

What Guardianship Is

In Utah, a guardianship arrangement may be granted for the protection of unemancipated Minors who do not have a legal Guardian.

Guardianship is a relationship created by law in which a Guardian is given the legal authority to make decisions that manage and control the Minor's life. The purpose of guardianship is to ensure that decisions affecting the Minor's affairs will be made rationally and with the Minor's best interests in mind.

Utah law clearly distinguishes between Guardians, whose responsibility is mainly personal; and Conservators, whose responsibility is specifically financial. Nevertheless, in the absence of a legally appointed Conservator, a Guardian may also oversee the financial affairs and estate of a Minor. However, even though there is no statutory limit to the size of an estate that a Guardian may oversee, the Court will generally require that a Conservator also be appointed for an estate valued at over \$10,000. The same person who is appointed Guardian may also be appointed Conservator of the Minor's estate.

What are the Rights and Responsibilities of a Guardian of a Minor?

A Guardian of a Minor has the same authority and responsibility as a parent who has not been deprived of custody of a minor child, except that a Guardian is not financially liable to third parties for actions of the Minor in the same sense that a parent would be.

Although a Guardian is not legally obligated to provide for the Minor from the Guardian's own personal resources, a Guardian should be willing and able to provide reasonably adequate food, clothing, shelter, and supervision for the Minor. A Guardian submits personally to the jurisdiction of the Court in any proceeding relating to the Guardianship of a Minor and will be notified by the Court at the Guardian's mailing address.

The Guardian may be required by the Court to post a bond.

In particular, a Guardian has the following powers and duties:

- The Guardian must take reasonable care to manage and protect both the personal and real property of the Minor.
- The Guardian may receive money payable to the Minor's parent, custodian, or guardian under the terms of any statutory benefit, insurance system, contract, devise, trust, or conservatorship for the support of the Minor. Any sums received shall be applied to the Minor's current needs for support, care, and education. A Guardian must take care to conserve any excess income for the Minor's future needs. If a Conservator has been appointed, then any excess funds should be paid at least annually to the Conservator. No such monies will go toward compensation for the services of the Guardian unless so ordered by the Court or approved by a duly appointed Conservator who is not the Guardian.
- The Guardian may initiate proceedings to collect any debts owed to the Minor or compel payment by anyone who has a duty to support the Minor.
- The Guardian is empowered to facilitate the Minor's education and social activities, and to authorize medical or professional treatment or advice.

- The Guardian is not liable to the Minor for negligent acts of third parties that may result in an injury during an activity that would have been legally consented to by Parents (for example, a school field trip).
- The Guardian may consent to the marriage or adoption of the Minor; and may delegate Power of Attorney for the Minor for up to six months.
- The Guardian must report the conditions of the Minor and the Minor's estate which has been under the Guardians control upon petition of any person interested in the Minor's welfare and/or as ordered by the court.
- The Guardian has all powers and responsibilities necessary to act in the current and continuing best interests of the Minor except where the Court may have limited the authority by Order of Appointment and/or as expressed in the Letter of Guardianship of Minor.

How Is Guardianship of a Minor Requested?

To commence an action to create guardianship, any person interested in the Minor's welfare may petition the Court in the County in which the Minor resides or is physically present for an appointment of a qualified guardian.

Once the completed Petition for Appointment is filed with the District Court Clerk, a hearing will be set by the Court. All other required forms should be completed and filed prior to the hearing, or the hearing may need to be rescheduled.

Notice of the time and place of the impending hearing must be given at least ten days prior to the hearing to any living parent, the Minor (if over 14 years old), the local School District, and to any other interested persons listed on the Petition for Appointment. The Court Clerk will generally issue those notices as required by statute, but it is the responsibility of the Petitioner to provide the names and addresses of those interested parties to the Court and, if necessary, to assist in the notification as directed by the Court Clerk.

What Happens In Court?

At the hearing, all interested parties are invited to give input regarding the appointment of a Guardian. If there are any objections to the appointment, the hearing may be rescheduled for argument at a later date. If the Court determines at any time during the hearing that the Minor's interests are not or will not be adequately represented, the Court may appoint an attorney to represent the Minor.

The Court wants to be sure that the individual who is seeking guardianship is genuinely interested in the Minor's welfare, which includes the Minor's physical, mental, moral, and emotional health needs; and is fully capable of serving in that capacity. If the Minor is at least 14 years old, the Court will give considerable deference to a qualified individual whose nomination the Minor supports by affidavit.

After the hearing, the Court will appoint a Guardian. The appointed Guardian must provide the Court with a written Acceptance of Appointment within 30 days of the appointment date, or the appointment will be void. Upon acceptance of appointment, the Court will issue Letters of Guardianship to verify the Guardian's status as Guardian of the Minor and to list any specific limitations or responsibilities as such.

TERMINATION OF GUARDIANSHIP

Termination of guardianship does not affect the Guardian's liability for prior acts in the capacity of the obligation to account for the Minor's funds and assets during the term of Guardianship. An appointed Guardian's duty to the Minor terminates upon the occurrence of any one of the following four sets of circumstances:

- Death of either the Minor or the Guardian
- When the Minor reaches the age of 18 years old, is adopted, or is married.
- The Guardian submits a Resignation of Guardianship which is accepted by the court.
- The Court removes the Guardian for whatever reason. An action to remove a Guardian can be initiated by any person genuinely interested in the Minor's well being. In Deciding whether to remove a Guardian or terminate guardianship, the Court will follow the same procedures intended to safeguard the rights of the Minor that are used in considering the Petition for Appointment of Guardian.

To File a Guardianship petition, use the Online Court Assistance Program at <https://www.utcourts.gov/ocap/utah/guardianship/>