



TRANSITION
UNIVERSITY

Guardianship Step By Step Process

1. **Eligibility.** Obtain a medical doctor's letter or psychological exam stating that guardianship is warranted. Reasons why a parent might seek guardianship of their adult child might include the following:
 - a. Individual needs high amount of supervision for personal safety.*
 - b. Individual does not have medical decision-making capacity.*
 - c. Individual needs assistance with financial matters.*
 - d. Individual needs assistance with medications and other health matters.*
 - e. Individual needs assistance with daily care, such as hygiene, dressing, shopping, cleaning, cooking, meal preparation, etc.*
 - f. Individual is severely limited in ability to communicate personal needs and wishes, especially in emergency situations.
 - g. Individual is likely to need care for the duration of their lifetime.

*Even if the guardian is not performing all these tasks for the individual, oversight of ensuring these are taken care of properly and that adequate care is taken of the individual will rest with the guardian.

2. **Attorneys.** Once you have determined that guardianship is necessary, make the decision whether you are comfortable representing yourself at the guardianship hearing, or whether you want to hire an attorney to represent you. Many parents find they are able to go through this process without the expense of hiring an attorney, but some find it overwhelming and emotional and prefer to hire a representative. If you find that representing yourself is causing you to delay the process, you might want to consider hiring an attorney.

Your child will not need an attorney if **all** of the following conditions are met:

Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:

- (i) the person is the biological or adopted child of the petitioner;
- (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
- (iii) the person appears in court with the petitioner;
- (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;

- (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);
- (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
- (vii) the court appoints a visitor under Subsection (4).

If your child does not meet all those conditions, you will need to hire an attorney, or have one appointed, to represent your child. It cannot be the same attorney who represents you if you are hiring an attorney for yourself.

If you wish to have an attorney appointed for your child by the court, you will need to request that prior to your hearing.

3. **Paperwork.** If you are hiring an attorney to represent you, he or she will meet with you to complete all the paperwork. If you are representing yourself, you can complete all the paperwork online at this website and print it out for a \$20.00 fee:

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

Set up an account on the above website. Complete the interview. Answering these questions generates all the documents you need to submit to the court. If you have questions while filling out these documents, you can contact the self-help center found at this link: [Self Help Center](#)

4. **Get a hearing date and attend the hearing.**

You or your attorney will contact your county courthouse for a hearing date. Be sure to contact your child's attorney if they have one and schedule this date with them as well. Some counties only hear guardianship cases one day a month, so plan to schedule in advance of your child's 18th birthday if it is important to you to have guardianship immediately upon him or her turning 18. You can be granted guardianship as early as your child turning 17.5 years old so that there is no gap in the time between when they are a minor and when you have guardianship. There is a \$35.00 filing fee to schedule a court date.

You and your child and their attorney need to attend the hearing. The judge will ask you questions and will want to see your child. The judge may ask your child questions, whether or not your child is capable of answering the questions. If your child cannot answer the questions, the attorney may

answer on their behalf. The judge will usually make a decision whether or not grant guardianship at the hearing.

You will receive an official document stating that you are the legal guardian. You can request additional copies of this document and it is recommended that you do so. There is usually a small fee for these documents, so it is a good idea to have cash, check or credit card to pay for those documents the day of the hearing. You can also get copies at a later date, however, as you need them. Photocopies will not always work.

Guardianship FAQs (Frequently Asked Questions)

Q. When should I start the Guardianship Application Process?

A. You can begin the paperwork anytime between the 17th and 18th birthday. You can actually apply for guardianship when your child turns 17.5 years old, so there is no gap between when the child is a minor and when you as a parent become the legal guardian. The judge will grant guardianship that will become effective immediately upon the child turning 18 years old. It may take several months to get a court date, so there's no harm in beginning the process earlier than the 18th birthday.

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

Q. How much does it cost to get guardianship of my child?

A. There is a \$20.00 fee for completing the paperwork on the Utah Court Online Application Process website and a \$35.00 court filing fee. There is also a small charge for additional notarized copies of the guardianship order, which you can get at the courthouse the day of the hearing, or order later as you need them. It is recommended that you have several extra copies.

If you are hiring attorneys, you will pay attorney fees and those will vary, but you are not required to hire attorneys for this process. As the parent, if you fill out the paperwork yourself, you can represent yourself at the guardianship hearing (called "pro se") and you simply have to answer the judge's questions yourself instead of having an attorney do it for you. Your child is entitled to have an attorney represent them; however if you do not have means to hire an attorney, you can request the judge appoint one on their behalf prior to the hearing. This is explained here:

<https://www.utcourts.gov/gramp/gsp/>

Q. How can I find an attorney to represent me or my child in the guardianship process?

A. Word of mouth is always a good way to find a reputable attorney. Ask other parents who have been through the process who they used and if they were satisfied with the job their attorney did for them. If you don't know anyone who has been through the process, you can check the Utah Bar Association website and search for an attorney who is willing to assist you in the process. Attorneys listed here have passed the bar exam, will list their fees, payment plan options, and if they speak Spanish or other languages. They also will list other areas of the law in which they practice.

<https://www.utahbar.org/>



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