The Law of Guardians and Conservators: Southern States

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Guide Information
Last Updated: Oct 29, 2010
Guide URL: http://libguides.law.gsu.edu/lawofguardians
Description: Kimberly Cameron - Spring 2005 - Family Law
Tags: family_law
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Guide Index
Home
Primary Sources
Secondary Sources
Computerized Research
Interest Groups and Associations

Home

Introduction
The law of Guardians and Conservators is primarily state based and therefore varies somewhat from state to state. Although every state has laws that apply to guardians, some states do not have laws that apply to conservators. In states that have both classifications a guardian is normally classified as a guardian of the person, they “possess any or all powers and rights with regard to the personal affairs of the individual, including placement, medical, educational, rehabilitation, and social aspects of the care of the person”. Whereas a conservator also called a guardian of the estate, is an individual who “possesses any or all powers and rights with regard to the property of the individual”. Each state has guardian and conservator laws, which are based on the needs and conditions of each state. Although the laws of each state vary most states follow the provisions of Uniform laws, which are produced by the National Conference of Commissioners on Uniform State Laws, as a model when enacting their own laws. This research guide is intended to assist the attorney who is new to the practice of law in the area of guardianship or conservatorship. Although every state has its own laws this research guide is focused on the statutory laws of the southern states, which for purposes of this guide consists of Georgia, Florida, Alabama, South Carolina, North Carolina, Tennessee, and Mississippi.

About the Author
Kimberly Renee Cameron is a 3rd year law student at Georgia State University College of Law. This web-research guide was completed for the Advanced Legal Research Course taught by Prof. Nancy Johnson, during the Spring 2005 semester.

Disclaimer
Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

Primary Sources

Statutes
i. Uniform Acts

This uniform act like most uniform acts is merely suggested rules that states can then decide whether or not to use in adopting changes to their current statutes.

ii. Georgia
In Georgia, Title 29 – Guardian and Ward covers all areas of the law in respect to guardians. During the 2004 Session of the Georgia General Assembly the entire guardianship code of Georgia was changed and scheduled to take effect in July of 2005. The code sections are linked to the current versions of statute of which will change in July. Until then HB 299 has been referenced which was enacted by 2004 Ga. Laws p. 161, in order to view the new sections scroll down the document and the code sections are present.


This chapter includes definitions of importance in regards to guardians.

**O.C.G.A. § 29-2-1 et seq.** (2005). – Guardians of Minors

This chapter includes the provisions for different types of guardians of minors, the powers and required duties of the guardians of minors, termination, removal, substitute or successor guardians, and transfers.

**O.C.G.A. § 29-3-1 et seq.** (2005). – Conservators for Minors

This chapter includes the provisions for powers and duties of a conservator for a minor, requirements for the management of the property of the ward, bond requirements, compensation and expense provisions, settlements of accounts, dismissal, removal, successors, and transfers.

**O.C.G.A. § 29-4-1 et seq.** (2005). – Guardians for Incapacitated Adults

This chapter includes provisions for appointment procedures, powers and duties, bond requirements, modification or termination, removal, successors, appeals, and transfers.

**O.C.G.A. § 29-5-1 et seq.** (2005). – Conservators for Incapacitated Adults

This chapter includes provisions for appointment procedures, powers and duties, management of property provisions, bond requirements, compensation, settlements of accounts, modification or termination, dismissal, removal, successors, appeals, and transfers.

**O.C.G.A. § 29-6-1 et seq.** (2005). – Judge of Probate Court as Custodian of Certain Funds.

**O.C.G.A. § 29-7-1 et seq.** (2005). – Guardians of Beneficiaries of United States Department of Veterans Affairs.

**O.C.G.A. § 29-8-1 et seq.** (2005). – County Guardians

Currently there is no link for this section because it currently does not exist but it will after July. In July the new version will be easily accessed from any of the other statutory links.

### iii. Florida

Florida Statutes Annotated, Title 43 (XLIII) Domestic Relations, Chapter 744 Guardianship – This chapter includes provisions for venue, types of guardianships, guardians, adjudication of incapacity and appointment of guardians, powers and duties, termination, veterans’ guardianship, and public guardianship.


Florida Statutes Annotated, Title 43 (XLIII) Domestic Relations, Chapter 747 Conservatorship

**Fla. Stat. Ch. 747.01 et seq.** (2005). – Conservatorship

This chapter includes provisions for appointment, bond, rights, powers, duties, resignation, and termination.

### iv. Alabama

Alabama Code Title 26. Infants and Incompetents

**Ala. Code § 26-2-1 et seq.** (2005). – Appointment of Guardians (In order to get to the link you must click on the section referenced, then click on Code of Ala which is found on the left side of the screen, then click view, then click Title 26, then click Chapter 2, then you can click on the sections of interest.)

This chapter includes provisions for a general conservator for the county, guardians of minors, and guardians of incapacitated persons.

**Ala. Code § 26-2A-1 et seq.** (2005). – Alabama Uniform Guardianship and Protective Proceedings Act (In order to get to the link you must click on the section referenced, then click on Code of Ala which is found on the left side of the screen, then click view, then click Title 26, then click Chapter 2A, then you can click on the sections of interest.)

This chapter includes provisions for jurisdiction, notice, and protection of persons under disability and their property (guardians of minors, guardians of incapacitated persons and protection of property of persons under disability and minors).

**Ala. Code § 26-3-1 et seq.** (2005). – Bonds of Guardians (In order to get to the link you must click on the section referenced, then click on Code of Ala which is found on the left side of the screen, then click view, then click Title 26, then click Chapter 3, then you can click on the sections of interest.)

**Ala. Code § 26-5-1 et seq.** (2005). – Settlements of Accounts of Conservators (In order to get to the link you must click on the section referenced, then click on Code of Ala which is found on the left side of the screen, then click view, then click Title 26, then click Chapter 5, then you can click on the sections of interest.)

**Ala. Code § 26-9-1 et seq.** (2005). – Guardianship and Commitment of Incompetent Veterans and Dependents (In order to get to the link you must click on the section referenced, then click on Code of Ala which is found on the left side of the screen, then click view, then click Title 26, then click Chapter 9, then you can click on the sections of interest.)

### v. South Carolina

South Carolina Code Annotated Title 62: South Carolina Probate Code


This part includes provisions for definitions, subject matter jurisdiction, payment, delegation of powers, and a possible designation of the director of the Department of Mental Health as conservator.

This page includes a provision for jurisdiction of family courts as to minors.


This page includes provisions for venue, procedure, order of appointments, alternatives, acceptance of appointment, termination, removal or resignation, notices, temporary guardians, who may be a guardian, general powers and duties, and subsequent proceedings.


This page includes provisions for proceedings, venue, petitions, notice, court orders, protective proceedings, protective arrangements, who may be appointed conservator, bond requirements, removal of conservator, general duties, records, accounts, conflicts of interest, powers in administration, distributive duties, limitations and enlargement of powers, preservation, claims, individual liability, termination, payment, foreign conservator, and settlements of claims.


This page includes provisions for appointment, persons who may file petition for appointment, content of petition, facts which constitute prima facie evidence of need for guardian of a minor ward, facts which constitute prima facie evidence of need for guardian of a mentally incompetent ward, notice, fitness of guardian, bond, limitation on the number of wards per guardian, annual accounting, securities, failure to account, accountability, allowed investments, use of estate for support of person other than ward, compensation, final discharge, proceedings, copies, hearings, notice, and construction.

**vi. North Carolina**

North Carolina General Statutes Chapter 34: Veterans’ Guardianship Act

**N.C. Gen. Stat. § 34-1 et seq.** (2005). This chapter includes provisions as to a guardians powers as to property, appointment, limitations on the number of wards a guardian can have, petition for appointment, prima facie evidence needed for appointment of guardian of minor, certificate as evidence in regard to guardianship of mentally incompetent wards, notice, qualifications, accountings, failure to file accounting, compensation, investments, application of ward’s estate, payments to relatives, discharge, and construction.

North Carolina General Statutes Chapter 35A: Incompetency and Guardianship


This article includes provisions for jurisdiction, venue, change of venue, petitions, contents of petitions, right to counsel, notice, right to jury, evaluation, hearings, appointments, appeals, costs, and fees.


This article includes provisions for application, service, hearings, qualifications, priorities for appointment, letters of appointment, and rule-making powers of the Secretary of Health and Human Services.


This article includes provisions for absence of natural guardian, application, service, hearings, criteria, recommendations, orders, letters of appointment, funds owed to minors, and guardians for children of servicemen.


This article includes provisions for bond requirements, terms and conditions of bonds, clerk’s authority, renewal, relief, liability, and a Health and Human Services bond.


This article includes provisions for powers and duties, status reports, and procedures.


This article includes provisions for accountings, procedures, final accountings, expenses, and investment and bank statements.


Termination of Guardianship


**vii. Tennessee**

**Tennessee Code** Title 34: Guardianship


This chapter includes provisions for parents, joint and natural guardians of minor children, duty of support, abandoned minors, bonds, appointments, guardian ad litem, hearings, notice, effectiveness of appointment, waiver, powers, duties, hearings, accounting, compensation, payments, costs, investments, sale of property, resignation, receipts of property, standby fiduciaries, personal representatives, courts, distributions to persons other than minor or disabled person, removal, attorney ad litem, least restrictive alternatives, letters of conservatorship or guardianship, and forms or instructions.


This chapter includes provisions for appointments, jurisdiction, venue, petition for appointment, priorities, court orders, and termination.


This chapter includes provisions for appointments, jurisdiction, venue, petitions, priorities, physical or psychological examinations, rights of respondent, court orders, discharge, modification of duties, and support of persons.

Cases

As previously state, guardian and conservator laws are state specific so therefore the cases are also state specific. For every above-mentioned provision covered in each section, chapter, or article of each state statute there are cases that are decided based upon those points. In order to fully research the cases that relate to a particular issue, the best way to start is with the statutes. If you find a state statute on issue the cases found in the annotations of the statute may be enough if not they are at least a good starting point.

Secondary Sources

Law Review Articles


Call No. S815 .L38

Call No. S815 .L38

Call No. S815 .H42 .C376

Call No. S815 .L38

Call No. T975 .L4162

Call No. W93 .P67

Call No. S815 .L38

Phillip B. Tor, Ph.D and Bruce D. Sales, J.D., Ph.D., A Social Science Perspective on the Law of Guardianship: Directions for Improving the Process and Practice, 18 Law & Psychol. Rev. 1 (1994).
Call No. L416 .A54378 .P79

Annotations

W. J. Dunn, Annotation, Mental Condition Which Will Justify the Appointment of Guardian, Committee, or Conservator of the Estate for an Incompetent or Spendthrift, 9 A.L.R.3d 774 (1968).
Call No. KF132 .A522 Ser.3

Call No. KF132 .A522 Ser.3

Forms and Practice Aids


Lauren Krohn, J.D., Cause of Action to Establish Involuntary Conservatorship for Estate of Adult Person, 6 Causes of Action 2d 625 (2004). Call No: None in Georgia State University College of Law Library


These sections include forms that can be used during the process of appointment of a guardian in a testamentary capacity, during the process of obtaining a security bond, during the process of selling the property of a ward, during the process of terminating the guardianship, and in regards to leases and compromise and settlement agreements involved with guardianships.

This practice aid includes the elements of the case, defenses, and also checklist for various steps in the process of establishing an involuntary conservatorship of an adult person.

These sections include information on guardians of minors, guardians of the mentally impaired, judicial appointments, tenure and removal, powers and duties, actions, accountings, liability, relationships, joint guardians, and foreign guardians.

This practice aid includes information on appointments, qualifications, tenure, custody and care of person, custody and care of estate, sales and conveyances, accountings, actions, foreign and ancillary guardianships, joint and successive guardianships, and liability.

This practice aid includes forms in regards to a nomination by a minor, appointments, qualifications, transfers, tenure, powers and duties, powers over property of ward, accounts, reimbursements, compensation, foreign guardians, and actions.

Treatises


This treatise deals with the appointment of guardians in the context of who can be a guardian, how the person becomes a guardian, different kinds of guardians in Georgia.

This is in addition to other information on the Georgia law of administrators and executors. This treatise is outdated being that the Georgia law on guardianship has changed several times in recent years, but it is one of a few treatises on the subject of guardianship.

This treatise deals with various issues that are involved with executors, administrators, and guardians. Although it is outdated in its relationship to guardians it is one of the few treatises that exist in relationship to the laws of guardians.

Books


This book provides an overview of the guardianships of adults, a history of changes to the law of guardianships, alternatives, the process, accountability, courts and the future of guardianships of adults.

This book deals with the Georgia law of appointments of guardians of minors, guardians of adults, emergency guardians of adults, appointment of other guardians, guardian ad litem, administrative duties, fiduciary duties, powers, rights of adult wards, compensation, appeals, and termination.

This book contains information on what needs to be done in order to properly insure that the goals of guardianship are properly evoked.

This book includes information on what is required in competency hearings on guardianship such as standards, evaluations, and models.

This book includes information on the guardianship and conservatorship laws of the 50 states. It also breaks down and discusses each section of the Model Act.

This annotation discusses the cases and laws of various states in relation to how the law deals with allowing a minor to choose his or her guardian.

This annotation covers the cases and laws of several states and their opinions of if a guardian can be sued or sue someone outside their state of appointment.

This annotation covers the cases and laws of several states on the liability of a guardian in relation to the money of a ward.

This annotation covers the cases and laws of several states and how they deal with the appointment of a guardian for a child in a custody proceeding.
This book talks specifically about guardianship in the context of older persons, minor, relationships, incompetents, and veterans. It also includes sample forms and information on the laws of the 50 states.

This book includes guardianship information in the following contexts: legal basis, competency, psychiatric disorders, judicial process, decisions, abuse, monitoring, and research.

This book includes information on guardianships in the following contexts concerns, in capacity, characteristics of wards and guardians, pathways, experiences, strain, legislation, reform, and recommended practices.

This practice manual includes information in regards to the practice of law that involves the elderly. Chapter 6 of this manual specifically discussed guardians and conservators, and the processes involved with appointment, powers and duties, process, and information on special situations of guardians and conservators of the elderly.

This book talks about the guardianship laws of Florida, it also talks about public guardianship, the functioning of the guardianship courts, programs and services, and future recommendations of change.

This book is beneficial to a new attorney because it includes a step-by-step process of guardianship. This book talks about representing clients in guardianship proceedings, ethical dilemmas evaluating evidence of capacity, communication, alternatives, and advising.

Program Materials

Guardians Ad Litem in Juvenile Court: Program Materials (Institute of Continuing Legal Education in Georgia 1990).
Call No: KFG106.A75 G92

Call No: KFG106.A75 G83 2000

Call No: KFG106.A75 C43 2002

Call No: KFG53.A75 G43 2002

Hot Topics in Guardianship: Program Materials 2004 (Institute of Continuing Legal Education in Georgia 2004).
Call No: KFG53.A75 H68 2004

Call No: KFG53.A75 I77

This book includes the program materials of a CLE conference on guardians’ ad litem in juvenile courts. The program covers information in regards to the CASA Program, the court system, deprivation and termination, representation, and the role of a guardian ad litem in a paternity or legitimation proceeding.

This book is the program materials from a CLE conference on the proposed legislative changes to the guardian ad litem provisions of Georgia law.

This book includes the program materials of a CLE conference on guardianship issues such as ethics, appropriateness of guardianship, testimony, the use of experts, guidelines, hypotheticals, and selected issues under discussion.

This book contains the program materials from a CLE conference that discussed guardianship law in the context of recent cases, ethics, incapacity, and future changes to the guardianship laws of Georgia.

This book is the program materials for a CLE conference on the issue of guardianship. The program covers guardianship in regards to nursing homes, trusts, ethical considerations, emergency guardianships, legislation, alternatives, and other selected areas.

This periodical includes information from CLE conferences held in Georgia that are in regards to guardianship. The information included in each book is the issues that are priorities in the year of each conference.

Computerized Research

Lexis

Lexis is a great site to use in order to find just about anything you are looking for with a range from statutes, cases, law reviews, practice aids, forms, just about anything dealing with legal research that you can think of to look at. Although this is a great way to find research it has a very expensive downside, the costs, unless of course you are a law student with a free subscription.

Westlaw

Westlaw like Lexis is great about finding anything needed in regards to legal research but also like Lexis there is a huge downside in the cost of a subscription.

Findlaw

This is a free website that is devoted to legal resources by providing links to other useful websites, which leads to cases, codes, legal news, lists, and message boards.
LoisLaw
This is a less expensive website that is comparable to websites such as Lexis and Westlaw but for small law firms and other individuals who cannot afford the costs of Lexis and Westlaw.

Google
This website is just a general search engine found on the web. This is a great place to start just to learn a little about your topic or in order to find more possible keywords to use in expensive search engines such as Lexis and Westlaw.

Suggested Search Terms
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<thead>
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<th>Term</th>
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</thead>
<tbody>
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<td>Ward</td>
<td>Guardianship</td>
<td>Conservator</td>
<td>Ad litem</td>
<td>Administrator</td>
<td>Appointed guardian</td>
<td>Best interest</td>
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<td>Appointment</td>
<td>Incompetent</td>
<td>Custody</td>
<td>Children</td>
<td>Guardian ad litem</td>
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<tr>
<td>Incompetent person</td>
<td>Appointment</td>
<td>Probate</td>
<td>Capacity</td>
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Internet Sites

GUARDIANSHIP/CONSERVATORSHIP: What Do I Need to Know?
This article answers questions such as what is a guardian and conservator, the differences between the two, the question of can an individual be both, who decides, how they decide, who can start the process, petitions, hearings, who is a guardian ad litem, duties of the guardian, the appointment of legal counsel as a guardian, and who is eligible to serve.

Resources: The Estate Planning Center – Guardians and Conservators
This article is published by King Maynord, LLC, Attorneys at Law. This article answers questions about guardians, conservators, who may be appointed, definition of incapacitation or disabled, legal effect of the determination of incapacity, proceedings, duties, liability, and termination.

Prevent Guardianship Abuse through Education & Actions Unjust Blog
This blog is a production of the Justice for Florida Seniors Organization with entries that are important to senior issues.

Interest Groups and Associations

Interest Groups
National Guardianship Association
This website has several areas that define guardianship, resources for individuals looking for guardians along with resources for guardians, resources which includes links to other organizations, and also a calendar of upcoming events.

AARP
This website is a great website to learn more about issues involving the elderly population, it is a general website with links that are specific to the 50 states and various issues.

The Center for Social Gerontology
This website and organization is designed to promote elderly individuals and improve their place in society. This article talks about guardianships and alternatives that may yield a more favorable result.

ABA Commission on Law and Aging
This website covers the laws of the 50 states in comparison to each other through the use of charts on particular topical areas.