



Transition University



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Basics of Guardianship and Alternatives

What Alternatives are there for Guardianship?

There are ways to support a person that range from informal supports, supportive decision making, signing legal documents that allow oversight in particular areas of need and partial or full guardianship. 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.

It is good to explore all of the options with the individual needing support and determine what will work best for them, while ensuring they have a say in the decisions made as possible.

What is Supported decision making (SDM)?

Supported decision making is way to achieve goals by working with a team of trusted supporters in order to make decisions about the future. It should be directed by the individual (self advocate) needing support as much as possible. By using friends, family members and professionals, the individual can better understand the situations and choices they might face when making both simple and hard decisions. It promotes the ability for the self-advocate to be self-determined, have control over their life decisions and empower them to be more self-sufficient and independent.

More information and a guide can be located here:

<https://utahparentcenter.org/wp-content/uploads/2018/04/Support-decision-making-Guide-revised-2018.pdf>

Advance Health Care Directives

Oral and written instructions about future medical care should the individual become unable to make decisions (for example, unconscious or too ill to communicate). Each State regulates the use of advance directives differently. A living will is one type of advance directive. It takes effect when the patient is terminally ill. An advanced health care directive can be part of a living will.

Health Care Power of Attorney

A health care power of attorney lists who is assigned to make health care related decisions on an individual's behalf. The document includes the agent's powers and limitations, guidance on the preferences and wishes of the individual (including end-of-life care), and when the document will become effective.

Utah Declaration for Mental Health Treatments

This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (Not to exceed 17 days) admission to a treatment facility, convulsive treatment and outpatient services.

Hippa Release Form

An authorization form a medical provider uses to get a patient's permission to release their health or medical data to another person, provider, or organization.

Financial Alternatives

Special Needs Trusts

Trusts are legal arrangements between an individual and another person (or institution) called a "trustee." The trustee manages the adult's assets, including their money and property. Be sure to ask lawyer how many special needs trusts they have done. It should be written in third person. When written in 3rd person any money that is left over will go to a beneficiary.

Fiduciary

A fiduciary is a court appointed person who manages another individual's property and/or money. This alternative can be in the form of a personal representative, guardian, conservator, or trustee.

Representative Payee

A representative payee is for Social Security Income. It allows another person or agency to manage another person's income. This is less restrictive than guardianship. The payee will need to keep good records in case there is an audit.

Joint Bank Account or Ownership of Property

Joint ownership occurs when two or more people own a property jointly. It can be beneficial to manage property of an incapacitated person. Joint ownership can be used for property management, bank accounts, automobiles, stocks and bonds, or a home. Joint banking accounts put both the protected person and another selected person on the same bank account, both people have access to manage money, bills, and payments.

Durable Power of Attorney

A financial power of attorney is a document designating another person to manage and assist the individual with finances. "Springing" power of attorney only goes into effect when individual no longer able to manage finances or becomes incapacitated. A "durable" power of attorney becomes effective immediately upon signing the document. In most situations, a durable power of attorney is preferred.

Automated Electronic Banking

Direct deposits, electronic payments and/or billing can be set up through the individual's bank. Electronic payments record the exchange of funds online, this makes managing money easier. Automating bills may be easier for managing finances and can help ensure an individual will pay for necessities such as rent.

Conservatorship

Conservatorship must be granted by a judge. Conservators are only granted the authority to make decisions and manage an individual's finances and properties. A conservator cannot make personal decisions, or decisions relating to any other aspect of life, for the individual.

What is Guardianship?

At age 18 a person with special needs has the same legal rights as every other person. If the person is not able to understand their rights due to a disability, a judge can appoint a guardian to help them with legal decisions. You can have up to three co-guardians. It may be a good idea to have at least two people listed as guardians.

Guardianship is process finalized in court. 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. This process can restrict a person's ability to vote and marry.

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.

The Utah Courts website can give you all the information on what it means to be a guardian and what the responsibilities of a guardian are. Most judges will ask questions to ensure that the guardian understands their responsibilities as a guardian.

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

There are multiple ways to obtain guardianship for your adult child.

Hiring an Attorney

The proposed guardian will need to hire an attorney for the individual that they are seeking to be the guardian of (in most cases, this is a parent and their child). This ensures that the individual's best interest is protected and represented throughout the guardianship process.

You can also hire a second attorney to help you prepare the guardianship paperwork and file with the courts for you. The same attorney cannot represent both parties.

Information for the Guardianship Signature Program

This is the low cost help for families through the court. To request a lawyer under this program you will need to complete a Request to Appoint an Attorney to Represent the Respondent and an Order, both forms found in the forms section on the Utah Courts website. There is also a checklist that will go through that process as well.

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

Other Resources

You can also do the paperwork, file and represent yourself. That is called Pro-Se.

If you are unable to afford an attorney, information about free or low cost legal assistance is available at: <http://www.utcourts.gov/howto/legalassist/>.

The Utah State Bar's Modest Means Lawyer Referral Program provides legal help at discounted rates for people whose income is too high to qualify for free legal services.

Utah Legal Services, Inc. Provides free legal services. Hours 9 a.m. to 2 p.m. Monday through Friday. For information or to apply for services:

- (1) Internet: <http://www.utahlegalservices.org>
- (2) By phone: 1-800-662-4245 toll free outside of Salt Lake County.
- (3) By phone: 801-328-8891 within Salt Lake County.

Legal Aid Society of Salt Lake County provides free and low cost legal services. For information or to apply for services:

- (1) Internet: <http://www.legalaidsocietyofsaltlake.org>

(2) By phone: 801-328-8849 x 3107

(3) Protective Orders only, in person: Room W17, Matheson Courthouse, 450 South State Street, Salt Lake City, Utah 84114

Self-Help Center of the Utah State Courts provides free information if you do not have an attorney.

(1) Internet contact information: <http://www.utcourts.gov/selfhelp/contact>.

(2) By phone: 888-683-0009

(3) By email: selfhelp@utcourts.gov

(4) By text: 801-SHC-1TXT (801-742-1898)

Filing Pro-Se

If you choose to file and represent yourself there are a few ways to obtain the paperwork

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

This link below is the easier way but it does cost an extra \$20 at the time you file to do it this way. The OCAP system will generate the forms for you based on the information you provide. It will also let you know how much it will cost to file the papers as well.

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

If you need help filing out these forms you can get help in your county by clicking on the link below:

<https://www.utcourts.gov/howto/legalclinics/>

Other forms needed to file

A Doctor's Letter: This letter should be written by an MD, DO or PhD. The court will also accept letters from a LCSW and even a Nurse Practitioner. The letter needs to be current within the past 12 months. The letter should provide a statement of diagnosis for the protected person. The letter also needs to provide a statement of need for guardianship. This letter needs to be on the doctor's letterhead and it needs to have an original signature. This letter is MANDATORY.

Psychological Evaluation: If the protected person is in the public school system or was in the public school system then there is a psychological evaluation or summary in their school file. You can request a copy from the school. You can also use evaluations that were completed when the original diagnosis was determined. The court likes to see a psychological evaluation, but if you don't have one then you don't need to pay a lot of money to get one. You can file your case with just a doctor letter.

Helpful words to know

Protected person – the person you are seeking guardianship of.
Respondent – the protected person that you will be seeking guardianship for.
Petitioner – the person/s seeking to obtain guardianship over an individual.
Pro Se – representing yourself in court rather than hiring an attorney.

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