

## **45-5-312**

### **Chapter 45. Uniform Probate Code.**

#### **ARTICLE 5 Protection of Persons Under Disability and Their Property**

##### **45-5-312. General powers and duties of the limited guardian and guardian.**

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but not all aspects of his personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for himself commensurate with his ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise his supervisory powers over the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian of an incapacitated person has the same powers, rights and duties respecting the incapacitated person that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the incapacitated person and is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or his replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the incapacitated person, a guardian is entitled to custody of the incapacitated person and may establish the incapacitated person's place of abode within or without New Mexico;

(2) if entitled to custody of the incapacitated person, a guardian shall make provision for the care, comfort and maintenance of the incapacitated person and, whenever appropriate, arrange for his training and education. He shall take reasonable care of the incapacitated person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the incapacitated person is in need of protection;

(3) if no agent is entitled to make health-care decisions for the incapacitated person under the provisions of the Uniform Health-Care Decisions Act [24-7A-1 NMSA 1978], then the guardian shall make

health-care decisions for the incapacitated person in accordance with the provisions of that act. In exercising health-care powers, a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known;

(4) if no conservator for the estate of the incapacitated person has been appointed, the guardian may institute proceedings to compel any person under a duty to support the incapacitated person or to pay sums for the welfare of the incapacitated person; and

(5) the guardian shall exercise his supervisory powers over the incapacitated person in a manner that is least restrictive of his personal freedom and consistent with the need for supervision.

C. Any guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for his services and for room and board furnished to the incapacitated person. The guardian may request the conservator to expend the incapacitated person's estate by payment to third persons or institutions for the incapacitated person's care and maintenance.