

Guardianship



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The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and other personnel eligible for legal assistance from the Space Base Delta 1 Legal Office. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws change from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

GUARDIANSHIP

What is a Guardian?

A guardian is a person lawfully given the power and duty to take care of the person, property, and rights of one who is considered incapable of administering to one's own affairs (legally referred to as a "Ward"). The needs that most often must be met by the guardian are medical care, education, shelter, and other personal needs. To become a legal guardian, one should obtain a civilian attorney to prepare the petition that will be submitted to the court.

When Does a Child Need a Guardian?

For those under the age of 18, a guardian must be appointed by the court of the county in which the child resides if any one of the following factors is met: (1) the child's parent consent, (2) the parents' rights have been terminated, (3) the parents are unable to exercise their rights, (4) a prior guardian died without naming a new guardian. A court must also find that the appointment of a guardian is in the best interest of the child.

When a child is 14 or older, he or she may nominate a suitable person as their guardian. Either the child or the person interested in the well-being of the child may file to have a guardian appointed. In Colorado, the guardian must be 21 or older.

When Does an Adult Need a Guardian?

In some instances, adults who are no longer able to make decisions for themselves or take care of their own needs require a guardian. In cases of incapacity, a guardian may be appointed either over the person, over the estate, or both.

A person concerned about the welfare of the incapacitated adult may file with the court to open guardianship proceedings. Guardianship proceedings for adults are similar to those of minors. A petition is filed with the court along with supporting documents. The court then decides on the fitness of the guardian and the incapacity of the adult. Restrictions may be placed on the guardian if the ward is capable of making some decisions. In adult case, it is preferable to let the ward retain as much power over themselves as possible.

Can You Transfer a Guardianship Case From Colorado To Another State?

A guardian can ask the court to transfer a guardianship case to another state if: the Ward is physically present in the other state; or, the Ward is planning to permanently move to the other state, and there are plans in place to care for the Ward in the other state. You should contact the other state court to determine if there are any other requirements for the transfer because the Colorado court will not transfer the case unless the other state court will accept it.

Likewise, you will also need to give notice to the Ward and all other interested parties using JDF 787 Petition to Transfer Guardianship and/or Conservatorship from Colorado to a Receiving State. If no one contests the transfer and the court agrees with your transfer request, the court will sign JDF 788 Provisional Order re: Petition to Transfer Guardianship/Conservatorship

from Colorado to Receiving State. You will then need to send a certified copy of the signed JDF 788 to the receiving court. Then file a certified copy of the Order from the receiving state indicating its acceptance of the transfer with the Colorado court.

DUTIES OF A GUARDIAN

It is the duty of the guardian to manage the estate of the ward to the best of their ability. A guardian is responsible for the ward's property and for any investments made from the property. The guardian is also responsible for income derived from those investments. The guardian is responsible for the education of the ward if the ward is a minor. If the income from the ward's property is insufficient to provide for the ward's maintenance and/or education in a manner suitable to their condition in life, the probate court, upon application by the guardian in writing, may order the guardian to sell some of the property. A guardian may resign by signing a written document and filing that document with the probate court. Keep in mind that a resignation does not terminate any liabilities owed by the guardian because of his or her service. A guardian must be removed for conviction of a felony for which they are sentenced to imprisonment.