



Guardianship

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What is a guardianship?

A guardianship is a long-term court ordered custodial relationship established between a guardian and a ward, which vests the guardian (caretaker) with continuing legal authority over the ward (minor or incompetent person). The relationship vests the guardian with certain powers, focused on providing care and decision making on behalf of the ward, subject to a fiduciary duty. The ward has the right to the least restrictive and most appropriate involvement by the guardian, and freedom from inappropriate restraint. Guardianships can be either voluntary or involuntary and are commenced by the filing of a petition. Anyone has standing to file a petition for the appointment of a guardian.

Definitions (W.S. § 3-1-101)

- “Conservator” means a person appointed by the court to have the custody and control of the property of a ward.
- “Guardian” means a person who has qualified as a guardian of a minor or incompetent person pursuant to an appointment by the court to exercise the powers granted by the court. The term includes a plenary (full), limited, emergency and standby guardian, but does not include a guardian ad litem.
- “Incompetent person” means an individual who, for reasons other than being a minor, is unable unassisted to properly manage and take care of himself or his property as a result of the medical conditions of advanced age, physical disability, disease, the use of alcohol or controlled substances, mental illness, mental deficiency or intellectual disability.
- “Ward” means an individual for whom a guardian or conservator has been appointed by the court or designated under W.S. 3-3-501.
- “Minor” means an unemancipated individual under the age of majority as defined by W.S. 14-1-101(a).

Venue (W.S. § 3-1-103) for a guardianship proceeding is in the place where the minor or incompetent person resides or is present.

Best interests of the child is the touchstone in awarding guardianship of minors. *In re DMW*, 214 P.3d 996 (Wyo. 2009).

Any person may file a complaint against a **guardian or conservator not properly discharging their duties**. The guardian or conservator has twenty (20) days to respond. The court will set a hearing and make findings and a determination thereafter. (W.S. § 3-1-111)

Any person interested in the estate of the ward may file a complaint against anyone suspected of **concealing, embezzling, converting or conveying property of the ward**. (W.S. § 3-1-104)

Title to the property of the ward generally remains with the ward. (W.S. § 3-1-203)

Rights of Ward – prior to appointment (W.S. § 3-1-205); after appointment (W.S. § 3-1-206)

The proposed ward of any involuntary guardianship shall have the right to:

- Notice
- An opportunity for a hearing
- Be present at a guardianship hearing
- Have a GAL appointed
- **The least restrictive and most appropriate guardianship or conservatorship**, subject to guardianship order of preference (*see* W.S. 3-2-107)
- Freedom from inappropriate physical or chemical restraint

Appointment of Guardian (W.S. § 3-2-101 et seq.)

Actions to appoint a guardian are **commenced by filing a petition** for the appointment of a guardian (W.S. § 3-2-101). The petition must include statutorily prescribed details, and make a prima facie case for the need to appoint a guardian.

Notice of the petition of an involuntary guardianship must be served in accordance with WRCP upon the proposed ward, his custodian and the proposed guardian (W.S. § 3-2-102). Certain notice exceptions apply, see statute.

The petitioner, the proposed ward or the ward's custodian may demand a **jury trial** as provided by WRCP (W.S. § 3-2-103).

The court may appoint a guardian if the allegations of the petition regarding the status of the proposed ward and the necessity for the appointment of a guardian are **proved by a preponderance of the evidence** (W.S. § 3-2-104).

Appointing a **temporary guardian** for education, medical or dental purposes is available for not more than ninety (90) days for an adult ward and not more than one (1) year for a minor ward (W.S. § 3-2-106). *See also* W.S. § 3-2-302.

Appointing an **emergency guardian** may be appointed **without notice** if the court finds by a **preponderance of evidence** that the proposed ward will be substantially harmed before a hearing on the appointment can be held (W.S. § 3-2-106). Notice must be provided within forty-eight (48) hours of emergency appointment, and a hearing held within seventy-two (72) hours. Emergency guardians appointed without notice have limited authority, limited to making medical and medically related decisions (with exceptions).

Preference for appointment of guardian (W.S. § 3-2-107)

The court **may not** appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian:

- Provides or is likely to provide substantial services to the ward in a professional or business capacity
- Is or is likely to become a creditor of the ward
- Has or is likely to have conflicting interests with those of the ward
- Is employed by anyone who is disqualified above
- Exceptions apply for close family members with insubstantial conflicts of interest

Qualified persons have priority for appointment as **guardian of incompetent persons** in the following order (W.S. § 3-2-107). The court considers these priorities, but is not bound by them:

- A person nominated by the ward at a time the ward was competent to make such nomination
- The ward's spouse
- A nomination in the will of the ward's deceased spouse
- A parent of the ward
- An adult child of the ward
- A person named in the will of the ward's deceased parent
- A relative of the ward with whom the ward has resided for more than 6 months during the previous year
- A friend or relative having demonstrated a sincere and longstanding interest in the ward's well being
- Any other person whose appointment would be in the best interest of the ward
- A person with a guardianship program for incompetent person

Qualified persons have priority for appointment as **guardian of a minor** in the following order (W.S. § 3-2-107). The court considers these priorities, but is not bound by them:

- The parents or parent of the minor
- The person nominated as guardian in the will of the custodial parent

- The person requested by the minor who has reached the age of fourteen (14) years old
- Any other person whose appointment would be in the best interest of the minor

The appointed guardian must present a **guardian's report** every six (6) months during the guardianship. The report must be in writing, signed, and include details regarding the physical condition of the ward (including level of disability), principal residence, treatment, care and activities of the ward, as well as a description of the actions taken by the guardian on behalf of the ward (W.S. § 3-2-109).

Powers and duties of the guardian (W.S. § 3-2-201)

The guardian is required to do certain things. The guardian **shall**:

- Determine and facilitate the least restrictive and most appropriate and available residence for the ward
- Facilitate the ward's education, social and other activities
- Authorize and expressly withhold authorization of medical or other professional care, treatment or advice (statutory exceptions apply: § 3-2-202).
- Take reasonable care of the ward's personal property
- Commence protective proceedings if necessary to protect the property of the ward (*see* W.S. § 3-1-104).
- Apply appropriated guardianship money to the ward's current needs for support, care and education, as needed
- Exercise due care to conserve excess funds of the ward
- Pay to the conservator excess funds at least annually
- Request modification of duties if ward's changed circumstances require
- Upon ward's death, arrange final disposition of ward's remains according to ward's express wishes, if applicable

The guardian may do certain things. The guardian **may**:

- Receive money payable from any conservatorship for the support of the ward
- Receive money or property of the ward paid or delivered to the guardian
- Institute proceedings to compel the performance by any person of the duty to support or contribute to the support of the ward
- Consent to the marriage or adoption of the ward

The guardian is **not liable** for negligence or acts of third party providing medical or other professional care on ward under the authorization of the guardian.

The guardian of a minor has **powers and responsibilities of a parent** who has not been deprived of custody of their unemancipated minor child. Non-parent guardian is not required to expend their own funds for the support of the ward.

Upon approval of the court, the guardian **may after notice and hearing** (W.S. § 3-2-202):

- Commit the ward to mental health hospital or other mental health facility
- Consent to electroshock therapy, psychosurgery, sterilization, other long-term or permanent contraception
- Relinquish the ward's minor child for adoption so long as both parents attended the hearing
- Execute any appropriate advance medical directives, including durable POA for health care and an individual instruction