



FORT LEONARD WOOD MANEUVER SUPPORT CENTER OF EXCELLENCE
OFFICE OF THE STAFF JUDGE ADVOCATE
Legal Assistance Office



GUARDIANSHIP IN MISSOURI

Appointing a Guardian

Missouri law allows for the appointment of a guardian over a minor as a stop-gap measure to provide for the care and custody of a minor for the period of time when the parent is unable, unwilling, or unfit to perform his or her parental functions.

- Clear and convincing standard
- This determination must be made in the first instance based on the evidence and due regard to the presumption in favor of the parent. And the determination should be based not only on present circumstances, but also on the parent's history of dealing with the children.
- Factors considered by Court: stability in a parent's life, the care the parent would be able to provide on a daily basis, the environment in which the child would be raised, the amount of effort made by the parent to furnish any financial support, and the parent's mental health.
- A court should not appoint a guardian for a child unless there is no parent available, willing, and able to care and provide for the child.

Once a parent has been found unfit in a guardianship proceeding, the burden of proving that the parent is fit to assume custody of a child shifts to the parent and the statutory presumption in favor of the parent as the custodian is removed. To terminate the guardianship of a third party, the burden of proof is on the parent to prove by a preponderance of the evidence that the parent is fit, suitable, and able to assume the duties of guardianship and that it is in the best interest of the minor that the guardianship be terminated, Mo. Rev. Stat. § 475.083.2(3), 475.083.6 (2000). A parent can only file a petition to terminate guardianship once every 180 days, Mo. Rev. Stat. § 475.083.6.

Guardianship vs Conservatorship

A guardian is appointed by the Circuit Court's Probate Division to have the care and custody of a minor or of a person found to be incapacitated. The guardian of an adult is not responsible for the financial care of his/her "ward" (§475.010(8), RSMo).

The conservator or limited conservator of the estate is under duty to use a degree of care, skill and prudence which an ordinarily prudent person would use to manage property and conduct business for another person. The conservator does not assume personal responsibility of the protectee's financial burdens. §§475.094 and 475.130, RSMo.



FORT LEONARD WOOD MANEUVER SUPPORT CENTER OF EXCELLENCE
OFFICE OF THE STAFF JUDGE ADVOCATE
Legal Assistance Office



In short, a guardian protects physical well being whereas a conservator protects financial wellbeing