

GUARDIANSHIP OF ADULT CHILDREN WITH DISABILITIES — IN UTAH —

A COMPREHENSIVE GUIDE FOR PARENTS
PUBLISHED DECEMBER 2022



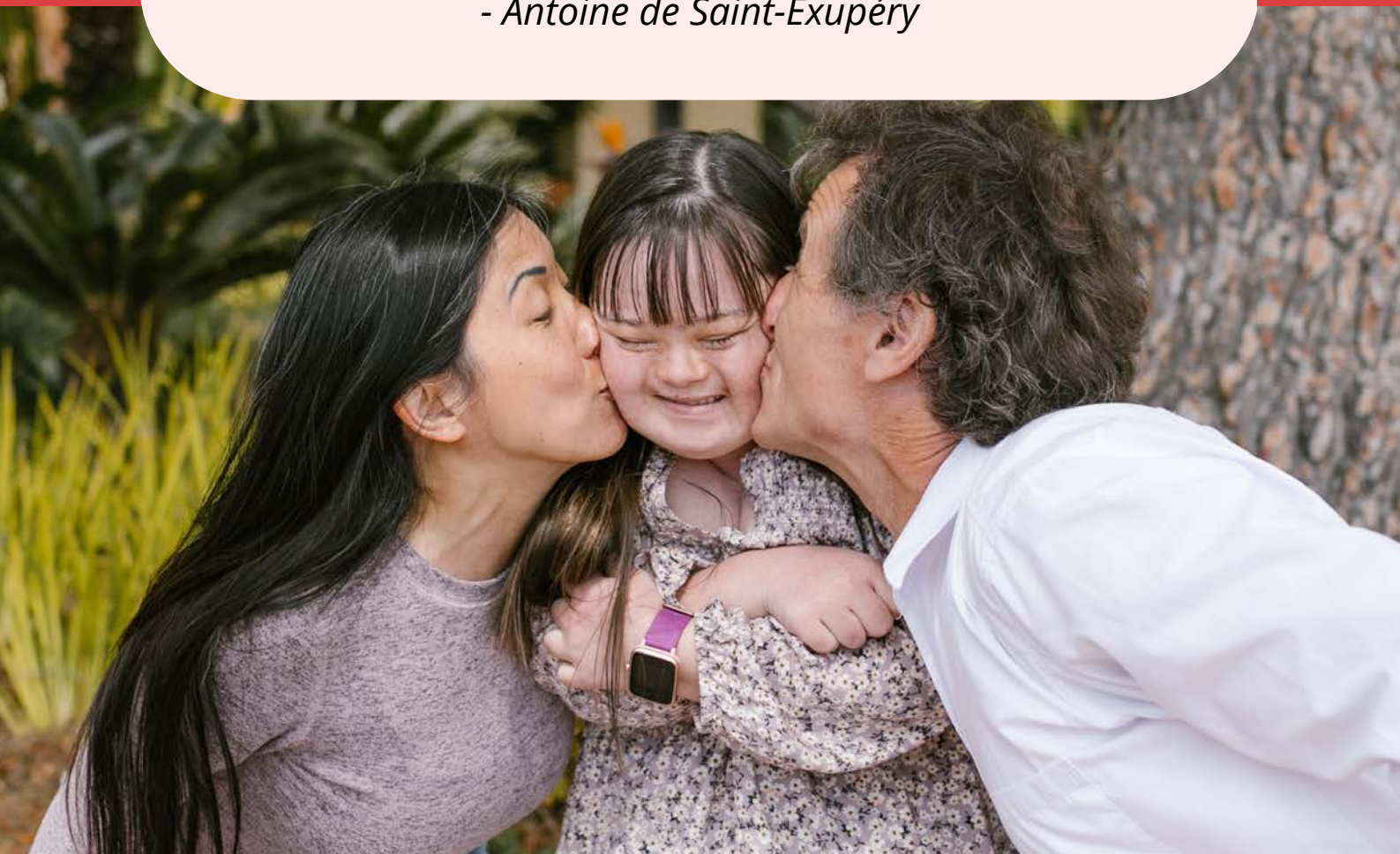
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Success doesn't just happen, it's planned for.
- Antoine de Saint-Exupéry



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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 those using this guide will want to defer to the most recent instructions available from the Utah Courts' website and the district court closest to them.

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 to compile 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.

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 an attorney who understands guardianship for individuals with disabilities.

INTRODUCTION

What is Guardianship?

At the age of 18, the state of Utah deems a person a legal adult, even if that person is impaired, either by a mental deficiency, physical illness, or disability and may not have the capacity to make or communicate responsible decisions for themselves. This means the person has the full legal authority to make their own decisions and others do not have the right to make decisions for them. This includes decisions about health care, education, finances, and all other aspects of life.

Many individuals with disabilities are able to make very good decisions for themselves, especially with support. However, some individuals can lack the ability to communicate and make responsible decisions for their medical care, shelter, safety, or basic care needs to name a few. For those individuals, guardianship may be necessary for responsible 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 reviewed and revised to fit their circumstances.

Advocates for adults with intellectual and developmental disabilities have worked hard to improve decision-making within this population. Legal processes, including guardianship, are now easier and less expensive. In Utah, a parent or caregiver of a biological or adopted youth is usually given preference to be a guardian. This guide can help you through the process to establish guardianship and hopefully answer many of your questions.

If you find you still have questions or need more guidance, please call the Utah Parent Center and ask for a consultation with one of our knowledgeable UPC Parent Consultants. They can be reached at 801-272-1051. Transition and guardianship information can also be found on our [website](https://www.utahparentcenter.org).



[utahparentcenter.org](https://www.utahparentcenter.org)

GUARDIANSHIP ALTERNATIVES



If an individual is able to make choices on their own, Supported Decision-Making (SDM) is one alternative to guardianship. Rather than a guardian making decisions for an individual with a disability, SDM allows the person with a disability to make his or her own decisions with support from their trusted team. SDM allows for changes as an individual's preferences/needs change. Even though Utah law does not currently recognize Supported Decision-Making as a legal, formal support option for adults with disabilities, using SDM as a tool to help the individual be independent is an option. It is important to evaluate all options and decide what is the best choice for the individual with the disability. If guardianship is the correct choice, SDM can be used in conjunction with guardianship. For more information on SDM, conservatorship, power of attorney, guardianship, and other tools to assist with planning for the future, please refer to the RED sections of the Choices Book and the Youth Workbook.



Choices Book

<https://bit.ly/UPCChoices>



Youth Workbook

<https://bit.ly/UPCTEEN>



Supported Decision Making

<http://www.supporteddecisionmaking.org/>

Additional Alternatives to Guardianship

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/

In addition, detailed information on all alternatives to guardianship and planning for the future are provided in the RED section of the Choices and Youth Workbooks.

RESOURCES

Utah Courts Website

The Utah Courts' website site contains a great deal of information including how to contact the district courts, how to open a case, how to prepare the legal documents yourself, and how to file guardianship documents with the court. There is extensive information about guardianship and conservatorship for individuals who are incapacitated.

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/youth/individual" throughout this booklet referring to the filial relationship between parent and child regardless of age.



www.utcourts.gov

Self-Help Center

Additionally, there is a "Self Help" section on the Utah Courts' website that includes information on guardianship. The Self-Help Center provides free legal help to people who do not have a lawyer. The Self-Help Center provides information to help you resolve your legal problems on your own if you cannot afford an attorney or if you choose not to hire one.

Assistance from the court's Self-Help Center can be found by emailing their staff at: selfhelp@utcourts.gov, texting 801-742-1898, or, calling (888) 683-0009. Use this QR code to access their website.



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

OCAP: Online Court Assistance Program

This is the official Utah Court website for help in preparing court documents if you don't have a lawyer available to help with that process.



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

Utah Statute

The state statute surrounding guardianship can be found here on the State Legislature's website. The statute along with the Utah Courts website and Self-Help Desk were used in creating this booklet.



<http://bit.ly/3fRti4K>

ADDITIONAL RESOURCES

Guardian Signature Program

A program under which attorneys volunteer to represent the person needing protection (respondent) who need an attorney and do not have the means to obtain one. If needed, you can submit a Request to Appoint an Attorney and one can be requested. The judge will wait 60 days for a volunteer attorney to respond before setting a hearing 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. Sliding fee scales can apply.



<https://www.utcourts.gov/gram/p/gsp/>

For more information about the Court Visitor Program use this link and QR code.

<https://bit.ly/3PEt6m4>



Use this link and QR code for help finding an attorney.

<https://bit.ly/3uN7r2E>



You can visit the law library and utilize their public computer to fill out paperwork on the Utah Courts' website (OCAP website). However, they are not attorneys and are unable to give legal advice.

Utah State Law Library

450 S. State Street
Salt Lake City, UT 84111
Phone -801-238-7990
Open hours Monday - Friday
9:00 am - 4:30 pm



Frequently Used Terms and Definitions Related to Guardianship

Petitioner:

Person(s) seeking guardianship authority for an alleged incapacitated individual

Protected Person, Respondent, or Person Needing Protection:

The individual for whom you are seeking guardianship

Pro Se or Self Represented:

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

Types of Guardianship

Full or Plenary Guardianship*

Covers all areas of decision making including financial, medical, residential, education or training, healthcare/nutrition, personal care, and estate. **Guardianship can be modified at any time.** 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 up to 30 days. On request by an interested person **after** the appointment of an emergency guardian, the court shall hold a guardianship hearing within 14 days. The court may appoint a temporary guardian at that time to replace the emergency guardian. The temporary guardian is responsible for the protected person's care and custody. A temporary guardian can then apply to be a permanent guardian through the OCAP website. Like all other situations, it can be either limited or full, depending on need. There are no court forms for requesting an emergency or temporary guardian. If you need help with an emergency guardianship, you can contact the Office of Public Guardian or see the Utah Courts page on finding legal help.

*There are multiple terms for guardianship. This document will address full and limited in more detail. Guardianship can be revisited at any time.

For guardianship situations involving tribal or indigenous people, tribal laws may take precedence. The following link can provide you with more information.



<http://bit.ly/3TYcNlv>

HOW DO I KNOW IF MY YOUTH NEEDS A GUARDIAN?

Asking the following questions can help you determine if guardianship may be the best avenue for supporting your young adult. Or if an alternative to guardianship, like supported decision-making, or power of attorney in a certain area, is a better option.

- 1 Does the individual have the knowledge, skills, and abilities to have a job or attend school? Are there any supports available to them?
- 2 Can the individual handle an emergency at home? Can they call 911 and communicate their needs? If required, can they leave the home independently? Can they do these things with some support?
- 3 Can the individual speak for themselves in public situations and appointments? Can they do this with support?
- 4 Can the individual make daily decisions and choices for basic needs, (i.e. getting dressed, making and eating food, personal hygiene, and laundry)? Can they do these things with some support?
- 5 Can the individual drive a car? Can they use public transportation? Are there others who can offer support in transportation?
- 6 Does the individual know which bills to pay? How much? When? Can they pay them? Can they manage their money and contracts, and resist fraud? Can they do this with support?
- 7 Does the individual know which prescribed and OTC medicine to buy? Can they take their medicine on time and in the proper amount? Can they make and attend a doctor's appointment? Can they do these things with some support?
- 8 Can the individual understand what a dangerous or vulnerable situation is and do they know how to navigate the situation?

What Constitutes Incapacity?

Guardianship may be granted by a judge after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care :

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

Incapacity is a judicial determination and is measured by the person's functional limitations. (Utah Code Section 75-1-201)

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 of an incapacitated adult. Some areas of well-being include residence, health care, nutrition, education, and personal care. The individual who is incapacitated is called a "protected person."

A **conservator** is a person appointed by the court to make decisions about a protected person's estate (assets, property, finances). If a person is unable to manage their "estate", a conservator may be needed; however, a guardian can also manage the "estate" if the guardianship order states they have authority to do so.
www.utcourts.gov/howto/family/gc/options.html

If a protected person only needs a conservator because they are unable to manage their estate, that is an option. Guardianship is not required.

If guardianship is granted and conservatorship becomes necessary due to estate value, a conservatorship can be set up at a later time, separate from guardianship. It does not have to be completed at the same time.

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

In other states, a conservatorship is equal to guardianship. In Utah, they are separate but can be used together if necessary. In Utah guardianship is usually the method used to support individuals with disabilities who require legal protections and support with decision-making. However, guardianship is the most restrictive option for support and should be used after alternatives are considered.

If a guardian and protected person have moved to Utah from another state, the guardian is still required to file for guardianship in Utah even though they are the appointed conservator/guardian in another state. Follow the checklist in this book to file for guardianship in Utah. Depending upon the guidelines in the state you moved from, you may be required to file paperwork in that state notifying them of your relocation.

For questions, please contact the Utah Court's Self-Help Center. They can be reached at 888-683-0009 or email them at selfhelp@utcourts.gov



WILL I NEED TO HIRE AN ATTORNEY TO OBTAIN GUARDIANSHIP?

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 using the Online Court Assistance Program (OCAP) by filling out an "interview" with important information about your case. In some cases, your child may need their own attorney. Their attorney must be someone other than an attorney you get to represent you. Whether or not the judge requires your child to have an attorney present depends on individual circumstances. You may be informed as you submit the paperwork whether or not you are required to have an attorney present for the individual with disabilities.

Many parents choose to go through this process without hiring an attorney. However, you may need to consult with an attorney if you are in one or more of the following circumstances:

- You are not the biological or adoptive parents of the individual for whom you are requesting guardianship
- Someone might oppose the request for guardianship, including the individual for whom you are requesting guardianship
- Your child has significant assets or property in their name, totaling more than \$20,000
- 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. Consult with an attorney to see if an alternative to guardianship is a better option.

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.



<https://www.licensedlawyer.org>



<https://www.utahlegalservices.org>

WILL I NEED TO HIRE AN ATTORNEY FOR MY YOUTH?



According to Utah statute, legal representation (hiring an attorney) for your child who you are seeking guardianship of **may not** be required if the **ALL** of 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 (see resources section of this book for information on the program.)
- The court is satisfied that legal counsel is not necessary in order to protect the interests of the individual with disabilities, 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).
- If an attorney is needed for a youth, look at the resource page for the Guardianship Signature Program.

AUTHORITY AND RESPONSIBILITIES OF A GUARDIAN



Utah law recognizes that individuals should have as much authority and control over their lives 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.

Under Utah statute, limited guardianship is preferred if it is possible. This allows the guardianship to be tailored to the protected person's needs and abilities (the person you are seeking guardianship of). This individual will retain all rights not defined under the limited guardianship, so any limits need to be clearly stated in the guardianship order.

As the guardian of an individual with limited 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. What you are responsible for will be outlined in the order of guardianship and reflected in the letter of guardianship which shows the guardian's authority to make decisions for the protected person.

Regardless of the type of guardianship obtained, guardianship should be adequate for the individual's care and protection. The guardian should also consider the individual's values, stated preferences, and expressed desires when making decisions.

More information and details can be found on the court's website found here:



<https://bit.ly/3RRyWSa>



GUARDIAN REPORTING REQUIREMENTS

What are my reporting requirements?

Your reporting requirements depend on whether you are the protected person's biological or adoptive parent and their guardian or conservator (including co-guardians and co-conservators).

If you are the biological or adoptive parent of the protected person or a co-guardian **with** the parent of the protected person, you **do not** have to file **annual status reports** or **financial accountings**. You have all of the authority and responsibilities of a Guardian and all of the authority and responsibilities of a Conservator, but you do not have to report to the court unless ordered by the judge.

Independent court-appointed guardians and conservators who are **NOT** biological or adoptive caregivers **must** file an **initial inventory, annual status reports, and financial accountings**.

To file your reports, take the following steps:

- Go to the Utah Court website link (QR posted below)
- Click on the **"Self Help"** tab at the top
- Choose **Guardianship and Conservatorship**
- Click on the **"requirements of guardian or conservator"**
- Select **"1. Reports required from the Guardian and Conservator"**. On this page, you will find the requirements necessary for each report
- In the left-hand shaded box, scroll to the bottom where it says **"Forms"** OR scroll to the bottom of the entire page. Click on the links to each report. Reports can be completed using the OCAP website, or printed, completed, and submitted.
- File the paperwork with the district court where guardianship was obtained.
- After filing your reports with the court, you must serve a copy, along with a "Notice of Right to Object" to all people involved in the guardianship



There will be a fee for filing with the courts depending on the amount of the protected person's estate



<http://bit.ly/3AMWh15>

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's website, and you are able to select the areas you feel are necessary. 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, and care
- 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 petition 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.



RESPECTING THE PROTECTED PERSON'S RIGHTS

The extent to which the protected person can make these decisions depends on their individual needs. 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:

- 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>



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; sending a letter or an 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.

However, you do need the court's permission to transfer the guardianship and/or conservatorship to another state. More detailed information on this can be found on the Utah Courts' website.

If you are moving to Utah from another state, you will need to follow the previous State's guardianship instructions of transfer and also petition for the acceptance of guardianship in this state following the guidelines found on the Utah Courts' website listed below.



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

PRO SE PROCESS CHECKLIST

- You can begin the guardianship paperwork online once your child turns 17.5 years old. You may also request a hearing date prior to their 18th birthday. It's possible for the guardianship to become effective on their 18th birthday.
- Gather needed personal information and documents, including social security numbers, driver's license numbers, and addresses of the person applying for guardianship and for the protected person.
- Go to the following website: www.utcourts.gov. Click on "Representing yourself" midway down the page. Scroll down and click the OCAP (find out more) tab. Create an account.
- From the list of "Start New Interview" options, select "Guardianship of an Adult Child" under the tab heading "guardianship and conservatorship" if you are the biological or adoptive parent. If you are a sibling or some other caretaker and seeking guardianship, select the "Guardianship of an Adult" interview. Do not select the conservatorship interview for guardianship. The Conservator interview is used with regard to property. (See the section in this book on Conservatorship).
- 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. **NOTE:** Read through instructions carefully on needing an attorney for the child. You will need an attorney if the statements are NOT true.
- 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.
- Obtain a report from a physician or psychologist on their letterhead, that indicates the specific description of the diagnosis and description of the incapacitated person's functional impairments. List what tasks they can do on their own or with assistance. What medications are taken and description of what they are used for. Describe the prognosis for improvement and recommendations for appropriate rehabilitation. The report should state the need for guardianship and has to be dated within the 6 months prior to filing for guardianship.

THE PROCESS CONTINUED...

- Contact the district court clerk, that the protected person 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. You can also save your downloaded paperwork to a PDF file and email them to the court. For information and the email address of your court, go to:
<https://www.utcourts.gov/howto/filing/email/>
- There is a small fee for using the Utah Courts' 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 that is on the OCAP website.
- You will be asked to "serve" your youth, 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 a significant interest in the action. To serve papers, have a third party (an adult who is not the person seeking guardianship) give the youth the "notice of hearing" paper and have it explained to the youth what the paper means. A third party can be a grandparent, neighbor, or another trusted adult. Make note of the date and time the youth is served. 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 additional copies.

AFTER GUARDIANSHIP IS COMPLETE:



As soon as possible after guardianship is awarded, guardians should notify the people and entities you will be working with and interested persons, such as:

- The protected person's spouse, children, parents, and other family members who were involved in the case;
- The protected person's employer;
- The administrator or manager of the protected person's residential facility;
- The protected person's healthcare providers and caregivers;
- The protected person's education and training providers;
- Banks, savings and loans, credit unions, and other financial institutions where the protected person has savings or checking accounts or credit or debit cards;
- Stockbrokers and financial advisers;
- Companies in which the protected person owns stock;
- Insurance agents;
- Government agencies, such as Social Security Administration, Veterans Administration, and Workers Compensation Fund, from which the protected person receives payments;
- Pension plan administrators;
- People who owe the protected person money or to whom the protected person owes money;
- The county recorder in every county in which the protected person owns land;
- The post office, if you want to change the protected person's mail address; and
- Anyone involved in a lawsuit by or against the protected person.
- Any person the court has named in the order of appointment whom the guardian must notify of any significant health care or treatment received by the protected person

To notify individuals that you are a guardian, you should:

- **Inform the person or entity you have been appointed**
- **Give each a copy of your letter of guardianship and an address, email address, and telephone number at which you can be reached**
- **Ask the person or entity whether they recognize your authority or need something else**

EXAMPLES OF GUARDIANSHIP LIVED EXPERIENCE

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 your youth needs more support than originally thought, or less support as they mature and gain 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 with knowledgeable Parent Consultants who are happy to talk 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 these two neurological disorders, she also has a seizure disorder, metabolic issues, and a 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, as her parents 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 Trax and the 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 grocery shop with guidance and advice. He just needs 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. We 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. We help Kaitlyn understand the pros and cons of each decision, and then allow 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. We have increased our capacity in supporting her in an effective way. We know there will be bumps in the road, but we 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.



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 the UPC commonly encounters 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.

Any questions you can't find answers to in this booklet, please reach out to the Utah Court's Self-Help Desk. Please refer to the resource page at the beginning of the book for contact information for the Self-Help Desk.



FREQUENTLY ASKED QUESTIONS

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

A: 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 because 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.

Q: What can I do if I go on vacation without my child, or I end up in the hospital for an extended period of time and am not available as a guardian?

A: If for some reason — perhaps your illness or absence — you are temporarily unable to make and communicate decisions for the protected person, you may prepare a power of attorney for someone to make the decisions on your behalf. The power of attorney may last for up to six months, but no longer. For more information and forms, see Utah Courts' website on Delegating a Parent's or Guardian's Powers to an Attorney-in-Fact.

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

A: 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.

Q: 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?

A: Under the statute, the individual with disabilities is entitled to legal representation. While not every judge requires parents petitioning for guardianship to provide attorneys for the protected person, some do. You need to be prepared if that is the case. If you do not wish to hire an attorney, or cannot afford to do so, you can request an attorney be appointed through the Guardianship Signature Program. 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. Another option is to find an attorney to represent your child at low or no cost (pro bono). Refer to the resources page to find links for the Guardianship Signature Program, Court Visitor Program, finding an attorney, and access to the Utah State Library.

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

A: After filling out the interview template "Guardianship of an Adult Child" you can add adult siblings in the initial hearing if you wish, by filling out a "Petition to File for Guardianship" with their names and attaching it to the biological or adoptive parents' petition. (This form is found on the OCAP website). Or for ease of adding co-guardians who are not the biological or adoptive parents, you may wish to use the interview template: "Guardianship of an Adult" which allows you to name various individuals as guardians. You can then print out the forms you need from both interviews and combine them into one packet to submit to the court. The higher fee may not be implemented, but be prepared if that is the case. 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 adult siblings are added as co-guardians, be sure that they are aware of any reporting requirements from the court. Parents as guardians are not required to submit annual reports to the court. Adult siblings do not need to file the annual reports as long as a parent is also a guardian, but they still owe the protected person the duty to meet their needs for care, comfort, and maintenance and to budget, invest, and use the protected person's estate to meet the protected person's needs over their expected life.

If you don't want to add them in the initial hearing, you can do this later by filing a "Motion to Add a Co-Guardian" when you are ready to add them as co-guardian. This 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 nominate a guardian in your will to take over as guardian upon your death. Those individuals will still have to file with the court to become legal guardians within a certain period of time (please check with your district court on that timeframe). The court will take into account your wishes as the previous guardian.

Q: What happens when I want to modify the guardianship? Can I take a full guardianship and change it to temporary? Can I remove a guardian?

A: You can modify guardianship at any time. You will need to file a "motion" to do so. Anyone interested in the welfare of the protected person, including a family member, a guardian of the protected person, or the protected person themselves (if they are 14 years of age or older) can ask the court to:

- review how the guardian or conservator is managing their responsibilities
- terminate (end) the guardianship or conservatorship,
- remove the guardian or conservator (without ending the guardianship or conservatorship).

Refer to <https://www.utcourts.gov/en/self-help/case-categories/gc/motion.html>

Q: **As the biological parents of our protected child, we are seeking guardianship. However, we also want to add our child's older brother and sister as guardians so that guardianship will be in place when we pass away. Are there pros and cons to having multiple guardians?**

A: Yes, there are pros and cons to having multiple guardians for a protected person. While it is comforting to know there are multiple people helping to navigate caring for the protected person, challenges also occur. Who is going to make decisions? Who does the protected person go to for their needs? How are disputes between guardians resolved? Will both guardians be available to represent the protected person when needed? If multiple guardians are in place, all guardians must remember to act in the protected person's best interests. Having multiple guardians can make caring for the protected person complicated.

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

A: No. OCAP will not work in this situation. The OCAP Guardianship of an Adult Child Interview only works for one or two parents asking for guardianship, not a non-parent co-guardian. However, if the Guardianship of an Adult Interview is used, it will allow multiple co-guardians. The guardians do not have to be the parent. The Adult interview gives a coversheet for a \$375 filing fee and does not include the request to waive an attorney for the respondent (a parent petitioner can do this in some situations).

The Adult Interview form is set up for one guardian. You will have to print more forms to add additional guardians. Those forms are general and not set up specifically for a parent petitioner. A person could try to adapt either set of interviews but may want the advice of an attorney. Or, they could pay an attorney to draft the necessary forms. At this time, we do not know if the court would allow the lower filing fee for a non-parent. It may depend on the court. As far as whether or not an attorney is required for the youth, that is up to the judge. See:
<https://www.utcourts.gov/howto/family/gc/guardianship/#lawyer>.

Q: What if my youth doesn't want a guardian but I feel strongly they need one?

A: If your youth can express their wishes, it is important they have the opportunity to live as independently as possible. If they need support to do so, the parent and youth may want to consider options that might be a good fit for the situation. For example, consider less restrictive alternatives to guardianship such as power of attorney, supported decision-making, or limited guardianship. Learn about Person-Centered Planning and see what supports are available to help your youth develop the skills needed to grow into adulthood. The Utah Parent Center provides training on Person-Centered Planning on their website.

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

Any person served with notice of a guardianship petition may object, including the respondent (adult youth). The court takes into consideration what the respondent has to say. Whether or not a guardianship is granted depends on if the court is satisfied that the respondent is incapacitated and the appointment is necessary or desirable as a means of providing continuing care and supervision of the respondent.



Q: Does my child need to be present in court

A: Utah law requires that the protected person must attend the guardianship hearing. Under extremely serious and limited circumstances the individual may not be able to attend the hearing. The individual may be excused from attending the hearing if there is clear and convincing evidence from a physician's or court visitor's report that:

1. The individual has fourth-stage Alzheimer's disease. (Physician's Report)
2. The individual has extended comatose. (Physician's Report)
3. The individual has an intellectual disability with an IQ score under 20 to 25. (Physician's Report)
4. There are other extremely serious and limited circumstances that prevent The individual from attending the hearing. (Court Visitor's Report)

Q: Will the judge ask my child to speak?

A: It depends on the judge. The judge might only ask general questions. There is information on what happens at the hearing at <https://www.utcourts.gov/howto/family/gc/guardianship/#hearing>.

NOTICES AND ACKNOWLEDGEMENTS

The development and update of information in this resource book have been completed with funding from multiple state and federal funding sources over time. The contents of this resource book were developed by Transition University (TU), with input from TU's Interagency Workgroup and with funding from the following sources:

- A grant from the US Department of Education, #H328M200028, and funding from the Utah State Board of Education. However, the contents do not necessarily represent the policy of the US Department of Education nor the Utah State Board of Education, and you should not assume endorsement by the Federal Government or the State of Utah. The information is in the public domain unless otherwise indicated and may be duplicated with proper credit to the Utah Parent Center as the source.
- A grant by the Health Resources and Services Administration (HRSA) of the U.S. Dept. of Health and Human Services (DHHS) as part of an award to Utah Family Voices Family to Family Information Center, a project of the Utah Parent Center, Grant Award # H84MC07996. The contents do not necessarily reflect the official views of, nor an endorsement by HRSA, HHS, or the U.S. Government.
- This work is supported by the Utah Developmental Disabilities Council, grant number 2101UTSCDD-02, from the U.S. Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$632,214.00 with 100 percent funding by ACL/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACL/HHS, or the U.S. Government.
- In addition, private grants funded through the Sorenson Legacy, Williamson Family, and Miller Family Foundations and a corporate grant from doTerra supported this work.

Credit has been given where necessary to other sources where information was taken. If no credit is given to a specific piece of information, it was developed by the Utah Parent Center and is already contained within our resources. Any information used in this publication should be given proper credit as to sourcing.

This information has been independently reviewed by an attorney licensed in the state of Utah. Although the content has information provided by the Utah Courts and cites Utah regulations, the information contained in this publication should not be interpreted as legal advice. Every effort is made to provide accurate and complete information. All consumers are responsible to investigate further and make individual informed decisions for themselves.



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