

## **TRANSFER OF JURISDICTION OF GUARDIANSHIP ORDERS**

The factual starting point is when a family member (parent) lives in one state, and the responsible family member lives in another state, and wants to move the incapacitated family member to be closer to the responsible person. The incapacitated person must have been declared incapacitated, and have a guardian and conservator appointed by the Court.

The relevant Virginia Code Sections are attached. Section 64.2-2114 dealing with transfers to another state, and Section 64.2-2115 dealing with transfers from another state.

Virginia is part of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The Uniform Act has been introduced in Georgia and North Carolina, and has not been enacted in Florida, Kansas, Louisiana, Michigan, Texas and Wisconsin.

Both statutes require four Orders to be entered as part of the process. Provisional Orders have to be entered first. Then the termination Order from the home state is entered; following by the Order transferring jurisdiction.

Attached are the two recent cases where Ross Hart was involved in a transfer from Virginia to Arizona, and I represented a niece in a transfer from Illinois to Virginia. In both cases, the petitioner was the same person, there was no challenge, and the Orders were entered. The Virginia petition and Orders are attached. In order to make the process smoother, the initial petition should include some history and background, in addition to why the petition needs to be acted on.

There is no time limit as to when a transfer petition must be filed. §64.2-2114 (D)(1), transfer to another state requires that the Provisional Order find that the incapacitated person is physically present or is reasonably expected to move permanently to another state. In many cases, the incapacitated person has moved, and months have passed, before the petition gets filed. In the recent case, from Illinois to Virginia, petitioner moved her uncle to Virginia, and dealt with his hospitalization, nursing home, and his eventual assisted living placement, based on her Illinois authority. The best answer to the “when to file” question is “as soon as the move is made”, but the real question is “what happens when there is a problem”.

Attached is an Order from Florida which is not part of the uniform act. I served as guardian/conservator for a lady for several years. She was declining, and a son in Florida agreed to move her to a facility close to him, and to petition to become guardian of his mother. The Florida attorney requested a triple seal of the Virginia Order, and a copy of the last accounting. The Order entered appointed her son as Plenary Guardian of her Person and Property, and defined his responsibilities. The Order did not mention the termination of the Virginia Order, and the attorney's response was that no Order would be entered. Attached is the Virginia Order that terminated my appointment, and dealt with the surety bond as conservator that I filed to end Virginia jurisdiction, and terminated the surety bond.

Although most transfers are uncontested, there are cases where someone objects. The statute provides concurrent jurisdiction. §64.2-2102-2013 deal with jurisdictional issues where there is a dispute that mandates communication between the states to protect the respondent.

One additional aspect of these Code Sections is that some states have dockets that did not provide a smooth transition, and something happens to the ward.

However, most cases are uncontested, and the two listed code sections are the applicable statutes.

The notice provision in section B of each Code Section requires some notice by mail service on family members. The ward needs to be served, and consents from family members are helpful.

There is no mention of a *Guardian Ad Litem* in either Section 2114 or 2115. Section 2114 is the initiating state and a *Guardian Ad Litem* should have been appointed. The issue of requiring a GAL report Code Section 2114 is silent. Section 2115 F provides that "the court shall recognize a guardianship or conservatorship order from another state including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian and conservator." In the recent transfer from Illinois case, the issue of GAL was never raised. There is an unresolved question that, given the mandatory notice of this section, and, if there is the same petitioner and/or no contest, what should a GAL investigate for a report.

Section 64.2-2115 (E) requires that the final Order contain a determination whether the Order should be modified to conform to the laws of Virginia.

One of the biggest problems with the two transfer sections is the mandate for four petitions/motions and four Orders, with attorneys in the two states, filing in the necessary procedure from initial provisional motion to final Order. The attorney's fees are substantial in most cases, even when there is no contest and the petitioner is the same person.