

A GUIDE TO GUARDIANSHIP

What is Guardianship for a Minor?

Guardianship is a legal process in probate court where the court appoints a person to act as a parent for a child (under 18 years old) who is not independent (emancipated or married).

To appoint a guardian, a judge must schedule a hearing and decide that:

- You (or the nominated person) are qualified to be a guardian;
- There is a need for the guardianship based on parent's unavailability or consent; and
- The guardianship is in the child's best interest.

Is a guardianship the same as custody?

There are some similarities between orders determining custody (Allocation of Parental Responsibilities) and appointing a guardian. In both cases:

- Orders can be made concerning children under 18 years old, in most cases.
- A judge will make decisions about a child's physical care and contact with his or her parents based on the child's best interests.
- A judge must give you permission to relocate outside of Colorado.

Guardianships follow laws and procedures that do not apply in custody cases. For example:

- A person must file a background check and a credit report before being appointed as a guardian.
- A guardian must file a court form (Guardian's Report) every year to update the Court about how they are doing.
- A guardian cannot receive child support through a guardianship. The guardian may receive payment directly from the child's property (like inheritance or insurance payments) with a court's permission or by requesting child support from the state or in another court case.

How long does a guardianship last?

There are three types of guardianship appointments:

- An *emergency guardianship* can last up to 60 days if there is a likelihood of substantial harm to a child's health/safety and no one has the authority to act on the child's behalf.
- A *temporary guardianship* can last up to 6 months when there is an immediate need for the guardianship and it is in the best interest of the child.
- A *permanent guardianship* can last until the child turns 18 years old or until a judge terminates it for other reasons when the regular requirements for a guardianship are met.

You should talk to a lawyer for legal advice about your rights, options, and next steps based on your individual situation. This material provides legal information only and does not constitute legal advice or create an attorney-client relationship with the reader.

Any guardianship appointment can change or terminate if the court decides that circumstances have changed and that a new order is in the child's best interest. Changes to guardianships usually require (1) a written motion by the guardian, the parent, or another interested person, and (2) a court hearing so that the judge can decide whether a change to the guardianship is appropriate.

Do I need the parents to agree to my being a guardian?

Parents do not have to agree to a guardianship. When you file your case, it is your responsibility (*burden*) to show the court why the guardianship is necessary. To do that, you must show that there is a reason that each parent is not in the position of acting as the child's parent. The most common reasons find in appointing a guardian are:

- A parent agrees (*consents*);
- A parent is deceased;
- A parent is *unable or unwilling to exercise his or her parental rights*.

A guardian can also be appointed if a parent's legal rights have already been terminated in another case or if a new guardian is needed to replace an existing guardian.

I know the child's parents are divorced; can I still ask to be the child's guardian?

Generally, no. There can only be one court order determining a child's custody. That means that you cannot file a case to be appointed as a guardian when a custody order has been entered in another case like a divorce. This applies even if that original case is in a different state or was completed several years ago.

This doesn't mean you don't have any options to obtain custody orders for a child in your care. You may be able to join (*intervene*) the existing case as a party and request to change the orders based on the facts of your case and the best interests of the child.

Can I be a guardian?

To be a guardian, you must:

- Be at least 21 years old
- Provide information about your background (background check and credit report). You can be a guardian with prior arrests, bad credit, or other court cases. A judge will review your information to evaluate if you might misuse your authority or mistreat the child.

You do not have to be related to the child or a resident of Colorado to be a child's guardian.

What are the responsibilities of a guardian?

Guardians have the same duties and responsibilities as a parent has for the child, like ensuring the child's support, care, education, health, and welfare. Guardians must always act in the best interest of the minor and exercise reasonable care, diligence, and prudence.

A guardian can have either limited or unrestricted authority in their appointment. A judge can enter any order that is in the child's best interest as part of the guardianship, including steps to tell the guardian how to make decisions about contact with parents, travel, school, or other major issues. A guardian must update the court every year about the child's wellbeing by filing a report.

What do I do to get started?

To begin your own case, you need prepare these forms available at the courthouse in your county or on the Colorado Judicial Branch website (www.courts.state.co.us/):

- Petition for Appointment of Guardian – Minor
- Acknowledgement of Responsibilities
- Notice of Hearing to Interested Persons (*parents and possibly other prior caregivers*)
- Notes of Hearing to Respondent (*minor over 12 years old*)

You will also need:

- Background Check from Colorado Bureau of Investigations (available online)
- Credit Report from Experian, TransUnion, or Equifax
- Consent of Minor (*if over 12 years old*)
- Consent of Parent (*if applicable*)
- Proposed Order Appointing Guardian – Minor and Proposed Letters of Guardianship

Courts charge fees when you file a new case. You can file a motion to have these fees waived based on your income. If your motion to waive the fees is not granted, you will have to pay the filing fee before your case can move forward. The fee to issue formal (*certified*) documents after you are appointed as a guardian cannot be waived.

What happens after I file my case?

Some counties issue *Case Management Orders* in new cases that tell you what you need to do and what deadlines have been set by a judge in your case. Look at this order carefully.

If a case management order is not issued, you will need to talk to the court staff to make sure that all requirements in your case have been met and to get a court date for a hearing with a judge.

Who needs to know that I am asking to be appointed as a guardian?

It is your responsibility to give notice of the hearing and court documents (*pleadings*) to all people entitled to know about the case. This includes:

- The minor who is 12 years old or older
- Each living parent of the child
- If no parent is living, the most immediate adult relative to the child (*nearest in kinship* – i.e., siblings, aunts/uncles, grandparents before notifying cousins etc.)
- Any other guardian who has been previously appointed
- Any guardian who has been proposed (*nominated*) by the minor child (if over 12)

Once you have a hearing date, you must give formal notice (*personal service*) to the minor child. This means that a 3rd party (not a party to the case) must personally hand a copy of the Petition and Notice of Hearing to the minor child and sign an affidavit confirming that notice has been provided at least 14 days before the hearing. There are no exceptions to this requirement for youth over the age of 12. You do not need to give formal notice to children younger than 12.

You must also give Parents (and other any Interested Parties in your case) a copy of the Petition and Notice of Hearing. This can be done in several ways:

- If you know the address, mail all documents to the parents/other interested parties at least 14 days before the hearing. Complete the *Certificate of Service* and file it with the Court.
- If the address or identity of a parent is unknown and you have tried everything practical to locate them (*reasonable diligence*), you can publish notice of the hearing in a newspaper in the county where your case is filed. You will need additional court forms to do this and to explain to the court what you tried to do to locate a current address for or the identity of a party. Instructions and forms are available from the Colorado Judicial Branch's website.

If you are asking for an emergency guardianship, you may be able to have a hearing before notice is given to the parents if you can prove to the court that the child will be substantially harmed by following the typical guardianship procedures.

What will happen the first time I go to court?

A judge will review all of your paperwork to make sure you have followed all of the procedures for a guardian to be appointed. If not, your case may be delayed (*continued*) until these requirements are met.

An *uncontested hearing* is held when everyone is in agreement or if no one appears at the hearing to object to your appointment. You should be prepared to answer questions from the judge. If the judge grants your petition, *Letters of Guardianship* will be issued. This is the document you will use to prove your authority to schools, medical providers, and other professionals.

A *contested hearing* is held when someone objects to your appointment as a guardian. This is your opportunity to present evidence about why your Petition should be granted. Before holding a contested hearing, a judge might:

- Appoint a *Guardian ad litem* – an attorney who represents the best interests of the minor child – to investigate the situation and make recommendations to the court.
- Order everyone to go to mediation to see if an agreement can be worked out by the parties.
- Temporarily appoint a guardian, if necessary, while the case is moving forward
- Continue the case for a longer contested hearing, depending on the judge's availability to hear your contested case and if all the necessary information (witnesses, other evidence, recommendations) is available to the court.

How do I stop being a guardian?

Only a judge can end (*terminate*) an appointment of a guardian. If your circumstances change and you are no longer able to act as a guardian, you need to get the court's approval before your legal responsibility ends. This is the process even when the parents and the child agree to the change.