



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 common questions regarding the guardianship process.

Q: WHAT IS THE PURPOSE OF APPOINTING A GUARDIAN?

A: A guardian is typically appointed to assist with caring for and attending to the personal and medical affairs 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 upon the state in which you live. Some states will allow the same person to serve as both the guardian and conservator of a minor or incapacitated person. Other states do not allow the same person to serve as both guardian and conservator unless the court makes an exception.

Q: HOW DO YOU BECOME A GUARDIAN?

A: Many courts have forms that allow a person seeking to become a guardian to petition the court to be appointed as the guardian of another person. This process normally requires a background check, notification and/or consent of any interested parties (such as the parents of a minor), and the submittal of a personal statement explaining why the applicant desires to be appointed as the guardian of the ward. For a person seeking to become the guardian of an impaired adult, sworn statements and medical documents verifying the person’s impairment or incapacity are generally required.

Q: WHAT NORMALLY HAPPENS WHEN A GUARDIAN IS APPOINTED?

A: The clerk of court will prepare a written document evidencing the guardian’s authority to act as the guardian of the minor or impaired adult (referred to as a ward). Normally, certified copies are obtained and provided to interested parties, such as schools, hospitals and government agencies, upon request.

Q: DOES A GUARDIAN HAVE FINANCIAL AUTHORITY OVER THEIR WARD?

A: Normally, yes. Guardians usually have limited powers under state probate codes. Typically, 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 DOES A GUARDIAN HAVE TOWARD THE COURT?

A: If there is a significant change in the ward’s condition or situation, or if the guardian moves, the guardian should promptly notify the court. Most courts will also require a guardian to file an annual report, which may require proof that the ward is in good health and has seen a physician within the past year. Typically, unlike a conservator, a guardian is not required to post bond or file a periodic financial accounting.

Q: ARE GUARDIANS NORMALLY COMPENSATED?

A: Sometimes. Guardians may be entitled to reasonable compensation for their services, payable from the funds of the ward. However, a guardian should not receive compensation unless there is a court order that allows compensation. This compensation is taxable income to the guardian.

Q: WHEN MAY GUARDIANSHIP BE TERMINATED?

A: Guardianship may be terminated for a variety of reasons, such as death of the ward, when the ward reaches the age of majority, or when the ward’s condition improves. None of these conditions automatically terminates guardianship, therefore, court proceedings are necessary to relieve the guardian.

Q: WHAT IF I WANT TO ADD ANOTHER PERSON AS A GUARDIAN?

A: Because being a guardian is associated with certain legal responsibilities, the additions of a new guardian must be done with court approval. Most courts have forms and a process for amending an order of guardianship to add new guardians. Again, this will likely require that the person being added as a guardian submit a personal statement and undergo a background check.

Q: CAN A GUARDIANSHIP OR CONSERVATORSHIP BE AVOIDED?

A: For adults, generally yes. Guardianships and conservatorships can be avoided so long as a health care power of attorney and a general durable power of attorney are in effect. It is also advisable to have a living will to ensure that your end-of-life decisions are appropriately enacted. Health care powers of attorney, general durable powers of attorney, and living wills are all documents that can be prepared and executed with the help of a legal assistance attorney. When these legal documents are properly executed under your state's law, a guardian or conservator will usually not need to be appointed if you become incapacitated

Consultation with an Army attorney is a free service for eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at 719-526-5572/5573 or come by the office (Building 6222) Monday-Friday from 9 a.m. to 4 p.m. Appointments are made on the last duty day of every week, you can call or walk-in to schedule an appointment.

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