

Guardianship of Adult Children with Disabilities in Utah

A COMPREHENSIVE GUIDE FOR PARENTS



Utah Parent Center



TRANSITION
UNIVERSITY



Utah Developmental
Disabilities Council.

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Utah Statute and the Utah Courts Website

The statute governing Appointment of a Guardian of an Incapacitated Person in Utah can be found here on the State Legislature website: <https://bit.ly/Code75>

The interpretation of the proceedings outlined in the statute and provided in this document have been taken from the Utah Courts website found here: www.utcourts.gov



This site contains a great deal of information including how to contact the district courts, how to find your case, how to prepare legal documents yourself and how to file the documents with the court. There is extensive information about guardianship and conservatorship for individuals with limited intellectual capacity.

We have prepared the information in this booklet specifically with parents in mind, but the information may be helpful to others who find themselves in a position to seek guardianship. We refer to the protected individual as "child" throughout this booklet referring to the filial relationship between parent and child regardless of age.

Procedures and processes of the court may change periodically, and vary from county to county. Every effort has been made to keep this information updated and accurate, but individuals using this guide will want to defer to the most recent instructions available from the Utah Courts website and the district court closest to you. Additionally, there is a "Self Help" section on the Utah Courts that includes information on guardianship: <https://www.utcourts.gov/howto/family/gc/>



What is Guardianship?

At the age of 18, an individual is considered a legal adult, even if that person has diminished mental capacity from a developmental or intellectual disability. This means that the person has the full legal authority to make their own decisions and that others do not have the right to make decisions for them. This includes decisions about health care, education, and finances and all other aspects of life.

Many individuals with disabilities are able to make very good decisions for themselves, especially with support. However, there are some who lack the ability to communicate their needs and desires, and to manage their basic daily care.

For those individuals, guardianship may be necessary for good decisions to be made on their behalf. If at some point the individual becomes able to make decisions and better care for themselves, guardianship can be reversed.

Advocates for adults with intellectual and developmental disabilities have worked hard to improve decision making in this population. Legal processes, including guardianship, are now easier and less expensive. In Utah, people who have had decision-making authority before the person became an adult have preference as guardians. This guide will take you through the process and hopefully answer many questions you may have. If you find you still have questions or need more guidance, please call and ask for a consultation with one of our knowledgeable parent consultants at 801-272-1051.

The information in this booklet is intended as general information only, based on the best information available at the time it was written. It should not be construed as individual legal advice. It is intended only for the purpose of compiling information from a variety of sources into one helpful resource for families. A great deal of this information came directly from the Utah Courts website, and updated information can be found there. www.utcourts.gov

If you feel the information in this booklet does not fit your situation, or does not adequately answer your questions or specific needs, please consult with an attorney.

How do I know
if my
child needs a
guardian?

Guardianship may be granted for individuals who are deemed incapacitated by a judge. Incapacity means that the judge has found by "clear and convincing evidence" that someone has functional limitations so that they lack ability, even with the help of technology, to meet essential requirements for protecting their finances, health, safety or self-care. Asking the following questions can help you determine if guardianship may be the best avenue for supporting your young adult:

1. What are the individual's limitations that affect the ability to protect finances or to provide for health, safety, or self-care? Can technology help with these limits?
2. Can the individual receive or evaluate information? What kinds of information? At what level?
3. Can the individual make decisions? What kinds of decisions are most difficult for them to make?
4. Can the individual communicate decisions? Can technology help with communication?
5. Can the individual understand contracts when they are discussed? Can the individual understand that they shouldn't sign something without understanding it?
6. What does the individual understand about money?

*See the legal definition of "incapacity" on pg 14 of this booklet

Types of Guardianship

Full or Plenary Guardianship*

- Covers all areas of decision making, including: financial, medical, residential, education or training, health/nutrition, and property. Guardianship can be revisited at anytime and considerations should include the individual's current maturity and growth.

Limited Guardianship*

- Applies only to those areas specified in the guardianship order. The individual retains all other decision making rights. Utah law prefers limited guardianship.

Emergency Guardianship

- In an emergency situation, guardianship can be granted for a period of 30 days. It can be then be converted to temporary or permanent guardianship. Like all other situations, it can be either limited or full, depending on need. On request by an interested person after the appointment of an emergency guardian, the court shall hold a hearing within 14 days.

*There are multiple terms for guardianship. This document addresses full and limited in more detail.

What is the difference between a guardian and a conservator?

A **guardian** is a person 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."

A **conservator** is a person appointed by the court to make decisions about a protected person's estate (assets). If a person is unable to manage their property, a conservator may be needed; however, a guardian can also manage money if the guardianship order states they have authority over finances.

www.utcourts.gov/howto/family/gc/options.html

If it becomes necessary, you can set up a conservatorship at a later time, separate from the guardianship. It does not have to be done at the same time.

A guardian or conservator is considered to be a "fiduciary agent"—meaning they have the legal responsibility to act in the best interest of the protected person.

The State of Utah has made it possible for parents to prepare the necessary paperwork online to petition for guardianship. This allows you to represent yourself at the hearing (called *pro se*) without incurring the cost of hiring an attorney. This is done in the Online Court Assistance Program (OCAP) by filling out an "interview" with important information about your case. When warranted, your child may need their own attorney. Their attorney must be someone other than an attorney representing you. Whether or not the judge requires your child to have an attorney present depends on individual circumstances. You will be informed as you submit the paperwork whether or not you are required to have an attorney present for the individual with disabilities.

Will I need to hire an attorney to obtain guardianship?



<https://www.utcourts.gov/ocap/>

Will you need to hire an attorney to represent or assist you?

Many parents choose to go through this process without hiring an attorney. However, you may need to consult with an attorney if:

- You are not the biological or adoptive parents of the individual for whom you are requesting guardianship.
- Someone (including the individual for whom you are requesting guardianship) might oppose the request for guardianship.
- Your child has significant assets or property in his or her name (totaling more than \$20,000.00).
- You or your child are unable to attend the hearing to represent yourselves before the judge.
- You do not wish to represent yourself at the hearing or are unable to complete the paperwork yourself.
- The need for guardianship is not clearly evidenced by supporting documents and reports.

If your guardianship process becomes complicated, licensed attorneys can be found by searching <https://www.licensedlawyer.org/> and at <https://www.utahlegalservices.org> for those that qualify.

Will you need to hire an attorney for your child?

According to Utah statute, legal representation for your child you are seeking guardianship of may not be required if the following circumstances are met:

- The person is the biological or adopted child of the petitioner;
- The value of the person's entire estate does not exceed \$20,000;
- The person will appear in court with the petitioner;
- The person is given the opportunity to communicate to the extent possible, the person's acceptance of the petitioner as guardian;
- No attorney responds to the court's request for a volunteer to represent the defendant within 60 days using the Guardian Signature Program;
- The court is satisfied that legal counsel is not necessary in order to protect the interests of the disabled individual, AND;
- The court appoints a visitor (usually a social worker or psychologist who assesses the need for guardianship and provides a report to the judge in lieu of the defendant appearing in court).

Responsibilities and Authority of the Guardian

Utah law recognizes that each individual should have as much authority and control over his or her life as possible. You will be asked when filling out the petition for guardianship to specify whether you should have full decision-making authority, or if limited guardianship is an option.

If limited guardianship is possible, that is preferred under Utah statute. That allows the guardianship to be tailored to the protected person's needs and abilities. The individual will retain all rights not defined under the limited guardianship, so any limits need to be clearly stated in the guardianship order.

As guardian of an adult individual with diminished capacity, you may be responsible for determining the living arrangement, activities, food, clothing, and health care for that person. You might also be responsible for overseeing the individual's finances and property, unless a separate conservator has been appointed. You are asked to act in the best interest of the individual, always considering their health, well-being, and quality of life. Make sure your petition reflects the areas of need that your child will need support in. What you are responsible for will be outlined in the order of guardianship and reflected in the letter of guardianship.

If nothing less than full guardianship is adequate for the person's care and protection, the guardian should still consider the individual's values, stated preferences, and expressed desires when making decisions.

Moving or Transferring Guardianship

You do not need the court's permission to move the protected person to another residence within Utah, but you must notify the court that you are doing so and provide the court with the protected person's new address. You must also notify the other interested persons. There are no forms to report a change in residence; a letter or email will do. Address it to the clerk of the court that appointed your guardianship. Be sure to identify the case number and the protected person's name. Send a copy to the interested persons in the case.

You do, however, need the court's permission to transfer the guardianship and/or conservatorship to another state. Guardianship is not necessarily recognized in other states. More information on this can be found on the Utah courts website here: [.https://www.utcourts.gov/howto/family/gc/move.html](https://www.utcourts.gov/howto/family/gc/move.html)

Respecting the Protected Person's Rights

The extent to which the protected person can make these decisions depends on his or her capacity or functioning. The Utah statute and the Utah Courts website emphasize that "the protected person retains decision making authority not given to the guardian or conservator, including decisions about his or her religion, friends, whether to consume legal substances, whether to marry or divorce, and other decisions." Even under full guardianship appointment, the protected person retains all the basic rights listed below:

Protected Person's Rights Continued....

- 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.

Further protections of the individual's rights are explained here:

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

Possible Areas of Authority for a Limited Guardian

These are areas of authority you might wish to consider for a limited guardianship. They are listed in the form on the court website, and you are able to select the ones you feel are needed. A limited guardian has only the powers listed in the court order.

- Custody, residence, living arrangements
- Training and education
- Care, comfort, maintenance
- Care of clothing, furniture, vehicles and other personal property
- Protection of personal property
- Give consent for the individual to receive medical care and other professional services
- Ensure that services are performed to support the individual
- Receive money or property deliverable to the individual and apply the money or property to the individual's support, care, and
- Education/training
- Other areas of authority you wish to specify

If, after considering the areas on this list, you feel that your child needs someone to make decisions in all these areas, you can file for full guardianship.

Please note that the language utilized above can be adjusted on the petition to the protected person's specific needs. The instructions on the Utah Court website point out that the challenge will be to describe the decision-making authority needed specifically enough to be clear, and yet remain general enough to be flexible. The goal of limited guardianship is to allow the protected individual as much latitude as possible in directing their own life and decisions.

PRO SE PROCESS CHECKLIST

- You can begin the guardianship paperwork online once your child turns 17.5 years old and request a hearing date prior to their 18th birthday. The guardianship will become effective on their 18th birthday.
- Obtain a letter from a physician or other medical professional who treats your child on their letterhead that indicates diagnosis and description of functioning . The letter should state the need for guardianship.
- You will also need a recent psychological exam for your child. This can usually be obtained from the school, and is also needed to apply for SSI benefits, so keep a copy in your records.
- Gather needed personal information and documents, including social security numbers, drivers license numbers, addresses of petitioners and defendants.
- Go to the following website and create an account:
www.utcourts.gov/ocap
- From the list of interview options, select "Guardianship of an Adult Child" if you are the biological or adoptive parent.
- Complete the information requested on the form. By answering the questions on the form, the online court assistance program will generate the needed documents for your court case. If you aren't sure how to complete a section of the forms, you can select "Save and Exit" and return to the forms at a later time. Your information will be saved for 180 days from your last login.
- When you have completed the "interview," select "View Documents" Your court documents will be prepared with the information you have input along with instructions for submitting them to the district court.
- Review the documents and make sure the information is all correct. If the information is accurate, print two copies, one for the court and one for yourself. Sign and date the forms where indicated. NOTE: Read the instructions that print with your forms. Some of the forms will be signed at the hearing.
- Call the district court clerk that the individual you are filing guardianship for lives closest to for instructions on submitting the paperwork and receiving a hearing date. Your district court will have timeline information for this process.

The Process Continued...

- There is a small fee for using the Utah Court's OCAP website to generate the forms to file your petition. When you file your petition with the county court, you are also charged a minimal filing fee. These fees are listed on your OCAP forms. If you are unable to pay the fees, you can apply for a fee waiver.
- You will be asked to "serve" your child, and possibly other interested parties, the "Notice of Hearing" once you have a hearing date. This is often confusing to those who have not had experience with the legal process, but it is merely a way of informing those who need to appear in court or have significant interest in the action. If it seems strange that you would serve papers on someone who has limited capacity, consider that this is simply a protective legal process.
- Attend the hearing, and have your child attend with you. The court hears multiple cases and can get crowded, so be prepared to wait if needed.

Note: Your child is expected to attend the hearing, unless there is clear and convincing evidence from a physician of:

- 4th stage Alzheimer's,
- extended coma,
- an intellectual disability with an IQ of less than 25,
- or a report from a court visitor.

- If guardianship is granted, you will be given "a letter of guardianship" stating that you are the legal guardian along with a "finding of facts and conclusions of law" and an "order of guardianship" that will outline areas of guardianship (full or limited). Before you leave court, ask how you can obtain several copies of your paperwork. You will need several copies as you apply for adult services and to show medical providers and financial service providers. If ever in need, you can go back to the court for an additional copy.



Whatever this process looks like for you, remember you are not alone. For some it is quite simple and straightforward; for others it can be a complex and tense process. One important thing to keep in mind is that nothing in this process is permanent. If you find that your child needs more support than originally thought, or less support as he or she matures and gains skills, you can always pursue other choices. Many families have gone through the process of finding the right balance for the individual that needs support and protection. Below are three examples of families finding the right option for their loved ones. The Utah Parent Center has resources and information and knowledgeable Parent Consultants who are happy to chat with you about the various options.

Full Guardianship: A Family's Experience

There was not really any question in our minds that full guardianship was the most appropriate choice for our adult daughter, Elaine. She was diagnosed as having autism at age 2, and then diagnosed with bipolar disorder at age 12. In addition to those two neurological disorders, she also has a seizure disorder, metabolic issues, and significant intellectual disability. Thanks to amazing support staff and services throughout her life, she functions very well considering her many challenges. However, she will never be able to live independently, and she is not able to verbalize her long-term needs or preferences. We have had to make all of her medical and healthcare decisions, and oversee her care and daily supports. Without full guardianship, it might fall to her staff, support coordinator, or program managers to make important decisions about her well-being. When it comes to significant decisions about education, employment, healthcare, finances, and residence, we want to have the final say as we feel we know her best and will always have her best interests at the center of those decisions.



Limited Guardianship: A Parent Perspective

Our son, Gustavo, has many abilities. Even if he has difficulties choosing among options, with help, he is able to decide and state what he wants, how he wants it, and when he wants it. A very important reason for requesting partial guardianship is that, regardless of his intellectual disability, he is equipped with the skills to face life without needing to give someone else the power to decide what is best on his behalf in every area of his life. Gustavo does not drive, but he has learned to ride the Trax and bus system and is able to find his way home if he gets lost. He can eat by himself, walk, and run without any problems. He can do grocery shopping with guidance and advice. He just needs the additional support. He really struggles with money management, and that is where we help him a lot. Even then, given the options and an explanation about each, he can tell us what he prefers—we do not need to make the decisions for him, and we are very happy to have him keep as many rights as possible.

Supported Decision Making: A Family Choice

When we were deciding the best way to support our adult daughter, Kaitlyn, we considered many options. We wanted her to have the most autonomy over her life as was appropriate for her, and wanted her to have the option to make decisions that would set her up for success, but also allow her the dignity to fail in a safe and supportive environment. In considering her strengths and challenges, we decided to follow the concepts of supported decision making, by helping her understand the pros and cons of each decision, and allowing her to make decisions herself and experience the natural consequences that go along with those decisions. We have been so impressed by how thoughtful she is when considering her options, and have increased our capacity in supporting her in an effective way. We know there will be bumps in the road along the way, but are excited to see how she continues to push herself and expand her abilities, as we support her in making the decisions that shape her life.

Alternatives to Guardianship

Although not formally recognized as a legal alternative in Utah, Supported Decision Making is a formal support in many states. You can learn more about this tool on the national website for Supported Decision Making and see sample plans here: <http://www.supporteddecisionmaking.org/>



Other options for supporting individuals with disabilities can be found on the Utah Courts website here: <https://www.utcourts.gov/howto/family/gc/options.html>

To learn more about Power of Attorney options, and to download the form, you can look here:

https://www.utcourts.gov/howto/family/power_of_attorney_general/

What if....



There are often special circumstances that make the online forms found on the Utah Courts website confusing or inadequate for specific family situations.

Sometimes the forms can be adapted by adding information from other online forms, or if the situation is complex, you may simply need to consult an attorney and have special forms prepared.

The following pages contain general situations that we commonly encounter when consulting with families preparing to obtain guardianship. The answers given are based on the information available from the Utah Courts website and self-help center. Information may change or be updated from time to time. You can always check with your district court to determine what you will need to do to proceed.

Frequently Asked Questions

Question: Will getting guardianship of my adult child affect benefits like SSI, Medicaid, SNAP, or DSPD services?

Answer: Having a guardian does not make it harder or affect your child's ability to qualify for adult services. In fact, it should simplify the process as you will be able to complete and sign forms for them. They are still considered an adult in terms of qualifying for SSI, Medicaid, and other financial benefits.

Question: I am a single parent, and I want to have a co-guardian who is not my spouse. Can I still file the OCAP paperwork and pay the lower filing fees specified for parents?

Answer: In most cases, you will be able to pay the lower fees if you as the biological/adoptive parent are filing as the primary guardian. The co-guardian can be an adult sibling, an ex-spouse, a relationship partner, grandparent, or close relative. They should be able to tell the judge why they have the right to be named as a co-guardian.

Question: If I become the legal guardian of my adult child, will I be liable for his or her criminal actions, financial obligations, or misdeeds?

Answer: The individual under protection of a guardian can still take actions that might be dangerous, financially harmful, or even criminal. The guardian is responsible to do everything possible to prevent those things from happening by providing safeguards, instruction, and necessary supervision of the individual. However, things can still occur that are outside of the guardian's control. The guardian will not usually be held liable for actions that the individual takes.

Question: The judge says my child needs an attorney. I didn't think I would have to hire one and I can't really afford one. What are my options?

Answer: Under the statute, the disabled individual (defendant) is entitled to legal representation. While not every judge requires parents petitioning for guardianship to provide attorneys for the defendant, some do. You need to be prepared for that to be the case. If you do not wish to hire an attorney, or cannot afford to do so, you can request that an attorney be appointed through the Guardianship Signature Program. <https://www.utcourts.gov/gramp/gsp/> This process can take up to 60 days. If no one responds to the request, the judge can appoint a court visitor to visit the respondent and submit a report to the court responding to the need for guardianship. For more information about this process, visit the Utah Court website: <https://www.utcourts.gov/gramp/cvp/> Your other option is to find an attorney to represent your child at low or no cost (pro bono). <https://www.licensedlawyer.org/>

Question: What if we want to name adult siblings as co-guardians, or other adult friends or relatives as co-guardians, to serve as guardians when we can no longer be the guardians of our child?

Answer: You can add adult siblings in the initial hearing if you wish, by filling out "Petition to File for Guardianship" with their names and attaching it to the parents' petition. For ease of adding co-guardians who are not parents, you may wish to use the interview: "Guardianship of an Adult" which allows you to name various individuals as guardians. You can print out the forms you need from both interviews and combine them into one packet to submit to the court. Doing it at the same time you petition as parents has the advantage of getting it all done in one hearing, and with less expense. If siblings are added as co-guardians, be sure they know of any reporting requirements from the court. Parents as guardians are not required to submit annual reports to the court, but other guardians do have reporting requirements.

If you don't want to add them in the initial hearing, you can later file a "Motion to Add a Co-Guardian" and add them at a later date. That is not an OCAP form. Your district court clerk may be able to supply it. If not, you will need to contact an attorney. You will probably be required to pay the higher filing fee for petitioning for guardianship in this separate process.

You can also specify in your will who should take over as guardians upon your death. Those individuals will still have to file with the court to become the legal guardians, but the court will take into account your wishes as the previous guardian.

Question: What if my child doesn't want a guardian but we still feel strongly he needs one?

Answer: If your child can express his or her wishes, it is important that they have the opportunity to learn to live as independently as possible. If they need support to do so, consider less restrictive alternatives to guardianship, such as power of attorney, supported decision-making, or a limited guardianship. Learn about person-centered planning and see what supports you can find to help your child grow into the needed skills for adulthood. The Utah Parent Center provides training on Person Centered Planning and has the following printed guide that you might find helpful:
<https://bit.ly/planningmanual>



If you have tried and exhausted alternatives to guardianship, and have determined that is needed for the protection of your child, you can petition the court for guardianship. Your child is entitled to legal representation on his own behalf, and you will need to be able to provide evidence that guardianship is necessary. The judge will decide whether or not guardianship is warranted.

Terms and Definitions Related to Guardianship



Petitioner: Person(s) seeking guardianship authority for an incapacitated individual

Protected Person, Respondent or Defendant: The individual for whom you are seeking guardianship

Pro Se: Self representation in court, rather than being represented by an attorney

Pro Bono: Professional work done at no cost, providing services to those who cannot afford them

OCAP: Online Court Assistance Program that allows families to represent themselves when seeking guardianship in Utah.
utcourts.gov/ocap



Incapacity: To appoint a guardian, the protected person must be incapacitated. "Incapacity" means that an adult's ability to:

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

is so impaired 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.
(Utah Code Section 75-1-201)

Guardian Signature Program: A program under which attorneys volunteer to represent petitioners or defendants who need an attorney and do not have one. If needed, you can submit a Request to Appoint an Attorney and one can be requested, if the program is available in your area. The judge will wait 60 days for a volunteer attorney to respond before setting a hearing a date. If no one has responded within the 60 day time period, you can either find an attorney to represent the defendant, or the judge can send a "court visitor" to see that the rights of the defendant are being met.
<https://www.utcourts.gov/gramp/gsp/>

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