

BASIC GUIDELINES FOR COURT-APPOINTED GUARDIANS AND CONSERVATORS

**COMMITTEE ON LAW AND AGING, UTAH STATE BAR
AND THE
ADMINISTRATIVE OFFICE OF THE UTAH STATE COURTS**

This manual and other help and information are on the web at:
<http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>

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(1) Introduction.

Thank you for serving as a guardian or conservator. People incapacitated by age, illness or disability may need special protection. As a fiduciary for such a person, you hold a position of high trust to help your ward make decisions and to make decisions on his or her behalf.

This manual does not explain the process for becoming a guardian or conservator, but it will help you understand your responsibilities after you have been appointed by a court. Because it provides only general information, this manual is not a substitute for legal advice. Consult your lawyer to answer your specific questions.

This manual has limited applicability to the guardian of a minor. If the guardianship is limited to the purpose of attending school, the guardian of a minor is exempt from filing the annual report on the status of the ward. (Section (5)(a)). If the minor's estate is deposited in an account that requires judicial approval for withdrawal or if there is no estate, the guardian of a minor is exempt from filing an annual accounting. (Section (5)(b)).

Code of Judicial Administration Rule 6-501 requires that before you receive your order and letters of appointment, you must file with the court a declaration that you have completed an examination on the authority and responsibilities of guardians and conservators. The declaration form for filing and the exams are in Section (15), Examination on responsibilities. The tests are not meant to screen anyone out of their role as fiduciary. They are meant to reinforce some of the responsibilities of the office. The answers to the questions are in this manual. There are four tests. Select the one that fits your fiduciary status:

- Conservator
- Guardian without a conservator
- Guardian with a separate conservator
- Guardian who is the conservator

(2) What is a guardian and a conservator?

A guardian is a person or institution appointed by a court to make decisions about the care of another, who is called a "ward." A conservator is a person or institution appointed by the court to manage the property and financial affairs of a ward. Sometimes the same person is appointed to both roles. If no conservator is appointed, the guardian has some of the responsibility of a conservator. Utah Code Section 75-5-312.

A guardian has the responsibility of a parent for a minor, except that the guardian does not have to use his or her own money for the ward's care and support. Utah Code

Section 75-5-312. A conservator is the trustee of the ward's estate. Utah Code Section 75-5-420. The ward's estate includes all of his or her property. Some examples are income (such as wages, an annuity, or Social Security or other government benefits), real property (buildings and land), furniture, cash, bank accounts, certificates of deposit, stocks, bonds, retirement benefits, motor vehicles, and valuables such as jewelry, furs, and art. A conservator must use reasonable care, skill and caution to manage and invest the estate as a prudent investor would. Utah Code Section 75-7-902.

If the ward needs help in some but not all areas of decision making, the court may order a limited guardianship. Utah Code Section 75-5-304. Under Utah law, a limited guardianship is preferred, and the court may grant a full guardianship only if no alternative exists. A limited guardian has only those powers and duties listed in the court order. The court may also limit the conservator's authority. Utah Code Section 75-5-426.

In an emergency, the court may appoint a temporary guardian, who serves for no more than 30 days, until a hearing to decide whether the ward needs a permanent guardian. A temporary guardian has the responsibility of a permanent guardian, either limited or full, depending on the circumstances. Utah Code Section 75-5-310.

Your appointment order and letters of guardianship or conservatorship issued by the court should specify the nature of your appointment.

(3) How long is my appointment?

Your appointment as guardian or conservator lasts until the court terminates your appointment. You may resign, and the court will appoint another guardian or conservator if your ward still needs one or both. If you have been appointed both guardian and conservator, you can resign as one and not the other. Or the circumstances that justified the appointment in the first place may change so that the ward no longer needs a guardian or conservator. Changed circumstances might include such things as the ward has been adopted, has reached age 18, is no longer incapacitated, or has died. Regardless of the reason to end your obligations, you retain them until the court removes you. Utah Code Section 75-5-306, 75-5-307 and 75-5-415.

Consult your lawyer about the proper procedures to end the appointment and turn over the estate. You must prepare a final accounting and transfer the estate to your successor, if one is appointed, or to your ward. You may need to record a copy of the order ending the appointment with the county recorder where your ward owns land to clear title to that property.

(4) Recordkeeping.

Keeping good records is essential for guardians and conservators because you must account for all transactions at least annually. Contemporaneous records, that is, records prepared at the same time as an event, will help later, when you prepare your reports. As guardian, you must report the status of your ward to the court. Guardians must also

report financial transactions to the court or, if there is one, to the conservator. As conservator, you must report financial transactions to the court. In addition to annual reports, any person interested in your ward can request further reports. Also, as is explained in Section (5), you can claim reimbursement from the estate for your ward's living expenses that you pay with your own money.

Set up files to keep legal documents, tax records, paid bills, unpaid bills, correspondence and other papers related to your ward. Obtain a copy of your ward's will, living will, trust or other estate planning documents so you can follow the estate plan. Keep a copy of all documents filed with or issued by the court. Keep the records about your ward separate from your personal records.

As guardian, you should keep a journal or diary throughout the year to record your ward's activities and important events, especially if there is not an independent record of the event. If your ward does not live with you, record the dates of your visits.

Keep negotiable instruments, deeds, and wills in a safe deposit box in the name of the guardianship or conservatorship.

You may be personally liable if you do not keep proper records. Utah Code Sections 75-5-302, 75-5-312 and 75-5-417. The court may order you to reimburse the estate if you cannot show what you did with your ward's property, even if you know that you used it in your ward's best interests. Good records help to protect you in the event that your management of the estate is questioned.

(5) Reporting.

(a) Guardian.

You must annually report to the court the status of your ward. Utah Code Section 75-5-312. The annual report shows how your ward is doing and alerts the court to any changes. Between annual reports, you should inform the family and other interested persons of any significant changes in your ward's circumstances. If your ward dies, notify the court and the interested persons at once.

If the court has appointed a separate conservator, you must report to the conservator the financial transactions that you have taken on your ward's behalf. Utah Code Section 75-5-312. Because the conservator has to report annually to the court, you should report at least annually to the conservator. Discuss this with the conservator to ensure that you report at a mutually convenient time.

If the court has appointed you conservator or has not appointed a conservator, you must also file the inventory and accountings required of the conservator. Code of Judicial Administration Rule 6-501.

(b) Conservator.

Within 90 days after being appointed as conservator, (or if you are the guardian and there is no conservator) you must file with the court an inventory listing the estate property. Utah Code Section 75-5-418. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. Once you have a complete list of the property, prepare the inventory and file it with the court. Later, if you discover more property, file an amended inventory. Your ward's financial affairs may be in disarray, and you may need to put them in order.

You must annually account to the court for your ward's estate. Utah Code Section 75-5-417. You must also account to the court for your ward's estate with your motion to terminate the appointment. Utah Code Section 75-5-419. Filing an accurate accounting is important. Failure to do so makes you liable for a fine. Utah Code Section 75-5-417. More important, the court order approving the accounting relieves you of liability for anything included in the accounting. Utah Code Section 75-5-419.

If your ward's estate is limited to payments from a state or federal agency that requires you to account annually to the agency, you may file with the court a copy of the agency's form rather than the court form. For example, this may be the case if you are your ward's representative payee through the Social Security Administration. See Section (11).

(c) Procedures.

An on-line interview, based on your answers to questions, will prepare the necessary forms for a report on the status of your ward, an inventory, an accounting and notice to interested persons. The on-line interview is available at: http://www.utcourts.gov/ocap/guardian_conservator_reporting/ . Keep a copy of all documents for your records.

The deadlines for the status report, inventory and accounting are as follows:

Document	Who Files?	Due Date
Status Report	Guardian	Within 60 days after each anniversary of your appointment.
Inventory	Conservator*	Within 90 days after your appointment.
Accounting	Conservator*	Within 60 days after each anniversary of your appointment.

* Filed by guardian if there is no conservator.

File the documents with the court that appointed you. You may ask the court to change the reporting period, such as to a calendar year or any other 12-month period that is more convenient. Code of Judicial Administration Rule 6-501. This means that for the year in which the change is made you will report for a shorter period of time. For

example, if you are appointed on August 17, and receive the court's permission to report on a calendar year basis, your initial report would cover the period from August 17 to the end of the calendar year.

Also, if your ward moves to another county, you may ask the court to move your reports to that county. Utah Code Sections 75-5-205, 75-5-302 and 75-5-403.

You must mail a copy of your status report, inventory and accounting, along with a notice of right to object, to:

- (1) your ward (if he or she is of an appropriate age and mental capacity to understand the proceedings);
- (2) your ward's guardian or conservator (if the court has appointed one other than yourself);
- (3) your ward's spouse, adult children, parents and siblings; and
- (4) anyone requesting notice under Utah Code Section 75-5-406.

Code of Judicial Administration Rule 6-501.

Because the information is sensitive, mark the outside of the envelope with "confidential" or a similar statement. If anyone objects to the filing or if the judge has further questions, the court clerk will schedule a hearing of which you and the others will be notified. Code of Judicial Administration Rule 6-501.

(6) Compensation.

Often a family member serves as guardian or conservator without compensation. A guardian is entitled to reasonable compensation from the estate with the approval of the court or a separate guardian. Utah Code Section 75-5-312(3). What is reasonable depends on the types of services provided, the skill of the guardian or conservator, and whether the time and expenses are reasonable. Utah Code Section 75-5-414. Accurate records are essential.

You do not have to pay your ward's expenses with your money. Utah Code Section 75-5-209. Although you should not commingle your money and property with that of your ward, you can pay for your ward's living expenses and recover your out-of-pocket costs from the estate. Utah Code Section 75-5-102. Because reimbursement for living expenses includes elements of commingling, do it only if it is absolutely necessary. Whenever possible, use your ward's money to pay his or her expenses. To claim reimbursement from the estate, keep a receipt for the goods or services and proof that you paid with your own money. If you need to pay some of your ward's living expenses with your money, you should pay by check, credit card or debit card rather than with cash because cash does not create a record that the money was yours.

(7) Liability.

You are not personally liable for your ward's acts. Utah Code Section 75-5-312. You are not liable for reasonable actions taken in the best interests of your ward. You are not liable for managing your ward's estate if you act like a prudent person dealing with the property of another. You are liable if you are personally at fault and your ward is damaged by your carelessness. Utah Code Section 75-5-429.

Understand your responsibilities, use common sense and exercise sound judgment to prevent problems. You are not required to have any special skills to act as guardian or conservator. However, if you have special skills, you must use those skills to manage your ward's estate. Consult your lawyer to answer specific questions.

The court will require a bond to protect your ward financially, unless it is waived for good cause. Utah Code Sections 75-5-411 and 75-5-412. The bond is an insurance policy paid for by the estate that protects your ward in the event that your mistake causes the estate to lose money. The amount of the bond will be the total value of the estate property over which you have unsupervised control, plus one year's estimated income.

(8) Financial decisions.

If the court appoints a conservator, the conservator will decide most issues involving the ward's money and property and will file the accountings described in Section (5)(b). If the court does not appoint a separate conservator, the guardian has some of the conservator's responsibilities. If you, as guardian, do not want those added responsibilities, ask the court to appoint a separate conservator.

As guardian, you must manage your ward's money and property to pay for his or her support, care and education. If your ward has money and property beyond what is needed for support, care and education, a conservator, either you or another, should invest the excess. Utah Code Sections 75-5-312 and 75-5-424.

Involve your ward in the estate management as much as possible, and keep your ward informed. If your ward is able to maintain a small checking account and to pay routine bills, encourage him or her to do so, to provide a higher level of self esteem.

You may use your ward's funds only for his or her benefit. You may take into account your ward's accustomed standard of living. Utah Code Section 75-5-425. If family members express concern about the cost of your ward's care, your responsibility is to your ward, not the heirs.

Open a checking account in the name of the guardianship or conservatorship to deposit income and pay bills. Completely describe each transaction. If the balance in the checking account accumulates beyond your ward's needs, transfer the excess to an interest bearing account or other investment in the name of the guardianship or conservatorship. If you need to withdraw money from the investment account to pay for an extraordinary expense, first transfer the money into the checking account.

Keep your ward's property – including money – separate from yours, and use your ward's property only for his or her benefit. Manage your ward's property as you would want someone else to handle yours. Consult your lawyer or financial counselor to answer specific questions.

(9) What is a guardian's responsibility?

Utah Code Section 75-5-312 governs your responsibility as guardian. Generally, you have the responsibility of a parent for a minor. If the court does not appoint a separate conservator, you also have some of the conservator's responsibilities. Unless your authority is limited by the appointment order, you:

- (1) may have custody of your ward;
- (2) may establish your ward's place of abode;
- (3) must provide for your ward's care, comfort and maintenance and arrange for your ward's education and social activities;
- (4) must take reasonable care of your ward's personal effects;
- (5) may consent to enable your ward to receive medical or professional care, counsel or treatment;
- (6) may consent to your ward's marriage, if authorized by a court to give consent;
- (7) may consent to your ward's adoption if authorized by a court to give consent and if the rights of the ward's parents have been terminated;
- (8) must start proceedings to protect your ward's property or to compel someone to pay money due your ward;
- (9) must exercise care to conserve any excess money or property for your ward's future needs.

A separately appointed conservator has most of the responsibility for money and property. Discuss with the conservator your respective responsibilities so that both of you clearly understand them.

If the court has appointed a separate conservator, you have the right to receive from the conservator reasonable sums for your ward's daily living expenses. This might be in the form of an allowance to you as guardian to pay third persons, or the conservator might pay third persons directly. Utah Code Section 75-5-312. Discuss this with the conservator to agree upon the amount, method and timing of regular payments and of any extraordinary expenses.

As guardian, you may not:

- (1) sell your ward's property, such as stocks or real estate, unless also appointed as conservator;
- (2) cast your ward's ballot in an election;
- (3) decide your ward's religious preference;

- (4) write a will for your ward or change a previously executed will;
- (5) physically punish your ward;
- (6) neglect appropriate healthcare for your ward;
- (7) leave your ward unattended if he or she needs care; or
- (8) commit your ward to a psychiatric hospital without a commitment hearing, unless your ward consents or the authority was expressly granted in the appointment order.

(a) Decision making guidelines.

Encourage your ward's maximum self-reliance and independence. Involve your ward in making decisions, and allow your ward to make as many decisions as possible. One guide to help you is known as "the least restrictive alternative." This means that, to preserve your ward's independence to the fullest extent possible, you and your ward choose the alternative that will least restrict your ward's freedom.

As guardian, you help your ward make personal decisions or, if necessary, you make the decisions for your ward. If your ward is unable to communicate, try to reach the decision that your ward would have made if able to choose. It is what the ward would do, not you, that serves as your guide, as long as the decision is in your ward's best interest.

(b) Health care.

If your ward has appointed a health care agent in an advance health care directive, that person makes health care decisions for your ward, including decisions about end-of-life. Otherwise, these decisions are yours. Work closely with your ward's doctor or other healthcare providers. You may be asked to give consent to medical treatment. Obtain as much information as you can about your ward's preferences. You can do this by asking your ward directly. If your ward is unable to communicate and has advance medical directives, like a living will or advance health care directive, then you should use those directives to guide your decision. If such documents are not available, speak with your ward's family and friends about his or her medical treatment preferences. If no information about medical treatment preference is available, consider the beliefs of your ward's religion.

Ask questions regarding medical alternatives and the benefits and risks of a proposed treatment. If a proposed surgical procedure or drug therapy is controversial, ask for the court's permission before you authorize treatment.

(c) Living arrangements.

If possible, keep your ward living at his or her own home. Services may be available to provide meals, transportation, or in-home assistance. If your ward is no longer safe at home, it may be necessary to move him or her to a more protected setting. Consult your ward's doctor and other professionals for recommendations concerning placement in a

facility that will best meet your ward's needs. Following placement, regularly visit your ward and consult with staff to ensure that your ward's needs are met. Your ward may live with you, your spouse, your parents or your children, but you are not permitted to charge your ward's estate for the cost of room and board unless you get permission from the court or from a separate conservator. Utah Code Section 75-5-312(2) and (3). Regardless of the living situation, you are responsible to ensure that your ward is safe, comfortable, and receiving healthcare, nutrition, grooming, and recreation.

(10) What is a conservator's responsibility?

Utah Code Sections 75-5-424, 75-5-425, 75-5-428 and 75-7-902 govern your responsibility as conservator.

You must exercise reasonable care, skill and caution to invest and manage estate assets as a prudent investor would, considering the estate's circumstances. You must make a reasonable effort to verify relevant facts. Your investment and management decisions about individual assets must be evaluated in the context of the estate as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the estate. Circumstances that you should consider in investing and managing estate assets include the following:

- (1) general economic conditions and the possible effect of inflation or deflation;
- (2) the expected tax consequences of investment decisions or strategies;
- (3) the role that an investment or course of action plays within the overall portfolio;
- (4) the expected total return from income and the appreciation of capital;
- (5) the size of the estate, the need for liquidity, regularity of income, and preservation or appreciation of capital; and
- (6) an asset's special value to the purposes of the estate or to the ward.

In managing your ward's estate, you are required to take into account any estate plan. You may examine your ward's will, including a will filed with the court for safekeeping. Utah Code Sections 75-5-427 and 75-2-901.

Unless your authority is limited by the appointment order, you may:

- (1) collect, hold, and retain estate assets;
- (2) invest in any kind of property or type of investment that is consistent with the standards imposed by the Utah Code;
- (3) allocate items of income or expense to estate income or principal;
- (4) acquire estate assets or take an option to acquire estate assets;
- (5) dispose of estate assets or grant an option to dispose of an estate asset;
- (6) invest and reinvest estate assets;
- (7) deposit estate funds in a bank;
- (8) continue or participate in operating any business or enterprise;

- (9) acquire an undivided interest in an estate asset in which the conservator holds an undivided interest;
- (10) manage, develop, improve, exchange, partition, abandon or change the character of, an estate asset;
- (11) repair, modify or demolish buildings, structures or improvements;
- (12) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
- (13) enter into a lease for a term within or extending beyond the term of the conservatorship;
- (14) vote a security;
- (15) pay calls, assessments, and other sums accruing on account of securities;
- (16) sell or exercise stock subscription or conversion rights; consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship;
- (18) insure estate assets against damage or loss and the conservator against liability with respect to third persons;
- (19) borrow money and advance money for protecting the estate or the ward, and for all expenses, losses, and liabilities sustained in administering the estate;
- (20) prosecute or defend actions, claims, or proceedings for protecting estate assets and you, as conservator, in the performance of your duties;
- (21) pay, settle or contest a claim by or against the estate or the ward;
- (22) release any claim of the estate to the extent that the claim is uncollectible;
- (23) pay taxes, assessments, your compensation, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (24) pay any sum distributable to your ward or his dependent by paying the sum to your ward, to his guardian if there is one, or to the person with custody of your ward;
- (25) employ persons to advise or assist you in the performance of your duties and act upon their recommendation personally or by an agent;
- (26) execute and deliver instruments to facilitate the exercise of your powers;
- (27) spend or distribute income or principal for the support, education, care or benefit of your ward and his or her dependents;
- (28) if the estate is sufficient to provide for the support, education, care or benefit of your ward and his or her dependents and if the estate is that of an incapacitated adult, you may make gifts to charity as your ward might have been expected to make, provided the total does not exceed for any year 20% of the income from the estate; and
- (29) pay all just claims against the estate and against your ward.

As conservator, you may not:

- (1) commingle your personal funds with those of your ward;
- (2) pay your personal expenses from the estate (For example, do not use your ward's money to pay your personal bills.);
- (3) deposit estate funds into your account or your funds into the estate account;
- (4) borrow money or property from the ward's estate;
- (5) sell estate property for less than fair market value (For example, do not sell the property to family members at reduced prices.);
- (6) record your name on your wards property as though you are the owner (For example, do not record your name on your ward's bank account as if you owned the account. It is proper to record you name on an account as your ward's conservator).

(11) Representative payee.

If an agency, such as the Veteran's Administration or the Social Security Administration, pays benefits to your ward and your ward is found by a court to be incapacitated, the agency must appoint a representative payee to receive the payments. This appointment is separate from the court-appointed guardianship and conservatorship. If you wish to serve as the representative payee, you must apply to the agency that provides the benefits. In most cases, the agency will appoint the court-appointed guardian or conservator as representative payee. The agency providing the benefits has the authority, however, to appoint any person it chooses to be the ward's representative payee. Once appointed by the agency, the representative payee has the authority to receive and handle the benefits for your ward.

(12) Criminal penalties.

You may be found criminally liable for financially exploiting or physically or emotionally abusing your ward. While there are many laws that govern the conduct of a person in a fiduciary relationship, you should especially be aware of the following criminal penalties under Utah law. Consult your lawyer to answer your specific questions.

(a) Abuse or neglect of a vulnerable adult.

Utah Code Section 76-5-111.

A person who causes a vulnerable adult to suffer harm, abuse or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of abuse of a vulnerable adult.

(b) Exploitation of a vulnerable adult.

Utah Code Section 76-5-111.

A person commits the offense of exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult;

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or

(vi) commits sexual exploitation of a vulnerable adult.

(c) Reporting abuse, neglect or exploitation of a vulnerable adult.

Utah Code Section 76-5-111.1.

Any person who has reason to believe that a vulnerable adult has been abused, neglected or exploited shall immediately notify the nearest peace officer, law enforcement agency, or Adult Protective Services within the Department of Human Services, Division of Aging and Adult Services. Anyone who makes that report in good faith is immune from civil and criminal liability. A person who is required to report suspected abuse, neglect, or exploitation of a vulnerable adult and who willfully fails to do so is guilty of a class B misdemeanor.

Any person who has reason to believe that a ward is being physically or emotionally abused, or financially exploited, should report the abuse to Adult Protective Services at 801-264-7669 (in Salt Lake County), or 1-800-371-7897 (throughout Utah). In case of an emergency, call local law enforcement or 911.

(d) Theft.

Utah Code Section 76-6-404.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him of it.

(e) Unlawful dealing of property by a fiduciary.

Utah Code Section 76-6-513.

A person is guilty of unlawfully dealing with property by a fiduciary if he deals with property that has been entrusted to him as a fiduciary ... in a manner which he knows is a violation of his duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted.

A person acting as a fiduciary is guilty of unlawfully dealing with property by a fiduciary if, without permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(13) Resources.

(a) Adult Protective Services.

801-264-7669 (in Salt Lake County), or 1-800-371-7897 (throughout Utah). In case of an emergency, call local law enforcement or 911.

(b) Aging services.

Division of Aging and Adult Services, State of Utah, Department of Human Services, 801-538-3910, or www.daas.utah.gov/ap_services.htm. The Division of Aging can give you information about your local area agency on aging.

(c) Guardianship services.

Office of Public Guardian, State of Utah, Department of Human Services, opg.utah.gov, 801-538-8255.

(d) Legal resources.

Utah State Bar, www.utahbar.org, or 801-531-9077
Utah Legal Services, 801-328-8891 or 1-800-662-4245

(e) Court website.

Resources are listed on the court's website at:

<http://www.utcourts.gov/>

The court website links to the statutes and rules mentioned in this manual.

(14) Terms to know.

Annual Account – Report of a conservator filed with the court, showing income to and payments from an estate, as well as inventory changes.

Annual Report – Report of a guardian filed with the court, about the ward's current condition.

Bond – Insurance that the court may require, which is paid for by and covers the ward's estate.

Conservator – A person or institution appointed by the court to manage the ward's estate.

Court visitor- A person appointed by the court, in a guardianship proceeding, to visit the alleged incapacitated person and report to the court.

Durable power of attorney for health care – A legal document by which one person gives another power to make health care decisions. This power of attorney is effective even after the giver no longer has legal capacity.

Estate – All property and assets, of any kind, belonging to a person.

Fiduciary – A special relationship of trust between two people; a person having legal responsibilities for another.

Guardian – A person or institution appointed by the court to take care of the ward.

Guardian ad litem – A lawyer appointed by the court to represent an alleged incapacitated/protected person who does not already have a lawyer.

Incapacitated person – A person who cannot make or communicate responsible personal decisions because of mental illness, mental deficiency, physical illness or disability, chronic uses of drugs, chronic intoxication, or any other cause except being a minor.

Letters of guardianship/conservatorship – The court document in which the guardian/conservator accepts duties and which authorizes him or her to act.

Living will – A legal document by which a person expresses his/her end-of-life medical treatment wishes.

Minor – A child under the age of 18 who, by law, does not have the capacity to manage his or her affairs.

Protected person – A person who cannot effectively manage financial affairs because of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause. A minor child may require protection because of legal incapacity arising from minority.

Representative payee – A person named by a federal agency, such as the Veteran's Administration or Social Security Administration, to receive and account for another person's benefits.

Ward – A person for whom a guardian has been appointed.

(15) Examination on responsibilities.

Code of Judicial Administration Rule 6-501 requires that before you receive your order and letters of appointment, you must file with the court a declaration that you have completed an examination on the authority and responsibilities of guardians and conservators. This section contains the declaration form for filing and the exams. The tests are not meant to screen anyone out of their role as fiduciary. They are meant to reinforce some of the responsibilities of the office. The answers to the questions are in this manual. There are four tests. Select the one that fits your fiduciary status:

- Conservator
- Guardian without a conservator
- Guardian with a separate conservator
- Guardian who is the conservator

Page numbers in the answer key refer to page number in this manual.

(a) Questions for the conservator	True	False
1) A guardian is responsible for the care of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
2) A conservator is responsible for the property and financial affairs of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
3) The appointment order contains a statement of your powers, rights and duties.	<input type="checkbox"/>	<input type="checkbox"/>
4) You must file a complete inventory of the property owned by the ward within 180 days of your appointment.	<input type="checkbox"/>	<input type="checkbox"/>
5) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.	<input type="checkbox"/>	<input type="checkbox"/>
6) The reports that you have to make must be made on court forms.	<input type="checkbox"/>	<input type="checkbox"/>
7) After you prepare an annual report your only responsibility is to file it with the court.	<input type="checkbox"/>	<input type="checkbox"/>
8) The court may impose a penalty for failure to file a required report.	<input type="checkbox"/>	<input type="checkbox"/>
9) When you are uncertain about your responsibilities the best course is to consult a lawyer.	<input type="checkbox"/>	<input type="checkbox"/>
10) You should record financial transactions made on behalf of your ward on a monthly basis.	<input type="checkbox"/>	<input type="checkbox"/>
11) You should open a separate bank account in your name to manage your ward's money.	<input type="checkbox"/>	<input type="checkbox"/>
12) As long as you are honest, you may manage your ward's property in the same manner as you manage your own money.	<input type="checkbox"/>	<input type="checkbox"/>
13) If you can no longer carry out the responsibilities of a conservator you should ask someone else to take over for you.	<input type="checkbox"/>	<input type="checkbox"/>
14) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities	<input type="checkbox"/>	<input type="checkbox"/>

	Answers for the conservator
1) True	A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)
2) True	A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)
3) True	Your appointment order and letters of conservatorship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)
4) False	You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)
5) True	An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)
6) True	Reports can be prepared online at www.utcourts.gov/ocap/guardian conservator reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)
7) False	You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters • the ward’s guardian and • anyone requesting notice under Rule 6-501. (Pages 6-7)
8) True	The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)
9) True	The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)
10) False	You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)
11) False	All bank accounts should be opened in the name of the conservatorship. You must never commingle your personal funds with those of your ward. (Page 8)
12) False	You must invest and manage your ward’s property as a prudent investor would, using reasonable care, skill and caution. (Page 10)
13) False	You must request the court’s permission to resign by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)
14) True	The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)

(b) Questions for the guardian without a conservator	True	False
1) A guardian is responsible for the care of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
2) A conservator is responsible for the property and financial affairs of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
3) The appointment order contains a statement of your powers, rights and duties.	<input type="checkbox"/>	<input type="checkbox"/>
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.	<input type="checkbox"/>	<input type="checkbox"/>
5) You must file a complete inventory of the property owned by the ward within 180 days of your appointment.	<input type="checkbox"/>	<input type="checkbox"/>
6) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.	<input type="checkbox"/>	<input type="checkbox"/>
7) The reports that you have to make must be made on court forms.	<input type="checkbox"/>	<input type="checkbox"/>
8) After you prepare an annual report your only responsibility is to file it with the court.	<input type="checkbox"/>	<input type="checkbox"/>
9) The court may impose a penalty for failure to file a required report.	<input type="checkbox"/>	<input type="checkbox"/>
10) When you are uncertain about your responsibilities the best course is to consult a lawyer.	<input type="checkbox"/>	<input type="checkbox"/>
11) You should record financial transactions made on behalf of your ward on a monthly basis.	<input type="checkbox"/>	<input type="checkbox"/>
12) You should open a separate bank account in your name to manage your ward's money.	<input type="checkbox"/>	<input type="checkbox"/>
13) Your primary responsibility with regard to your ward's property is to increase its value.	<input type="checkbox"/>	<input type="checkbox"/>
14) You are automatically entitled to receive reimbursement for room and board that you furnish to the ward.	<input type="checkbox"/>	<input type="checkbox"/>
15) When making decisions about your ward's care, you should do as you think best.	<input type="checkbox"/>	<input type="checkbox"/>
16) If you can no longer carry out the responsibilities of a guardian, you should ask someone else to take over for you.	<input type="checkbox"/>	<input type="checkbox"/>
17) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.	<input type="checkbox"/>	<input type="checkbox"/>

	Answers for the guardian without a conservator
1) True	A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)
2) True	A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)
3) True	Your appointment order and letters of guardianship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)
4) False	You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)
5) False	You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)
6) True	An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)
7) True	Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)
8) False	You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters and • anyone requesting notice under Rule 6-501. (Pages 6-7)
9) True	The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)
10) True	The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)
11) False	You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)
12) False	All bank accounts should be opened in the name of the guardianship. You must never commingle your personal funds with those of your ward. (Page 8)
13) False	Your duty is to preserve your ward’s property in order to have the money needed to pay for your ward’s support, care and education. (Page 10)
14) False	Only with the court’s approval may you receive reasonable reimbursement. (Page 7)
15) False	The question that you should ask yourself is “What would my ward do?” As long as your ward’s wishes are not contrary to his or her best interest, they should be respected. (Page 10)

Answers for the guardian without a conservator	
16) False	You must request the court's permission to resign by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)
17) True	The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)

(c) Questions for the guardian with a separate conservator	True	False
1) A guardian is responsible for the care of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
2) A conservator is responsible for the property and financial affairs of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
3) The appointment order contains a statement of your powers, rights and duties.	<input type="checkbox"/>	<input type="checkbox"/>
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.	<input type="checkbox"/>	<input type="checkbox"/>
5) You are required to make reports to the conservator.	<input type="checkbox"/>	<input type="checkbox"/>
6) Reports to the court must be made on court forms.	<input type="checkbox"/>	<input type="checkbox"/>
7) After you prepare an annual report your only responsibility is to file it with the court.	<input type="checkbox"/>	<input type="checkbox"/>
8) The court may impose a penalty for failure to file a required report.	<input type="checkbox"/>	<input type="checkbox"/>
9) When you are uncertain about your responsibilities the best course is to consult a lawyer.	<input type="checkbox"/>	<input type="checkbox"/>
10) You should record financial transactions made on behalf of your ward on a monthly basis.	<input type="checkbox"/>	<input type="checkbox"/>
11) You should open a separate bank account in your name to manage your ward's money.	<input type="checkbox"/>	<input type="checkbox"/>
12) You are automatically entitled to receive reimbursement for room and board that you furnish to the ward.	<input type="checkbox"/>	<input type="checkbox"/>
13) When making decisions about your ward's care, you should do as you think best.	<input type="checkbox"/>	<input type="checkbox"/>
14) If you can no longer carry out the responsibilities of a guardian you should ask someone else to take over for you.	<input type="checkbox"/>	<input type="checkbox"/>
15) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.	<input type="checkbox"/>	<input type="checkbox"/>

	Answers for the guardian with a separate conservator
1) True	A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)
2) True	A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)
3) True	Your appointment order and letters of guardianship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)
4) False	You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)
5) True	You must report all financial transactions made on behalf of your ward to the conservator at least once a year at a time convenient for both of you. (Page 5)
6) True	Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)
7) False	You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters • the ward’s conservator and • anyone requesting notice under Rule 6-501. (Pages 6-7)
8) True	The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)
9) True	The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)
10) False	You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)
11) False	All bank accounts should be opened in the name of the guardianship. You must never commingle your personal funds with those of your ward. (Page 8)
12) False	Only with the conservator’s approval may you receive reasonable reimbursement. (Page 7)
13) False	The question that you should ask yourself is “What would my ward do?” As long as your ward’s wishes are not contrary to his or her best interest, they should be respected. (Page 10)

Answers for the guardian with a separate conservator	
14) False	You must request the court's permission to resign from this role by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)
15) True	The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)

(d) Questions for the guardian who is the conservator	True	False
1) A guardian is responsible for the care of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
2) A conservator is responsible for the property and financial affairs of a ward.	<input type="checkbox"/>	<input type="checkbox"/>
3) The appointment order contains a statement of your powers, rights and duties.	<input type="checkbox"/>	<input type="checkbox"/>
4) As guardian, you are required to make reports to the court only when there is a significant change in your ward's condition.	<input type="checkbox"/>	<input type="checkbox"/>
5) As conservator, you must file a complete inventory of the property owned by the ward within 180 days of your appointment.	<input type="checkbox"/>	<input type="checkbox"/>
6) Every year within 60 days after the anniversary of your appointment you must file an accounting with the court.	<input type="checkbox"/>	<input type="checkbox"/>
7) The reports that you have to make must be made on court forms.	<input type="checkbox"/>	<input type="checkbox"/>
8) After you prepare a report your only responsibility is to file it with the court.	<input type="checkbox"/>	<input type="checkbox"/>
9) The court may impose a penalty for failure to file a required report.	<input type="checkbox"/>	<input type="checkbox"/>
10) When you are uncertain about your responsibilities the best course is to consult a lawyer.	<input type="checkbox"/>	<input type="checkbox"/>
11) You should record financial transactions made on behalf of your ward on a monthly basis.	<input type="checkbox"/>	<input type="checkbox"/>
12) You should open a separate bank account in your name to manage your ward's money.	<input type="checkbox"/>	<input type="checkbox"/>
13) As long as you are honest, you may manage your ward's property in the same manner as you manage your own money.	<input type="checkbox"/>	<input type="checkbox"/>
14) When making decisions about your ward's care, you should do as you think best.	<input type="checkbox"/>	<input type="checkbox"/>
15) If you can no longer carry out the responsibilities of a guardian and conservator you should ask someone else to take over for you.	<input type="checkbox"/>	<input type="checkbox"/>
16) The Division of Aging and Adult Services provides information on resources for seniors and adults with disabilities.	<input type="checkbox"/>	<input type="checkbox"/>

	Answers for the guardian who is the conservator
1) True	A guardian is a person appointed by a court to make decisions about the care of another, who is called a “ward.” (Page 3)
2) True	A conservator is the trustee of a ward’s estate. As such, a conservator makes investment decisions. (Page 3)
3) True	Your appointment order and letters of guardianship and conservatorship issued by the court should specify the nature of your appointment. Your powers and duties are limited to those described in the appointment order. (Page 4)
4) False	You must make status reports to the court showing how your ward is doing and alerting the court to any changes every year within 60 days after the anniversary of your appointment. (Page 5)
5) False	You must file a complete inventory of your ward’s property with the court within <u>90</u> days of your appointment. Your first task is to locate and identify all of the property. Begin as soon as possible after your appointment or even before the appointment is final. (Page 5)
6) True	An accounting of the year’s income and expenses and of the changes in the value of the property in the estate must be filed every year. (Page 5)
7) True	You’re right. Reports can be prepared online at www.utcourts.gov/ocap/guardian_conservator_reporting/ . You will be asked specific questions and the answers you provide will automatically produce the required forms. In addition, paper copies of the forms are available at the clerk’s office in the court house. (Page 6)
8) False	You must send copies of the report along with a notice of the right to object to the following: <ul style="list-style-type: none"> • the ward if he or she can understand them • the ward’s husband or wife • the ward’s adult children • the ward’s parents • the ward’s brothers and sisters and • anyone requesting notice under Rule 6-501. (Pages 6-7)
9) True	The court may impose a fine on you. The court will review all reports and order a hearing if more information is necessary. (Page 6)
10) True	The best course is to consult a lawyer. To find a lawyer, you could ask friends and acquaintances for a recommendation, contact the Utah State Bar, www.utahbar.org or 801-531-9077, or call Utah Legal Services, 801-328-8891 or 1-800-662-4245, to discover whether you qualify for their assistance. (Page 3)
11) False	You should record financial transactions at the time you make them. It is very important to have accurate and detailed records of all transactions made on behalf of your ward. (Page 4)
12) False	All bank accounts should be opened in the name of the guardianship or conservatorship. You must never commingle your personal funds with those of your ward. (Page 8)
13) False	You must invest and manage your ward’s property as a prudent investor would, using reasonable care, skill and caution. (Page 10)
14) False	The question that you should ask yourself is “What would my ward do?” As long as your ward’s wishes are not contrary to his or her best interest, they should be respected. (Page 10)

Answers for the guardian who is the conservator	
15) False	You must request the court's permission to resign from one or both roles by filing a Motion to Terminate. If your request is granted, the court will appoint someone to replace you. (Page 4)
16) True	The Division of Aging and Adult Services provides a great deal of information for adults with disabilities and seniors and for those who care for them. You can get more information at 801-538-3910 or www.daas.utah.gov . (Page 15)

(e) Declaration of completion of testing.

Name

Address

Phone

Fax

E-mail

I am the Guardian Conservator

I am the attorney for Guardian Conservator My
Utah State Bar number is _____

In the _____ Judicial District Court _____ County, Utah

Court Address: _____

IN THE MATTER OF:

(Ward).

DECLARATION OF COMPLETION OF TESTING

Case Number _____

Judge

I have successfully completed the court approved examination on the authority and responsibilities of guardians and conservators.

I declare under criminal penalty of Utah Code Section 46-5-101 (class B misdemeanor for knowingly making false written statement) that this document is true and correct.

Date

Sign here ► _____

(Type or Print Name Here)

(16) Sample forms.

If you wish to use these sample forms, make copies of the blank forms so you can use the sample in the future. Keep a copy of each completed form for your records. If you have any questions about these forms, consult a knowledgeable lawyer.

An on-line interview, based on your answers to questions, will prepare the necessary forms for a report on the status of your ward, an inventory, an accounting and notice to interested persons. The on-line interview is available at: http://www.utcourts.gov/ocap/guardian_conservator_reporting/ . Keep a copy of all documents for your records.