



Region Legal Service Office Hawaii
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Preventative Law Series

Guardianship

In the context of a minor, a guardian is a person who is appointed by a court to take care of a child's personal needs, including shelter, education, and medical care. A guardian may, and in many cases has a responsibility to, provide financial management for a child's assets, although sometimes a second person (often called a "guardian of the estate") is appointed for this purpose.

What is the difference between a guardianship and an adoption?

A guardianship establishes a legal relationship between a child and an adult who isn't the child's parent, but it does not end the legal relationship between the child and the child's biological parents. For example, the biological parents are still legally required to provide financial support for the child.

When does a guardianship end?

A guardianship ordinarily lasts until the earliest of these events: the child reaches legal age (usually 18); the child dies; the child's assets are used up (if the guardianship was set up solely for the purpose of handling the child's finances); or a judge determines that a guardianship is no longer necessary. Even if a guardianship remains in force, a guardian may step down from his or her role with permission from the court. In that case, a judge will appoint a replacement guardian if necessary.

What is a guardian ad litem?

A guardian ad litem is a person appointed by the court to stand in the shoes of a minor in a court proceeding in which the minor has some interest. The court can also appoint a guardian ad litem for an adult who can't care for himself or herself. Often, the guardian ad litem is a parent, close relative, or attorney. Some states also authorize the appointment of a guardian ad litem to represent a child's interests in a divorce case that involves custody issues. If a guardian ad litem is not an attorney, the minor or disabled adult is frequently represented by an attorney as well.

If a child lives with the petitioner, is a guardianship still necessary?

Guardianship is not necessary if the child is only staying with the petitioner for a few weeks or months. But anyone who anticipates caring for a child for a period of years will probably need a legal guardianship. Without this legal arrangement, it may be difficult to register the child in school, arrange for medical care, and obtain benefits on the child's behalf. In addition, a guardianship will protect the rights of the petitioner in decision-making against the will of the biological parents.

Is it true that parents may need a guardianship of their own child?

It's strange but true: sometimes parents need to establish a particular type of guardianship called a "guardianship of the estate" to handle their own child's finances—even if the child lives with them. This situation usually arises when significant amounts of property (at least \$5,000 in most states) are given directly to a child.

Example: The Thompsons lived next door to an elderly widow, who was extremely fond of their small daughter. When the widow died, she left her house to little Suzy Thompson. The lawyer handling the widow's estate suggests that Suzy's parents go to court to establish a guardianship of their child's estate. The house is then transferred into the name of Suzy's guardianship estate, which her parents manage until she reaches adulthood.

While this system is effective in protecting children's assets from unscrupulous parents, setting up a formal guardianship of the estate involves time and money that well-meaning parents sometimes find burdensome. For this reason, all states have passed laws to make it easier to give money or property to children. These laws provide simple, inexpensive procedures by which gifts to minors (typically up to \$10,000) can be managed by their parents without setting up formal guardianships of the estate. A gift-giver must simply name, in his or her will or in a trust document, someone to manage the gift until the child reaches adulthood. No court involvement is required.

How is guardianship established?

To put a guardianship in place, the petitioner will start by filing guardianship papers in court. A court investigator will likely interview the petitioner, the child, and his or her parents if they are alive and available. The investigator will then make a recommendation to the judge. The judge will review the case and decide whether to appoint the petitioner as guardian, usually after a hearing. The court must find that the appointment is in the best interests of the child.

Can a petitioner be appointed guardian if the child's parents object?

As a general rule, guardianships are not granted unless: the parents voluntarily consent; the parents have abandoned the child; or a judge finds that it would be detrimental to the child for his or her parents to have custody.

There are some circumstances where a petitioner can get a guardianship over the parents' objections, but generally this is only where the parents were shown to be unfit.

Other family members—siblings, grandparents, aunts, and uncles of the child—are also entitled to know that a petitioner is seeking guardianship of their relative. In many jurisdictions, these family members have a right to object to the guardianship.

Who financially supports a child under a guardianship?

Unless a court terminates the biological parents' rights (uncommon in most guardianship situations), the parents are responsible for supporting their child. In reality, however, financial support often becomes the guardian's responsibility. The guardian may choose to seek financial benefits on the child's behalf, such as public assistance and Social Security.

Any funds the guardian receives for the child must be used for the child's benefit. Depending on the amount of money involved, the guardian may be required to file periodic reports with a court showing how much money was received for the child and how it was spent.

For more information, please contact your local Region Legal Service Office.