

An Overview of Guardianships in Wyoming

By Alex H. Sitz III

As an attorney in the State of Wyoming, the issue of guardianships can arise in many areas of our practices. Often, I see them in family law cases where grandparents or another family member take over the parental role of a minor child for an absentee parent. However, they may also occur in other areas of practice, including personal injury cases where an individual is deemed incompetent due to the severe nature of an injury suffered.

Before discussing the Wyoming guardianship statutes further, it is important to note an important distinction between a “guardian” and a “guardian ad litem.” Per Wyoming Statute 3-1-101(a)(v), a guardian is defined as “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.” In contrast, a *guardian ad litem* is defined in Wyoming Statute 3-1-101(a)(vi), as “a person appointed by the court to represent the best interests of a respondent during the course of litigation.” What does this mean in plain English? It means that a *guardian ad litem* is only involved in helping to advocate for the best interests of an incompetent person or minor child during the pendency of a case. And, although they help to advocate for that individual they have no actual power, control, or decision-making authority over that individual. Whereas, a guardian is typically granted the care, custody and control over the ward and granted further decision-making authority over that person for such reasons as medical, educational and legal matters.

With that understanding, how does one get appointed as a guardian in the State of

Wyoming? It all starts with the filing of a petition pursuant to Wyoming Statute § 3-2-101, which sets forth very succinctly the seven (7) requirements to include in one’s petition. They are as follows:

1. The name, age and address of the proposed ward;
2. The status of the proposed ward as a minor, an incompetent person or a mentally incompetent person and the reasons for the petition;
3. The name and address of the proposed guardian, and his qualification as a fit and proper person to serve as guardian;
4. The residence of the proposed ward in the county or his presence in the county;
5. The facts to show that the best interest of the proposed ward requires the appointment of a guardian in the state;
6. The name and address of the person or facility having the care, custody or control of the proposed ward, and;
7. The interests of the petitioner.

The guardianship statutes further explain very clearly in W.S. § 3-2-102 who must be served with notice of this petition. They typically include some combination of the proposed ward himself, his custodian, his parents, his spouses, and his adult children. Please review the statute to determine which ones apply to your specific case.

One important thing to remember when faced with a contested guardianship proceeding is that one does have a right to demand a jury trial per Wyoming Statute § 3-2-103. Therefore, be certain to advise one’s client of that right, and since guardianships are governed by the Wyoming Rules of Civil Procedure, be sure to make that jury demand within the time frames set forth in WRCP 38.

After going through all these initial procedural requirements to set up a guardianship, the final act is to draft and obtain a final order appointing a guardian. The language that must be included in the final order is also set forth very nicely in the guardianship statutes. Wyoming Statute § 3-2-104, states that a court must find by a preponderance of the evidence: the necessity for the appointment; and said order should include the reasons for that necessity; the actual appointment of the guardian; the duration of that appointment; and the limited or plenary duties of the guardian. Wyoming Statute § 3-2-201, sets for the duties of a guardian, and I will usually simply copy that statutory language into my guardianship orders, or generally reference the statute number and state that the guardian in my particular case is granted all those powers and duties as set forth in Wyoming Statute § 3-2-201.

After obtaining the final order, one would typically be done with a legal case. However, that is not so in guardianship cases because there is an ongoing duty to report to the Court every six (6) months after the establishment of a guardianship. That report is a written one and is signed by the guardian after he sets forth the physical condition, including level of disability or functional incapacity of the ward, the principal residence, treatment, care and activities of the ward, as well as providing a description of those actions the guardian has taken on behalf of the ward. These reporting requirements can be found in Wyoming Statute § 3-2-109; to avoid further legal expenses to clients I will typically provide them with a copy of that reporting statute and direct that they type or handwrite the report themselves for filing with the Clerk of Court. Pursuant to the statute all that is required is that the report be filed, but be aware of any local practices in one’s jurisdiction. For example, in my local jurisdiction the Court likes to approve these reports with an order and that may require one to draft a simple order to satisfy the Court. ❶

Robson Forensic

ENGINEERS, ARCHITECTS, SCIENTISTS
& SPECIALTY EXPERTS

WWW.ROBSONFORENSIC.COM | 206.262.7919