

GUARDIANSHIPS IN CALIFORNIA

WHAT IS A GUARDIANSHIP? A guardian is the adult who is legally responsible for the needs of a minor. You may only become a guardian in California by being appointed by the court.

There are basically two types of guardianships, “guardianship of the person” - meaning legal custody and responsibility for the minor, and “guardianship of the minor’s estate” - meaning legal responsibility to manage the minors assets. In many cases, you will only need to obtain a guardianship of the person, unless the minor has assets in excess of \$5,000.

A guardianship is not an adoption. In an adoption, you are assuming the legal equivalent of a parent/child relationship, as if the minor was your natural child. A guardianship is not as permanent a relationship. However, by obtaining a guardianship, you will have the responsibility of caring for all of the minor’s needs including: food, shelter, health care, education, and emotional and physical well-being.

When you become the minor’s guardian, the minor will then be eligible for medical coverage as your dependent under CHAMPUS or TRICARE, and you will be able to make health care decisions concerning the minor. You will also be able to enroll the minor in school and make decisions involving the minor’s education.

HOW LONG DOES THE GUARDIANSHIP LAST? The guardianship generally lasts until the minor turns 18, unless the court determines that the guardianship is not in the minor’s best interest. You may also petition the court to terminate the guardianship.

DO I NEED TO HIRE A LAWYER? There are numerous circumstances in which it is necessary to hire an attorney to handle the guardianship procedures: If the child’s parents or some other party is likely to contest the guardianship, if the minor has substantial assets (more than \$5,000), if the minor lives in California but you live in another state, if the minor is physically or emotionally disabled, if the minor is a Native American, or if you plan to move the minor to live outside of the state of California. Also, you should understand that becoming a guardian is an important and complex process which will very often require the assistance of an attorney.

WHERE CAN I OBTAIN INEXPENSIVE LEGAL HELP? Call the Monterey County Bar Association Lawyer Referral Service at (408) 375-9889. Call the Legal Services for Children, Inc., 1254 Market St., 3rd Floor, San Francisco, California, 94102, telephone (415) 863-3762; Hire an “independent paralegal” (look in the yellow pages under “paralegal”). A paralegal may not practice law but may be able to assist you in filling out the forms, and will be much more inexpensive than an attorney.

HOW TO BECOME A LEGAL GUARDIAN The main thing you will have to do to complete the guardianship process is to fill out numerous forms. But first, you will need to gather the following information: Names and addresses of the minor’s parents, grandparents, sisters and

brothers, spouse and children (if any), and the adult or guardian who the child lives with now; copies of death certificates if the minor's parents have died; birth certificate of the minor; copies of any court documents involving the minor; as well as any documents relating to the minor's estate (assets).

You will need to file the necessary forms in the court of the county where the minor lives. You may take the forms in person or mail them to the court clerk. There will be a filing fee to start the process. In Monterey, the fee is \$225 for guardianship of the person, but the fee in your county may vary. There may also be an investigation fee of approximately \$700 (depending on which county you live- also not every county performs an investigation). This fee is used to pay for the state's investigation as to whether you would be an appropriate guardian for the minor.

If you cannot afford to pay these fees, there is a form you can file to try to get all court fee's and costs waived. Eligibility is based on your income (for a family of 1, your monthly income must be less than \$1,163.55; for a family of 2, \$1576.05; for a family of 3, \$1,988.55; for a family of 4, \$2,401.05; for a family of 5, \$8,813.55; and each additional approximately \$412.50).

That information is based on form FW-001. All of the forms you will be using have form numbers which are located at the bottom left corner of the form. The number is written in fine print and most of the forms are labeled "judicial council" forms.

The basic forms that will be required in a very straightforward guardianship proceeding are: GC-211(81) in which the minor's relatives give consent and waive notice to the guardianship, GC-210 the petition for guardianship, MC-150 describing where the child has lived for the past 5 years, GC-020(81) relating to notice of the hearing , GC-240(81) the order appointing the guardian, GC-250(81) the letters of guardianship. All of these forms may be obtained on the California Court's website: www.courts.ca.gov, under "Forms & Rules".

The main problem in handling this process alone is the requirement that all of the minor's relatives be notified of the hearing. In legalese this is called "service of process", and you must either serve them with notice of the guardianship hearing (plus a copy of the petition for appointment of guardian), or get their signed waiver of notice GC-211(81). If you cannot discover the address of the minor's relatives, you must fill out a form indicating you used "due diligence" in trying to find them. For example you must call the phone company, check with friends and relatives, check at the last known address, check voter registration records, and check with the DMV (the form here is called "attachment 14 to petition for appointment of guardian).

WHAT HAPPENS NEXT? After you file the forms, you will get a case number. You should include this case number in all further court correspondence. After this, the clerk will assign a hearing date. This hearing will determine whether your guardianship will be approved. It is crucial to be prepared for the hearing. Address the judge as "your honor"; dress neatly and professionally; if the judge asks a question stop talking and answer his exact question; if the judge interrupts you, stop talking; and in general, be respectful to the judge. You should also bring the following documentation to the hearing: Copies of all papers you filed with the court, birth certificate of the minor, any death certificates of the minor's parents, copies of any court documents involving the minor, copies of all proofs of service (showing you served process on

the relatives of the minor), an extra copy (unsigned) of the letters of guardianship, an extra copy of the proposed order appointing guardian of minor (if the minor is 12 years or older), and any notes you may have made.

The information in this handout was obtained largely from *The Guardianship Book*, By: Lisa Goldoftas & Attorney David Brown, Nolo Press, which is a good reference for anyone trying to obtain a guardianship without legal advice.

EMERGENCY SITUATIONS If there are emergency circumstances, you may need to file for a temporary guardianship. Please note that you must still file all of the forms for a regular guardianship before you can obtain a temporary guardianship. The extra forms for obtaining a temporary guardianship are GC-110(81) and GC-140(81) and GC-150(81). The temporary guardianship, if approved will enable you to take immediate custody of the child while waiting for the regular guardianship proceedings to take place.