

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, February 15, 2024, 12:00 pm | 2 hours |

AGENDA

	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none">Housekeeping, minutesWelcome guests and new members	Judge Kelly	<ul style="list-style-type: none"><i>WINGS Minutes (December 2023 – draft)</i>
12:10	Legislative Updates		
	<ul style="list-style-type: none">Utah Code 75-5-303HB0197 – Supported Decision-MakingSB079 – Estate Planning Recodification	Shonna Thomas Andrew Riggle Brant Christiansen	<ul style="list-style-type: none"><i>HB0197</i><i>Probate Recodification Handout</i>
12:45	WINGS Projects		
	<ul style="list-style-type: none">Proposed update - Order on Review	Shonna Thomas Katie Thomson	<ul style="list-style-type: none"><i>Order on Review of GC Reports</i>
	<ul style="list-style-type: none">Proposed subcommittee for “Basic Guidelines” manual and guardianship test	Judge Kelly Shonna Thomas	<ul style="list-style-type: none"><i>Basic Guidelines – Guardians and Conservators</i><i>Guardian and Conservator Exams</i><i>Utah Code 75-5-301.5</i><i>CJA Rule 6-501</i>
1:30	Other Business		
	<ul style="list-style-type: none">Annual Report to the Judicial Council	Stakeholders	<ul style="list-style-type: none"><i>Draft - WINGS Report to Judicial Council</i>
	<ul style="list-style-type: none">		
2:00	Meeting adjourned		

Next meeting:

April 18, 2024 (via WebEx)

1 **REQUIREMENTS FOR SUPPORTED DECISION-MAKING**

2 **AGREEMENTS**

3 2024 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Marsha Judkins**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses supported decision-making agreements.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ prescribes the principles by which provisions related to supported decision-making
- 15 agreements should be interpreted;
- 16 ▶ describes the requirements for a supported decision-making agreement;
- 17 ▶ describes the duties of an individual who is a supporter under a supported
- 18 decision-making agreement;
- 19 ▶ provides that a supported decision-making agreement may be revoked or
- 20 terminated, with certain conditions;
- 21 ▶ describes how a supported decision-making agreement interacts with and affects
- 22 other laws and principles; and
- 23 ▶ provides protections for a person who relies, in good faith, on the provisions of a
- 24 supported decision-making agreement.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

32 ENACTS:

33 **75-5-701**, Utah Code Annotated 1953

34 **75-5-702**, Utah Code Annotated 1953

35 **75-5-703**, Utah Code Annotated 1953

36 **75-5-704**, Utah Code Annotated 1953

37 **75-5-705**, Utah Code Annotated 1953

38 **75-5-706**, Utah Code Annotated 1953

39 **75-5-707**, Utah Code Annotated 1953

40 **75-5-708**, Utah Code Annotated 1953

41 **75-5-709**, Utah Code Annotated 1953



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

44 Section 1. Section **75-1-201** is amended to read:

45 **75-1-201. General definitions.**

46 Subject to additional definitions contained in the subsequent chapters that are
47 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in
48 this code:

49 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of
50 attorney, an individual authorized to make decisions concerning another's health care, and an
51 individual authorized to make decisions for another under a natural death act.

52 (2) "Application" means a written request to the registrar for an order of informal
53 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment
54 Proceedings.

55 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
56 present or future interest, vested or contingent, and also includes the owner of an interest by
57 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
58 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a

59 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
60 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
61 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
62 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
63 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
64 appointment, and a person in whose favor a power of attorney or a power held in any
65 individual, fiduciary, or representative capacity is exercised.

66 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of
67 an insurance or annuity policy, of an account with POD designation, of a security registered in
68 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
69 other nonprobate transfer at death.

70 (5) "Child" includes any individual entitled to take as a child under this code by
71 intestate succession from the parent whose relationship is involved and excludes any person
72 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

73 (6) "Claims," in respect to estates of decedents and protected persons, includes
74 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
75 and liabilities of the estate which arise at or after the death of the decedent or after the
76 appointment of a conservator, including funeral expenses and expenses of administration.
77 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
78 a decedent or protected person to specific assets alleged to be included in the estate.

79 (7) "Conservator" means a person who is appointed by a court to manage the estate of a
80 protected person.

81 (8) "Court" means any of the courts of record in this state having jurisdiction in matters
82 relating to the affairs of decedents.

83 (9) "Descendant" of an individual means all of his descendants of all generations, with
84 the relationship of parent and child at each generation being determined by the definition of
85 child and parent contained in this title.

86 (10) "Devise," when used as a noun, means a testamentary disposition of real or
87 personal property and, when used as a verb, means to dispose of real or personal property by
88 will.

89 (11) "Devisee" means any person designated in a will to receive a devise. For the

90 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to
91 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
92 devisee, and the beneficiaries are not devisees.

93 (12) "Disability" means cause for a protective order as described by Section 75-5-401.

94 (13) "Distributee" means any person who has received property of a decedent from his
95 personal representative other than as a creditor or purchaser. A testamentary trustee is a
96 distributee only to the extent of distributed assets or increment thereto remaining in his hands.
97 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
98 a personal representative is a distributee of the personal representative. For purposes of this
99 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
100 the extent of the devised assets.

101 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs
102 are subject to this title as originally constituted and as it exists from time to time during
103 administration.

104 (15) "Exempt property" means that property of a decedent's estate which is described in
105 Section 75-2-403.

106 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

107 (17) "Foreign personal representative" means a personal representative of another
108 jurisdiction.

109 (18) "Formal proceedings" means proceedings conducted before a judge with notice to
110 interested persons.

111 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
112 account with POD designation, security registered in beneficiary form (TOD), pension,
113 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
114 appointment or a power of attorney, a supported decision-making agreement, or a dispositive,
115 appointive, or nominative instrument of any similar type.

116 (20) "Guardian" means a person who has qualified as a guardian of a minor or
117 incapacitated person pursuant to testamentary or court appointment, or by written instrument as
118 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

119 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the
120 surviving spouse and state, who are entitled under the statutes of intestate succession to the

121 property of a decedent.

122 (22) "Incapacitated" or "incapacity" is measured by functional limitations and means a
123 judicial determination after proof by clear and convincing evidence that an adult's ability to do
124 the following is impaired to the extent that the individual lacks the ability, even with
125 [~~appropriate technological~~] assistance, to meet the essential requirements for financial
126 protection or physical health, safety, or self-care:

127 (a) receive and evaluate information;

128 (b) make and communicate decisions; or

129 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

130 (23) "Informal proceedings" mean those conducted without notice to interested persons
131 by an officer of the court acting as a registrar for probate of a will or appointment of a personal
132 representative.

133 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,
134 beneficiaries, and any others having a property right in or claim against a trust estate or the
135 estate of a decedent, ward, or protected person. It also includes persons having priority for
136 appointment as personal representative, other fiduciaries representing interested persons, a
137 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
138 incapacitated. The meaning as it relates to particular persons may vary from time to time and
139 shall be determined according to the particular purposes of, and matter involved in, any
140 proceeding.

141 (25) "Issue" of a person means descendant as defined in Subsection (9).

142 (26) "Joint tenants with the right of survivorship" and "community property with the
143 right of survivorship" includes coowners of property held under circumstances that entitle one
144 or more to the whole of the property on the death of the other or others, but excludes forms of
145 coownership registration in which the underlying ownership of each party is in proportion to
146 that party's contribution.

147 (27) "Lease" includes an oil, gas, or other mineral lease.

148 (28) "Letters" includes letters testamentary, letters of guardianship, letters of
149 administration, and letters of conservatorship.

150 (29) "Minor" means a person who is under 18 years [~~of age~~] old.

151 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property

152 is used as security.

153 (31) "Nonresident decedent" means a decedent who was domiciled in another
154 jurisdiction at the time of his death.

155 (32) "Organization" includes a corporation, limited liability company, business trust,
156 estate, trust, partnership, joint venture, association, government or governmental subdivision or
157 agency, or any other legal or commercial entity.

158 (33) "Parent" includes any person entitled to take, or who would be entitled to take if
159 the child died without a will, as a parent under this code by intestate succession from the child
160 whose relationship is in question and excludes any person who is only a stepparent, foster
161 parent, or grandparent.

162 (34) "Payor" means a trustee, insurer, business entity, employer, government,
163 governmental agency or subdivision, or any other person authorized or obligated by law or a
164 governing instrument to make payments.

165 (35) "Person" means an individual or an organization.

166 (36) (a) "Personal representative" includes executor, administrator, successor personal
167 representative, special administrator, and persons who perform substantially the same function
168 under the law governing their status.

169 (b) "General personal representative" excludes special administrator.

170 (37) "Petition" means a written request to the court for an order after notice.

171 (38) "Proceeding" includes action at law and suit in equity.

172 (39) "Property" includes both real and personal property or any interest therein and
173 means anything that may be the subject of ownership.

174 (40) "Protected person" means a person for whom a conservator has been appointed. A
175 "minor protected person" means a minor for whom a conservator has been appointed because
176 of minority.

177 (41) "Protective proceeding" means a proceeding described in Section [75-5-401](#).

178 (42) "Record" means information that is inscribed on a tangible medium or that is
179 stored in an electronic or other medium and is retrievable in perceivable form.

180 (43) "Registrar" refers to the official of the court designated to perform the functions of
181 registrar as provided in Section [75-1-307](#).

182 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of

183 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
184 payments out of production under such a title or lease, collateral trust certificate, transferable
185 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
186 security, or any certificate of interest or participation, any temporary or interim certificate,
187 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
188 the foregoing.

189 (45) "Settlement," in reference to a decedent's estate, includes the full process of
190 administration, distribution, and closing.

191 (46) "Sign" means, with present intent to authenticate or adopt a record other than a
192 will:

193 (a) to execute or adopt a tangible symbol; or

194 (b) to attach to or logically associate with the record an electronic symbol, sound, or
195 process.

196 (47) "Special administrator" means a personal representative as described in Sections
197 [75-3-614](#) through [75-3-618](#).

198 (48) "State" means a state of the United States, the District of Columbia, the
199 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
200 the United States, or a Native American tribe or band recognized by federal law or formally
201 acknowledged by a state.

202 (49) "Successor personal representative" means a personal representative, other than a
203 special administrator, who is appointed to succeed a previously appointed personal
204 representative.

205 (50) "Successors" means persons, other than creditors, who are entitled to property of a
206 decedent under the decedent's will or this title.

207 (51) "Supervised administration" refers to the proceedings described in Title 75,
208 Chapter 3, Part 5, Supervised Administration.

209 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
210 Registration Act, means that an individual has neither predeceased an event, including the
211 death of another individual, nor is considered to have predeceased an event under Section
212 [75-2-104](#) or [75-2-702](#). The term includes its derivatives, such as "survives," "survived,"
213 "survivor," and "surviving."

214 (53) "Testacy proceeding" means a proceeding to establish a will or determine
215 intestacy.

216 (54) "Testator" includes an individual of either sex.

217 (55) "Trust" includes a health savings account, as defined in Section 223, Internal
218 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and
219 however created. The term also includes a trust created or determined by judgment or decree
220 under which the trust is to be administered in the manner of an express trust. The term
221 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal
222 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,
223 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts
224 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,
225 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security
226 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,
227 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
228 arrangement under which a person is nominee or escrowee for another.

229 (56) "Trustee" includes an original, additional, and successor trustee, and cotrustee,
230 whether or not appointed or confirmed by the court.

231 (57) "Ward" means a person for whom a guardian has been appointed. A "minor ward"
232 is a minor for whom a guardian has been appointed solely because of minority.

233 (58) "Will" includes codicil and any testamentary instrument which merely appoints an
234 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits
235 the right of an individual or class to succeed to property of the decedent passing by intestate
236 succession.

237 Section 2. Section **75-5-701** is enacted to read:

238 **Part 7. Supported Decision-making Agreements**

239 **75-5-701. Definitions.**

240 As used in this part:

241 (1) "Abuse" means the same as that term is defined in Section [26B-6-201](#).

242 (2) "Coercion" means influencing or attempting to influence a principal using force,
243 threats, or intimidation.

244 (3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

- 245 (4) "Exploitation" means the same as that term is defined in Section 26B-6-201.
- 246 (5) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 247 (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996,
- 248 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.
- 249 (7) "Neglect" means the same as that term is defined in Section 26B-6-201.
- 250 (8) "Principal" means an individual who:
- 251 (a) is 18 years old or older;
- 252 (b) has a disability, as that term is defined in Section 26B-6-801;
- 253 (c) seeks to enter or has entered into a supported decision-making agreement with at
- 254 least one supporter; and
- 255 (d) has the permission of the individual's guardian or conservator to enter into a
- 256 supported decision-making agreement, if the supported decision-making agreement includes an
- 257 area over which a court has granted authority to the guardian or conservator.
- 258 (9) "Protected health information" means the same as that term is defined in 45 C.F.R.
- 259 Sec. 160.103.
- 260 (10) "Supported decision-making" means the process of supporting and
- 261 accommodating an individual in the decision-making process to make, communicate, and
- 262 effectuate life decisions, without impeding the self-determination of the individual.
- 263 (11) "Supported decision-making agreement" means an agreement between a principal
- 264 and at least one supporter that meets the requirements of Section 75-5-704.
- 265 (12) "Supporter" means an individual:
- 266 (a) who is 18 years old or older;
- 267 (b) without:
- 268 (i) a substantiated allegation of abuse, neglect, or exploitation;
- 269 (ii) a protective or restraining order; or
- 270 (iii) a conviction for:
- 271 (A) harm of another;
- 272 (B) theft; or
- 273 (C) financial crime; and
- 274 (c) who has agreed to provide specified assistance to a principal by entering into a
- 275 supported decision-making agreement with the principal.

276 (13) "Undue influence" means the same as that term is defined in Section [26B-6-201](#).

277 Section 3. Section **75-5-702** is enacted to read:

278 **75-5-702. Purposes of part.**

279 The purposes of this part are to:

280 (1) provide a principal assistance in:

281 (a) gathering and assessing information;

282 (b) understanding options, responsibilities, and consequences of a decision; and

283 (c) communicating decisions for a principal if the principal wants assistance with

284 communicating decisions;

285 (2) give a supporter legal status, as specified in a supported decision-making

286 agreement, to be with a principal, to access information on behalf of a principal, and to

287 participate in discussions with others when a principal is making decisions or seeking to obtain

288 information; and

289 (3) enable a supporter to assist in making and communicating decisions for a principal,

290 but not to substitute as the decision maker for a principal.

291 Section 4. Section **75-5-703** is enacted to read:

292 **75-5-703. Interpretation of part.**

293 This part shall be construed and applied in accordance with the following principles:

294 (1) a principal should be able to:

295 (a) live in the manner in which the principal wishes; and

296 (b) make decisions about accepting or refusing support, assistance, or protection, as

297 long as doing so does not cause serious bodily injury, as that term is defined in Section

298 [26B-5-301](#), to the principal, or harm to others;

299 (2) a principal should be informed about and, to the best of the principal's abilities,

300 participate in the management of the principal's affairs;

301 (3) a principal should receive the most effective, yet least restrictive and intrusive,

302 form of support, assistance, or protection when the principal is unable to manage the principal's

303 affairs alone; and

304 (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds

305 should be respected in supporting the principal.

306 Section 5. Section **75-5-704** is enacted to read:

307 75-5-704. Supported decision-making agreement.
308 (1) Subject to Subsection (7), a principal may enter into a supported decision-making
309 agreement at any time if the principal:
310 (a) enters into the agreement voluntarily and without coercion or undue influence; and
311 (b) understands the nature and effect of the agreement.
312 (2) A principal is presumed to understand the nature and effect of a supported
313 decision-making agreement unless the supported decision-making agreement involves an area
314 over which a court has granted authority to a guardian or conservator.
315 (3) A supported decision-making agreement shall:
316 (a) be in writing;
317 (b) state the date on which the agreement is effective;
318 (c) designate at least one supporter;
319 (d) describe:
320 (i) how the principal uses supported decision-making to make decisions;
321 (ii) the rights of the principal;
322 (iii) the responsibilities of each supporter;
323 (iv) the decision-making supports and accommodations the principal chooses to
324 receive from each supporter; and
325 (v) the types of decisions, if any, with which a supporter is not authorized to assist the
326 principal;
327 (e) include the ink or electronic signature of:
328 (i) the principal;
329 (ii) each supporter;
330 (iii) a guardian or conservator, if required under Subsection [75-5-701\(4\)\(d\)](#); and
331 (iv) (A) two witnesses; or
332 (B) a notary public; and
333 (f) describe how any perceived or actual conflict of interest between a supporter and
334 the principal will be mitigated.
335 (4) (a) A supported decision-making agreement executed other than in this state is
336 valid in this state if, when the supported decision-making agreement was executed, the
337 execution complied with the law of the jurisdiction that determines the meaning and effect of

338 the supported decision-making agreement.

339 (b) The meaning and effect of a supported decision-making agreement is determined by
340 the law of the jurisdiction indicated in the supported decision-making agreement and, in the
341 absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported
342 decision-making agreement was executed.

343 (5) (a) A supported decision-making agreement may include a release or other
344 document by which the principal authorizes a supporter to access the principal's confidential
345 information, subject to the terms of the supported decision-making agreement described in
346 Subsection (2)(d) and the supporter's duties described in Section 75-5-705.

347 (b) Before a covered entity may share a principal's protected health information with a
348 supporter, the principal shall sign a HIPAA consent form authorizing release of the protected
349 health information to the supporter.

350 (c) Nothing in this part shall be construed to alter or preempt the requirements for
351 protecting health information under HIPAA.

352 (6) Each supporter shall include with the supporter's signature:

353 (a) a description of the supporter's relationship to the principal;

354 (b) a statement of the supporter's willingness to act as a supporter;

355 (c) an acknowledgment of the supporter's duties; and

356 (d) an attestation that the supporter:

357 (i) agrees to honor the right of the principal to make decisions;

358 (ii) will not make decisions for the principal, including health care decisions; and

359 (iii) will respect and work to further the independence of the principal.

360 (7) A supported decision-making agreement may do one or more of the following:

361 (a) specify a time period for which the supported decision-making agreement is valid;

362 (b) designate more than one supporter;

363 (c) designate an alternate individual to act in the place of a supporter under
364 circumstances specified in the supported decision-making agreement; or

365 (d) authorize a supporter to share information with another supporter or other
366 individual named in the supported decision-making agreement.

367 Section 6. Section 75-5-705 is enacted to read:

368 **75-5-705. Supporter duties.**

- 369 (1) A supporter shall:
- 370 (a) act with the care, competence, and diligence ordinarily exercised by individuals in
371 similar circumstances, and in accordance with the supporter's skills or expertise;
- 372 (b) act in good faith;
- 373 (c) comply with the terms of the supported decision-making agreement;
- 374 (d) maintain records, which the supporter shall make available to the principal upon
375 request, concerning:
- 376 (i) the supporter's actions under the supported decision-making agreement; and
377 (ii) how the principal communicates and expresses opinions to the supporter; and
- 378 (e) ensure that all information collected on behalf of the principal pursuant to the
379 supported decision-making agreement and this section is:
- 380 (i) kept confidential, as appropriate;
381 (ii) not subject to unauthorized access, use, or disclosure; and
382 (iii) properly disposed of when appropriate.
- 383 (2) Except as otherwise provided in the supported decision-making agreement or
384 Subsection (3), a supporter may, as directed by the principal:
- 385 (a) assist the principal in understanding information, options, responsibilities, and
386 consequences of the principal's life decisions, including decisions relating to the principal's
387 affairs or supportive services;
- 388 (b) help the principal access, obtain, and understand information that is relevant to a
389 life decision, including medical, psychological, financial, or educational decisions, or any
390 treatment records or records related to the management of the principal's affairs or supportive
391 services;
- 392 (c) assist the principal with finding, obtaining, and making appointments for supportive
393 services, and implement the principal's plans for supportive services;
- 394 (d) help the principal monitor information about the principal's affairs or supportive
395 services, including tracking future necessary or recommended services;
- 396 (e) ascertain the wishes and decisions of the principal, assist in communicating those
397 wishes and decisions to others, and advocate to ensure that the wishes and decisions of the
398 principal are implemented; or
- 399 (f) assist the principal with obtaining information to which the principal is entitled.

400 (3) A supporter may not:

401 (a) coerce, exploit, exert undue influence on, or make decisions on behalf of the
402 principal;

403 (b) sign for the principal or provide an electronic signature of the principal to a third
404 party;

405 (c) make health care decisions for the principal; or

406 (d) without the principal's consent:

407 (i) obtain information that is not reasonably related to matters with which the supporter
408 is authorized to support or assist the principal pursuant to the supported decision-making
409 agreement;

410 (ii) use information acquired in connection with the supported decision-making
411 agreement for a purpose other than supporting or assisting the principal pursuant to the
412 supported decision-making agreement; or

413 (iii) delegate the supporter's duties to a third party.

414 Section 7. Section **75-5-706** is enacted to read:

415 **75-5-706. Revocation -- Withdrawal.**

416 (1) A principal may revoke a supported decision-making agreement at any time by
417 providing written notice to all other parties to the agreement.

418 (2) A supporter may withdraw from a supported decision-making agreement at any
419 time by providing written notice to all other parties to the agreement.

420 (3) A written notice of revocation or withdrawal under this section may be provided by
421 electronic means.

422 Section 8. Section **75-5-707** is enacted to read:

423 **75-5-707. Termination.**

424 Unless otherwise provided in the supported decision-making agreement, a supported
425 decision-making agreement is terminated upon the occurrence of any of the following:

426 (1) the death of the principal;

427 (2) revocation by the principal pursuant to Section [75-5-706](#);

428 (3) as to a specific supporter, if the supporter is no longer qualified by reason of failure
429 to meet the requirements of Subsection [75-5-701\(8\)\(b\)](#);

430 (4) withdrawal by all of the supporters pursuant to Section [75-5-706](#) without the

431 designation of a successor supporter;

432 (5) the principal's execution of a valid power of attorney, healthcare directive, or
433 declaration for mental health treatment, except to the extent the executed document expressly
434 continues, in whole or in part, the supported decision-making agreement; or

435 (6) a court's:

436 (a) determination that the principal does not have capacity to execute or consent to a
437 supported decision-making agreement; or

438 (b) appointment of a temporary or permanent guardian or conservator, unless the
439 court's order of appointment:

440 (i) modifies but continues the supported decision-making agreement; and

441 (ii) limits the powers and duties of the guardian.

442 Section 9. Section **75-5-708** is enacted to read:

443 **75-5-708. Impact of supported decision-making agreement.**

444 (1) A decision or request made or communicated by a principal with the assistance of a
445 supporter in accordance with the terms of a supported decision-making agreement and this part
446 shall, for the purposes of any provision of law, be recognized as the decision or request of the
447 principal and may be enforced on the same basis as a decision or request of the principal
448 without support.

449 (2) The availability of a supported decision-making agreement does not limit the
450 informal use of supported decision making, or preclude judicial consideration of informal
451 supported decision-making arrangements as a less restrictive alternative to a guardianship or
452 conservatorship.

453 (3) Execution of a supported decision-making agreement may not be a condition of
454 participating in any activity, service, or program.

455 (4) A court may not consider a principal's execution of a supported decision-making
456 agreement as evidence of the principal's incapacity.

457 (5) The existence of a supported decision-making agreement does not preclude the
458 principal from acting independently of the supported decision-making agreement.

459 Section 10. Section **75-5-709** is enacted to read:

460 **75-5-709. Liability.**

461 (1) A person who is not a party to a supported decision-making agreement, including a

462 provider of health care or financial services, that in good faith accepts or relies upon a
463 supported decision-making agreement:

464 (a) may presume that the signatures on the supported decision-making agreement are
465 genuine, unless the person has actual knowledge that any signature on the supported
466 decision-making agreement is not genuine;

467 (b) may presume that a supported decision-making agreement is valid and that a
468 purported supporter's authority is valid, unless the person has actual knowledge that the
469 supported decision-making agreement or the purported supporter's authority has been revoked,
470 terminated, or is otherwise void or invalid; and

471 (c) is not subject to civil or criminal liability, or discipline for unprofessional conduct,
472 for giving effect to a provision in a supported decision-making agreement, or for following the
473 direction of a supporter given in accordance with the supported decision-making agreement.

474 (2) If a person has reason to believe a principal is or has been the subject of abuse,
475 neglect, or exploitation, or observes a principal being subjected to conditions or circumstances
476 that would reasonably result in abuse, neglect, or exploitation, the person shall immediately
477 report the suspected abuse, neglect, or exploitation to Adult Protective Services.

478 (3) The provisions of this part may not be construed to affect mandatory reporting
479 obligations related to abuse, neglect, or exploitation.

480 (4) A supporter who violates this part or the terms of a supported decision-making
481 agreement is liable to the principal or the principal's successor in interest for the amount
482 required to restore the value of the principal's property to what it would have been had the
483 violation not occurred.

484 (5) A transaction between a supporter and a principal that occurs while a supported
485 decision-making agreement is in effect, or while the supporter is in a position of trust with the
486 principal, and from which the supporter obtains a benefit or advantage, is voidable by the
487 principal unless the supporter establishes that the transaction was fair to the principal.

488 Section 11. **Effective date.**

489 This bill takes effect on May 1, 2024.

Probate Recodification

- Why a recodification?
- What is the plan for recodifications over the next years?
 - Note: On Detailed outline, 75B Chapter 2 and Chapter 3, the Uniform Trust Code and the Uniform Directed Trust Code, are stated as planned for recodification in the 2025 Session.
 - Any other provisions from title 75 to be recodified next year?
- Why the push for 2024? Could passage be delayed until next year with more time for review? Could the effective date be delayed until 2025?
- Why are three separate titles being used?
- How were the provisions for recodification selected?
 - Note: those selected for new titles 75A and 75B are
 - Former title 22 (Fiduciaries) chapters 1 and 2 (death of trustee)
 - o Unit Fiduciary Income and Principal Act
 - o Uniform Act for Fiduciary Security Transfers
 - o Retirement Trusts (moved to title 75B)
 - Former title 25, (Fraud) – Uniform Voidable Transfers Act, asset protection Trust provisions (moved to title 75B)
 - From Title 75
 - o Advanced Health Directive
 - o Uniform Transfers to Minors Act
 - o Uniform Power of Attorney Act
 - o Uniform Powers of appointment Act
 - o Uniform Fiduciary access to digital assets
 - Leaving Title 75 to remain with
 - Uniform disposition of Community Property Act
 - Probate Code – Intestate succession and wills; probate of wills and administration, etc.
 - Protection of Persons under disability and their property
 - Non – probate Transfers (transfer on death deeds, transfer on death security registration, multi-party accounts, payment or transfer at death (insurance, contracts, notes, etc.)).
 - Trusts and Directed Trusts (planned for 2025 in title 75B);
- What process or procedure was used in drafting?
 - Other states reviewed
 - Uniform Laws Commission consulted.
- What internal legislative counsel reviews were done of the drafts?
- Was there a reason for removing act title sections (causing renumbering of all subsequent sections)?
- Why was the intent statement of 75-2a-102 (part of Health Care directive provisions) removed?
- Why is the preamble deleted to 75-1-201 (general probate code definitions) which says “Subject to additional definitions contained in subsequent chapters...and unless the context otherwise requires...”

- couldn't the need to duplicate or cross refer to definitions have been avoided or reduced by maintaining a single title?
- How were the definitions among the various titles and chapters co-ordinated? What was the procedure?
- Why was the reference to "community property with right of survivorship" removed from the definition of "joint tenants" in 75-1-201?
 - Note: the reference is still in non- probate transfers 75-6-402 (real property transfers at death joint owner)
- Why was the definition of "Interested person" in 75-1-201 changed to remove the language to the effect that an interested person depends on context?
- What are the type of definitions for which 75A-1-10- and 75B-1-101 are reserved?
- Will the provisions of Title 22 applicable to all sorts of fiduciaries (see 75A-1-201) including bankruptcy trustees, partners, etc. be as easily found when associated in the code with estate planning trusts and estates?
- Do retirement trust provisions belong with estate planning trust provisions?
- How are disputes to be handled when probate and trust proceedings are covered by one title. But applicable provisions are in another title (Probate and guardianship under 75, Fiduciary under 75A, Trusts under 75B (some now, rest next year).
 - Note: "Petitions" are referred to as starting proceedings for probate issues, health directive issues, guardianship and conservatorship issues, transfer to minors act issues, trust issues, powers of attorney issues, which will now be spread over three titles.
 - Also, the definition of "interested person" and general notice of proceedings provisions start in Title 75 (probate part) but can be more specific in other contexts e.g. guardianship.
- Was maintaining consistency with the numbering of Uniform Act provisions of other states considered?
- Was the cost of modifying forms considered?
 - Estate practitioners and their clients
 - Court forms and explanations needing extensive revision.
 - o Does any fiscal note apply?
 - Effect on other areas of the law
 - Hospital Medical Directives needing replacement.

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

**Order on Review of Guardianship or
Conservatorship Reports**

In the Matter of Protection for

Case Number

_____,
Respondent

Judge

The following reports are submitted for review: (check all that apply)

- | | | |
|--|--|---|
| <input type="checkbox"/> Inventory Report | <input type="checkbox"/> Report on Status of
Protected Person | <input type="checkbox"/> Financial
Accounting Report |
| <input type="checkbox"/> Proof of Minor's
Insurance Deposit | <input type="checkbox"/> Court Visitor Report | <input type="checkbox"/> Final Financial
Accounting Report |

The judge, having reviewed the above report(s):

Approves the reports as submitted. No further action is required.

Reporting period for annual reports is: _____

Requests the following additional information from the filer:

Directs that a court visitor be appointed regarding the following:

Directs that a hearing be set regarding the following:

Other (describe):

Judge's signature may instead appear at the top of the first page of this document.

Date

Signature ► _____
Judge _____

(This form does not need to be sent if the court approves all the reports as submitted.)

Clerk's Certificate of Service

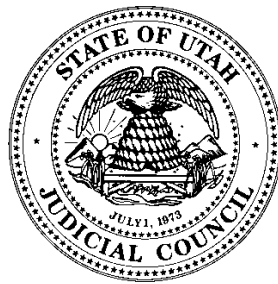
I certify that on _____ (date) a copy of this Order on Review of Guardianship or Conservatorship Reports was sent to the following people at the following addresses:

Date

Signature ► _____
Printed name of court clerk _____

Utah State Courts

Basic Guidelines: Guardians & Conservators of Adults



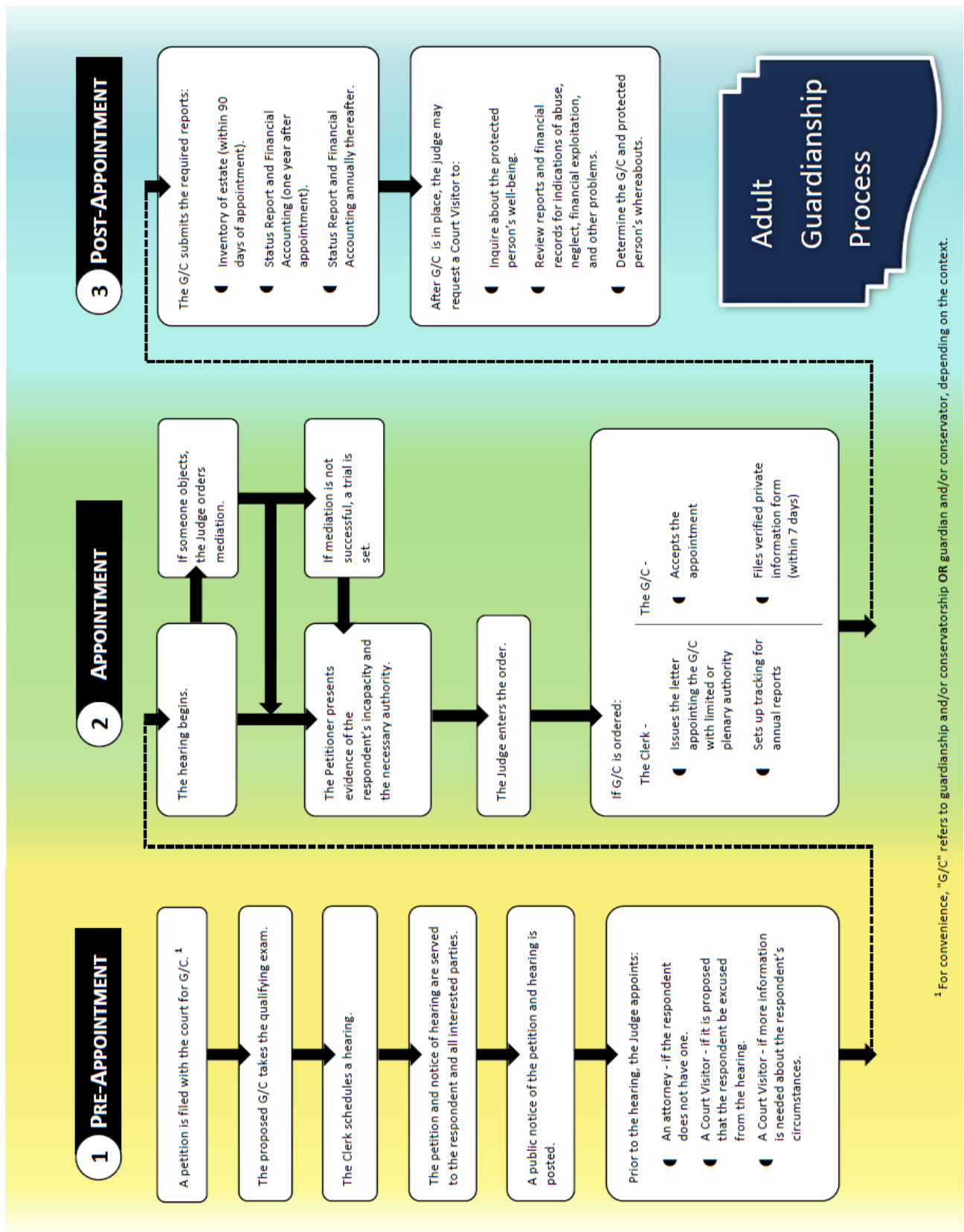
Committee on Law and Aging, Utah State Bar
Administrative Office of the Courts

<https://www.utcourts.gov/howto/family/gc/>

Table of Contents

- A. Summary of the Adult Guardianship Process 3**
- B. Introduction..... 4**
 - What is a Guardian and a Conservator? 5
 - Appointment Length 6
 - Recordkeeping 6
- C. Reporting to the Court 7**
 - Report Types 7
 - Annual Report Due Dates 10
 - Filing Required Reports 10
- D. Responsibilities and Restrictions 12**
 - General Responsibilities as Guardian 12
 - General Responsibilities as Conservator..... 15
- E. Other Considerations 18**
 - Compensation 18
 - Liability 19
 - Conflict of Interest..... 19
 - Representative Payee 20
- F. Criminal penalties..... 20**
 - Abuse or Neglect of a Vulnerable Adult..... 21
 - Exploitation of a Vulnerable Adult..... 21
 - Theft 22
 - Unlawful Dealing of Property by a Fiduciary 22
 - Reporting Abuse, Neglect, or Exploitation of a Vulnerable Adult 22
- G. Resources 23**
- Glossary of Terms..... 25**
- Appendix A – Care Planning Considerations 27**
- Appendix B – Utah Code 75-5-312 and CJA Rule 6-501 28**
- Appendix C - Sample Forms 36**

A. Summary of the Adult Guardianship Process



B. Introduction

Anyone 18 or older has the right to make decisions based on his or her values and beliefs, even if others disagree with those decisions. Making decisions is an essential part of adult life. Every day we make decisions for ourselves and for those who depend on us. Decision-making can be burdensome, even stressful at times, but few of us would willingly give up the right to make our own decisions. However, the appointment of a guardian or conservator does just that — removes the right of a person to make his or her own decisions. That is why paying special attention to these cases is an important court responsibility.

A guardian of an adult is a person or institution appointed by a court to make decisions about the personal well-being — residence, health care, nutrition, education, personal care, etc. — of an incapacitated adult, who is called a “protected person.”

“Incapacity” means that an adult’s ability to do any of the following is impaired to the extent that the person lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care. Incapacity is a judicial determination, and is measured by the person’s functional limitations to:¹

- Receive and evaluate information.
- Make and communicate decisions.
- Provide for necessities such as food, shelter, clothing, health care, or safety.

A conservator of an adult is a person or institution appointed by the court to make decisions about a protected person’s estate. A person does not have to be incapacitated to have a conservator appointed. A conservator may be appointed if the respondent is unable to manage his or her property effectively and a conservator is needed to:

- prevent the respondent’s property from being harmed; or
- obtain or provide funds for the respondent’s support or the support of those entitled to be supported by the respondent

The protected person’s estate includes all of his or her property, personal and business. Some examples are income (such as wages, an annuity, a pension, and Social Security or other government benefits), real property (buildings and land), and personal property (such as furniture, cash, bank accounts, certificates of deposit, stocks, bonds, motor vehicles, jewelry, tools, furs and art). A conservator must use reasonable care, skill and caution to manage and invest the estate to meet the protected person’s needs over his or her expected life.

¹ Utah Code Section 75-1-201

Under appropriate facts, the court might appoint a guardian, or a conservator, or both. The guardian and the conservator might be two different people, or they might be the same person. If there is no conservator, the guardian has some of the conservator's responsibilities.

If the protected person needs help in some but not all areas of decision-making, the court may order a limited guardianship.² Under Utah law, a limited guardianship is preferred, and the court may grant a full guardianship only if no alternative exists. A limited guardian has only those powers and duties listed in the court order. The court may also limit the conservator's authority.³

In an emergency, the court may appoint a temporary guardian, who serves for no more than 30 days, until a hearing to decide whether the protected person needs a permanent guardian. A temporary guardian has the responsibility of a permanent guardian, either limited or full, depending on the circumstances.⁴

This manual does not explain the process for becoming a guardian or conservator, but it will help you understand your responsibilities after you have been appointed by a court.

Because it provides only general information, this manual is not a substitute for legal advice; consult your lawyer to answer any specific questions.

What is a Guardian and a Conservator?

As a guardian and/or conservator, you hold a position of high trust to help the incapacitated person (sometimes called a "protected person" or "ward") make decisions and to make decisions on his or her behalf. This position of trust puts you in the role of a fiduciary, meaning you have legal duties and responsibilities to the incapacitated person.

A guardian is a person or institution appointed by a court to make decisions about the care of another, who is called a "protected person." A conservator is a person or institution appointed by the court to manage the property and financial affairs of a protected person. Sometimes the same person is appointed to both roles. If no conservator is appointed, the guardian has the responsibility of a conservator.⁵

A guardian has the responsibility similar to that of a parent for a minor, except that the guardian does not have to use his or her own money for the protected person's care and support.⁶ See Section D, *financial decisions* (pg. 17) for additional information.

A conservator is the trustee (a person with the duties and responsibilities to administer assets for the benefit of someone else) of the protected person's estate.⁷ The protected person's estate includes all of his or her property. Some examples are income (such as

² Utah Code Section 75-5-304

³ Utah Code Section 75-5-426

⁴ Utah Code Section 75-5-310

⁵ Utah Code Section 75-5-312

⁶ Utah Code Section 75-5-312

⁷ Utah Code Section 75-5-420

wages, an annuity, or Social Security or other government benefits), real property (buildings and land), furniture, cash, bank accounts, certificates of deposit, stocks, bonds, retirement benefits, motor vehicles, and valuables such as jewelry and art. A conservator must use reasonable care, skill and caution to manage and invest the estate as a prudent investor would.⁸

In your fiduciary role, you must avoid all conflicts of interest with the welfare, goals, and preferences of the protected person. A conflict of interest arises when the guardian/conservator has some personal or agency connection that could be perceived as self-serving or adverse to the best interest of the protected person. Self-dealing arises when the guardian/conservator seeks to take advantage of their position as a guardian and acts in their own interests rather than what is best for the protected person.

Your appointment order and letters of guardianship or conservatorship issued by the court should specify the nature of your appointment.

Appointment Length

Your appointment as guardian or conservator lasts until the court terminates your appointment. You may resign, and the court will appoint another guardian or conservator, if the protected person still needs one or both. If you have been appointed both guardian and conservator, you can resign as one and not the other.

Additionally, the circumstances that justified the initial appointment of a guardian or conservator may change in such a way that the protected person no longer needs a guardian or conservator. Examples of changed circumstances include adoption of the protected person, the protected person has reached age 18, the protected person is no longer incapacitated, or the protected person has passed away. Regardless of the reason to end your obligations, you retain them until the court removes you as guardian/conservator.⁹

Consult your lawyer about the proper procedures to end the appointment and turn over the estate. You must prepare a final Financial Accounting Report and transfer the estate to your successor (if one is appointed), or to the protected person. You may need to record a copy of the order ending the appointment with the county recorder where the protected person owns land to clear title to that property.

Recordkeeping

Keeping good records is essential for guardians and conservators because you must account for all transactions at least annually. Recommendations for good recordkeeping include:

⁸ Utah Code Section 75-7-902

⁹ Utah Code Sections 75-5-306, 75-5-307, and 75-5-415

- Keep contemporaneous records, that is, records prepared at the same time as an event, will help later, when you prepare your reports.
- Create files/folders to keep legal documents, tax records, paid bills, unpaid bills, correspondence and other papers related to the protected person.
- Keep the records about the protected person separate from your personal records.
- Obtain a copy of the protected person's will, living will, trust, and other estate planning documents so you can follow the estate plan.
- Keep a copy of all documents filed with or issued by the court.
- As guardian, you should keep a journal or diary throughout the year to record some of the protected person's activities and important events, especially if there is no other record of the event.
- If the protected person does not live with you, record the dates of your visits.
- Keep negotiable instruments, deeds, and wills in a safe deposit box in the name of the guardianship or conservatorship.

You may be personally liable if you do not keep proper records.¹⁰ The court may order you to reimburse the estate if you cannot show what you did with the protected person's property, even if you know that you used it in the protected person's best interests. Good records help to protect you in the event that your management of the estate is questioned.

C. Reporting to the Court

One important responsibility of guardians and conservators is filing regular reports on the protected person's living situation and financial circumstances.

Report Types

The table below shows a summary of the required reports and the individual responsible for completing them:

¹⁰ Utah Code Sections 75-5-302, 75-5-312, and 75-5-417

Report	Filed By	Due Date / Timeframe
Inventory	Conservator*	Within 90 days after the appointment
Status of the Protected Person	Guardian	Within 60 days after the anniversary of the appointment
Financial Accounting	Conservator*	Within 60 days after the anniversary of the appointment
Final Financial Accounting	Conservator*	Upon resignation or removal of the conservator (or guardian), or upon termination of appointment.
<i>* Filed by the guardian if no conservator has been appointed.</i>		

Not every guardian or conservator is required to report annually, but most are, including spouses who are guardians. (Note - The Inventory, Status Report, and Financial Accounting are not necessary if the guardian, co-guardian, or conservator is the parent of the adult protected person.)

Otherwise, it is required that the guardian and conservator of an adult file the reports.¹¹ The judge can impose a \$5,000 penalty if the guardian and/or conservator:

- Willfully fails to file a report.
- Makes a substantial misstatement in a report.
- Is guilty of gross impropriety in handling the protected person's property.

Inventory report

Within 90 days after being appointed, the conservator — or the guardian if there is no conservator — must file the Inventory Report.¹² To do so, your first task is to locate and identify all of the protected person's property. Begin as soon as possible after your appointment or even before the appointment is final.

Once you have a complete list of the property, prepare the Inventory Report and file it with the court. Later, if you discover more property, file an amended inventory.

Report on the status of the protected person (“status report”)

As guardian, you must report **annually** to the court about the protected person's care and status¹³. (See Appendix for sample form.) The Status Report shows how the protected person is living, what they are doing, and alerts the court to

¹¹ Utah Code Sections 75-5-312, 75-5-417, and CJA Rule 6-501

¹² Utah Code Sections 75-5-418

¹³ Utah Code Section 75-5-312

changes and possible problems. (Note - If a guardian or co-guardian is the protected person's parent, they are not required to file an annual status report.¹⁴)

Between annual reports, you should inform the family and other interested persons of any significant changes in the protected person's circumstances. If the protected person dies, notify the court and the interested persons at once.

Financial accounting report

A conservator — or the guardian if there is no conservator — must **annually** account to the court for the protected person's estate (e.g., finances).¹⁵ (See Appendix for sample form).

If you are the guardian only, AND the court has appointed a separate conservator, you must instead report to the conservator the financial transactions that you have taken on behalf of the protected person.¹⁶ Because the conservator has to report annually to the court, you should report at least annually to the conservator. Discuss this with the conservator to ensure that you provide your report at a mutually convenient time.

If the protected person's estate is limited to payments from a state or federal agency that requires you to account annually to them, such as if you are protected person's representative payee through the Social Security Administration, you may file with the court a copy of the agency's form rather than the court's Financial Accounting Report.

Final financial accounting

The conservator - or the guardian if there is no conservator - must file a final accounting if any of the following situation occurs:

- The guardian or conservator resigns or is removed.
- The protected person dies.
- The guardianship or conservatorship ends.
- The court transfers the guardianship or conservatorship to another state.

The reporting period will be from the date of the most recently filed accounting to the date the guardianship or conservatorship ends.¹⁷ This report should go to the judge assigned to the case for review, not the judge on the probate calendar rotation (if your district has this).

¹⁴ Utah Code Section 75-5-312(3)(f)(x)

¹⁵ Utah Code Sections 75-5-312 and 75-5-417

¹⁶ Utah Code Section 75-5-312

¹⁷ Utah Code Section 75-5-419

Annual Report Due Dates

Annual Reports should cover a full year, starting from the date you were appointed guardian and/or conservator. Reports are due within 60 days from that date of appointment.

For example:

- You are appointed as guardian and/or conservator on May 1, 2021.
- The Inventory Report is due by July 30, 2021.
- The Status and Financial Accounting Reports are due by June 30, 2022.
- Every year thereafter, the Status and Financial Accounting Reports are due by June 30th and late on July 1st - until the guardianship/conservatorship is terminated.

You may ask the court to change the reporting period, such as to a calendar year or any other 12-month period that is more convenient.¹⁸ This means that for the year in which the change is made you will report for a shorter period of time. For example, if you are appointed on August 17, and receive the court's permission to report on a calendar year basis, your next report would cover the period from August 17 to the end of the calendar year. Subsequent reports would cover the calendar year.

Filing Required Reports

Reports can be completed by hand or online, through the Online Court Assistance Program (OCAP). To complete by hand, find the correct report form on the court's website (<https://www.utcourts.gov/howto/family/gc/reports.html>), and print out the document(s) you need.

To complete the report online, visit the OCAP website (<https://www.utcourts.gov/ocap/>), create an account (if you do not already have one), and find the form you need (called an "interview" in OCAP; see screenshot below). Once you have completed all items on the interview, you can print the document and file it with the court.

¹⁸ CJA Rule 6-501

OCAP Interviews

<p>Children and/or Family - Divorce</p> <ul style="list-style-type: none">• Divorce - Petitioner• Divorce Answer - Respondent• Documentos de Divorcio <p>Children and/or Family - Other</p> <ul style="list-style-type: none">• Custody and Support, or Paternity - Petitioner• Custody and Support, or Paternity Answer - Respondent• Dismiss a Divorce Case - Petitioner• Dismiss a Divorce Case - Respondent• Temporary Separation - Petitioner• Financial Declaration• Register Out-of-State Custody Order• Register Out-of-State Support Order• Venue - Change of Venue <p>Enforcing Children and/or Family Orders</p> <ul style="list-style-type: none">• Order to Show Cause Motion• Order to Show Cause Response• Order to Show Cause Reply• Order to Show Cause Stipulation• Order to Show Cause Order• Order to Show Cause Objection <p>Guardianship and Conservatorship</p> <ul style="list-style-type: none">• Guardianship of an Adult• Guardianship of an Adult Child (for parents only)• Guardianship of a Minor• Guardianship/Conservator Test• Prepare Inventory and Annual Reports• Terminate Guardianship/Conservatorship <p>Garnishment</p> <ul style="list-style-type: none">• Employer's Answers to Garnishment Interrogatories	<p>Protective Orders/Stalking Injunction</p> <ul style="list-style-type: none">• Protective Order - Adult<ul style="list-style-type: none">◦ Cohabitant Protective Order◦ Dating Violence Protective Order◦ Civil Stalking Injunction◦ for Sexual Violence Protective Order, go to https://www.utcourts.gov/abuse/sexual_violence.html• Protective Order on Behalf of a Child (to be filed in a juvenile court) <p>Landlord and Tenant</p> <ul style="list-style-type: none">• Landlord - Eviction Notices• Landlord - Eviction Documents for Court• Landlord - Damage Judgment• Tenant - Respond to an Eviction Case• Tenant - Respond to a Possession Bond <p>Small Claims</p> <ul style="list-style-type: none">• Affidavit and Summons - Plaintiff• Counter Affidavit - Defendant• Interpleader Affidavit, Summons• Appeal Judgment• Default Judgment (if needed after hearing)• Dismiss Small Claims Case• Interpleader Default Judgment• Postpone Trial• Set Aside Judgment• Abstract of Judgment• Employment Verification• Garnishment• Property Seizure• Satisfaction of Judgment• Supplemental Proceedings
--	--

You must file the documents with the court that made the appointment unless there has been a change of venue. If the protected person moves to another county, you may ask the court to move your reports to that county.¹⁹

You must serve a copy of the documents, along with a notice of right to object on:

- The protected person (if they have mental capacity to understand the proceedings).²⁰
- The protected person's guardian or conservator (if the judge has appointed separate people).
- The protected person's spouse, adult children, parents and siblings.
- Anyone requesting notice under [Section 75-5-406](#).²¹

You may serve the documents by mail, email or hand delivery. If anyone objects to the filing or if the judge has further questions, the court clerk will schedule a hearing of which you and the others will be notified.²²

¹⁹ Utah Code Sections 75-5-205, 75-5-302, and 75-5-403

²⁰ Utah Code Section 75-5418 and CJA Rule 6-501

²¹ CJA Rule 6-501

²² Code of Judicial Administration Rule 6-501

D. Responsibilities and Restrictions

As noted earlier, as guardian, you are responsible for care, support, and decision-making related to the protected person's personal wellbeing, whereas as conservator, you are responsible for the care, support, and decision-making of the protected person's estate and finances.

The following sections describe in more detail the responsibilities and restrictions you assume when you become a guardian and/or conservator.

General Responsibilities as Guardian

Utah Code governs your responsibility as guardian. Generally, you have the responsibility similar to that of a parent for a minor child. If the court does not appoint a separate conservator, you also have the conservator's responsibilities.

Unless your authority is limited by the appointment order, you:

- May have custody of the protected person.
- May establish the protected person's place of abode.
- Must provide for the protected person's care, comfort and maintenance and arrange for the protected person's education and social activities.
- Must take reasonable care of the protected person's personal effects.
- May consent to enable the protected person to receive medical or professional care, counsel or treatment.
- May consent to the protected person's marriage, if authorized by a court to give consent.
- May consent to the protected person's adoption, if authorized by a court to give consent, and if the rights of the protected person's parents have been terminated.
- Must start proceedings to protect the protected person's property or to compel someone to pay money due the protected person.
- Must exercise care to conserve any excess money or property for the protected person's future needs.

As guardian, you may NOT:

- Sell the protected person's property, such as stocks or real estate, unless also appointed as conservator.
- Cast the protected person's ballot in an election.
- Decide the protected person's religious preference.
- Write a will for the protected person or change a previously executed will.
- Physically punish the protected person.

- Neglect appropriate healthcare for the protected person.
- Leave the protected person unattended if he or she needs care.
- Commit the protected person to a psychiatric hospital without a commitment hearing, unless the protected person consents or the authority was expressly granted in the appointment order.

As noted earlier, a separately appointed conservator has most of the responsibility for money and property. Discuss with the conservator your respective responsibilities so that both of you clearly understand them.

If the court has appointed a separate conservator, you have the right to receive from the conservator reasonable sums for the protected person's daily living expenses. This might be in the form of an allowance to you as guardian to pay third persons, or the conservator might pay third persons directly.²³ Discuss this with the conservator to agree upon the amount, method and timing of regular payments, and of any extraordinary expenses.

Decision-making guidelines

Encourage the protected person's maximum self-reliance and independence. Involve the protected person in making decisions, and allow the protected person to make as many decisions as possible.²⁴

A guide to help you is known as "the least restrictive alternative." This means to preserve the protected person's independence to the fullest extent possible, you and the protected person choose the alternative that will least restrict the protected person's freedom, rights, and ability to control his or her environment. "Least restrictive alternative" could arise where the person lives, with whom they associate, the medical or mental health care they receive, where they work, or where and the type of training they receive.

As guardian, you help the protected person make personal decisions or, if necessary, you make the decisions for the protected person. If the protected person is unable to communicate, try to reach the decision that the protected person would have made if able to choose. To the extent known, you should act in accordance with the protected person's expressed desires and personal values.²⁵ It is what the protected person would do, not you, that serves as your guide, as long as the decision is in the protected person's best interest.

The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety. The goal should be to

²³ Utah Code Section 75-5-312

²⁴ Utah Code Section 75-5-312(7)

²⁵ Utah Code Section 75-5-312(7)

manage, but not necessarily eliminate, risks. The person's goals, needs and preferences should be consistent with the alternative chosen.

For more information about a guardian's specific decision-making authority, visit: <https://www.utcourts.gov/howto/family/gc/authority-guardian.html>

Health care

If the protected person has appointed a health care agent in an advance health care directive, that person makes health care decisions for the protected person, including decisions about end-of-life. Otherwise, these decisions are yours.

- Work closely with the protected person's doctor or other healthcare providers. You may be asked to give consent to medical treatment.
- Obtain as much information as you can about the protected person's preferences. You can do this by asking the protected person directly.
- If the protected person is unable to communicate and has advance medical directives, such as a living will or advance health care directive, then you should use those directives to guide your decision.
- If such documents are not available, speak with the protected person's family and friends about his or her medical treatment preferences.
- If no information about medical treatment preference is available, consider the beliefs of the protected person's religion.

Ask questions regarding medical alternatives and the benefits and risks of a proposed treatment. If a proposed surgical procedure or drug therapy is controversial, ask for the court's permission before you authorize treatment.

Living arrangements

If possible, keep the protected person living at his or her own home. Services may be available to provide meals, transportation, or in-home assistance. If the protected person is no longer safe at home, it may be necessary to move him or her to a more protected setting. Consult the protected person's family, doctor and other professionals for recommendations concerning placement in a setting that will best meet the protected person's needs. Following placement, regularly visit the protected person and consult with staff to ensure that the protected person's needs are met.

The protected person may live with you, your spouse, your parents or your children, but you are not permitted to charge the protected person's estate for the cost of room and board unless you get the court's permission.²⁶ Regardless of the living situation, you are responsible to ensure that the protected person is safe, comfortable, and receiving healthcare, nutrition, grooming, and recreation.

²⁶ Utah Code Section 75-5-312(2)(d)(ii)

General Responsibilities as Conservator

Utah Code governs your responsibility as conservator.²⁷ You must exercise reasonable care, skill and caution to invest and manage estate assets as a prudent investor would, considering the estate's circumstances. You must make a reasonable effort to verify relevant facts. Your investment and management decisions about individual assets must be evaluated in the context of the estate as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the estate.

Circumstances that you should consider in investing and managing estate assets include the following:

- General economic conditions and the possible effect of inflation or deflation.
- The expected tax consequences of investment decisions or strategies.
- The role that an investment or course of action plays within the overall portfolio.
- The expected total return from income and the appreciation of capital.
- The size of the estate, the need for liquidity, regularity of income, and preservation or appreciation of capital.
- An asset's special value to the purposes of the estate or to the protected person.

In managing the protected person's estate, you are required to take into account any estate plan. You may examine the protected person's will, including a will filed with the court for safekeeping.²⁸

Unless your authority is limited by the order of appointment, you may:

- Collect, hold, and retain estate assets.
- Invest in any kind of property or type of investment that is consistent with the standards imposed by the Utah Code.
- Allocate items of income or expense to estate income or principal.
- Acquire estate assets or take an option to acquire estate assets.
- Dispose of estate assets or grant an option to dispose of an estate asset.
- Invest and reinvest estate assets.
- Deposit estate funds in a bank.
- Continue or participate in operating any business or enterprise.
- Acquire an undivided interest in an estate asset in which the conservator holds an undivided interest.

²⁷ Utah Code Sections 75-5-424, 75-5-425, 75-5-428 and 75-7-902

²⁸ Utah Code Sections 75-5-427 and 75-2-901

- Manage, develop, improve, exchange, partition, abandon or change the character of, an estate asset.
- Repair, modify or demolish buildings, structures or improvements.
- Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries.
- Adjust differences in valuation on exchange or partition by giving or receiving considerations and dedicate easements to public use without consideration.
- Enter into a lease for a term within or extending beyond the term of the conservatorship.
- Vote a security.
- Pay calls, assessments, and other sums accruing on account of securities.
- Sell or exercise stock subscription or conversion rights.
- Consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- Hold a security in the name of a nominee or in other form without disclosure of the conservatorship.
- Insure estate assets against damage or loss and the conservator against liability with respect to third persons.
- Borrow money and advance money for protecting the estate or the protected person, and for all expenses, losses, and liabilities sustained in administering the estate.
- Prosecute or defend actions, claims, or proceedings for protecting estate assets and you, as conservator, in the performance of your duties.
- Pay, settle or contest a claim by or against the estate or the protected person.
- Release any claim of the estate to the extent that the claim is uncollectible.
- Pay taxes, assessments, your compensation, and other expenses incurred in the collection, care, administration, and protection of the estate.
- Pay any sum distributable to the protected person or his dependent by paying the sum to the protected person, to his guardian if there is one, or to the person with custody of the protected person.
- Employ persons to advise or assist you in the performance of your duties and act upon their recommendation personally or by an agent.
- Execute and deliver instruments to facilitate the exercise of your powers.

- Spend or distribute income or principal for the support, education, care or benefit of the protected person and his or her dependents.
- Make gifts to charity as the protected person might have been expected to make, provided:
 - the estate is sufficient to provide for the support, education, care or benefit of the protected person and his or her dependents;
 - if the estate is that of an incapacitated adult; and
 - the total does not exceed for any year 20% of the income from the estate.
- Pay all just claims against the estate and against the protected person.

As conservator, you may NOT:

- Comingle your personal funds with those of the protected person.
- Pay your personal expenses from the estate (for example, do not use the protected person's money to pay your personal bills).
- Deposit estate funds into your account or your funds into the estate account.
- Borrow money or property from the protected person's estate.
- Sell estate property for less than fair market value (for example, do not sell the property to family members at reduced prices).
- Record your name on the protected person's property as though you are the owner (for example, do not record your name on the protected person's bank account as if you own the account; it is proper to record your name on an account as the protected person's conservator).

Financial decisions

If the court appoints a conservator, the conservator will decide most issues involving the protected person's money and property and will file the accountings described in the Reports section above. If the court does not appoint a separate conservator, the guardian also assumes the conservator's responsibilities. If you, as guardian, do not want those added responsibilities, ask the court to appoint a separate conservator.

As guardian, you must manage the protected person's money and property to pay for their support, care, and education. If the protected person has money and property beyond what is needed for support, care, and education, the conservator should invest the excess.²⁹

It is important that you involve the protected person in the estate management as much as possible, and keep the protected person informed. If the protected

²⁹ Utah Code Sections 75-5-312 and 75-5-424

person is able to maintain a small checking account and to pay routine bills, encourage them to do so, to provide a higher level of self-determination and independence.

Things to keep in mind include:

- Open a checking account in the name of the guardianship or conservatorship to deposit income and pay bills.
- Completely describe each transaction.
- If the balance in the checking account accumulates beyond the protected person's needs, transfer the excess to an interest bearing account or other investment in the name of the guardianship or conservatorship.
- If you need to withdraw money from the investment account to pay for an extraordinary expense, first transfer the money into the checking account.

Keep the protected person's property – including money – separate from yours, and use the protected person's property only for his or her benefit. Manage the protected person's property in the same manner you would want someone else to handle your property. Consult your lawyer or financial counselor to answer specific questions.

For more information on preparing a budget for the protected person, and to access the Budget Worksheet template, visit:

<https://www.utcourts.gov/howto/family/gc/budgeting.html>

E. Other Considerations

Compensation

Often a family member serves as guardian or conservator without compensation, but with the court's approval, a guardian or conservator is entitled to reasonable compensation from the estate. What is reasonable depends on the types of services provided, the skill of the guardian or conservator, and whether the time and expenses are justifiable.³⁰ Accurate records are essential.

You do not have to pay the protected person's expenses with your own money.³¹ Whenever possible, use the protected person's money to pay their expenses. Although in general you must not commingle your money and property with that of the protected person, you can pay for the protected person's living expenses from your own account and subsequently recover your out-of-pocket costs from the estate.³²

If you need to pay some of the protected person's living expenses with your money, pay by check, credit card or debit card rather than with cash; cash does not create a record

³⁰ Utah Code Section 75-5-414

³¹ Utah Code Section 75-5-209

³² Utah Code Section 75-5-102

that the money was yours. To claim reimbursement from the estate, keep a receipt for the goods or services and proof that you paid with your own money.

Note - Because reimbursement for living expenses includes *elements* of commingling, do it only if it is **necessary**.

Liability

You are not personally liable for the protected person's acts.³³ You are not liable for reasonable actions taken in the best interests of the protected person. You are not liable for managing the protected person's estate if you act like a prudent person dealing with the property of another. However, you are liable if you are personally at fault and the protected person is damaged by your carelessness.³⁴

Understand your responsibilities, use common sense and exercise sound judgment to prevent problems. You are not required to have any special skills to act as guardian or conservator. However, if you have special skills, you must use those skills to manage the protected person's estate. Consult your lawyer to answer specific questions.

The court will require a bond to protect the protected person financially, unless it is waived for good cause.³⁵ The bond is an insurance policy paid for by the estate that protects the protected person in the event that your mistake causes the estate to lose money. The amount of the bond will be the total value of the estate property over which you have unsupervised control, plus one year's estimated income.

Conflict of Interest

The guardian (and/or conservator) must avoid any conflicts of interest or self-dealing when managing the protected person's estate.

- The guardian may not loan or give money or objects of worth from the person's estate unless specific prior approval is obtained.
- The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly, unless all of the following are met:
 - Specific prior approval is obtained.
 - A reasonable showing is made that such support is consistent with the person's goals, needs and preferences.
 - It will not substantially harm the estate.

Conflict of interest arises where the guardian has some personal interest in the protected person's finances or estate that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian

³³ Utah Code Section 75-5-312

³⁴ Utah Code Section 75-5-429

³⁵ Utah Code Sections 75-5-411 and 75-5-412

seeks to take advantage of their position as a guardian and acts for their own interests rather than for the interests of the person.

Self-dealing can sometimes take place in seemingly innocent ways. For instance, if a guardian lived in the protected person's home or used the protected person's car for personal matters, this may be inconsistent with the guardian's fiduciary duty to the protected person. Using any of the protected person's property for personal use would be inappropriate. Likewise, paying the costs for a family vacation that the guardian attends would be self-dealing, if costs of family members who did not need to be there to take care of the protected person's physical needs were paid.

You may use the protected person's funds only for their benefit. You may take into account the protected person's accustomed standard of living.³⁶ If family members or others express concern about the cost of the protected person's care, your responsibility is to the protected person; guardians shall value the well-being of the person over the preservation of the estate.

Representative Payee

If an agency, such as the Veteran's Administration or the Social Security Administration, pays benefits to the protected person and the protected person is found by a court to be incapacitated, the agency must appoint a representative payee to receive the payments. This appointment is separate from the court-appointed guardianship and conservatorship.

If you wish to serve as the representative payee, you must apply to the agency that provides the benefits. In most cases, the agency will appoint the court-appointed guardian or conservator as representative payee. The agency providing the benefits has the authority, however, to appoint any person it chooses to be the protected person's representative payee.

Once appointed by the agency, the representative payee has the authority to receive and handle the benefits for the protected person.

F. Criminal penalties

You may be found criminally liable for financially exploiting, neglecting, or physically or emotionally abusing the protected person. While there are many laws that govern the conduct of a person in a fiduciary relationship, you should especially be aware of the following criminal penalties under Utah law. Consult your lawyer to answer your specific questions.

³⁶ Utah Code Section 75-5-425

Abuse or Neglect of a Vulnerable Adult

Utah Code Section 76-5-111.

A person who causes a vulnerable adult to suffer harm, abuse or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of abuse of a vulnerable adult.

Exploitation of a Vulnerable Adult

Utah Code Section 76-5-111.

A person commits the offense of exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult;

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity;

(vi) commits sexual exploitation of a vulnerable adult;

(vii) intentionally, knowingly, or recklessly creates, transmits, or displays a photographic or electronic image or recording of the vulnerable adult to which creation, transmission, or display a reasonable person would not consent; and that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or pubic area, displays the clothed area of only the vulnerable adult's breasts, buttocks, anus, genitals, or pubic area; or that shows the vulnerable adult

engaged in conduct that is harmful to the mental or physical health or safety of the vulnerable adult; or

(viii) intentionally, knowingly or recklessly causes the vulnerable adult to participate in an act that is highly offensive or demeaning to the vulnerable adult in which a reasonable person would not participate or that is harmful to the mental or physical health or safety of the vulnerable adult.

Theft

Utah Code Section 76-6-404.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him of it.

Unlawful Dealing of Property by a Fiduciary

Utah Code Section 76-6-513.

A person is guilty of unlawfully dealing with property by a fiduciary if he deals with property that has been entrusted to him as a fiduciary ... in a manner which he knows is a violation of his duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted.

A person acting as a fiduciary is guilty of unlawfully dealing with property by a fiduciary if, without permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

Reporting Abuse, Neglect, or Exploitation of a Vulnerable Adult

Utah Code Section 76-5-111.1.

Any person who has reason to believe that a vulnerable adult has been abused, neglected or exploited shall immediately notify the nearest peace officer, law enforcement agency, or Adult Protective Services within the Department of Human Services, Division of Aging and Adult Services.

Anyone who makes that report in good faith is immune from civil and criminal liability. A person who is required to report suspected abuse, neglect, or exploitation of a vulnerable adult and who willfully fails to do so is guilty of a class B misdemeanor.

Any person who has reason to believe that a protected person is being physically or emotionally abused, or financially exploited, should report the abuse to Adult Protective Services (see Resources below).

G. Resources

Protective Services	<p>Adult Protective Services:</p> <p><u>Phone</u> Salt Lake County: 801-264-7669 Statewide: 1-800-371-7897</p> <p><u>Website</u> https://daas.utah.gov/adult-protective-services/</p> <p>Long-Term Care Ombudsman:</p> <p><u>Website</u> https://daas.utah.gov/long-term-care-ombudsman/</p>
Aging Services	<p>Division of Aging and Adult Services:</p> <p><u>Phone</u> 801-538-3910</p> <p><u>Website</u> https://daas.utah.gov/</p> <p>Utah Commission on Aging:</p> <p><u>Phone</u> 1-888-985-6866</p> <p><u>Website</u> https://ucoa.utah.edu/</p>
Disability Services	<p>Division of Services for People with Disabilities:</p> <p><u>Phone</u> 1-844-275-3773</p> <p><u>Website</u> https://dspd.utah.gov/</p>
Legal Resources	<p>Free Legal Clinics:</p> <p><u>Website</u> https://www.utcourts.gov/howto/legalclinics/</p> <p>Utah Legal Services:</p> <p><u>Phone</u> 801-328-8891 1-800-662-4245</p> <p><u>Website</u> http://www.utahlegalservices.org/</p> <p>Utah State Bar:</p> <p><u>Phone</u> 801-531-9077</p> <p><u>Website</u> http://www.utahbar.org/</p>

<p>Court Resources</p>	<p>Court Self Help Center: <u>Phone</u> Call: 888-683-0009 Text: 801-742-1898 <u>Website</u> https://www.utcourts.gov/selfhelp/contact/ <u>Email</u> selfhelp@utcourts.gov</p>
<p>State Guardianship Services</p>	<p>Office of Public Guardian: <u>Phone</u> 801-538-8255 <u>Website</u> https://opg.utah.gov/</p>
<p>Informational Resources</p>	<p>National Guardianship Association <u>Website</u> https://www.guardianship.org/find-a-guardian/ <u>Standards of Practice (PDF)</u> https://www.guardianship.org/standards/</p>

**** In case of an emergency, call local law enforcement or 911.**

Glossary of Terms

Annual Report	<p>Report of a guardian filed with the court, about the protected person's current condition.</p> <p>Report of a conservator filed with the court showing income to and payments from an estate, as well as inventory changes of the protected person's estate.</p>
Bond	Insurance that the court may require that covers the protected person's estate. Paid for by the protected person's estate.
Conservator	A person or institution appointed by the court to manage the protected person's estate.
Court Visitor	A person appointed by the court, in a guardianship proceeding, to visit the alleged incapacitated person and report to the court.
Estate	All property and assets, of any kind, belonging to a person.
Fiduciary	A special relationship of trust between two people; a person having legal responsibilities for another.
Guardian	A person or institution appointed by the court to take care of the protected person.
Guardian ad litem	A lawyer appointed by the court to represent an alleged incapacitated/protected person who does not already have a lawyer.
Incapacitated person	A person (other than a minor) who cannot receive or evaluate information or communicate decisions, with or without assistance, concerning their health, safety, basic needs, or finances.
Least Restrictive Alternative	A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

Letters of guardianship Letters of conservatorship	The court document in which the guardian/conservator accepts duties and which authorizes him or her to act.
Living will	A legal document by which a person expresses his/her end-of-life medical treatment wishes.
Minor	A child under the age of 18 who, by law, does not have the capacity to manage his or her affairs.
(Durable) Power of attorney for health care	A legal document by which one person gives another power to make health care decisions. This power of attorney is effective even after the giver no longer has legal capacity.
Protected person	A person subject to court-ordered guardianship or conservatorship. A minor child may require protection because of legal incapacity arising from minority. A person for whom a guardian has been appointed.
Representative payee	A person named by a federal agency, such as the Veteran's Administration or Social Security Administration, to receive and account for another person's benefits.

Appendix A – Care Planning Considerations

Once you are appointed, your responsibilities begin immediately, and it is easy to be overwhelmed. Take care of the most urgent needs first; then arrange for general needs.

You will be taking responsibility for another person's life, and you will want to give some thought to what that means in day-to-day circumstances. Planning can make things easier when the time comes for difficult decisions. The [Care Planning Considerations](#) document may be helpful. It is written as a conversation that you might have with yourself, with the protected person, and with advisors as you see fit. You may need to make some decisions more than once, as circumstances change.

The Care Planning Considerations document assume that you are using the "substituted judgment standard" for most decisions. For more information, visit: <https://www.utcourts.gov/howto/family/gc/decisions.html>

Try to discuss the questions and answers with the protected person as much as possible. Some sections begin by asking about what the protected person wants to do. If the protected person can afford that course of action and it does not cause harm, what the protected person wants to do is the preferred course of action. Encourage the protected person to participate in the decision-making process, make suggestions, and express concerns, wishes, values and preferences. This approach recognizes the protected person's independence and dignity and encourages the protected person's maximum self-reliance.

To access the Care Planning Considerations document:
https://www.utcourts.gov/howto/family/gc/docs/25F.Plan_Form.pdf

Appendix B – Utah Code 75-5-312 and CJA Rule 6-501

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) 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
- (3) In particular, and without qualifying Subsections [\(1\)](#) and [\(2\)](#), 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) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.
 - (e) 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:
 - (A) except that the guardian may not use funds from the ward's estate for room and board that the guardian, 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.

(f)

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

(ii) 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 30 days, based on:

(A) the guardian's own observations; or

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

(iii) A guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward pursuant to Section [75-5-312.5](#) of:

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

(B) the ward's death; and

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

(iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice 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.

(v)

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

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

- (C) A report under Subsection [\(3\)\(f\)\(v\)\(A\)](#) or [\(B\)](#) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information.
- (D) The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council.
- (E) An annual report shall be examined and approved by the court.
- (F) 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 report.
- (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
- (vii) The guardian shall also render an annual accounting of the status of the person to the court that shall be included in the petition or the informal annual report as required under this Subsection [\(3\)\(f\)](#). 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 person.
- (viii) If a guardian:
 - (A) makes a substantial misstatement on filings of annual reports;
 - (B) is guilty of gross impropriety in handling the property of the ward; or
 - (C) willfully fails to file the report required by this Subsection [\(3\)\(f\)](#), after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000.
- (ix) The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.
- (x) The provisions and penalties in this Subsection [\(3\)\(f\)](#) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.

- (xi) For the purposes of Subsections [\(3\)\(f\)\(i\)](#), [\(ii\)](#), [\(iii\)](#), and [\(iv\)](#), "interested persons" means those persons required to receive notice in guardianship proceedings as set forth in Section [75-5-309](#).
- (g) If a conservator has been appointed:
 - (i) 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 code; and
 - (ii) the guardian shall account to the conservator for funds expended.
- (4)
 - (a) A court may, in the order of appointment, place specific limitations on the guardian's power.
 - (b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section [75-5-312.5](#).
 - (c) 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 [\(2\)](#).
- (5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and 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. 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.
- (6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person 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.
- (7) A guardian shall, to the extent practicable, encourage the ward 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. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward.

Rule 6-501. Reporting requirements for guardians and conservators.

Intent:

To establish the requirements sufficient to satisfy the Utah Uniform Probate Code.

Applicability:

This rule applies to guardians and conservators with the following exceptions:

- This rule does not apply if the conservator or coguardian is the parent of the ward.
- Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school.
- Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.
- Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school. A person interested in the minor may request a report under Utah Code Section 75-5-209.
- Paragraph (6)(D) does not apply to the guardian of a minor if the minor's estate is deposited in an account requiring judicial approval for withdrawal or if there is no estate. A person interested in the minor may request an accounting under Utah Code Section 75-5-209.

Statement of the Rule:

(1) Examination and private information record.

(1)(A) Before the court enters an order appointing a guardian or conservator, the guardian or conservator shall file a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator.

(1)(B) After the court enters the order of appointment, the guardian or conservator shall file within 7 days a completed and verified Private Information Record form provided by the Administrative Office of the Courts. The guardian or conservator shall continue to keep the court apprised of any changes to the guardian or conservator's contact information.

(2) Recordkeeping. The guardian shall keep contemporaneous records of significant events in the life of the ward and produce them if requested by the court. The conservator shall keep contemporaneous receipts, vouchers or other evidence of income and expenses and produce them if requested by the court. The guardian and

conservator shall maintain the records until the appointment is terminated and then deliver them to the ward, if there is no successor, to the successor guardian or conservator, or to the personal representative of the ward's estate.

(3) Definitions.

(3)(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

(3)(B) "Interested persons" means the ward, if he or she is of an appropriate age and mental capacity to understand the proceedings, the ward's guardian and conservator, the ward's spouse, adult children, parents and siblings and anyone requesting notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the ward's closest adult relatives, if any can be found.

(3)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

(3)(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

(3)(E) "Report" means the annual report on the status of the ward required by Utah Code Section 75-5-209 and Section 75-5-312.

(3)(F) "Ward" means a minor or an incapacitated person for whom the court appoints a guardian or a protected person for whom the court appoints a conservator.

(4) Report forms. Subject to the requirements of Paragraph (5):

(4)(A) forms substantially conforming to the forms produced by the Utah court website are acceptable for content and format for the report and accounting filed under the Utah Uniform Probate Code;

(4)(B) a corporate fiduciary may file its internal report or accounting; and

(4)(C) if the ward's estate is limited to a federal or state program requiring an annual accounting, the fiduciary may file a copy of that accounting.

(5) Report information. The report, inventory and accounting shall contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court may direct that a report or accounting be prepared with content and format as it deems necessary.

(6) Status reports.

(6)(A) The guardian shall file with the appointing court a report on the status of the ward no later than 60 days after the anniversary of the appointment. The guardian shall file the report with the court that appointed the guardian unless that court orders a change in venue under Utah Code Section 75-5-313. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the guardian. The guardian may not file the report before the close of the reporting period. For good cause the court may extend the time for filing the report, but a late filing does not change the reporting period.

(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that the person may object within 30 days after the notice was served.

(6)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge shall approve it.

(6)(D) If there is no conservator, the guardian shall file the inventory and accounting required of a conservator.

(7) Inventory reports.

(7)(A) Within 90 days after the appointment, the conservator shall file with the appointing court the inventory required by Utah Code Section 75-5-418. For good cause the court may extend the time for filing the inventory.

(7)(B) The conservator shall serve a copy of the inventory on all interested persons with notice that the person may object within 30 days after the notice was served.

(7)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the inventory is in order, the judge shall approve it.

(8) Accounting reports.

(8)(A) The conservator shall file with the appointing court an accounting of the estate of the ward no later than 60 days after the anniversary of the appointment. The conservator shall file the accounting with the court that appointed the conservator

unless that court orders a change in venue under Utah Code Section 75-5-403. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the conservator. The conservator may not file the accounting before the close of the reporting period. For good cause the court may extend the time for filing the accounting, but a late filing does not change the reporting period.

(8)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that the person may object within 30 days after the notice was served.

(8)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in order, the judge shall approve it.

(9) Final accounting.

(9)(A) The conservator shall file with the court a final accounting of the estate of the ward with the motion to terminate the appointment.

(9)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that the person may object within 30 days after the notice was served.

(9)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in order, the judge shall approve it.

Effective May 1, 2018

Appendix C - Sample Forms

If you wish to use these sample forms, make copies of the blank forms so you can use the sample in the future. Keep a copy of each completed form for your records. If you have any questions about these forms, consult an attorney.

These forms can also be accessed from: <https://www.utcourts.gov/ocap/>.

- [Inventory Report](#)
- [Report on Status of the Protected Person](#)
- [Financial Accounting](#)

Inventory Report

Name

Address

City, State, Zip

Phone

Check your email. You will receive information and documents at this email address.

Email

I am Guardian Conservator
 Guardian's Attorney Conservator's Attorney (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the Matter of:

(Protected person)

Inventory
(Utah Code Section 75-5-418)

Case Number

Judge

1. I am the following to the above named protected person:
 Guardian
 Conservator
 Guardian and Conservator

2. This is a complete inventory of the property owned by the protected person of which I am aware.

3. Each item of property is valued as of the date of the appointment order, _____ (date), using “cash accounting value at acquisition” where possible.

4. Summary

Schedule	Property	Property Value and Debt Amount
A	Real Estate	
B	Stocks and Bonds	
C	Money Owed to Protected person	
D	Miscellaneous Property	
E	Debts and Encumbrances	
F	Cash and Cash Accounts	
	Total Net Value	

Schedule A – Real Estate

Item	Description	Value on Date of Appointment Order
1		
2		
3		
4		

I used the following method to determine the value of the real property listed above:

Property 1: _____

Property 2: _____

Property 3: _____

Property 4: _____

Schedule B – Stocks and Bonds

Item	Description	Value on Date of Appointment Order
1		
2		
3		
4		

Schedule C – Money Owed to Protected person

Item	Description	Value on Date of Appointment Order
1		
2		
3		
4		

Schedule D – Miscellaneous Property

Item	Description	Value on Date of Appointment Order
1		
2		
3		
4		

Schedule E – Debts and Encumbrances

Item	Description	Debts on Date of Appointment Order
1		
2		
3		
4		

Schedule F – Cash Accounts (Such as checking or savings accounts)

Item	Description	Amount on Date of Appointment Order
1		
2		
3		
4		

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____
Printed Name _____

Report on the Status of the Protected Person

Name

Address

City, State, Zip

Phone

Check your email. You will receive information and documents at this email address.

Email

I am Guardian Conservator
 Guardian's Attorney Conservator's Attorney (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address

In the Matter of:

(Protected person)

Report on the Status of the Protected person

Case Number

Judge

1. I am Guardian of the above-named Protected person.
2. The Protected person was born on _____ (Protected person's birth date).
3. (Check all of the boxes which apply. Fill in the blanks if appropriate)
 This is my first report.
 My previous report covered the period from _____ to _____.
 This is my final report.

4. This report covers the period from _____ to _____.
(Note: The beginning date must be one day later than the ending date of the previous report.)
5. During the reporting period, I had contact with the Protected person approximately _____ (number of) times.
6. During the reporting period, the Protected person has engaged in the following education, training or social activities:

7. The Protected person lives at:

Name of facility (if applicable):

Street Address: _____

Mailing Address: _____

8. (Check all boxes which apply. Fill in the appropriate blanks)

The Protected person has been at this location since

The Protected person has moved during the reporting period year because

9. The Protected person's living arrangement is best described as:

The Protected person's home.

A relative's home. Describe the relationship _____.

My home.

A care facility.

10. If the Protected person is living in a private home, the following people are living in the same household with the Protected person:

Name	Relationship to the Protected person

11. If the Protected person is living in a care facility, I would describe the care facility as follows:

The name of the care facility is: _____.

My description of the care facility is: _____.

_____.

The following person at the care facility can be contacted for further information:

Name: _____.

Mailing Address: _____.

City, State, Zip _____.

Phone: _____.

Email: _____.

12. I rate the living situation as:

excellent

average

below average

Explain: _____.

_____.

13. I believe the Protected person's feelings about the living situation are as follows:

content

unhappy

Explain: _____.

_____.

14. I recommend a more suitable living arrangement.

[] No

[] Yes

Explain: _____
_____.

15. The Protected person's primary medical care provider is:

Name: _____

Mailing Address: _____

City / State / Zip: _____

16. During the reporting period, the Protected person has been treated or evaluated by: (Include Physicians, Dentists, Psychiatrists, Psychologists, Social workers, etc.)

Name: _____.

Mailing Address: _____.

City, State, Zip _____.

Date: _____

Purpose: _____.

Findings: _____

_____.

Name: _____.

Mailing Address: _____.

City, State, Zip _____.

Date: _____

Purpose: _____.

Findings: _____

_____.

Name: _____.

Mailing Address: _____.

City, State, Zip _____.

Date: _____

Purpose: _____.

Findings: _____

_____.

17. During the reporting period, the Protected person has received the following treatment, therapy or assistive devices:

18. Currently, the Protected person is taking the following medications:

Name: _____

Dosage: _____

Reason: _____

Name: _____

Dosage: _____

Reason: _____

Name: _____

Dosage: _____

Reason: _____

Name: _____

Dosage: _____

Reason: _____

19. Describe the Protected person's cognitive and emotional functioning:

20. Describe the Protected person's everyday functioning, such as ability care for self, make medical decisions, and make daily living decisions:

21. During the reporting period, the Protected person's mental health has:

remained about the same

improved

deteriorated

Explain:

22. During the reporting period, the Protected person's physical health has:

remained about the same

improved

deteriorated

Explain:

23. During the reporting period, the Protected person has been diagnosed with a terminal illness.

No

Yes

Diagnosing Doctor: _____

Telephone: _____

Diagnosis: _____

24. There is a current plan for the Protected person's care, training or treatment:

No

Yes

The plan is on file with the court.

The plan is being submitted along with this Status Report.

25. I recommend that the guardianship should be

continued

modified as follows:

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date Signature ► Printed Name _____

Financial Accounting Report

Name

Address

City, State, Zip

Phone

Check your email. You will receive information and documents at this email address.

Email

I am Guardian Conservator
 Guardian's Attorney Conservator's Attorney (Utah Bar #:_____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the Matter of:

(Protected person)

Guardian's Financial Accounting to Conservator (Utah Code Section 75-5-312)

Guardian's / Conservator's Financial Accounting to the Court (Utah Code Sections 75-5-312 and 75-5-419)

Case Number

Judge

1. I am the following to the above-named Protected person:
 - Guardian
 - Conservator
 - Guardian and Conservator

2. (Check all of the boxes which apply. Fill in the blanks if appropriate.)
 - This is my first report.
 - My previous report covered the period from _____ to _____.
 - This is my final report.

3. This accounting covers the period from _____ to _____.

4. There is an estate plan to guide investment and distribution:
 - No
 - Yes
 - The plan is on file with the court.
 - The plan is being submitted along with this accounting.

5. Balance Summary (Beginning Balance must agree with Ending Balance of the Inventory or the previous accounting, whichever is later.)

Schedule	Category	Beginning Balance	Gains and Losses	Ending Balance
A	Real Estate			
B	Stocks and Bonds			
C	Money Owed to Protected person			
D	Miscellaneous Property			
E	Debts and Encumbrances			
F	Cash and Cash Accounts		**	*
	Total			

* This amount should equal the money in all of the Protected person's bank accounts on the last day of the reporting period for this accounting.

** The total Gains and Losses for Cash and Cash Accounts should equal the total for Receipts and Payments.

Summary of Receipts and Payments

1	Receipts Total	
2	Payments Total	
3	Total	**

**The total Gains and Losses for Cash and Cash Accounts should equal the total for Receipts and Payments.

Receipts during the reporting period

Item	Description	Amount
1	Wages	
2	Interest	
3	Dividends	
4	Social Security	
5	Annuities	
6	Insurance	
7	Real Estate Sold	
8	Stocks/Bonds Sold	
9	Money owed to Protected person that was received	
10	Miscellaneous Property Sold	
11	Other (Describe)	
12	Total	

Payments during the reporting period

Item	Category	(Amount)
1	Mortgage/Rent	
2	Utilities (gas, electricity, water, sewage, phone, internet, etc.)	
3	Home Maintenance (Include maintenance, cleaning, repairs, etc.)	
4	Home Improvement (Include additions, remodeling, etc.)	
5	Home Furnishings	
6	Health Care (physicians, dentists, psychiatrists, psychologists, etc.)	
7	Food	
8	Education	
9	Clothes	
10	Personal Effects	
11	Activities	

12	Transportation	
13	Taxes	
14	Charge for Conservator's Services	
15	Charge for Guardian's Services	
16	Charge for other Professional Services	
17	Court Fees	
18	Other (Describe)	
19	Total	

Schedule A – Real Estate*

Item	Description	Value on First Day of this Reporting Period	Value on Last Day of this Reporting Period	Amount of Gain (Loss)
1				
2				
3				

* Attach a copy of the most recent tax assessment for each piece of real property.

Schedule B – Stocks and Bonds*

Item	Description	Value on First Day of this Reporting Period	Value on Last Day of this Reporting Period	Amount of Gain (Loss)
1				
2				
3				
4				
5				

* Attach a copy of the most recent account statement if one has been issued.

Schedule C – Money owed to Protected person

Item	Description	Value on First Day of this Reporting Period	Value on Last Day of this Reporting Period	Amount of Gain (Loss)
1				
2				
3				
4				
5				

Schedule D – Miscellaneous Property

Item	Description	Value on First Day of this Reporting Period	Value on Last Day of this Reporting Period	Amount of Gain (Loss)
1				
2				
3				
4				
5				

Schedule E – Debts and Encumbrances

Item	Description	Debts on First Day of this Reporting Period	Debts on Last Day of this Reporting Period	Amount of Gain (Loss)
1				
2				
3				
4				
5				

Schedule F – Cash Accounts (Such as checking or savings accounts)*

Item	Description	Amount on First Day of	Amount on Last Day of	Amount of Gain (Loss)

		this Reporting Period	this Reporting Period	
1				
2				
3				
4				
5				

* Attach a copy of the most recent bank statement for each account.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

 Date

Signature ► _____
 Printed Name _____

Guardian Who is Also a Conservator Exam

Questions for the guardian who is the conservator	True	False
1) A guardian is responsible for the care of a ward.		
2) A conservator is responsible for the property and financial affairs of a ward.		
3) The appointment order contains a statement of your powers, rights and duties.		
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.		
5) As conservator, you must file a complete inventory of the property owned by the ward within 180 days of your appointment.		
6) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.		
7) The reports that you have to make must be made on court forms.		
8) After you prepare a report your only responsibility is to file it with the court.		
9) The court may impose a penalty for failure to file a required report.		
10) When you are uncertain about your responsibilities the best course is to consult a lawyer.		
11) You should record financial transactions made on behalf of your ward on a monthly basis.		

<p>12) You should open a separate bank account in your name to manage your ward's money.</p>		
<p>13) As long as you are honest, you may manage your ward's property in the same manner as you manage your own money.</p>		
<p>14) When making decisions about your ward's care, you should do as you think best.</p>		
<p>15) If you can no longer carry out the responsibilities of a guardian and conservator you should ask someone else to take over for you.</p>		
<p>16) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.</p>		

Guardian Who is Also a Conservator Exam Answers

Answers for the guardian who is the conservator	True	False
1) A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)	X	
2) A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)	X	
3) Your appointment order and letters of guardianship and conservatorship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)	X	
4) You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)		X
5) You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)		X
6) An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)	X	
7) You’re right. Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting/ . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)	X	
8) You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters and • anyone requesting notice under Rule 6-501. (Pages 6-7) 		X
9) The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)	X	

10) The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)	X	
11) You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)		X
12) All bank accounts should be opened in the name of the guardianship or conservatorship. You must never commingle your personal funds with those of your ward. (Page 8)		X
13) You must invest and manage your ward's property as a prudent investor would, using reasonable care, skill and caution. (Page 10)		X
14) The question that you should ask yourself is "What would my ward do?" As long as your ward's wishes are not contrary to his or her best interest, they should be respected. (Page 10)		X
15) You must request the court's permission to resign from one or both roles by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)		X
16) The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)	X	

Page numbers refer to the Basic Guidelines For Court-Appointed Guardians and Conservators, which is available on the web at:
<http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>

After you have completed this exam and understand the responsibilities of your appointment, complete the following Declaration of Completion of Testing and file it with the court along with your petition.

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

I am the Guardian Conservator

I am the attorney for Guardian Conservator
My Utah State Bar number is _____

In the _____ Judicial District Court _____ County, Utah

Court Address: _____

IN THE MATTER OF:

(Ward).

DECLARATION OF COMPLETION OF TESTING

Case Number _____

Judge _____

I have successfully completed the court approved examination on the authority and responsibilities of guardians and conservators.

I declare under criminal penalty of Utah Code Section 46-5-101 (class B misdemeanor for knowingly making false written statement) that this document is true and correct.

Date

Sign here ► _____

(Type or Print Name Here)

Guardian with Separate Conservator Exam

Questions for the guardian with a separate conservator	True	False
1) A guardian is responsible for the care of a ward.		
2) A conservator is responsible for the property and financial affairs of a ward.		
3) The appointment order contains a statement of your powers, rights and duties.		
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.		
5) You are required to make reports to the conservator.		
6) Reports to the court must be made on court forms.		
7) After you prepare an annual report your only responsibility is to file it with the court.		
8) The court may impose a penalty for failure to file a required report.		
9) When you are uncertain about your responsibilities the best course is to consult a lawyer.		
10) You should record financial transactions made on behalf of your ward on a monthly basis.		
11) You should open a separate bank account in your name to manage your ward's money.		

<p>12) You are automatically entitled to receive reimbursement for room and board that you furnish to the ward.</p>		
<p>13) When making decisions about your ward's care, you should do as you think best.</p>		
<p>14) If you can no longer carry out the responsibilities of a guardian you should ask someone else to take over for you.</p>		
<p>15) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.</p>		

Guardian with Separate Conservator Exam Answers

Answers for the guardian with a separate conservator	True	False
1) A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)	X	
2) A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)	X	
3) Your appointment order and letters of guardianship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)	X	
4) You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)		X
5) You must report all financial transactions made on behalf of your ward to the conservator at least once a year at a time convenient for both of you. (Page 5)	X	
6) Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)	X	
7) You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters • the ward’s conservator and • anyone requesting notice under Rule 6-501. (Pages 6-7) 		X
8) The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)	X	
9) The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)	X	
10) You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)		X

11) All bank accounts should be opened in the name of the guardianship. You must never commingle your personal funds with those of your ward. (Page 8)		X
12) Only with the conservator's approval may you receive reasonable reimbursement. (Page 7)		X
13) The question that you should ask yourself is "What would my ward do?" As long as your ward's wishes are not contrary to his or her best interest, they should be respected. (Page 10)		X
14) You must request the court's permission to resign from this role by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)		X
15) The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)	X	

Page numbers refer to the Basic Guidelines For Court-Appointed Guardians and Conservators, which is available on the web at:

<http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>

After you have completed this exam and understand the responsibilities of your appointment, complete the following Declaration of Completion of Testing and file it with the court along with your petition.

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

I am the Guardian Conservator

I am the attorney for Guardian Conservator
My Utah State Bar number is _____

In the _____ Judicial District Court _____ County, Utah

Court Address: _____

IN THE MATTER OF:

(Ward).

DECLARATION OF COMPLETION OF TESTING

Case Number _____

Judge _____

I have successfully completed the court approved examination on the authority and responsibilities of guardians and conservators.

I declare under criminal penalty of Utah Code Section 46-5-101 (class B misdemeanor for knowingly making false written statement) that this document is true and correct.

Date

Sign here ► _____

(Type or Print Name Here)

Guardian with No Conservator Exam

Questions for the guardian without a conservator	True	False
1) A guardian is responsible for the care of a ward.		
2) A conservator is responsible for the property and financial affairs of a ward.		
3) The appointment order contains a statement of your powers, rights and duties.		
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.		
5) You must file a complete inventory of the property owned by the ward within 180 days of your appointment.		
6) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.		
7) The reports that you have to make must be made on court forms.		
8) After you prepare an annual report your only responsibility is to file it with the court.		
9) The court may impose a penalty for failure to file a required report.		
10) When you are uncertain about your responsibilities the best course is to consult a lawyer.		
11) You should record financial transactions made on behalf of your ward on a monthly basis.		

12) You should open a separate bank account in your name to manage your ward's money.		
13) Your primary responsibility with regard to your ward's property is to increase its value.		
14) You are automatically entitled to receive reimbursement for room and board that you furnish to the ward.		
15) When making decisions about your ward's care, you should do as you think best.		
16) If you can no longer carry out the responsibilities of a guardian, you should ask someone else to take over for you.		
17) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.		

Guardian with No Conservator Exam Answers

Answers for the guardian without a conservator	True	False
1) A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)	X	
2) A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)	X	
3) Your appointment order and letters of guardianship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)	X	
4) You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)		X
5) You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)		X
6) An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)	X	
7) Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)	X	
8) You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters and • anyone requesting notice under Rule 6-501. (Pages 6-7) 		X
9) The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)	X	

10) The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)	X	
11) You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)		X
12) All bank accounts should be opened in the name of the guardianship. You must never commingle your personal funds with those of your ward. (Page 8)		X
13) Your duty is to preserve your ward's property in order to have the money needed to pay for your ward's support, care and education. (Page 10)		X
14) Only with the court's approval may you receive reasonable reimbursement. (Page 7)		X
15) The question that you should ask yourself is "What would my ward do?" As long as your ward's wishes are not contrary to his or her best interest, they should be respected. (Page 10)		X
16) You must request the court's permission to resign by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)		X
17) The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)	X	

Page numbers refer to the Basic Guidelines For Court-Appointed Guardians and Conservators, which is available on the web at:

<http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>

After you have completed this exam and understand the responsibilities of your appointment, complete the following Declaration of Completion of Testing and file it with the court along with your petition.

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

I am the Guardian Conservator

I am the attorney for Guardian Conservator
My Utah State Bar number is _____

In the _____ Judicial District Court _____ County, Utah

Court Address: _____

IN THE MATTER OF:

(Ward).

DECLARATION OF COMPLETION OF TESTING

Case Number _____

Judge _____

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I declare under criminal penalty of Utah Code Section 46-5-101 (class B misdemeanor for knowingly making false written statement) that this document is true and correct.

Date

Sign here ► _____

(Type or Print Name Here)

Conservator Exam

Questions for the conservator	True	False
1) A guardian is responsible for the care of a ward.		
2) A conservator is responsible for the property and financial affairs of a ward.		
3) The appointment order contains a statement of your powers, rights and duties.		
4) You must file a complete inventory of the property owned by the ward within 180 days of your appointment.		
5) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.		
6) The reports that you have to make must be made on court forms.		
7) After you prepare an annual report your only responsibility is to file it with the court.		
8) The court may impose a penalty for failure to file a required report.		
9) When you are uncertain about your responsibilities the best course is to consult a lawyer.		
10) You should record financial transactions made on behalf of your ward on a monthly basis.		
11) You should open a separate bank account in your name to manage your ward's money.		

<p>12) As long as you are honest, you may manage your ward's property in the same manner as you manage your own money.</p>		
<p>13) If you can no longer carry out the responsibilities of a conservator you should ask someone else to take over for you.</p>		
<p>14) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities</p>		

Conservator Exam Answers

Answers for the conservator	True	False
1) A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)	X	
2) A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)	X	
3) Your appointment order and letters of conservatorship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)	X	
4) You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)		X
5) An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)	X	
6) Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)	X	
7) You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters • the ward’s guardian and • anyone requesting notice under Rule 6-501. (Pages 6-7) 		X
8) The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)	X	
9) The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)	X	
10) You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)		X

11) All bank accounts should be opened in the name of the conservatorship. You must never commingle your personal funds with those of your ward. (Page 8)		X
12) You must invest and manage your ward's property as a prudent investor would, using reasonable care, skill and caution. (Page 10)		X
13) You must request the court's permission to resign by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)		X
14) The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)	X	

Page numbers refer to the Basic Guidelines For Court-Appointed Guardians and Conservators, which is available on the web at:

<http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>

After you have completed this exam and understand the responsibilities of your appointment, complete the following Declaration of Completion of Testing and file it with the court along with your petition.

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

I am the Guardian Conservator

I am the attorney for Guardian Conservator
My Utah State Bar number is _____

In the _____ Judicial District Court _____ County, Utah

Court Address: _____

IN THE MATTER OF:

(Ward).

DECLARATION OF COMPLETION OF TESTING

Case Number _____

Judge _____

I have successfully completed the court approved examination on the authority and responsibilities of guardians and conservators.

I declare under criminal penalty of Utah Code Section 46-5-101 (class B misdemeanor for knowingly making false written statement) that this document is true and correct.

Date

Sign here ► _____

(Type or Print Name Here)

Name

Address

City, State, Zip

Phone

Check your email. You will receive information and documents at this email address.

Email

I am Guardian Conservator
 Guardian's Attorney Conservator's Attorney (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the Matter of:

Declaration of Completion of Testing

Protected Person

Case Number

Judge

I have successfully completed the court-approved examination on the authority and responsibilities of guardians and conservators

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____

Printed Name _____

Effective 5/4/2022

75-5-301.5 Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.

- (1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:
 - (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding;
 - (b) receive a copy of all documents filed in a guardianship proceeding;
 - (c) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;
 - (d) receive information about guardianships from the court; and
 - (e) be treated with respect and dignity.
- (2) Except as otherwise provided by this chapter or any other law, an incapacitated person for whom a guardian is appointed has right to:
 - (a) have counsel represent the incapacitated person at any time after the guardian is appointed;
 - (b) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;
 - (c) receive a copy of all documents filed in court regarding the guardianship;
 - (d) receive information about guardianships from the court;
 - (e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;
 - (f) participate in developing an individualized plan for the incapacitated person's care, including:
 - (i) managing the incapacitated person's assets and property;
 - (ii) determining the incapacitated person's residence; and
 - (iii) determining the services to be received by the incapacitated person;
 - (g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;
 - (h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:
 - (i) as expressed or demonstrated before a determination of capacity was made; or
 - (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;
 - (i) be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;
 - (j) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in the order of appointment;
 - (k) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license;
 - (l) be treated with respect and dignity;
 - (m) be treated fairly by the incapacitated person's guardian;
 - (n) maintain privacy and confidentiality in personal matters;
 - (o) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;
 - (p) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;
 - (q) have all services provided by a guardian at a reasonable rate of compensation;

- (r) have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or duplicative billing;
 - (s) receive prudent financial management of the incapacitated person's property;
 - (t) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), receive a copy of an accounting report regarding the incapacitated person's estate that is submitted to the court by the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person;
 - (u) receive and control the incapacitated person's salary;
 - (v) maintain a bank account and manage the incapacitated person's personal money; and
 - (w) ask the court to:
 - (i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;
 - (ii) continue to review the need for a guardianship or to modify or terminate a guardianship; and
 - (iii) enter an order restoring the incapacitated person's capacity at the earliest possible time.
- (3) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.
- (4) Any right described in this section may be:
- (a) addressed in a guardianship proceeding; or
 - (b) enforced through a private cause of action.

Enacted by Chapter 358, 2022 General Session

Amended by Chapter 358, 2022 General Session, (Coordination Clause)

Utah Courts

UCJA Rule 6-501 (Code of Judicial Administration)

Rule 6-501. Testing and reporting requirements for guardians and conservators.

*Effective:
11/1/2023*

Rule printed on February 13, 2024 at 12:29 pm. Go to

<https://www.utcourts.gov/rules> for current rules.

Intent:

To set forth the testing requirements for guardians and conservators and to establish standards and procedures for inventories, reports, and accountings that guardians and conservators are required to file under the Utah Uniform Probate Code.

Applicability:

This rule applies to individuals seeking appointment as guardians and conservators and individuals who are appointed by the court as guardians and conservators.

Statement of the Rule:

(1) Definitions.

(1)(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

(1)(B) "Interested person" means the respondent, if he or she is not a minor, the respondent's guardian and conservator, the respondent's spouse, adult children, parents and siblings, and any other person interested in the welfare, estate, or affairs of the respondent who requests notice under Utah Code Section 75-5-406. If no person is an interested person as previously defined, then interested person includes at least one of the respondent's closest adult relatives, if any can be found. For purposes of minor guardianship, interested persons include the persons listed in Utah Code Section 75-5-207.

(1)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

(1)(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

(1)(E) "Protected person" means a minor or an incapacitated person for whom the court appoints a guardian or an individual for whom the court appoints a conservator.

(1)(F) "Report" means the inventory, accounting, or annual report on the status of the protected person under Utah Code Sections 75-5-209 and 75-5-312, and the final accounting under Sections 75-5-210 and 75-5-419

(1)(G) "Respondent" means a person who is alleged to be incapacitated and for whom the appointment of a guardian or conservator is sought.

(2) Exceptions.

(2)(A) Paragraph (3) does not apply to the following:

(2)(A)(i) a guardian certified under Utah Code Section 75-5-311(1)(a);

(2)(A)(ii) the Office of Public Guardian; or

(2)(A)(iii) a conservator issued a permit under Utah Code Section 7-5-2.

(2)(B) Paragraphs (6), (7), (8), (9), and (10) do not apply if the guardian or conservator is a parent of the protected person.

(2)(C) Paragraph (7)(C) does not apply to the guardian of a minor if the minor's estate consists of funds that are deposited in a restricted account, which requires judicial approval for withdrawal, or if there is no estate.

(2)(D) Paragraph (9) does not apply to a conservator who is appointed for the purpose of receiving a personal injury settlement for a minor if 1) no funds are to be distributed until the minor reaches the age of majority, or 2) no structured settlement payments are to be made until the minor reaches the age of majority.

(3) Examination and private information record.

(3)(A) Before the court enters an order appointing a guardian or conservator, the proposed guardian or conservator must file:

(3)(A)(i) a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator; and

(3)(A)(ii) a completed and verified Private Information Record form provided by the Administrative Office of the Courts.

(3)(B) The guardian or conservator must continue to keep the court apprised of any changes to the guardian or conservator's contact information.

(4) Recordkeeping. The guardian must keep contemporaneous records of significant events in the life of the protected person and produce them if requested by the court. The conservator must keep contemporaneous receipts, vouchers or other evidence of income and expenses and produce them if requested by the court. The guardian and conservator must maintain the records until the appointment is terminated and then deliver them to the successor guardian or conservator, to the protected person if there is no successor guardian or conservator, or to the personal representative of the protected person's estate.

(5) Filing and service of required reports and proposed Order on Review

(5)(A) The guardian or conservator shall file with the court the reports required by Paragraphs 6, 7, 8, 9, and/or 10 using the appropriate Council-approved form or a form that substantially conforms to the format and content of the Council form.

(5)(A)(i) A corporate fiduciary shall attach its internal report or accounting, if any, as an exhibit to the Council form.

(5)(A)(ii) If the protected person's estate is limited to a federal or state program requiring an annual accounting, the guardian may file a copy of that accounting instead of the Council form.

(5)(B) The annual status report and annual accounting must contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period.

(5)(C) Along with the required report, the guardian or conservator shall also file the Council-approved Order on Review of Guardian or Conservator Report (“Order on Review”) as a proposed document.

(5)(D) The guardian or conservator must serve a copy of the required report on all interested persons in accordance with Rule 5 of the Utah Rules of Civil Procedure. The required report must include the following language at the top right corner of the first page, in bold type: **You have the right to object to this report within 28 days of service. If you do not object within that time, your objection may be waived.**

(6) Inventory.

(6)(A) Within 90 days after the appointment, the conservator must file with the appointing court the inventory required by Utah Code Section 75-5-418 in accordance with Paragraph 5. The inventory must be in substantially the same form as the inventory form approved by the Council, including the required attachments. The court may extend the time for filing the inventory for good cause.

(6)(B) The judge may conduct a hearing even though no objection is filed. If the judge finds that the inventory is in order, the judge must approve it by signing the Order on Review.

(6)(C) If there is no conservator, the guardian must file the inventory required of a conservator under Utah Code Section 75-5-312.

(7) Annual status reports.

(7)(A) The guardian must file with the appointing court a report on the status of the protected person no later than 60 days after the anniversary of the appointment in accordance with Paragraph 5.

(7)(A)(i) The status report must be in substantially the same form as the status report form approved by the Council, including the required attachments.

(7)(A)(ii) The guardian must file the report with the court that appointed the guardian unless that court orders a change in venue under Utah Code Section 75-5-313.

(7)(A)(iii) The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the guardian. The guardian may not file the report before the close of the reporting period. For good cause the court may extend the time for filing the report, but a late filing does not change the reporting period.

(7)(B) The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge must approve it by signing the Order on Review

(8) Annual accounting.

(8)(A) The conservator must file with the appointing court an accounting of the estate of the protected person no later than 60 days after the anniversary of the appointment in accordance with Paragraph 5.

(8)(A)(i) The accounting must be in substantially the same form as the accounting form approved by the Council, including the required attachments.

(8)(A)(ii) The conservator must file the accounting with the court that appointed the conservator unless that court orders a change in venue under Utah Code Section 75-5-403.

(8)(A)(iii) The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the conservator. The conservator may not file the accounting before the close of the reporting period. For good cause the court may extend the time for filing the accounting, but a late filing does not change the reporting period.

(8)(B) The judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in order, the judge must approve it by signing the Order on Review.

(8)(C) If there is no conservator, the guardian must file the accounting required of a conservator under Utah Code Section 75-5-312.

(9) Final accounting.

(9)(A) The conservator must file with the court a final accounting of the estate of the protected person with the motion to terminate the appointment in accordance with Paragraph 5.

(9)(B) The court may conduct a hearing even though no objection is filed. If the court finds that the accounting is in order, the court must approve it by signing the Order on Review.

(10) Objections.

(10)(A) If an interested person objects to a report, the person must file a written objection with the court and serve a copy on all interested persons within 28 days from the date of service of the report. A request to submit must be included with the objection. The court may for good cause, including in order to accommodate a person with a disability, waive the requirement of a writing and document the objection and request to submit in the court record.

(10)(B) The objection must specify in writing the entries to which the person objects and state the reasons for the objection.

(10)(C) An objection to a report may not contain a request to remove or substitute the guardian or conservator. Any request for removal or substitution of the guardian or conservator must be filed as a separate petition consistent with Utah Code Section 75-5-307 or 75-5-415.

(10)(D) If an objection is filed, the court must conduct a hearing unless the court determines that a hearing is not necessary. If the court determines that a hearing is not necessary, the court must issue a minute entry or order stating why a hearing is not necessary.

(10)(E) At the hearing, the court may require the guardian or conservator to supplement or amend the report if the court determines there is good cause for the objection.

(10)(F) If the court determines that the objection is unfounded or is filed in bad faith, the court may deny the objection and approve the report.

(11) Waiver. If an interested person does not object to a report within 28 days of service, the interested person waives any objection unless:

(11)(A) the objection relates to matters not fairly disclosed by the report; or

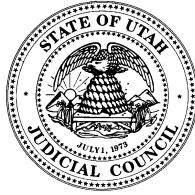
(11)(B) the time for objection is extended by the court under Rule 6 of the Utah Rules of Civil Procedure. If the request for an extension is made before the time has run, the court may extend the time for good cause. If the request is made after the time has run, the court may extend for excusable neglect.

(12) Report approval.

(12)(A) **Approval.** The court must examine and approve the report as required by Utah Code sections 75-5-312 and 75-5-417. Approving a report means the judge has reviewed it, to the court's knowledge notice has been given to every person entitled to notice, no objection has been received, the report meets the requirements set forth by the report form, and the court has not requested additional information or scheduled a hearing. Such approval does not foreclose a valid claim permitted under paragraphs (11)(A) or (11)(B), nor does it start an appeal time.

(12)(B) **Notice to interested persons.** When a court approves a report, the court must sign and enter the Order on Review. When a court does not approve a report, the court must indicate on the Order on Review, or in another minute entry or order, the reasons for non-approval, any additional actions required, and serve it on all interested persons entitled to notice.

(13) Report on a minor. Under Utah Code Section 75-5-209, a person interested in the welfare of a minor may petition the court for a report from the guardian on the minor's welfare or the minor's estate. If the court orders a status report from the guardian, the status report must be in substantially the same form as the status report form for guardianships of adults approved by the Council, including the required attachments.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

April 9, 2024

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Judicial Council
FROM: Judge Keith Kelly, WINGS Chair
Shonna Thomas, District Court Program Administrator - GRAMP
RE: Utah WINGS Annual Report

The Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) committee is a problem-solving body that relies on court-community partnerships to:

- Oversee guardianship practice in the Courts;
- Improve the handling of guardianship cases;
- Engage in outreach/education; and
- Enhance the quality of care and quality of life of vulnerable adults.

WINGS is effective through participation of key stakeholders who understand and are positioned to improve the Courts' guardianship processes.

WINGS Executive Committee:

1.	Keith A. Kelly	Judge, WINGS Chair	3 rd District
2.	Brant Christiansen	Attorney/Partner	Lewis Hansen Law Firm
3.	Nels Holmgren	Director	Division of Adult and Aging Services
4.	Nan Mendenhall	Director	Adult Protective Services
5.	Andrew Riggle	Public Policy Analyst	Disability Law Center
6.	Keri Sargent	Asst. District Court Administrator	Administrative Office of the Courts
7.	Shonna Thomas	Program Administrator - GRAMP	Administrative Office of the Courts
8.	Michelle Wilkes	Court Visitor Program Coordinator	Administrative Office of the Courts

WINGS Steering Committee:

9.	James Brady	Judge	4 th District
10.	Brian Cannell	Judge	1 st District
11.	Coral Sanchez	Judge	3 rd District
12.	Shane Bahr	District Court Administrator	Administrative Office of the Courts

13.	Sarah Box	Attorney	Utah Courts - Self Help Center
14.	Deborah Brown	Professional Guardian	Guardianship & Conservator Services
15.	TantaLisa Clayton	Attorney / Director	Utah Legal Services
16.	Katie Cox	Attorney	Disability Law Center
17.	Rob Denton	Attorney	Attorney at Law
18.	Lindsay Embree	Chief, Division of Neuropsychology	University of Utah School of Medicine
19.	Rob Ence	Director	Utah Commission on Aging
20.	Wendy Fayles	Criminal Justice / Mentor	National Alliance on Mental Illness
21.	Leslie Francis	Attorney	University of Utah Law School
22.	Stacy Haacke	Associate General Counsel	Administrative Office of the Courts
23.	Rachelle Johnson	Probate Clerk	4 th District
24.	Eve Larsen	Case Manager Senior Services	Davis County Health Department
25.	Wendy Naylor	Director (interim)	Office of Public Guardian
26.	Alan Ormsby	State Director	AARP
27.	Alianne Sipes	Long-Term Care Ombudsman	Dept. of Health and Human Services
28.	Katie Thomson	Judicial Case Manager	3 rd District
29.	Holly Thorson	Court Visitor Program Coordinator	Administrative Office of the Courts
30.	James Toledo	Program Manager	Utah Division of Indian Affairs
31.	Todd Weiler	Senator	8 th District
32.	Kaye Lynn Wootton	Assistant Attorney General	Medicaid Fraud Control Unit

WINGS Projects:

- In 2023, WINGS focused on identifying solutions to address attorney shortages, primarily the difficulty the Guardianship Signature Program (GSP) has in finding volunteer attorneys to provide representation to vulnerable adults in guardianship cases, in conjunction with Utah Code 75-5-303. WINGS worked with the Office of Legal Services Innovation to ascertain if a legal “sandbox” project could serve as a possible alternative or supplement to the GSP.
- WINGS also created an Attorney Gaps subcommittee to further investigate possible resolutions. The subcommittee includes members from WINGS, as well as stakeholders in the community with knowledge of the problem, and a vested interest in finding solutions. The subcommittee is currently putting together a proposal to fund a 3-year pilot program to replace the GSP with a training academy program, similar to the Domestic Lawyers Academy offered by Utah Legal Services. The proposed academy would provide training, mentorship, CLE credits, and a flat rate fee for volunteer attorneys in exchange for accepting guardianship cases. The subcommittee expects to finish the proposal in 2024.
- WINGS continued its work on improving the language of Utah Code 75-5-303. Revisions included updating the medical criteria to conform with current standards used by the medical community and clarifying language on the requirements for attorneys and court visitors in these proceedings. WINGS provided these suggested amendments to the Liaison committee in October 2023. The Liaison committee approved the suggestions and moved to find a sponsor to present them during the 2024 legislative session.

- WINGS partnered with the Forms committee to create a forms workgroup tasked with updating the multitude of forms used in guardianship and conservatorship proceedings. The workgroup meets monthly to work on this project. In late 2023, the workgroup was tasked with creating new forms that previously only existed on OCAP, in anticipation of OCAP sunsetting in 2024. Drafts were developed by the workgroup, and subsequently reviewed and approved by the WINGS committee at the December 2023 meeting. They have been sent to the Forms Committee for the final review and approval process.
- At the request of the Forms committee, WINGS worked on creating orders for previously approved motions related to reviewing, changing, or terminating adult or minor guardianships. WINGS completed recommendations on these orders in December 2023, and the draft forms were sent to the Forms Committee for the final review and approval process.
- WINGS continued to work alongside the Probate subcommittee to finalize revisions to CJA Rule 6-501, regarding the review process for annual guardianship reports. The final revisions were approved by the Judicial Council in October 2023, and went into effect November 1, 2023. This project is now complete.
- WINGS continued to work alongside the Probate subcommittee to finalize revisions to CJA Rule 6-507, regarding court visitors. Revisions include adding language to better define a court visitor, clarifying the mechanism for making objections to court visitor investigations, and describing the process required for review of the reports submitted by court visitors. The revisions were approved by the Judicial Council in June 2023, and went into effect November 1, 2023. This project is now complete.
- Additional items of note –
 - Several WINGS stakeholders participated in the New Judge Orientation training in June 2023. Training materials and topics were discussed during WINGS meetings, and stakeholders provided feedback on items considered most pertinent for new judges.
 - WINGS heard a presentation on community concerns related to Utah Code 75-5-301.5 (“*Guardianship Bill of Rights*”) and the intention of the presenters to develop a coalition to recommend changes to the statute during the 2024 legislative session.
 - WINGS heard a presentation and provided feedback on a proposed bill related to Supported Decision-Making in guardianship (HB0197). This bill is currently making its way through the legislative committees.
 - In 2024, WINGS plans to continue addressing the attorney shortage problems, reviewing and providing feedback on guardianship forms, updating training materials for judges and court staff, and making needed updates to the Guardianship and Conservatorship manual, training, and required test.