



## **2021: Transferring Guardianship Across State Lines**

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The U.S. Census Bureau estimates that more than 7 million United States residents moved to a different state over the past year. (See US Census Data Set 2019 American Community Survey 1-year Estimates, [State-to-State Migration Flows](#).) Moving can be a very stressful event. Guardians and individuals who are incapacitated or who need assistance making personal decisions should be aware of legal complications that may arise when moving to a different state. (This article will use the terms “guardian” and “ward,” although some jurisdictions may use the term “conservator” and “protected person.” For more information about Guardianships, see *The Voice*®, Volume 7, Issue 5, June of 2013.)

The guardianship process can be quite formal, technical, and lengthy. Once appointed, many guardians may be under the impression that because a court has appointed them as a guardian, their authority to serve as guardian will be effective in each and every state. Unfortunately, this impression is overly simplistic. The laws between the states can vary considerably, and moving to another jurisdiction can be challenging.

When considering moving to another jurisdiction, a guardian will need to know what will be required by both the original state and the new state. Dealing with two sets of laws and regulations can be overwhelming and can lead to complicated delays and lengthy legal proceedings. Sorting through the details is sufficiently complicated that it would be a good idea to consult with special needs attorneys from *each state involved* to make the move as easy as possible.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) is one proposal to simplify the process of moving a guardianship between states. As of the date of this writing, 47 states, Puerto Rico and Washington, D.C., have enacted the statute (click [here](#) for an up-to-date tally). The UAGPPJA strives to simplify the process of moving guardianships between states by outlining a process that will generally enable each state to recognize the legal findings and authority of a guardian implemented in another state. Although this is the general intent, the actual implementation of this rule can still vary between different states.

Ideally, the UAGPPJA would permit a guardian to record an existing court order in the judicial system of the new home state and have the laws of the new state then enforce the prior state's court order. States have developed their own procedure to carry this out. Hawaii, as an example, requires a guardian to petition its court system to accept the guardianship order from a different state and to register the prior order with the Hawaii judiciary. One reason for doing this is to make sure that the initial appointment is consistent with the laws of Hawaii and to assure certain safeguards for the ward are met.

The primary safeguard addressed by the UAGPPJA is to ensure that moving a ward to another state is done for appropriate reasons. In relevant part, the UAGPPJA requires that:

- the relocation is in the ward's best interests;
- plans to care for the ward in the new home are "reasonable and sufficient;"
- no parties oppose the move; and
- the relocation is permanent.

It is equally important to consider the procedures required by the transferring state. Under UAGPPJA, a guardian will need to initiate the legal process of asking permission from both the originating state and new home state to begin the transfer. The back-and-forth process can be largely clerical in uncontested matters, and the UAGPPJA has largely streamlined the process. There are exceptions, though. The use of different legal terms by the various states involved can slow operations, but seasoned attorneys will likely be able to dispose of the semantics. In some cases, especially those that are being contested, the courts may want to hold evidentiary hearings. It is important to note that even if the initial petition to transfer jurisdiction is denied, the Guardian should still be able to seek appointment in the new home state if the court has jurisdiction to otherwise appoint a guardian other than by granting an order of transfer. This is basically the same as starting a new Guardianship process in the new state, but it will not address the requirements that may have been imposed by order of the court of the prior state.

Once guardianship has been transferred to the new home state under the UAGPPJA, there may be additional steps to take with the original state, including seeking a final order confirming the transfer of the guardianship to the new jurisdiction. Even if it is not required, it may be beneficial to seek the termination of the initial guardianship proceeding in the original state. If the original proceeding remains in effect, the guardian will need to continue to comply with the original order, which may include reporting requirements. Failure to comply with an effective court order is problematic and could be investigated by the state's protective services division.

In instances where both states have *not* approved reciprocity or adopted the UAGPPJA, complications can multiply. Guardians may need to petition the court in the originating state to allow the transfer to take place and may have to start proceedings from scratch in the new one. Fees could mount for attorneys, medical experts and more, and the new court may ultimately disagree with previous findings. In the meantime, guardians must continue submitting reports and accountings to the first state.

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