



Utah Parent Center
Special needs, extraordinary potential

Considering Guardianship

Utah Parent Center

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Eighteen years may seem like a young age, but in the eyes of the law, it means a person is an independent adult. Being deemed an adult means a person can do such things as vote, sign contracts, or consent to surgery without anyone else's permission. That's true even for teens with disabilities who might not be able to take care of themselves or manage key areas of life, such as employment, housing, nutrition, safety, or medical care.

If your teen is not able to make or communicate reasonable personal decisions or is unable to manage essential personal needs, you may want to consider the need for a guardianship. This legal tool grants you or another designated person the legal authority to make decisions for your adult child. Guardianship cases can only be heard and determined by the court once an individual has reached the age of majority, which is age 18. A good time to start on guardianship is two to three months before your child's 18th birthday. Developing guardianship papers by your child's 18th birthday can help ensure a smooth transition from childhood to adulthood. Considering whether a guardianship is appropriate for your family is an important part of your overall planning for your child's future.

How a guardianship can help

"A guardianship focuses on a person's well-being—and their vulnerabilities," explains Minneapolis attorney Bob Gunderson. "Having one in place by the time your child is 18 helps you manage that transition when many changes are occurring. Your child may be leaving school and going to a vocational or residential setting. They'll be leaving the pediatric clinic where everyone knows them and facing a different set of players in the adult medicine clinic. If you don't have a guardianship in place and your child is not able to make appropriate decisions, there's no one to give direction. At age 18 the child is considered an adult; they are emancipated and receive full adult rights. As a result, you may be shut out and your young adult could be more vulnerable," he says. "I always tell moms and dads, this guardianship does not change your relationship with your child. What it changes is your relationship with the outside world," he adds.

Guardianship is a court process. The State of Utah allows for two types of guardianship. These include a plenary (full) or limited guardianship. A Plenary guardianship transfers all rights from a ward to a guardian. Limited guardianship means that a guardian has decision-making authority in limited areas in a ward's life. Judges are more open to limited guardianship because there is the feeling that it maintains as many of the wards rights as possible. With court approval, a guardian may have power in up to five areas: Medical, Habilitative (training and treatment), Education, Residential, and Financial.

Establishing a guardianship has significant implications for your adult child.

On one hand, it puts protections in place so your son or daughter can live life more safely, with as much self-determination as possible; on the other hand, it limits civil rights.

Choosing a guardian

If you do opt for a guardianship, you will want to think about whom should assume that duty. In many families, parents take on the role for as long as they are able. When parents die or can no longer do the job, someone else must be named. That person might be a sibling, relative, or trusted friend. You may even want to select co-guardians, such as a parent and a sibling, to share the responsibility.

There is no exact formula to guide you as you choose an appropriate guardian. You may, however, find it helpful to consider the following factors:

Age. If the prospective guardian is close in age to your adult child, he or she may be able to serve for a lifetime. If you choose someone who is significantly older, such as a grandparent, your adult child may need a contingent guardian.

Relationship with your child. A guardian makes important personal decisions that will have a significant impact on your adult child. You will want to choose someone who has a loving, respectful relationship with your child and will make decisions that support his or her values, desires, and independence.

Willingness to serve. Acting as a guardian is a big commitment.

Whoever assumes the role should do so willingly and not feel pressured into it.

Proximity. Living nearby will help the guardian to pay proper attention to important issues and maintain a close relationship with your adult child.

Skills. A guardian should be ethical, able to communicate effectively, have good organizational skills, and feel comfortable dealing with the court and other such agencies.

Choosing to have a guardianship of your child is a big decision, but it still has some flexibility. "It does not have to be forever," Gunderson says, noting that if your child becomes able to manage his or her affairs, the court can end the guardianship. Keep in mind, too, that the court reviews the arrangement each year. The scope of the guardianship can be renegotiated or a different guardian can be chosen.

If you are considering guardianship for your adult child, you no doubt will have many questions. Many factors will weigh into your decision. Every situation is unique, so it is advisable, although not required. To begin, call the Utah Parent Center or Guardianship Associates of Utah by consulting at least six to eight weeks before your child's 18th birthday.

Guardianship Associates of Utah

Website: <http://guardianshiputah.org>

Phone: 801-533-0203

Utah Parent Center

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