

## **Minor Guardianship - Frequently Asked Questions**

### **What is Guardianship?**

Legal guardianship gives a nonparent legal custody of the child and the corresponding parental responsibilities. Guardians must make sure that the child gets medical care, goes to school, and is fed, housed and clothed. A guardianship allows a non-parent to care for a child like a parent would.

### **Who can act as guardian?**

A person can act as guardian of a minor if the court finds that he or she is able to properly care for the child. Also, the person must be:

- At least 18 years old;
- A resident of the United States;
  - Some judges require legal immigration status in the US. Other courts will appoint undocumented immigrants as legal guardians.
- Of sound mind;
- Not adjudicated disabled; and
- Not convicted of a felony, unless the court finds that the appointment of the person convicted of a felony is in the minor's best interests. As part of the best interest determination, the court must consider the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation.
- Not convicted of a felony involving harm or threat to a child, including a felony sexual offense. This is an absolute bar to guardianship of a minor.

\*\*\*\*Technically, these requirements apply to all guardians, whether they are plenary, standby, or short-term. However, short-term guardians are appointed via private documents and are not subject to the same screening as those appointed by the courts. Families should make sure they are appointing someone they trust who would qualify as a legal guardian under the Probate Act. It should also be someone who has the resources to assume the care and expenses of the minor(s).\*\*\*\*

### **Plenary Guardianship**

Full legal guardian appointed by the court to make daily parenting decisions for a child.

- No end date - the parent must file a petition with the court to discharge the guardianship and may have trouble regaining custody if the guardian does not agree to be discharged.
- Can be used for all purposes: medical, educational, insurance, etc.
- Guardian must be primary caretaker for the child. The children's parents cannot live in home with the guardian unless they are disabled or there is another serious reason why they cannot parent the child.
- Must notify both parents, even if one parent has not been involved with child. Also must give notice to anyone who has had custody of the child and any adult brothers or sisters of the child.
- Must have child's birth certificate to show to court.
- Not recommended as a safety plan for those fearing detention or deportation because child should be living with guardian and not parents.
- Cook County Probate Court is currently not appointing undocumented petitioners for plenary guardianship, though Petitioners are seeing success in Domestic Relations cases.

## Standby Guardianship

- Guardian appointed by the court to step in as guardian when the parent or current guardian cannot, whether due to illness, death or some other reason. Requires same process and standards as a plenary (full) guardianship.
- Takes effect as soon as the parent or current guardian can no longer care for child.
- The standby guardian must file for plenary (full) guardianship within 60 days of stepping in to serve as guardian.
- The court must appoint the standby guardian unless circumstances have changed since the original appointment of the standby guardianship.
- Useful safety plan for undocumented immigrants, but standby guardians must meet same rules as regular guardians. That means that some courts require they have legal immigration status.
- Parents must be willing to appear in court.
- A standby guardianship cannot be used to avoid another parent getting custody.

## Short-Term Guardianship

- An agreement between two people that requires no court action.
- Allows a parent or guardian to assign guardianship to someone else for up to one year.
- Can take effect at a set time or if a specific event happens, like deportation or detention.
- Must be signed and dated by the parent or parents and at least two credible witnesses. The form should also be signed by the named short-term guardian, but that can be done at another time. The document does not have to be notarized, but, if possible, notarization is better.
- Can last up to one year and can be renewed.
- May be revoked (ended) by either parent at any time.
- Should be completed only by a parent who has custody rights to a child, and cannot be used to avoid another parent getting custody. Parental rights will prevail over a standby guardianship.
- Can be done on very short notice. Easy and effective safety plan for immigrants who fear detention or deportation. Can also be done from detention.
- Drawbacks: Although the law requires that health care workers, schools, and all other people treat the short-term guardianship like a court ordered guardianship, that may not happen in practice. Short-term guardians have problems enrolling children in school, getting public benefits or medical care. They may also have problems traveling with the minors, especially internationally.

## Pro Se Resources for Plenary and Standby Guardianship

### Cook County:

- Daley Center
  - Guardianship Assistance Desk for Minors
    - 69 W. Washington Street, Suite 1020
    - (312) 603-0135 for appointments
    - Free help to people who need to file for guardianship of a child, no matter their income. Suburbs and Other Counties: File directly at local courthouses.

Questions about Guardianship? Feel free to call Chicago Volunteer Legal Services at (312) 332-1624.