

General Provisions

	Current Montana Law	Uniform Law
<i>Terminology</i>	<ul style="list-style-type: none"> • Incapacitated person • Ward • Protected person 	<ul style="list-style-type: none"> • Deleted “incapacitated person” because of potentially offensive label • Substituted references to “individual subject to guardianship” & “adult/minor subject to guardianship” for references to “ward” • Substituted references to “individual subject to conservatorship” & “adult/minor subject to conservatorship” for references to “protected person” • Defines “less restrictive alternative” and “supported decisionmaking”
<i>Right to jury trial</i>	Right to jury trial in proceeding for appointment of guardian for an adult, but no right to trial by jury in proceeding for appointment of conservator (72-5-315)	May demand a jury trial on issue of whether basis exists for appointment of a guardian or conservator (107(c))
<i>Letters of office</i>	<ul style="list-style-type: none"> • Letters for guardianship of a minor must state whether the appointment is testamentary or court-ordered (72-5-201) • Adult guardianship statutes do not refer to “letters” but do require orders of appointment to specify whether the guardianship is a full guardianship or limited guardianship (72-5-316) • Letters of conservatorship are evidence of the transfer of all assets of a protected person to the conservator (72-5-426) • If the court limits any statutorily conferred power on the conservator, the limitation must be endorsed upon the conservator’s letters of appointment (72-5-430(2)) 	Requires court to issue letters of office upon guardian’s or conservator’s acceptance of appointment. Any limitations on power must be stated in letters (108)
<i>Appointment of co-guardian/co-conservator & successor guardian/conservator</i>	<ul style="list-style-type: none"> • No specific process for appointing a co-guardian or co-conservator • Allows appointment of a successor guardian or conservator (72-5-325(3); 72-5-414) 	Clarifies process for appointing a co-guardian or co-conservator and successor guardian or conservator (110)

<p><i>General notice requirements/waiver</i></p>	<ul style="list-style-type: none"> • Section 72-1-301 provides general notice requirements (72-5-314; 72-5-403) • No specific requirements for font or language • Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person’s waiver is confirmed in an interview with the visitor (72-5-314) • Waiver by the person to be protected is not effective unless the person attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor (72-5-403) 	<ul style="list-style-type: none"> • Provide notice in accordance with Rules of Civil Procedure • Provides specific requirements for giving notice, including requiring 16-point font, plain language, and, to the extent feasible, a language that the person to be notified is proficient in (113) • A person, <i>except</i> for a respondent or individual subject to guardianship/conservatorship/protective arrangement, may waive right to receive notice in a record signed by the person and the person’s attorney and filed with the court (114)
<p><i>Guardian ad litem</i></p>	<ul style="list-style-type: none"> • Representation of the alleged incapacitated person by a guardian ad litem is not necessary when the alleged incapacitated person waives notice (72-5-314) • In a proceeding for a conservatorship, the court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court (72-5-408) 	<p>Court may appoint a guardian ad litem if court determines an individual’s interest is not otherwise adequately represented (115)</p>
<p><i>Request for notice</i></p>	<p>An interested person who desires to be notified before any order is made in a guardianship proceeding or protective proceeding may file with the clerk a request for notice. A request is not effective unless it contains a statement showing the interest of the person and the person’s (or person’s attorney’s) address (72-5-318; 72-5-404)</p>	<p>A person may file with the court a request for notice if the person is not otherwise entitled to notice and is interested in the welfare of the respondent or individual subject to guardianship/conservatorship/protective arrangement (116)</p>
<p><i>Mandatory disclosure</i></p>		<p>Before accepting appointment as a guardian or conservator, a person is required to disclose to the court whether the person: (1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or (2) has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crime relevant to the functions the individual would assume as guardian or conservator. If a guardian or conservator engages or anticipates engaging an agent who has engaged in the above, the guardian or conservator promptly shall disclose that knowledge to the court (117)</p>

<p><i>Compensation for attorneys – petitions filed in bad faith</i></p>	<ul style="list-style-type: none"> • In conservatorship proceedings, an attorney is entitled to reasonable compensation from the estate for services rendered (72-5-432) 	<ul style="list-style-type: none"> • Attorney for a respondent is entitled to reasonable attorney’s fees and costs from the property of the respondent • Attorney or other person whose services resulted in a beneficial order to an individual subject to guardianship/conservatorship/protective arrangement is entitled to reasonable fees and costs from the property of the individual • Fees and costs must be approved by the court prior to payment • If a court dismisses a petition and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner (120)
<p><i>Compensation of guardian or conservator</i></p>	<ul style="list-style-type: none"> • Sums received by the guardian of a minor may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian (72-5-231) • A full guardian or limited guardian of an adult is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances (72-5-321(4)) • A conservator is entitled to reasonable compensation from the estate (72-5-432) 	<ul style="list-style-type: none"> • Subject to court approval or the approval of the conservator, a guardian is entitled to reasonable compensation and reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the individual subject to guardianship • Subject to court approval a conservator is entitled to reasonable compensation and reimbursement for appropriate expenses • Sets forth factors to consider in determining reasonableness (121)
<p><i>Instruction – ratification</i></p>	<ul style="list-style-type: none"> • A conservator may petition the court for instructions regarding the conservator’s fiduciary responsibility (72-5-413(2)) • A conservator or other interested person may petition for a court order authorizing or requiring the conservator to take a proposed action for the purpose of: (1) benefiting the protected person or the estate; (2) minimizing current or prospective taxes or expenses of administration; or (3) providing gifts (72-5-444) 	<ul style="list-style-type: none"> • Guardian or conservator may petition the court for instruction regarding fiduciary responsibility or to ratify a particular act related to the guardianship or conservatorship (122)

<i>Third-party acceptance of authority</i>	A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators that are endorsed on letters as provided in 72-5-430 are effective as to third persons. (72-5-435)	<ul style="list-style-type: none"> • Specifies when a 3rd party must or may refuse to accept the authority of a guardian or conservator • Provides a process for a 3rd party who has refused to accept the authority of a guardian or conservator to report the refusal and concerns to the court • Provides a mechanism for a guardian or conservator to petition the court to require a 3rd party to recognize the guardian's or conservator's authority (123)
<i>Delegation</i>		Sets parameters for a guardian or conservator delegating power, but not all power, to an agent (124)
<i>Temporary substitute guardian or conservator</i>	<ul style="list-style-type: none"> • If an appointed guardian is not effectively performing and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint a temporary guardian for a period not to exceed 6 months (72-5-317) • Court may appoint a temporary conservator for a period not to exceed 6 months if the court finds that the welfare of the person requires immediate action (72-5-421) 	Allows a temporary substitute guardian or conservator to be appointed when a proceeding to remove a regular guardian or conservator is pending or the guardian or conservator is not effectively discharging duties (125)
<i>Grievance</i>		<ul style="list-style-type: none"> • Allows an individual who is subject to guardianship or conservatorship or a person interested in that individual's welfare who reasonably believes that the guardian or conservator is breaching a fiduciary duty or acting inconsistent with the Act to file a grievance with the court • Court is required to consider the grievance unless a similar grievance has been filed in the past 6 months and the court followed procedures in considering the earlier grievance (127)