



# Legal Guardianship of The Person

Children's Rights Project

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## **GUARDIANSHIP LAW**

Legal guardianship of the person of a child suspends the parents' right to custody of their child and places that custody with some other adult. It does not permanently terminate parental rights. To establish a guardianship, a petition and related documents must be filed with the Probate Court unless the child is a dependent child, that is, has been adjudged abused or neglected by the Dependency Court. In that case, the guardianship will be handled by the Juvenile (Dependency) Court. The court decides if guardianship is appropriate at a Guardianship Hearing.

Prior to this hearing, an investigator from either the Probate Court or the Department of Children and Family Services (DCFS) will visit the proposed guardian's home and interview the proposed guardian and the child. Everyone who lives in the home must be present for the interview and must have a clean criminal record, and no child abuse or neglect history. It is important for the proposed guardian to be very cooperative with the investigator as the investigator's report will strongly influence the court's decision on whether to grant the guardianship.

In most cases both the father and the mother must be given notice of the hearing and a copy of the petition requesting guardianship. Since the petition contains the address and phone number of the proposed guardian, you need to let your attorney know if letting the mother or father know this information would put you or the children at risk. The attorney can then ask the court to keep this information confidential. When a guardianship has been established, the child is called a ward. Guardianship designated in a will or in a notarized statement is of no legal value. To establish legal guardianship, a court order must be obtained.

## **RIGHTS AND RESPONSIBILITIES OF GUARDIANS**

The guardian has the duty and responsibility for the care, custody, control and education of the child. The guardian may determine which school the child will attend and may request special educational services on behalf of the child. The guardian may determine the residence of the child within the state without permission from the court as long as they file a Change of Residence Notice with the court. If the guardian and child want to move outside the state, court permission must be obtained. Also, the child does not need to live with the guardian. Generally, the guardian will determine visitation arrangements between the child and the child's parents and relatives. In some cases, the court will make an order regarding visitation.

The guardian has the same rights as a parent to consent to medical treatment given the child and to require the child to receive medical treatment. However, if the child is fourteen years of age or older, no surgery can be performed upon him/her without either (1) consent of both the child and the guardian; or (2) a court order. If the guardian determined, in good faith based upon medical advice, that the case is an emergency, and without the surgery the child faces loss of life or serious bodily injury, the consent of the guardian alone is sufficient. There are certain types of medical treatment where consent of the parent or guardian is not required and the child who is at least 12 or 14 may consent. Examples include blood donations by the child, mental health counseling, care related to the prevention, diagnosis or treatment of a contagious disease, care for prevention and treatment

related to pregnancy, care related to the prevention, diagnosis or treatment of a drug or alcohol related problem, or diagnosis and treatment of rape.

In order for the child to obtain a driver's license, the guardian must give written consent. When signing the DMV (Department of Motor Vehicles) application, the guardian agrees to be responsible for any civil damages that result from the child's driving. However, the law limits the amount of damages for which a guardian can be held liable. The guardian must have insurance to cover the child. The guardian can withdraw consent at any time by filing the appropriate DMV form.

The guardian may be held liable for the child's conduct which causes harm to other persons or property. The guardian is not liable to third parties for acts of the ward solely because of the guardian-ward relationship. The California statutes governing guardianships lists the guardian's liability for acts by the child in certain situations. For example, liability might occur in the following situations: a fatal traffic accident, willful misconduct resulting in death of another or property damage, use of firearms resulting in personal injury or property damage, or shoplifting.

## **LIMITS ON DUTIES OF GUARDIANSHIP**

The court may include in the Order for Appointment of a Guardian other conditions or limitations as it deems necessary for the care, treatment, education and welfare of the child. For example, the judge may ask the guardian to follow specific visitation orders between the child and the child's parent(s) or the child's siblings. If the guardian anticipates needing special powers to accomplish the duties of guardianship, these powers must be requested and explained in the Petition for Appointment of a Guardian. Generally, the guardian may not take the child to an unsatisfactory place, unjustifiably confine the child, deny the child visits with the family or friends, or deprive the child of the opportunity to receive medical care.

## **FINANCIAL SUPPORT OF THE CHILD**

Although the child's parent(s) remain legally responsible for supporting the child, the guardian frequently volunteers to accept this responsibility. This is not required. As parents are required to support their children, the court can order the parent(s) to pay child support to the guardian.

A child living with a relative caregiver may be eligible to receive CalWORKs benefits with or without guardianship. Non-related caregivers cannot receive Cal WORKs. A non-related legal guardian may receive State Aid for Families with Dependent Children (AFDC-FC). These benefits are generally more than the monthly CalWORKs payments. The process for applying, however, is different than when a related caregiver applies for CalWORKs. If the child is undocumented, a guardian may obtain health care benefits such as Emergency and Minor Consent Medi-Cal without affecting their immigration status.

Related caregivers apply for CalWORKs benefits at the Department of Public Social Services (DPSS) office located near their home. Caregivers should expect to complete a lengthy application and to have a long wait in the office. Non-related legal guardians may apply for State AFDC-FC once the court has granted legal guardianship, even if it is temporary guardianship. The guardian initiates the application process as soon as the guardianship has been granted by calling the Child Abuse Hotline at 800-540-4000. The date that the guardian initiates the application (*e.g.* calls the Hotline) is the date that eligibility for aid begins. The guardian needs to inform the person who answers the telephone that guardianship was awarded and the guardian would like her home approved as a suitable place for the child. The case will be assigned to a Permanent Placement (PP) worker who will schedule a home visit, help the guardian complete the application and submit it for processing. The guardian should be prepared to give the worker a copy of the guardianship order as well as other documentation that may be required. It takes approximately 30 to 45 days to process the application and payments to begin.

If the child is receiving Social Security Survivors' benefits, SSI or has other child support, the non-related guardian will not be eligible for the AFDC-FC. Non-related guardians should note that if the Hotline refers the guardian to their local welfare office (DPSS) or an Emergency Response (ER) worker visits the home to investigate a report of child abuse, the Hotline is not following correct procedures. If this happens, the non-related guardian should contact the Children's Rights Project staff immediately.

## **STANDARDS FOR APPOINTMENT OF A GUARDIAN**

At the hearing the judge will consider and appoint a guardian if it appears necessary and convenient. Before appointing a guardian the court must make a finding that the guardianship is required to serve the best interest of the child. The court will also consider the proposed guardian's concern for and interest in the welfare of the child.

## **TERMINATION OF A GUARDIANSHIP**

A guardianship of the person of a minor automatically ends upon the ward's reaching majority at age 18. A guardianship also ends automatically at the ward's death, adoption or marriage. The ward or any other interested person can petition the court for termination of the guardianship or for removal of a particular guardian. The court will end the guardianship if it is no longer necessary or is no longer convenient or is no longer in the best interest of the minor. The court will remove the guardian due to, for example, the guardian's failure to perform duties suitably, conviction of a felony, or gross immorality.

## CONCLUSION

Guardianship can be an extremely useful and personally fulfilling experience for both the child and the guardian. In many cases, guardianship allows parents an opportunity to regain custody of their child at some future time. In cases where the parents are no longer living or will not likely be able to regain custody, guardianship provides the child with a healthy environment in which the child can feel safe, comfortable and happy.

If you have any questions regarding guardianship, please contact Public Counsel's Children's Rights Project intake line at 213-385-2977 or toll free at 800-870-8090, extension 500.

### ***Pro Per* Guardianship Clinic**

Los Angeles Superior Court

111 North Hill Street

Room 230

Los Angeles, CA 90012

### **Walk-in hours: 10-12 noon and 1-4 PM**

Monday, Tuesday, Wednesday

Due to high volume, please arrive by 9:00 AM to sign in. The *Pro Per* Clinic does not take appointments. We assist individuals on a first come, first serve basis.