

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, December 19, 2024, 12:00 pm | 2 hours |

AGENDA

	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none">Housekeeping, minutes	Judge Kelly	<ul style="list-style-type: none"><i>WINGS Minutes (October 2024 – draft)</i>
12:10	New Topics		
	<ul style="list-style-type: none">Criminal background disclosure	Shonna Thomas	<ul style="list-style-type: none"><i>Criminal Background Checks by State</i>
	<ul style="list-style-type: none">Drafts of forms – forms workgroup	Shonna Thomas	<ul style="list-style-type: none"><i>(Draft) Petition to Appoint a Guardian for an Adult</i><i>Petition to Appoint a Guardian for an Adult (2022)</i><i>(Draft) Order Appointing a Guardian for an Adult</i><i>(Draft) People Who Must be Notified (Formerly Schedule A)</i><i>Schedule A (2019)</i>
1:20	Stakeholder Agency Overviews		
	<ul style="list-style-type: none">Disability Law Center (DLC)	Andrew Riggle Katie Cox	
1:30	Updates		
	<ul style="list-style-type: none">URCP Rule 26.4	Judge Kelly	
	<ul style="list-style-type: none">Brown bag training	Shonna Thomas	
	<ul style="list-style-type: none">Legislative updates:<ul style="list-style-type: none">Utah code 75-5-303Supported Decision-MakingRecodification language	Keri Sargent Andrew Riggle Brant Christiansen	
1:45	Other Business		
	<ul style="list-style-type: none">	Stakeholders	
2:00	Meeting adjourned		

Next meeting:

February 20, 2025

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
UGCOPPA		<p>§ 117 Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:</p> <p>(1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or</p> <p>(2) been convicted of:</p> <p>(A) a felony;</p> <p>(B) a crime involving dishonesty, neglect, violence, or use of physical force; or</p> <p>(C) other crime relevant to the functions the individual would assume as guardian or conservator.</p>		
Alaska		<p>§§ 08.26.020 & 08.26.030 Department shall issue an individual private professional guardian/conservator license if ... criminal history record shows has not been convicted of a crime within 10 years of the application that would affect ability to provide services competently and safely</p> <p>§ 08.26.070(a) Department shall request Dept. Public Safety to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record information check; perform a state criminal history record information check</p>		
Arkansas	<p>§ 28-65-203(a) Convicted or unpardoned felon</p>			

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Arizona		<p>§ 14-5106 In petition, under oath, must disclose, whether proposed appointee has been convicted of a felony in any jurisdiction and, if so, the nature of the offense, the name and address of the sentencing court, the case number, the date of conviction, the terms of the sentence, the name and telephone number of any current probation or parole officer and the reasons why the conviction should not disqualify the proposed appointee.</p> <p>§ 14-5657(B) As condition of licensing, fiduciary must submit to full set of fingerprints to obtain state and federal criminal records check</p> <p>§ 14-5304(E) Court may require each person who seeks appointment as a guardian to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the dep't of public safety. The person shall bear the cost Does not apply to a fiduciary who is licensed or an employee of a financial institution.</p>		
California	Busi. & Prof. § 6536 Convicted of crime substantially related to the qualifications, function or duties of the professional fiduciary	Busi. & Prof. § 6533.5 To obtain a license as professional fiduciary shall submit fingerprints to obtain criminal offender record of state and federal arrests and convictions. DOJ prepares report of fitness		Judicial discretion re criminal history and nature of crime, nature of petition, case dynamics, whether can be bonded, ties to conservatee, alternative to conservator

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Colorado	§ 15-14-310(4) Owner/operator where receiving long term care	<p>§ 15-14-110(1) Statement with acceptance of office as to whether been convicted of, pled nolo contendere to, or received deferred sentence for a felony or misdemeanor; whether temporary or permanent civil protection or restraining order in any state; whether civil judgment entered; relieved of any court-appointed responsibilities</p> <p>§ 15-14-1102(2) Attach name-based criminal history record check through CO Bureau of Investigation</p> <p>§ 15-14-11(4) Does not apply to public administrator; bank, trust company or other financial institution; state or county agency; parent residing with his or her child; and any other person or entity for whom the court, for good cause shown, determines requirements not apply</p>	§ 15-14-110(2) Attach credit report	
District of Columbia	§ 21-2043(a-1)(1) Provides substantial services; creditor of the incapacitated individual; or employed by any person or entity that provides services.	<p>§ 21-2043(d-1)(1) Court shall not appoint a guardian until the person has submitted signed and sworn statement whether has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case upon a stet docket for, or has been found not guilty by reason of insanity of lifetime registration offense; registration offense, any offense set forth in Chapters 8, 8A, 9A, 10, 11, 14, 15, and 32 of Title 22, or its equivalent in any other state or territory, dangerous crime, or crime of violence.</p> <p>Shall submit results of a criminal-history check from the Metropolitan Police Department and FBI. Emergency guardians, health-care guardians, and provisional guardians are exempt.</p> <p>§ 21-2043(d-2)(1) Presumed not to be in best interest of individual subject to guardianship to appoint a guardian who has been convicted of listed offenses.</p>		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Florida	<p>§ 744.309(3) Convicted of a felony, or from any incapacity or illness, is incapable of discharging the duties of a guardian, or is otherwise unsuitable to perform the duties of a guardian</p>	<p>§ 744.3135(1) Court shall require a guardian and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to undergo level 2 background screening. Court must consider the results of any investigation before appointing a guardian.</p> <p>§ 744.3135(2) Nonprofessional undergoes state and national criminal history record check using fingerprints. Results filed by clerk.</p>	<p>§ 744.3135(5a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's registration with the Statewide Public Guardianship Office.</p>	<p>§ 744.3135 (7) Requirements not apply to a professional guardian, or to the employees of a professional guardian, that is a trust company, state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or national banking association or federal savings and loan association.</p>
Georgia	<p>§ 29-4-2(b) Is a minor, a ward, or a protected person; have a conflict of interest; or owner, operator, or employee of a long-term care or other caregiving institution or facility at which the adult is receiving care, unless related to the adult by blood, marriage, or adoption.</p>	<p>§ 29-10-3(a)(2) Public guardian must submit to a criminal background check with satisfactory results as prescribed by the Division of Aging Services of the Department of Human Resources; submit to an investigation of the individual's credit history as prescribed by Aging Services, Dep't Human Resources</p>	<p>§ 29-10-3(a)(3) Public guardian must submit to an investigation of the individual's credit history as prescribed by Aging Services, Dep't of Human Resources</p>	

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Idaho	§ 15-5-311(4) No convicted felon, or person whose residence is the incapacitated person's proposed residence or will be frequented by the incapacitated person and is frequented by a convicted felon, shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.	§ 15-5-311(5) Proposed guardian must submit to and paid for criminal history and background check; If ordered by the court, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and background check conducted. The findings of criminal history and background checks are made available to the visitor and guardian ad litem.	§ 15-5-311(5) The proposed guardian provides report of his or her civil judgments and bankruptcies to the visitor, the guardian ad litem and all others entitled to notice.	
Illinois	755/5/11a-5(5) Convicted of a felony, unless the court finds appointment to be in the disabled person's best interests; as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a minor or an elderly or disabled person, including a felony sexual offense.	Public Guardians must be CGC certified which requires background check		
Iowa		§ 633.564 Court must request criminal records check, check of child abuse, dependent adult abuse, sexual offender registries for all proposed guardians and conservators.		
Kentucky		§ 387.025(4) Verified application for appointment must state whether ever been convicted of a crime		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Louisiana	Art. 4561(B)(2) Except for good cause shown, convicted felon; person in debt to adult; adverse party in pending law suit			
Minnesota	§ 524.5-309(c) Individual or agency providing residence, custodial, medical, employment training, other care or services	§ 524.5-118(1) Background study once every 2 years; criminal history data from Bureau of Criminal Apprehension,; from National Criminal Records Repository if not been resident of MN for 10 years or info from BCA indicates a multistate offender or multistate offender status undetermined; state licensing agency if ever been licensed as professional in related field; perpetrators of substantiated maltreatment of vulnerable adult or minor. Professional guardian must pay fees; if in forma pauperis by county; if estate, by estate; or court may order fee paid by G, by C or by court; not apply to state agency or county; parent or guardian of person with developmental disability if raised in family home; background study must be done on all employees responsible for exercising guardian powers and duties; may make appointment pending results of study		
Mississippi		§ 93-20-117 Anyone considered for guardian or conservator must disclose to the court whether debtor in bankruptcy, convicted of a felony, crime involving dishonest, neglect, violence, or use of physical force.		
Missouri		§ 43.548.1 Courts and department of social services may require fingerprinting of guardians and conservators for the purpose of positive identification and criminal history to determine ability and fitness to serve.		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Nebraska	§§ 30-2627; 30-2639 Agency, owner providing residential care	§ 30-2602.02 A person, except for a financial institution nominated for appointment as a guardian or conservator shall obtain a national criminal history record check and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court. No report or national criminal history record check required for an emergency temporary guardianship or conservatorship. Court may waive for good cause.		
Nevada	§ 159.059 Incompetent; minor; convicted of felony unless court determines conviction not disqualify; suspended for misconduct or disbarred from law, accounting, other provision involving money, investment, securities, real property; nonresident without registered agent and not petitioner; judicially determined by clear and convincing evidence to have committed abuse, neglect, exploitation of child, spouse, parent, adult, unless court finds best interest	§ 159,0595(3) Private professional guardian shall, at his or her own cost and expense, undergo a background investigation which requires the submission of complete set of fingerprints to the Central Repository for Nevada Records of Criminal History and to the FBI; present to court upon request. Each natural person who acts in any capacity within a private professional guardian company must submit such fingerprints not less than once every five years.	§ 159.044(t) Petition must state whether proposed guardian has filed for or received protection in bankruptcy court.	§159.1852 After appointment, a guardian must immediately inform the court of: convictions of a gross misdemeanor or felony; a bankruptcy filing; suspension, revocation or cancelling of a driver's license for nonpayment of child support; a disbarment from the practice of law, accounting, or other profession requiring a license and involving financial management; or a judgment for misappropriation of funds. The court may remove the guardian and appoint a successor unless the court finds it is in the person's best interest to allow the guardian to continue serving.

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
New Hampshire	§ 464-A:10(III) An institution or agency providing care and custody of the incapacitated person, unless no one else can be found to serve	§ 464-A:4(v) Court shall review the proposed guardian’s record of criminal convictions maintained by the New Hampshire division of state police. Court may, in its discretion, request a search of the abuse and neglect registry maintained by the dep’t of health and human services. Court Rule 16 requires professional guardians to undergo criminal background check without fingerprints		
New Jersey	§ 52:27G-34(3)(a) Has criminal conviction or found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft, conversion; lacks financial responsibility; committed abuse, neglect or exploitation; engages in persistent or repeated violations of court order or any impropriety involving dishonesty, fraud, deceit, misrepresentation	§ 52:27G-33(2)(d)(4) Professional guardian satisfactory criminal history record background, child abuse registry, domestic violence central registry; not subject to outstanding arrest warrants	§ 52:27G-33(2)(d)(4) Professional guardian submit credit check to OPGEA from one national credit reporting agency issued within 1 month of application	
New Mexico		§ 45-5-303(A)(4) Petition shall state G qualification, including whether convicted of felony		
New York		§ 81.19(g)(1) Allows but not requires court to obtain and consider, and court evaluator to review, proposed guardian’s criminal history, sex offender registry, statewide central register of child abuse, statewide registry of orders of protection. Upon considering the information, court may appoint, refuse to appoint or revoke the appointment		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
North Dakota		<p>N.D. Sup. Ct. Admin. R. 59(B)(2) Requires professional and non-professional guardians to provide criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian.</p> <p>(C) provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency</p>		
Ohio		<p>§ 2111.03(A) Petition must state whether applicant ever been charged with or convicted of any crime involving theft, physical violence, sexual, alcohol or substance abuse.</p> <p>Ohio Sup. R. 66.05(A). Requires criminal background check for all guardians, including family guardians. For an attorney, court may accept a Supreme Court certificate of good standing.</p>		<p>No instruction to court on what if proposed guardian has criminal record. Some courts are fingerprinting</p>
Oklahoma	<p>§ 3-104(A) Owner operator employee of facility where residing</p>	<p>§ 3-101(c) Court may receive investigation and report on background and home of prospective G. When required, include petitioner and each adult member of household to establish no record of criminal conviction, protective order, pending criminal charge. Include OK Bureau of Investigation name-based check.</p>	<p>§ 3-101(c) Petitioner disclose case name and status of any civil or criminal matter in state or federal court, including bankruptcy involving petitioner or any adult household member</p>	

Criminal and Credit Background Checks for Guardians

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Oregon	§ 125.205 Incapacitated, financially incapable, minor, health care provider	§ 125.210(1) Person nominated must inform court of circumstances before appointed or provide in petition if convicted of crime, filed for bankruptcy, had required professional license revoked or cancelled. After appointment must immediately inform the court. Court may decline to appoint or may remove if fails to comply. § 125.240 Professional fiduciary must have criminal background check paid for by fiduciary		Courts require credit check on periodic basis along with updated criminal background check for professional fiduciaries
Rhode Island	§ 33-15-6(a) Agency, public or private, or representative of, that financially benefits from providing housing, medical, social services	§ 33-15-6(b) Shall find that individual or agency has no criminal background which bears on suitability to serve as guardian, has capacity to manage the financial resources involved; has ability to meet unique needs of adult; has ability to meet requirements of law		
South Dakota	§ 29A-5-110 Felon unless court finds appointment in best interest considering nature, date of offense and rehabilitation, employee of public agency, entity, or facility providing substantial services or financial assistance; creditor	§ 29A-5-110 A person, except for a financial institution or its officers, directors, employees, or agents, or a trust company, who has been nominated for appointment as a guardian or conservator, shall obtain an Interstate Identification Index criminal history record check and a record check of South Dakota state court civil judgments for abuse, neglect, or exploitation of an elder or adult with a disability. Nominee files the results of these record checks with the court at least ten days prior to hearing. Judge may not sign appointment until record check results filed and reviewed by the judge. Not apply to temporary appointments. Court may waive the record check for good cause.		
Tennessee		§ 34-3-104(3) Requires petition to include a statement of any felony or misdemeanor convictions of petitioner and proposed guardian/conservator		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<p>Texas</p>	<p>§ 1104.351 Minor or other incapacitated person; or because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward’s person or estate.</p> <p>§ 1104.353(a-b) Conduct is notoriously bad; convicted of any sexual offense, aggravated assault; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; terroristic threat; or continuous violence against the family of the ward or incapacitated person.</p> <p>§ 1104.358 Found to have committed family violence who is subject to a protective order</p>	<p>§ 698 County clerk obtains criminal history record information maintained by Dep’t of Public Safety or FBI for private professional guardian; employee who has personal contact, exercise control or any duties over estate; volunteer in guardianship program; proposed guardian; including family member. May submit own information 10 days before hearing; Guardianship Certification Board conducts criminal history check before issuing or renewing certificate Court use information to determine whether to appoint, remove, or continue appointment; GCB use to determine whether to certify. Judicial Branch Certification Commission conducts criminal background check for persons (other than attorneys and private professional guardians for whom the Commission already conducts a check) seeking to become a guardian.</p>		
<p>Vermont</p>	<p>14 § 3072(a)(2) Operates care facility where resides or receiving care</p> <p>14 § 3072(a)(2) Served as guardian ad litem in same proceeding</p>	<p>14 § 3067(d) Proposed guardian provide information and consent for complete background checks with available state registries, including adult abuse, child abuse, crime information center, sex offender. Court shall consider information received in determining if suitable. May waive reports, may remove based on information in report later received. If lived in VT less than 5 years or nonresident may order background from other state agencies where lives or has lived in past 5 years.</p>		

Criminal and Credit Background Checks for Guardians

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Washington	§ 11.88.020 Under 18; of unsound mind; convicted of felony or misdemeanor involving moral turpitude; court finds unsuitable	Certified Professional Guardianship Board Regulation 101 Every person or agency desiring to be certified as a CPG must undergo a criminal history check. 103.3.4 To become certified guardian must provide a fingerprint card that has been processed at a local police department.	Certified Professional Guardianship Board Reg. 103.3.8 To become certified the applicant must provide a personal credit report. 103.3.9 If an individual has declared bankruptcy in the seven (7) years prior to his or her application, the applicant must provide copies of the following documents: bankruptcy petition, discharge order, and a copy of the bankruptcy case docket.	
West Virginia	§ 44A-1-8(a) Individual employed by or affiliated with any public agency, entity or facility providing substantial services or financial assistance; creditor	§ 44A-1-8(c) Any person being considered shall provide information if convicted of any crime, other than traffic offenses, court or mental hygiene commissioner may order a background check conducted by state police or county sheriff. Shall consider in determining fitness to be appointed		
Wisconsin		§ 54.15(8) Sworn and notarized statement 76 hours before hearing if charged with or convicted of crime;	§ 54.15(8) Sworn and notarized statement 76 hours before hearing if filed for and received bankruptcy protection, had professional license revoked.	

Criminal and Credit Background Checks for Guardians

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Center for Guardianship Certification	<p>Rules and Regulations II.A.5-9</p> <p>5. An applicant must not have been convicted of, or pled guilty or no contest to, a felony. The only two exceptions to this requirement will be court or state agency documentation of one of the following: a) expungement of the felony conviction; or b) that a court or state agency, with knowledge of the felony, has determined that the applicant or re-certificant is eligible to serve as a guardian under state law.</p> <p>6. submit to a criminal background check.</p> <p>7. agree to comply with the NGA Ethical Principles and the NGA Standards of Practice.</p> <p>8. not have been civilly liable or criminally convicted in an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, exploitation, abuse or conversion, turpitude, theft, exploitation, abuse or conversion.</p> <p>9. not have been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, theft, exploitation, abuse or conversion</p>	<p>Rules and Regulations II.A.6</p> <p>Submit to a criminal background check</p>		

This is a tier 2 case.

Name

Address

City, State, Zip

Phone

Email

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

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

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

In the District Court of Utah

Judicial District _____ County

Court Address: _____

In the Matter of Protection for:	Petition to Appoint a Guardian for an Adult
	<input type="checkbox"/> Attorney for the respondent requested (see #11 below)
	<input type="checkbox"/> Court visitor requested (see #12 below)
Respondent	Case Number
	Judge

1. The alleged incapacitated person in a guardianship case is the respondent. I ask the court to appoint a guardian for _____. (name of respondent)

Information about the respondent.

Address

City, State, Zip

Phone

Email

Date of Birth

2. I ask the court to appoint as guardian: (select all that apply)
- Me, the petitioner in this matter.
- A co-guardian _____ . (name)
- Another person or institution _____ . (name)

Information about the proposed guardian.

_____ Proposed guardian's relationship to the respondent	_____ Proposed co-guardian's relationship to the respondent, if applicable
_____ Address	_____ Address
_____ City, State, Zip	_____ City, State, Zip
_____ Phone	_____ Phone
_____ Email	_____ Email
_____ Date of Birth	_____ Date of Birth

Choice of Guardian

3. Utah law gives a list of people who have priority to be the guardian for a respondent. The proposed guardian listed above should be appointed because they are the: (Choose all that apply.)
- person chosen by the respondent. I have attached evidence of this nomination. (Utah Code 75-5-311)

- respondent's spouse.
- respondent's adult child.
- person nominated by will or other writing signed by the respondent's deceased spouse or deceased parent. (Utah Code 75-5-311(3)(d))
- respondent's relative with whom the respondent has resided for more than six months before the filing of the petition.
- person nominated by _____ (name) who is caring for the respondent or paying benefits to the respondent.
- specialized care professional who does not profit financially or otherwise from or receive compensation for acting as guardian, except for the direct costs of providing guardianship services, and does not otherwise have a conflict of interest in providing those services.
- Office of Public Guardian.
- Other: _____ (describe)

4. Has any other person (other than the proposed guardian) been nominated to serve as guardian for the respondent?

- No.
- Yes. _____ (name) has been nominated to be the guardian. The nomination was made by: (Choose all that apply.)
 - the respondent;
 - the respondent's spouse;
 - the respondent's parent;
 - the respondent's caregiver.

5. The court should appoint the proposed guardian because: (choose one)

- the proposed guardian is highest in priority by Utah law (see # 8 above).
- there are good reasons not to follow the priority list: (explain)

6. Are there any other guardianship or conservatorship orders or pending cases about the respondent?

No.

Yes. Describe any pending cases:

Incapacity

Utah law states that incapacity means the respondent's ability to receive and evaluate information, make and communicate decisions, and provide for necessities such as food, shelter, clothing, health care, or safety is impaired to the extent that they lack the ability, even with appropriate help, to meet the essential requirements for financial protection or physical health, safety, or self-care.

7. The respondent's incapacity is shown by the following functional limitations:
(Describe examples of the respondent's inabilities and functional limitations, so that, even with appropriate help, they are unable to meet the essential requirements for financial protection or physical health, safety, or self-care.)

8. The respondent's incapacity is proved by the following clear and convincing evidence:

(Attach supporting documents to support the things listed under #7, including statements of any witnesses who are familiar with the respondent and/or evaluations of respondent's physician or other evaluator.)

Type of Guardianship

9. What alternatives to guardianship have been tried and why are they no longer enough?

(Examples of alternatives to guardianship include power of attorney, appointing a social security representative payee, creating a living trust, special needs trust, appointing a health care agent, completing an advanced health care directive)

10. Utah law requires a limited guardianship unless no other alternative exists that will meet the needs of the respondent.

The respondent needs a guardian with the power to make decisions about the respondent's: (choose all that apply)

- physical health and medical needs, treatment, and services.
- mental health and mental health counseling, treatment and services.
- living situation and residence.
- care, comfort, and maintenance.
- training and education.
- clothing, furniture, vehicles, and other personal effects.

The respondent needs a guardian with the power to perform the following duties: (choose all that apply)

- commence protective proceedings if the property needs protection.
- give consent necessary to enable the respondent to receive medical or other professional care, counsel, treatment, or service.
- _____ (name) should be notified if the respondent receives significant health care or treatment.
- institute proceedings to compel a person to perform their duty to support the respondent;
- receive money and tangible property deliverable to the respondent and apply the money and property for the respondent's support, care, and education;
- Other: (Describe additional authority that the guardian should have.)

OR Full guardianship, because no other alternative exists.

Explain why nothing less than a full guardianship will meet the needs of the respondent:

Respondent Rights

11. Utah law states that the respondent must have a lawyer to represent them in a guardianship proceeding. The respondent has the right to choose their own lawyer. If they do not choose a lawyer, the court will appoint one for them.

The respondent: (Choose one)

chose _____ (name) as the lawyer to represent them in this proceeding. (Utah Code 75-5-303(2)(b)).

has not chosen a lawyer and needs the court to appoint one. **I am filing a Request to Appoint an Attorney form with this petition.**

12. Utah law states that the respondent must be present at the hearing and see or hear all evidence. If the respondent is unable to come to the hearing, the court will order an investigation by a court visitor.

The respondent:

is able to attend the hearing in a courthouse.

is able to attend the hearing by phone or video.

OR

is not able to attend the hearing with or without accommodations and a Court Visitor needs to be appointed to investigate. **I am filing a Request to Appoint a Court Visitor form with this petition.** The respondent is unable to attend the hearing because: (explain)

Respondent Finances

13. An asset is a resource, item, or property that a person owns. The estimated value of the respondent's assets is:

General Description	Estimated Value	Unknown
Home and other real estate	\$	[]
Bank accounts	\$	[]
Investments (example: money market, retirement accounts, mutual funds)	\$	[]
Personal property (example: vehicles, jewelry, furniture, electronics, other)	\$	[]
Other	\$	[]
Total	\$	[]

14. Income is money received on a recurring basis, such as monthly. The estimated monthly income the respondent receives from all sources is:

General Description	Estimated Value	Unknown
Wages or pension	\$	[]
Social Security Income (SSI)	\$	[]
Rental Income Received	\$	[]
Dividends, annuities, or other earned interest	\$	[]
Inheritance or trust funds	\$	[]
Other	\$	[]
Total	\$	[]

Request to the Court

15. I ask the court to:
- schedule a hearing on this petition;
 - give notice as required by Utah Code Section 75-5-309;
 - enter an order declaring the respondent to be an incapacitated person and
 - appoint _____ (name) as guardian with the authority requested in paragraph 10;

- to allow the guardian to serve without bond, or with bond as ordered by the court;
- issue a Letter of Guardianship to the guardian describing the guardian's authority.

16. The court has jurisdiction under Utah Code 75-1-302.
17. The court has venue because the respondent lives or is present in the county listed at the top of this form.
18. I will send a copy of this petition and a notice of hearing to all the people listed on the **People Who Must be Notified in Guardianship and Conservatorship Proceedings** form by the method listed on that form.

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 _____

This is a tier 2 case.

Name

Address

City, State, Zip

Phone

Email

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

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

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

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>In the Matter of Protection for _____, Respondent</p>	<p>Petition to Appoint a Guardian for an Adult</p> <p><input type="checkbox"/> Attorney for the respondent requested</p> <p><input type="checkbox"/> Court visitor requested</p> <p>_____ Case Number</p> <p>_____ Judge</p>
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1. I request that the court appoint _____ (name of proposed guardian), who is a competent person or suitable institution, as guardian for _____ (name of respondent).
2. The court has jurisdiction under Utah Code 75-1-302.
3. The court has venue because the respondent resides or is present in this county.

4. The interested persons who must be served are described in Schedule A, which is attached. Service of a copy of this petition and notice of the time and place of the hearing will occur as described in Schedule A.

5. Information about the respondent:

Name

Address

City, State, Zip

Phone

Email

Social Security Number

Date of Birth

Driver License Number

6. Information about the proposed guardian:

Name

Address

City, State, Zip

Phone

Email

Social Security Number

Date of Birth

Driver License Number

7. Information about the proposed guardian's next of kin or other contact person:

Name

Address

City, State, Zip

Phone

Email

8. The proposed guardian has priority for appointment because they: (Choose all that apply.)
- [] have been nominated by the respondent (Choose one.)
 - [] in a signed writing substantially conforming to the requirements of Utah Code 75-5-311.
 - [] by some means other than a signed writing substantially conforming to the requirements of Utah Code 75-5-311.
 - [] are the respondent's spouse.
 - [] are the respondent's adult child.
 - [] are the respondent's parent.
 - [] are a person nominated by will or other writing signed by the respondent's deceased spouse.
 - [] are a person nominated by will or other writing signed by the respondent's deceased parent.
 - [] are the respondent's relative with whom the respondent has resided for more than six months before the filing of the petition.
 - [] have been nominated by _____ (name) who is caring for the respondent or paying benefits to the respondent.
 - [] are a specialized care professional who does not profit financially or otherwise from or receive compensation for acting as guardian, except for the direct costs of providing guardianship services, and does not otherwise have a conflict of interest in providing those services.
 - [] are the Office of Public Guardian.
 - [] had a court order granting sole legal decision making authority over the respondent when respondent turned 17 years and six months old, and this petition is being filed within 2 years after the day respondent turns 18. The case number is _____.

are the respondent's parents, or two people who share joint legal decision-making authority over the respondent.

are _____
(describe relationship to the respondent)

9. _____ (name) has been nominated as guardian for the respondent but is not the proposed guardian. (If no one or the proposed guardian has been nominated, enter "no one.") The nomination was made by: (Choose all that apply.)

- the respondent;
- the respondent's spouse;
- the respondent's parent;
- the respondent's caregiver.

10. The court should appoint the proposed guardian because: (Choose one.)

- the proposed guardian is highest in priority established by statute.
- there is good cause not to follow the statutory priority because:

11. List any other guardianship or conservatorship orders or pending cases regarding the respondent. (If there are no other orders or proceedings, enter "none.")

12. The respondent's ability to:

- receive and evaluate information; or
- make and communicate decisions; or
- provide for necessities such as food, shelter, clothing, health care, or safety

is impaired to the extent that they lack the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care.

13. The respondent has the following functional limitations, and a guardian is necessary or desirable as a means of providing the respondent with continuing care and supervision:

14. A report about the respondent, written by a physician or psychologist, is attached.

(Only required if respondent is a minor. Utah Code 75-5-317.)

- The report is based on an evaluation done in the last six months. I ask the court to waive any additional evaluation.

15. The respondent's incapacity is proved by the following clear and convincing evidence: (Describe examples of the respondent's inabilities and functional limitations, so that, even with appropriate technological assistance, they unable to meet the essential requirements for financial protection or physical health, safety, or self-care. Attach supporting documents, including statements of any witnesses who are familiar with the respondent and/or evaluations of respondent's physician or other evaluator.)

16. A guardianship is necessary or desirable as a means of providing the respondent with continuing care and supervision because:

(Explain what alternatives other than a guardianship have been tried and why they did not succeed. Or explain why alternatives have not been tried.)

The respondent requires a guardian with plenary or full authority because:
 (Explain why nothing less than a full guardianship is adequate to provide the respondent with continuing care and supervision.)

19. The estimated value of the respondent's assets is: (Attach additional pages if needed. Refer to paragraph 19.)

General Description	Estimated Value	Unknown
Home and other real estate	\$	[]
Bank and credit union accounts	\$	[]
Investments	\$	[]
Personal property	\$	[]
Other	\$	[]
Total	\$	[]

20. The respondent's estimated monthly income from all sources is: (Attach additional pages if needed. Refer to paragraph 20.)

General Description	Estimated Value	Unknown
Home and other real estate	\$	[]
Bank and credit union accounts	\$	[]
Investments	\$	[]
Personal property	\$	[]
Other	\$	[]
Total	\$	[]

21. The respondent: (Choose one.)

[] will be represented by _____, (name)
 an attorney selected by the respondent.

needs an attorney appointed by the court, and I am filing with this petition a Request to Appoint an Attorney.

22. The respondent: (Choose one.)

will be present at the hearing.

should be excused from attending the hearing: (Choose one.)

and I am filing with this petition a Request to Assign a Court Visitor to inquire about whether to excuse the respondent from attending the hearing under Utah Code 75-5-303.

because of clear and convincing evidence from a physician that the respondent has: (Choose all that apply. Attach physician's affidavit.)

fourth stage Alzheimer's disease;

extended comatosis; and/or

an intellectual disability with an IQ score under 20 to 25.

23. I request that the court:

- schedule a hearing on this petition;
- give notice as required by Utah Code Section 75-5-309;
- enter an order declaring the respondent to be an incapacitated person and appointing _____ (name) as guardian with the authority requested in paragraph 17 or 18, to serve: (Choose one.)
 - without bond.
 - with bond in the amount of \$_____.
- issue a Letter of Guardianship to the guardian describing the guardian's authority.

24. I ask the court to make the order immediately effective upon the respondent's 18th birthday, which is _____ (date).

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).

Signature ► _____

Date

Printed Name _____

In the District Court of Utah

Judicial District

County

Court Address:

In the Matter of Protection for:

Order Appointing a Guardian for an Adult

Respondent

Case Number

Judge

The matter before the court is a petition to appoint a guardian for the respondent named above. This matter is being resolved by the documents filed in the case, including any stipulations (agreements) reached by the parties, and the hearing held on _____ (date), notice of which was served on all parties.

The Respondent: (select all that apply)

- was present at the hearing.
- was excused from attending the hearing by the judge. (Utah Code 75-5-303)
- was represented by _____ . (lawyer's name)

The Petitioner: (select all that apply)

- was present at the hearing.
- was not present at the hearing.
- was represented by _____ . (lawyer's name)
- was not represented.

Having considered the documents filed with the court, the evidence and the arguments, and now being fully informed, **the Court orders:**

1. The above-named respondent is now a protected person under the jurisdiction of the court.
2. _____ (name) is appointed as guardian of the above-named respondent, who is now a protected person, to serve:

without bond.

with bond in the amount of \$ _____.

3. Utah law requires a limited guardianship unless no other alternative exists that will meet the needs of the protected person. A guardianship is ordered with the following level of authority: (select one)

Limited guardianship

The guardian has the authority to make decisions about the protected person's (choose only those that apply)

physical health and medical needs, treatment, and services.

mental health and mental health counseling, treatment and services.

living situation and residence.

care, comfort, and maintenance.

training and education.

clothing, furniture, vehicles, and other personal effects.

The guardian has the power to perform the following duties for the protected person (choose only those that apply)

give consent necessary so that the protected person can receive medical or other professional care, counsel, treatment, or service.

start proceedings to compel a person with a responsibility to the protected person to perform their duty to support the protected person;

receive money and personal property for the protected person and apply the money and personal property for the protected person's support, care, and education;

start proceedings if the property needs protection.

other: (Describe additional authority that the guardian has.)

- Full guardianship. The guardian has full authority (plenary) to make decisions for the benefit of the protected person in all the areas listed above. The court orders a full guardianship, because:

(If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate. Utah Code 75-5-304(2)(a)(ii))

Respondent Rights

4. The protected person under guardianship has the right to:
- Make all choices and decisions except the ones specifically ordered above;
 - make or change a will or trust;
 - marry or divorce;
 - vote;
 - practice religion;
 - send and receive mail, email and telephone calls;
 - keep personal relationships with family and friends;
 - be represented by a lawyer;
 - control personal spending money;
 - consume legal substances;
 - ask the court to end the guardianship or conservatorship; and
 - ask the court to change the guardian or conservator or to change their authority.
 - the other rights listed under Utah Code 75-5-301.5

5. The guardian is required to file with the court the following reports:

- Inventory.** Must be filed within 90 days from the date of appointment.
- Report on the Status of the Protected Person.** Must be filed every year and is due no later than 60 days after the date of the appointment.
- Financial Accounting.** Must be filed every year and is due no later than 60 days after the date of the appointment.

6. The guardian must notify the following interested persons of any significant health care or treatment the protected person receives: (Utah Code 75-5-304)

Name: _____
Name: _____
Name: _____
Name: _____

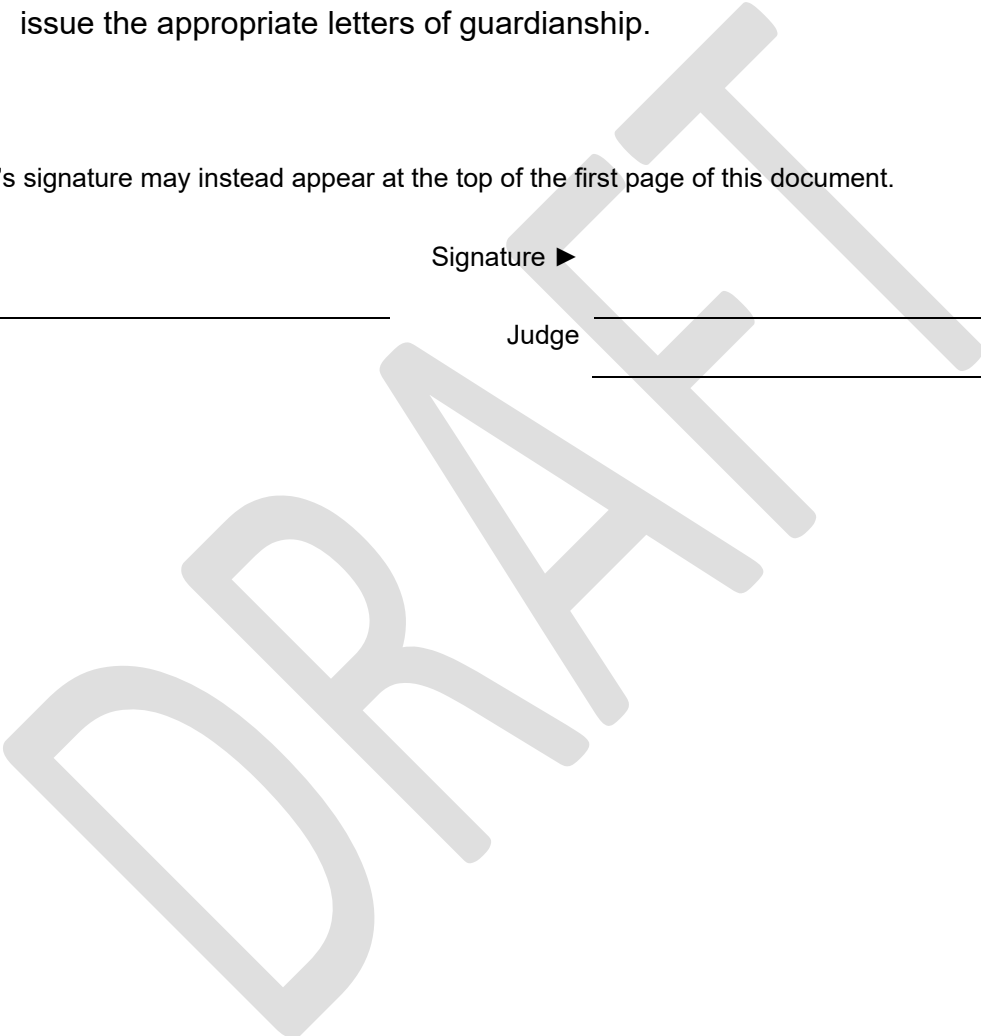
7. Upon qualification of and acceptance by the guardian, the clerk of court shall issue the appropriate letters of guardianship.

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

Signature ►

_____ Date

Signature _____
Judge _____



Name

Address

City, State, Zip

Phone

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

Email

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

In the District Court of Utah

Judicial District _____
County

Court Address: _____

In the Matter of Protection for:

**People Who Must be Notified in
Guardianship and Conservatorship
Proceedings**

Respondent

Case Number

Judge

- Utah Law states that certain people must be notified of a guardianship proceeding, including:
 - The person alleged to be incapacitated ("respondent").
 - The respondent's spouse, parents, and adult children, OR the respondent's closest adult relative if the others cannot be found.
 - The respondent's current guardian, conservator, caregiver and custodian.
 - Any person nominated as guardian by the respondent, parent, or spouse.
 - The respondent's healthcare agent and agent under a power of attorney.
 - Any other interested person.
 - Adult Protective Services (APS) if a referral was made about the respondent.

2. The respondent must be personally served (a non-party person delivering a physical copy). The respondent's spouse and parents must also be personally served if they are in Utah. Otherwise, they and any others requiring notice listed above may be served by first class mail or other method permitted by URCP 5.
3. As required above, I will **serve the petition and notice** of the hearing to the following people in the manner indicated:

Respondent

Role or Title

Personally

Method of Service

Name

Address

City, State, Zip

Phone

Email

Respondent's spouse Deceased

Role or Title

Personally Mail (lives out of state)

Method of Service

Name

Address

City, State, Zip

Phone

Email

Respondent's mother Deceased

Role or Title

Personally Mail (lives out of state)

Method of Service

Name

Address

City, State, Zip

Phone

Email

Respondent's father Deceased

Role or Title

Personally Mail (lives out of state)

Method of Service

Name

Address

City, State, Zip

Phone

Email

4. As required above, I will **mail a copy of the petition and notice** of the hearing to the following people at least 10 days before the hearing: (Fill out those that apply, leave blank any that do not apply to the respondent)

Respondent's adult child Deceased

Role or Title

Name

Address

City, State, Zip

Phone

Email

Respondent's adult child Deceased

Role or Title

Name

Address

City, State, Zip

Phone

Email

OR Respondent's closest adult relative

Role or Title

Name

Address

City, State, Zip

Phone

Email

Guardian, Conservator, or Caregiver

Role or Title

Name

Guardian, Conservator, or Caregiver

Role or Title

Name

Address

Address

City, State, Zip

City, State, Zip

Phone

Phone

Email

Email

Nominated Guardian Deceased

Nominated Conservator Deceased

Role or Title

Role or Title

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Phone

Phone

Email

Email

Respondent's Power of Attorney

Respondent's Health Care Agent

Role or Title

Role or Title

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Phone

Phone

Email

Email

Interested Person

Role or Title

Name

Address

City, State, Zip

Phone

Email

Interested Person

Role or Title

Name

Address

City, State, Zip

Phone

Email

Adult Protective Services

Role or Title

Name

Address

City, State, Zip

Phone

Email

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 _____

Name

Address

City, State, Zip

Phone

Email

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

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

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the Matter of Protection for

_____,
Respondent

Schedule A—people who must be served with the petition and notice of hearing

Case Number

Judge

1. I will have the petition and notice of the hearing personally served upon:

Respondent

Name

Address

City, State, Zip

Phone

Email

Respondent's spouse, who can be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's mother, who can be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's father, who can be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

2. I request that the clerk of court post a copy of the notice of the hearing for 10 consecutive days immediately preceding the hearing in at least three public places in the county. I will mail a copy of the petition and notice of the hearing to the following people at least 10 days before the hearing:

Respondent's spouse, who cannot be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's mother, who cannot be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's father, who cannot be found in this state (deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's adult child
(deceased)

Name

Address

City, State, Zip

Phone

Email

Respondent's adult child
(deceased)

Name

Address

City, State, Zip

Phone

Email

If no one is listed above, then respondent's closest living adult relative

Name

Address

City, State, Zip

Phone

Email

Person or entity serving as respondent's guardian

Name

Address

City, State, Zip

Phone

Email

Person or entity serving as respondent's conservator

Name

Address

City, State, Zip

Phone

Email

Person nominated as respondent's guardian ([] deceased)

Name

Address

City, State, Zip

Phone

Email

Person with power of attorney for respondent

Name

Address

City, State, Zip

Phone

Email

Healthcare decision making agent appointed by respondent

Name

Address

City, State, Zip

Phone

Email

Person nominated as respondent's conservator ([] deceased)

Name

Address

City, State, Zip

Phone

Email

Person or entity responsible for respondent's care and custody

Name

Address

City, State, Zip

Phone

Email

Adult Protective Services (Required if APS has received a referral concerning the welfare of the respondent, or of the guardian/conservator, or of the proposed guardian/conservator.)

Name

Address

City, State, Zip

Phone

Email

Other interested person

Name

Address

City, State, Zip

Phone

Email

Other interested person

Name

Address

City, State, Zip

Phone

Email

_____ Date

Signature ► _____

Printed Name _____