



UTAH JUDICIARY

Attorneys in Guardianship Cases Training Series

Part 3: Alternatives to Guardianship and the Least Restrictive Option

Materials





Alternatives to Guardianship and the Least Restrictive Option

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Guardianship Generally

Incapacity

- “‘Incapacitated’ means an adult's ability to do the following is functionally 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: (a) receive and evaluate information, (b) make and communicate decisions, or (c) provide for necessities such as food, shelter, clothing, health care, or safety.” **Utah Code Ann. 75-1-201(25).**
- Requires a judicial determination, by clear and convincing evidence. **Utah Code Ann. 75-5-304(1).**


Utah Guardianship Guidelines

- A guardian shall, to the extent practicable, encourage the ward to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the ward's expressed desires, preferences, and personal values. **Utah Code Ann. 75-5-312(1)(d-e).**
- Guardianship Bill of Rights clarifies all the rights a person with a guardian retains, based on the date upon which their guardianship was granted, including those rights a court may not waive or limit. **Utah Code Ann. 75-5-301.5.**



Guardianship Facts

- Except as provided in this Subsection (1), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor. (UCA 75-5-312(1)(c)(i))
- Decision making can be burdensome, even stressful at times, but few of us would willingly give up the right to make our own decisions. But the appointment of a guardian or conservator does just that — removes the right of a person to make his or her own decisions (Bench Book for Adult Guardianship and Conservatorship, Utah State Courts).
- Guardianship does not have to be granted at 18.
- Guardianship is rarely needed to continue to play a role in the life of an adult with a disability.
- There are other legal, medical, and/or financial tools allowing a parent or another to make decisions with and/or for an adult with a disability.



What are the
Alternatives to
Guardianship and
Why are They
Important?



Alternatives to
Full Guardianship:
Preserving Dignity
and Independence
to the Extent
Feasible

- Limited Guardianship
- Power of Attorney
 - ✓ Financial, Health Care, Education
 - ✓ Springing or Durable
- Other Financial Alternatives
 - ✓ Joint Account, ABLE Account, Trust, Rep Payee, Conservatorship
- Other Health Care Alternatives
 - ✓ Advance Directive, Surrogate, Living Will
- Person Centered Planning
- Shared Decision-making
- Supported Decision-making

Limited Guardianship

- The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists.
- If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.
- An order of appointment of a limited guardianship shall state the limitations of the guardianship.



Person maintains some rights



Limited guardianship can be tailored to the person's needs

Utah Code Ann. 75-5-304(2)(a-b).

Power of Attorney

An agent is assigned authority to make decisions by the principal

Forms of power of attorneys

- Springing
- Durable

Types of power of attorneys

- Financial
- Health care
- Education

Utah Uniform Power of Attorney Act

- Utah has a Uniform Power of Attorney Act, which means that a Power of Attorney form exists in statute. This form can be used by any adult as long as they have the capacity to complete it. This form is for authorizing decisions about property (including money); it is not for authorizing health care decisions.
- Statutory form located at **Utah Code Ann. 75A-2-301.**
- Utah Power of Attorney Form (non-medical, PDF version):
[https://legacy.utcourts.gov/howto/family/power of attorney general/docs/01 Power of Attorney.pdf](https://legacy.utcourts.gov/howto/family/power%20of%20attorney%20general/docs/01%20Power%20of%20Attorney.pdf)
- Utah Power of Attorney Form (non-medical, fillable Word version):
[https://legacy.utcourts.gov/howto/family/power of attorney general/docs/01 Power of Attorney.doc](https://legacy.utcourts.gov/howto/family/power%20of%20attorney%20general/docs/01%20Power%20of%20Attorney.doc)

Financial Alternatives

Direct deposits, electronic deposits and/or bill payments

Joint bank account/ownership

ABLE account

Trust

Representative payee

Financial power of attorney

Fiduciary

Conservatorship

Health Care Alternatives

Advance Health Care Directive

Health care power of attorney

Health care surrogate

Living will

Uniform Health Care Decisions Act (formerly known as the Utah Advance Health Care Directive Act)

- Utah has a Uniform Health Care Decisions Act, which went into effect on January 1, 2026. **75A-9-101 et seq.**
- The Act defines both “advance health care directive” and “advance mental health care” as a power of attorney for health care, health care instruction, or both.
 - **Codifies advance mental health care directives. Utah Code Ann. 75A-9-108.**
- Individuals can complete a statutory form expressing wishes about future health care:
 - Statutory form located at **Utah Code Ann. 75A-9-110.**
 - Utah Advance Health Care Directive Guide and Instructions:
<https://ucoa.utah.edu/resources/documents/directives/260501%20Utah%20Advance%20Health%20Care%20Directive%20-%20version%201.7.pdf>
- On January 1, 2026, the Advance Health Care Directive Act was repealed.


Mental Health Advance Directive

Written document expressing an individual's wishes in advance

- Types of treatments
- Services
- Other assistance desired during personal mental health crisis
- Individual can grant decision-making authority to another person

Directive temporarily goes into effect if the individual is hospitalized or until determined to have regained capacity to make decisions.

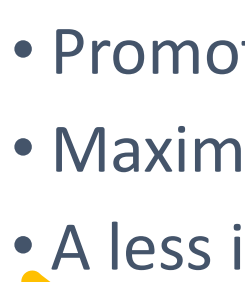
During an emergency, a doctor has the authority to make decisions



Supported
Decision-Making
Principles



Why Supported Decision-Making?

- Provides informal guidance and resources to help the adult communicate preferences and make decisions
 - Person-centered planning is the foundation and supported decision making can be the process
 - Increases self-determination
 - Promotes self-advocacy
 - Maximizes independence
 - A less intrusive alternative that does not require court time
- 

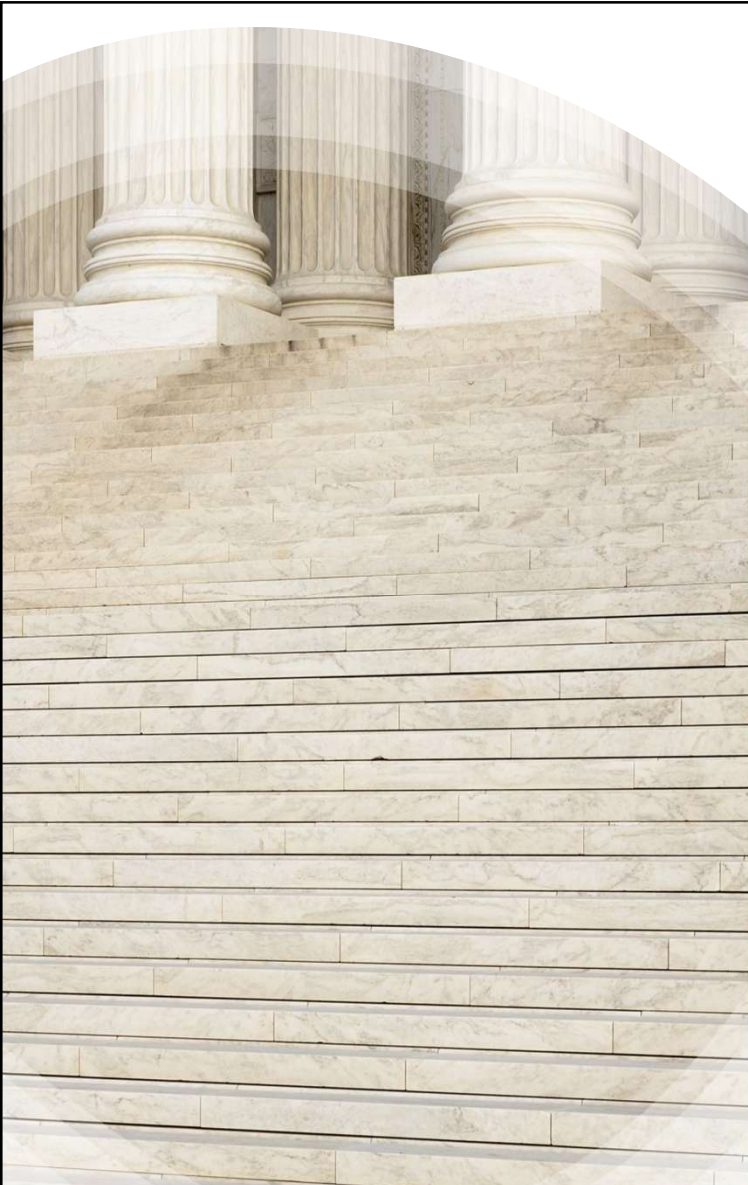


Application of Supported Decision-Making as Legally Recognized in Utah



HB 334

- Passed during the 2025 General Session
- Utah Code Ann. 75-5-701-709
- Codifies SDM Agreements
 - How agreements can be created and terminated
 - What they must include
 - What protections exist
 - What they mean for third parties



Purpose of SDMA under Utah Law

- Provide a principal assistance in gathering and assessing information; understanding options, responsibilities, and consequences of a decision; and communicating decisions for a principal if they want assistance with it.
- Give a supporter legal status, as specified in a supported decision-making agreement, to be with a principal, to access information on behalf of a principal, and to participate in discussions with others when a principal is making decisions or seeking to obtain information.
- Enable a supporter to assist in making and communicating decisions for a principal, but not to substitute as the decision maker for a principal.

Utah Code Ann. 75-5-702

Creating an SDM Agreement under Utah Law



- SDM means “the process of supporting and accommodating an individual in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the individual.”
- SDMA means “an agreement between a principal and at least one supporter.”
- Principal
 - 18 years old or older
 - Has a disability as defined under Utah Law
 - Has entered into an SDMA with at least one supporter
- Supporter
 - 18 years old or older
 - Not being paid to provide support to the principal, unless through caregiver compensation or is a sibling who cares for them
 - Also cannot have substantiated allegation of abuse, neglect or exploitation, a protective order, a conviction for harm of another, theft, or financial crime.
 - Must agree to provide the support detailed in the agreement.



Creating an SDM Agreement under Utah Law

- Agreement must be entered into voluntarily, without coercion or undue influence and without being solicited. They must understand the nature and effect of the agreement
- If the person seeking to enter SDMA has a guardian or conservator, that person must be given notice and an opportunity to participate in discussions related to the agreement and 14 days to review the proposed agreement to determine if the SDMA includes an area they have decision-making authority.



What an SDM Agreement under Utah Law Must Include

- SDMA requirements
 - Be in writing
 - Have an effective date
 - Designate at least one supporter
 - Describe how the principal will use SDM, the rights of the principal, the responsibilities of the supporter(s), supports and accommodations principal is supposed to receive, and any kinds of decisions supporters cannot assist with, if any
 - Signed by the principal, each supporter, a guardian or conservator, if required, and two witnesses or a notary public
 - Describe any conflicts of interest and how they will be mitigated, if necessary.



Revocation and Termination of SDMA

- Principal can revoke at any time by providing written notice to all other parties. Same for a supporter. Can be done electronically.
- SDMA is terminated when
 - Principal dies
 - Revocation by principal, as detailed above, occurs
 - Withdrawal of all supporters without designation of new ones
 - Principal executes an overriding document, e.g., power of attorney
 - A court deems principal no longer has capacity
 - As to specific supporter, they no longer meet the requirements



Interpretation of the Law

- Principal should be able to live in the manner in which the principal wishes; and make decisions about accepting or refusing support, assistance, or protection, as long as doing so does not cause serious bodily injury, as defined in Utah Law, to the principal, or harm to others
- Principal should be informed about and, to the best of the principal's abilities, participate in the management of the principal's affairs;
- Principal should receive the most effective, yet least restrictive and intrusive, form of support, assistance, or protection when the principal is unable to manage the principal's affairs alone;
- The values, beliefs, wishes, cultural norms, and traditions that a principal holds should be respected in supporting the principal.

Implications of Support Agreement

- Decisions or requests made or communicated by the principal under the terms of the support agreement are recognized and legally enforceable as decisions made by the principal
- The availability of formal support does not limit informal support or preclude judicial consideration of informal support in less restrictive alternatives to guardianship
- Execution of a support agreement may not be a condition of participation in any activity, service, or program
- The presence of a support agreement does not preclude the principal from making decisions without support

Duties of Supporter

- Act with the care, competence, and diligence ordinarily exercised by individuals in similar circumstances, and in accordance with the supporter's skills or expertise
- Act in good faith
- Comply with the terms of the support agreement
- Maintain records (available to the principal on request) of the supporter's actions under the agreement and of how the principal communicates and expresses opinions to the supporter
- Keep information confidential and otherwise protected and properly disposed of, as appropriate

Supporter May *Not*

- Coerce, exploit, or exercise undue influence on the principal]
- Make decisions on behalf of the principal
- Sign for the principal (includes electronically)
- Make health care decisions for the principal
- Without the principal's consent
 - Obtain information that is not reasonably related to support matters
 - Use information gained in the relationship for matters other than support
 - Delegate support duties to a third party

Third Parties (e.g., financial, medical)

- Should recognize decisions or requests in accord with agreement as the decision or request of the principal
- If in good faith accepts or relies on agreement
 - May presume signatures are genuine, unless actual knowledge that not
 - May presume agreement is valid, unless actual knowledge that not, or that revoked or otherwise void or invalid
 - Not subject to criminal or civil liability, or professional discipline, for giving effect to a provision of the agreement or following the directions of the supporter in accord with the agreement
- If reason to suspect principal is or has been subject to abuse, neglect, or exploitation, immediately report to APS (does not change other reporting requirements)



Resources and Links

- [Utah Parent Center](#)
- [Utah Courts](#)
- [Utah Office of Public Guardian](#)
- [Utah Department of Human Services: Aging and Adult Services](#)
- [Guardianship Signature Program](#)
- [Utah Courts Guardianship Guidelines](#)
- [Utah Developmental Disabilities Council](#)
- [Institute for Disability Research, Policy and Practice](#)
- [Disability Law Center](#)
- [Alternatives to Guardianship Fact Sheet](#)
- [Guardianship Fact Sheet](#)
- [Guardianship Bill of Rights Fact Sheet](#)
- [Supported Decision-Making Legislation Fact Sheet](#)
- [Supported Decision-Making and Guardianship Comparison Chart](#)
- [Utah Supported Decision-Making Agreement: Information and Instructions](#)
- [Benefits Explainer Fact Sheet](#)



Attorneys in Guardianship Cases Training Series

Allison Barger

Allison Barger is an associate attorney with Kathie Brown Roberts PC and one of three Certified Elder Law Attorneys in the State of Utah. Allison participates in the Probate Rules subcommittee of the Utah Rules of Civil Procedure, of which she is a founding member. She has presented numerous continuing education programs to the State Bar sections and authored articles in the Utah Bar Journal on topics such as special needs planning, guardianships, and related ethical issues. She is a past chair of the Elder Law section of the Utah State Bar and has participated in various volunteer legal services for seniors throughout her career.

Brant Christiansen

Brant T. Christiansen, JD, LLM, MBA, is a partner at Lewis Hansen. Over the last decade, Brant has represented numerous individuals, families, and professional fiduciaries in the guardianship and conservatorship process and has advised families on the most appropriate and least-restrictive protections for their incapacitated or disabled loved ones. Brant serves on the Executive Committee of the Elder Law Section of the Utah State Bar, the Executive Committee of the Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), and as a member of the Probate Rules Subcommittee. Brant also volunteers for the Guardianship Signature Program.

Katie Cox

Katie Cox is a staff attorney and Utah Medical-Legal Partnership Attorney Coordinator at the Disability Law Center. Katie also holds a Master of Social Work. She practices law as a healing profession, combining her law and MSW education to be a client-centered, humanistic practitioner, engaging in the work from both an individual and systemic perspective. Katie is passionate about social, economic, reproductive, and disability justice, human dignity, and whole health. Katie serves on the WINGS committee and regularly participate in subcommittees and workgroups aimed at improving access to justice for vulnerable individuals.

Rob Denton

Rob Denton is a retired attorney, with a law degree from the S.J. Quinney College of Law at the University of Utah. Rob spent most of his career representing people with disabilities, including in guardianship cases. Rob worked for the Disability Law Center for 28 years. He is a member of the Utah WINGS committee, serving as a stakeholder from 2013-present. He has been an active participant in building and strengthening the Guardianship Signature Program since it was first developed in 2015.

Leslie Francis

Leslie P. Francis, Ph.D., J.D., holds joint appointments as Alfred C. Emery distinguished professor of law and distinguished professor of philosophy at the University of Utah, where she also directs the Center for Law and Biomedical Sciences. Leslie is a published author, with works related to disability law and ethics, bioethics, and justice in health care. She is a member of the Disability Rights Bar Association and serves on the boards of the Utah Disability Law Center and the “And Justice for All” committee. Through the Guardianship Signature Program of the Office of State Courts, she regularly provides pro bono representation for people who are the subject of guardianship; for this work, she was a recipient of the service to the courts award in 2021.

Langdon Owen

Langdon T. Owen, Jr. is a member of the law firm of Cohne Kinghorn, p.c. in Salt Lake City, Utah. Don is a transactional lawyer who practices in such areas as estate and tax planning, guardianship and conservatorship, business and commercial transactions, health care law, nonprofit organizations, probate, and real estate. He has practiced law since 1977, and serves on the Probate Rules subcommittee of the Utah Rules of Civil Procedure. He holds a Juris Doctor degree from the University of Utah (1977) and a Bachelor of Arts degree from the University of California, Berkeley (1973, with great distinction).

Shonna Thomas

Shonna Thomas is the Court Program Administrator for the Guardianship Reporting and Monitoring Program (GRAMP), which includes the Guardianship Signature Program and the Court Visitor Program. Shonna serves as staff to WINGS and the Probate Rules subcommittee, and facilitates several workgroups related to guardianship. Shonna has worked for the State of Utah for 17 years, focusing her efforts on advocating for vulnerable populations, including five years as the training specialist on a federal research grant aimed at empowering teenagers with developmental disabilities. Shonna also worked as a behavior specialist and functional behavior assessment (FBA) trainer in Pennsylvania. Shonna holds MS degrees in human services and criminal justice, and a BA degree in psychology.





UTAH JUDICIARY

Guardianship Signature Program



VOLUNTEER OPPORTUNITY

The Guardianship Signature Program (GSP) connects volunteer attorneys with respondents in guardianship proceedings who need an attorney but do not have one of their own choosing.

The program is a joint effort by the Administrative Office of the Courts and the Utah State Bar, with endorsements by the Board of District Court Judges and the Bar Commission.

To participate in the program, attorneys must:

- Be eligible to practice law in Utah or be enrolled in a Utah law school. *
- Accept the fee limits (pro bono and Modest Means).
- Certify knowledge of guardianship law and procedure or complete the free online training course.

Eligible for CLE credits

Malpractice insurance covered by the Bar

Choose cases to suit your schedule

Active and Inactive attorneys can join

Gain valuable experience while serving your community

FOR MORE INFORMATION:

Call: (801) 578-3925

Email: GRAMP@utcourts.gov

Visit: utcourts.gov/gramp/gsp

* Under Rule 14-807, students and recent graduates, under the direct and immediate personal supervision and in the presence of a resident attorney, can conduct or assist with interviews and other investigations, do research, prepare pleadings and other papers, and represent the client at hearings.