



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate

Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs

GUARDIANSHIP

Consider these questions and answers to help you determine a Guardian's responsibilities and liabilities.

Q: WHAT IS THE PURPOSE OF APPOINTING A GUARDIAN?

A: A guardian is appointed to assist with the personal and medical affairs, and day-to-day life, of a minor or a person impaired due to mental or physical illness or deficiency. Do not confuse "guardianship" with "conservatorship." Conservators are appointed specifically to manage financial affairs.

Q: CAN A GUARDIAN AND A CONSERVATOR BE THE SAME PERSON?

A: It depends on the state in which you live. Some states will allow the same individual to serve as both the guardian and conservator for a minor or incapacitated person (referred to as a ward). Other states will not allow the same person to serve as the guardian and conservator unless the court makes an exception.

Q: WHAT NORMALLY HAPPENS WHEN A GUARDIAN IS APPOINTED??

A: The basic procedure provides that a clerk of court will prepare a written document evidencing the guardian's authority to act as such. Certified copies normally are obtained and provided to interested parties such as schools, hospitals, and government agencies upon request.

Q: DO GUARDIANS HAVE ANY FINANCIAL AUTHORITY OVER THEIR WARD?

A: Normally, yes. Guardians normally have limited powers under state probate codes. Normally, guardians can receive and use current income for the ward's support and maintenance, and to pay off the ward's bills. Guardians normally may receive their ward's Social Security benefits, disability income and similar benefits, and may be asked to assist the conservator in devising a monthly budget and financial plan. Excess money should be turned over to the conservator, trustee, or other person responsible for the ward's overall finances.

Q: WHAT RESPONSIBILITIES DO GUARDIANS HAVE TOWARD THE COURT?

A: The reporting responsibilities vary depending on where you live. Generally the guardian will have to file an initial report with the court containing the ward's condition and any of the ward's money or assets that the guardian has control of. Subsequent annual filings may also be required. If there is a significant change in the ward's condition or situation, or if the guardian moves, he or she should promptly notify the court without waiting for the regular time to file a report. Unlike conservators, guardians aren't normally required to post bond or file a periodic financial accounting.

Q: ARE GUARDIANS NORMALLY COMPENSATED?

A: Normally, guardians are entitled to reasonable compensation for their services, payable from the funds of the ward. No compensation may normally be taken, however, without a court order. This compensation is taxable income to the guardian.

Q: WHEN MAY GUARDIANSHIP BE TERMINATED?

A: Guardianship may be terminated for a variety of reasons, including death of the ward, when the ward reaches the age of majority, when the ward's condition improves, or by order of the court.