;

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

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

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

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

354 (b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and
355 the relative or qualified acquaintance;

356 (c) shall preserve the right of the adult ward to be present at the hearing; and

357 (d) may order supervised visitation by the relative or qualified acquaintance before the
358 hearing.

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

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

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

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

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

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

371 (b) the history of the relationship between the adult ward and the relative or qualified
372 acquaintance;

373 (c) any history of criminal activity, abuse, neglect, or violence by the relative or
374 qualified acquaintance; or

375 (d) whether a protective order was ever issued against the relative or qualified
376 acquaintance with respect to the adult ward.

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

379 (a) seeking an order prohibiting association or placing restrictions on association with a
380 relative or qualified acquaintance of the adult ward;

381 (b) modifying an order to place additional prohibitions or restrictions on association
382 with a relative or qualified acquaintance of the adult ward; or

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

384 (11) The relative or qualified acquaintance shall have the burden of proof if the relative
385 or qualified acquaintance is seeking to modify an order previously entered by a court under this
386 section.

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

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

392 (i) ~~may~~ shall award attorney fees to the prevailing party; and

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

394 (c) A court shall prohibit attorney fees awarded under this ~~[section]~~ Subsection (12)
395 from being paid by the adult ward or the adult ward's estate.