

GUARDIANSHIP BILL OF RIGHTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the rights of an incapacitated person with respect to a guardianship.

Highlighted Provisions:

This bill:

- ▶ addresses the rights that an incapacitated person has with respect to a guardianship;
- ▶ provides that the rights of an incapacitated person do not abrogate any remedy

provided by law; and

- ▶ provides that the rights of an incapacitated person may be addressed in a guardianship proceeding or a private cause of action.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

75-5-301.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-5-301.5** is enacted to read:

75-5-301.5. Rights of incapacitated person in regard to guardianship.



28 (1) Except as otherwise provided by this chapter or any other law, an incapacitated
29 person has the right to:

30 (a) before a guardianship is imposed, have an attorney represent the incapacitated
31 person in order to ask the court for relief;

32 (b) have an attorney, at any time, represent the incapacitated person during the
33 guardianship in order to ask the court for relief;

34 (c) receive a copy of all documents filed in a guardianship proceeding;

35 (d) have a relative, a physician, or any interested person speak about or raise any issue
36 of concern on behalf of the incapacitated person during a court hearing, in writing or orally;

37 (e) receive information about guardianships from the court;

38 (f) ask questions and express concerns or complaints about a guardian and the actions
39 of a guardian to the court, in writing or orally;

40 (g) participate in developing an individualized plan for the incapacitated person's care,
41 including:

42 (i) managing the incapacitated person's assets and property;

43 (ii) determining the incapacitated person's residence; and

44 (iii) determining the services to be received by the incapacitated person;

45 (h) be given consideration in regards to the incapacitated person's current and
46 previously stated desires, preferences for health care and medical treatment, and religious and
47 moral beliefs;

48 (i) remain as independent as possible, including giving deference to the incapacitated
49 person's preference for the incapacitated person's residence and standard of living:

50 (i) as expressed or demonstrated before a determination of capacity was made; or

51 (ii) as currently expressed or demonstrated by the incapacitated person if the preference
52 is reasonable under the circumstances;

53 (j) be granted the greatest degree of freedom possible that is consistent with the reasons
54 for the guardianship;

55 (k) be able to exercise control over all aspects of the incapacitated person's life that are
56 not granted to the guardian in the order of appointment;

57 (l) engage in any activity that the court has not expressly reserved for the guardian,
58 including marriage or domestic partnership, traveling, working, or having a driver license;

- 59 (m) be treated with respect and dignity;
- 60 (n) be treated fairly by the incapacitated person's guardian;
- 61 (o) maintain privacy and confidentiality in personal matters;
- 62 (p) receive telephone calls and personal mail and associate with relatives and
- 63 acquaintances unless the guardian and the court determine that the association should be
- 64 restricted or prohibited in accordance with Section [75-5-312.5](#);
- 65 (q) receive timely, effective, and appropriate health care and medical treatment that
- 66 does not violate the incapacitated person's rights;
- 67 (r) have all services provided by a guardian at a reasonable rate of compensation;
- 68 (s) have a court review any request for payment by a guardian to avoid excessive or
- 69 unnecessary fees or duplicative billing;
- 70 (t) receive prudent financial management of the incapacitated person's property and
- 71 regular detailed reports of financial accounting, including reports on:
- 72 (i) any investments or trusts that are held for the incapacitated person's benefit; and
- 73 (ii) any expenditures or fees charged to the incapacitated person's estate;
- 74 (u) receive and control the incapacitated person's salary;
- 75 (v) maintain a bank account and manage the incapacitated person's personal money;
- 76 and
- 77 (w) ask the court to:
- 78 (i) review the management activity of a guardian if a dispute cannot be resolved
- 79 regarding the guardian's management;
- 80 (ii) continue to review the need for a guardianship or to modify or terminate a
- 81 guardianship; and
- 82 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible
- 83 time.
- 84 (2) The rights of an incapacitated person under this section do not abrogate any remedy
- 85 provided by law.
- 86 (3) Any right described in this section may be:
- 87 (a) addressed in a guardianship proceeding; or
- 88 (b) enforced through a private cause of action.