

Guardianship Laws and Durable Powers of Attorney

Overview

In response to a request from a state, NASUAD sent a survey to its members and a list of long-term care contacts in the states seeking information about guardianship laws and practices and about how states assure appropriate use of durable powers of attorney. Twenty states responded to this survey, including: Arizona, Delaware, Georgia, Idaho, Illinois, Iowa, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming.

Response Summary

Respondents were asked which provisions were included in their state's laws (see Figure 1), the following answers were given:

- Eighteen states' laws clearly set forth the mandatory duties of guardians.
- Sixteen states' laws provide a right to counsel for people who seek or are under guardianship.
- Fifteen states' laws apply the mandatory duties to all guardians, regardless of familial relationship.
- Thirteen states' laws guide the use of best interest principles in guardianship decisions.
- Eleven states' laws provide for public funding for guardians if a person cannot afford to pay for a private guardian.
- Eight states' laws emphasize the use of self-determination and person-centered planning.
- Seven states' laws guide the use of substituted judgment in guardianship decisions.
- Five states' laws emphasize a preference for substituted judgment in guardianship decisions.
- Georgia's laws include ongoing training requirements for the public.
- Tennessee's public guardian statute allows service for no charge for those whose income is Supplemental Security Income (SSI).

Respondents were also asked which functions relating to guardianship their states' court perform (see Figure 2), the following answers were given:

- Thirteen states' courts monitor the filing of plans, reports, inventories, and accounting.
- Thirteen states' courts review the contents of plans, reports, inventories, and accounting.
- Eleven states' courts determine whether less restrictive alternatives will suffice.
- Ten states' courts monitor the reasonableness of fiduciary fees.
- Four states' courts independently investigate the well-being of the person.
- Four states' courts ensure that guardians, court staff and others involved in guardianship process receive sufficient, ongoing training.
- Two states' courts provide a template for developing a person-centered plan.
- New Jersey's courts determine the reasonableness of the sale of property of incapacitated individuals.
- None of the states' reported that their courts use technology to assist in monitoring.

Nine states (Arizona, Delaware, Illinois, Missouri, Nevada, New Mexico, New York, Ohio, and Oklahoma) said their state has laws and/or processes to monitor and assure the appropriate use of durable powers of attorney.

Helpful Links

Links to State Guardianship Laws and Policies

Arizona	http://www.azleg.state.az.us/arizonarevisedstatutes.asp?title=14
Delaware	http://delcode.delaware.gov/title12/c039/index.shtml
Idaho	http://legislature.idaho.gov/idstat/Title15/T15CH13PT1.htm
Illinois	http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2104&ChapterID=60
Iowa	http://coolice.legis.iowa.gov/coolice/default.asp?category=billinfo&service=iowacode&ga=83&input=633
Missouri	moga.mo.gov/statutes/c475.htm
Nevada	http://leg.state.nv.us/NRS/NRS159.html http://leg.state.nv.us/NRS/NRS253.htm
New Mexico	http://www.nmonesource.com/nmpublic/gateway.dll?f=templates&fn=default.htm
New York	www.nycourts.gov/supctmanh/.../Art%2081%20Law%202008.pdf
Ohio	http://codes.ohio.gov/orc/2111
Oklahoma	http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelID=71332 http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelID=71372
Oregon	http://www.leg.state.or.us/ors/125.html
Tennessee	http://www.tn.gov/comaging/documents/Chapter%2010%202010.pdf
Texas	http://www.statutes.legis.state.tx.us/Docs/PB/htm/PB.XIII.htm
Virginia	http://lis.virginia.gov/cgi-bin/legp604.exe?000+coh+64.2-2000+701785
Washington	http://www.courts.wa.gov/programs_orgs/guardian/
West Virginia	http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=44a&art=1
Wyoming	http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title3/Title3.htm

Links to Promising Guardianship Practices in the States

Delaware	http://courts.delaware.gov/Chancery/guardianship/index.stm
Illinois	http://gac.state.il.us/
Ohio	http://www.supremecourt.ohio.gov/Boards/familyCourts/
Oklahoma	http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelID=386863
Oregon	http://web.multco.us/ads/public-guardian-program
Tennessee	http://www.catenn.org/
Texas	www.dads.state.tx.us/news_info/.../pub395-guardianship.pdf
Virginia	http://lis.virginia.gov/cgi-bin/legp604.exe?000+coh+51.5-149+701788
West Virginia	http://www.courtswv.gov/public-resources/guardians-conservators.html
Wyoming	http://wyomingguardianship.org/guardianship-program.html

Links to Laws or Processes to Monitor the Appropriate Use of Durable Powers of Attorney

- Arizona <https://www.azag.gov/seniors/life-care-planning>
 Delaware <http://delcode.delaware.gov/title12/c049/index.shtml>
 Illinois <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2113&ChapterID=60>
 Missouri www.moga.mo.gov/statutes.c500-599/5700000145.htm
 Nevada <http://leg.state.nv.us/NRS/NRS162A.html>
 New Mexico <http://www.nmonesource.com/nmpublic/gateway.dll/?f=templates&fn=default.htm>
 Ohio <http://codes.ohio.gov/orc/1337>
 Oklahoma <http://www.oklegislature.gov/osStatuesTitle.html> (Title 58-Probate Procedure)

Do the state laws in your state include any of the following provisions?										
State	Clearly set forth the mandatory duties of guardians	Apply the mandatory duties to all guardians, regardless of familial relationship	Guide the use of substituted judgment in guardianship decisions	Emphasize a preference for substituted judgment in guardianship decisions	Guide the use of best interest principles in guardianship decisions	Emphasize the use of self-determination and person-centered planning	Require sufficient ongoing training of guardians	Provide for public funding for guardians, if a person cannot afford to pay for a private guardian	Provide a right to counsel for people who seek or are under guardianship	Other key provisions (Please explain)
Arizona	X	X	X		X	X	X	X	X	
Delaware					X	X		X	X	
Georgia	X	X							X	Ongoing training for public, not families
Idaho	X	X	X	X					X	
Illinois	X				X			X	X	
Iowa	X	X			X				X	
Missouri	X	X			X	X		X	X	
Nevada	X	X						X	X	
New Jersey	X	X	X	X	X			X	X	
New Mexico	X		X		X	X		X	X	
New York	X	X	X	X	v	X	X	X	X	
Ohio	X	X			X			X	X	
Oklahoma	X	X								
Oregon						X				
Tennessee	X	X	X	X	X	X				Our public guardian statute allows service for no charge for those
Texas	X				X		X		X	
Virginia	X	X						X	X	
Washington	X	X	X	X	X	X	X		X	Public Guardians are offered in few counties, not all.
Virginia	X	X			X			X	X	
Wyoming	X	X								

Figure 1

Do the courts in your state perform any of the following functions relating to guardianship?									
State	Determine whether less restrictive alternatives will suffice	Provide a template for developing a person-centered plan	Ensure that guardians, court staff and others involved in guardianship process receive sufficient, ongoing training	Monitor the filing of plans, reports, inventories and accounting	Review the contents of plans, reports, inventories and accounting	Independently investigate the well-being of the person	Monitor the reasonableness of fiduciary fees	None of the above	Other key functions
Arizona	X		X	X	X				
Delaware			X	X	X	X	X		
Georgia	X			X	X		X		
Idaho				X	X		X		
Illinois				X	X		X		
Iowa	X			X		X			
Missouri	X				X		X		
Nevada	X			X	X		X		
New Jersey	X						X		Determine reasonableness of sale of real property of incapacitated individuals
New Mexico								X	
New York	X		X	X	X	X	X		
Ohio	X			X	X				
Oklahoma	X	X		X	X				
Oregon								X	
Tennessee								X	
Texas	X		X	X	X	X	X		
Virginia	X								
Washington	X	X		X	X				
West Virginia				X					
Wyoming				X	X		X		

Figure 2

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