

How to Transfer a Guardianship to or from Idaho for a Developmentally Disabled Person

Read below to find out more information on how to transfer a guardianship to or from Idaho for a person with a development disability.

Question: I have legal guardianship over an individual with developmental disability. I need to transfer that guardianship to or from the state of Idaho. How do I do that?

Answer: In 2008, the Idaho Legislature created two statutes specifically directing how to transfer a developmentally disabled guardianship to or from Idaho. Idaho Code § 66-415 governs transferring a guardianship created in a different state to Idaho. Idaho Code § 66-416 governs transferring an Idaho guardianship to a different state. Both of these statutes direct courts to use the transfer process previously established for incapacitated adult guardianships, which are different from developmentally disabled guardianships.

In 2011, the Idaho Legislature revamped the incapacitated adult guardianship statutes, removing the previously mentioned transfer statutes and replacing them with Idaho Code §§ 15-13-301 and 302. A problem was created when the Legislature did not correct Idaho Code §§ 66-415 and 416 to the new transfer statutes.

As of now, the transfer statutes under Idaho Code §§ 66-415 and 416 for developmentally disabled guardianships direct courts to use a repealed and nonexistent law. In essence, the legal process hits a statutory dead end.

Until this inconsistency is corrected by the legislature, those seeking to transfer an Idaho guardianship to a different state should follow the process in Idaho Code § 15-13-301. The guardian will need to file a petition asking the Idaho court to transfer the guardianship to the new state and send a copy of the petition to all those required by the statute. The court will grant a provisional order of transfer if the protected person is in the new state or is soon moving there, the transfer is not contrary to the protected person's best interest, and there is a sufficient care plan for the protected person in the new state. At that point, the guardian will need to seek an order from the receiving state showing they will accept the guardianship transfer. Once the receiving state has accepted, the Idaho court will issue a final order confirming the transfer to the receiving state and terminating the Idaho guardianship.

Those seeking to transfer a guardianship to Idaho from a different state should follow Idaho Code § 15-13-302. For these situations, the guardian must first obtain a provisional order of transfer from the original state. Then, they should file a petition in Idaho with a copy of the original state's provisional order attached. The Idaho petition should request that Idaho accept the transfer of the guardianship from the different state. A copy of the Idaho petition must be sent to specific persons as listed in the statute. The court will issue a provisional order accepting the transfer as long as it is not contrary to the protected person's best interest and the guardian is not ineligible for appointment in Idaho. Within 90 days of the

Idaho provisional order of acceptance, the court shall determine if the guardianship needs to be changed or modified to comply with Idaho law. Idaho courts are directed to recognize the original state's determination of the need for the guardianship.

Note – The Idaho Court Assistance Office does not have self-help forms to petition for a developmentally disabled guardianship, including forms to transfer a guardianship to or from Idaho. This means people seeking to transfer a guardianship like this will need legal representation.

Last updated on January 24, 2023.

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