



Legal Guardianship

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What is Legal Guardianship?

A guardianship creates a legal relationship between a non-parent caregiver and a child. A court appoints the caregiver as the child's "guardian," and the guardian is responsible for the child and his or her property. A court proceeding is the only way to create a legal guardianship. Notarized letters and written or verbal agreements from a biological parent may be helpful, but they do not establish guardianship. **Only a court can establish a guardianship.**

Why do I need a Guardianship?

When a court grants a guardianship, the court gives the guardian legal and physical custody of the child. Without a court-ordered guardianship, the caregiver's relationship with the child is not protected, and a biological parent can remove the child from the caregiver's custody at any time.

A court-ordered guardianship allows a caregiver to make decisions about a child's education, medical care, and welfare benefits. Unless the court makes specific orders, the guardian has the right to decide visitation with the biological parents. A legal guardian may also provide consent for the child to enlist in the armed services, get a driver's license, or marry, provided the court also consents.

What benefits can a Guardian receive?

Sometimes, a caregiver must have guardianship to receive certain public benefits or services. For example, private health insurance companies will not allow caregivers to add children to their health plans without guardianship; California Children's Services will not allow caregivers to apply for services without guardianship.

A guardian who is related to the child may be eligible to receive public government benefits on behalf of the child. An unrelated guardian may be eligible for financial assistance through the Department of Children and Family Services under their nonfederal foster care funding program. An unrelated guardian need not be a licensed foster care provider to receive financial assistance.

How is a Legal Guardianship different from a Caregiver's Affidavit?

The Caregiver's Affidavit is simply a form signed under oath stating that someone other than the parent is currently caring for a child. A Caregiver's Affidavit does not establish a legal guardianship. The caregiver need not be related to the child, and no court proceeding is necessary for a Caregiver's Affidavit to be valid.

Because a Caregiver's Affidavit is not established through a court, the Caregiver's Affidavit cannot be used to prevent a parent from taking custody of a child, seeking visitation, or overriding any decisions made by the caregiver.

With a Caregiver's Affidavit, a caregiver who is related to the child may enroll a child in school; consent to medical, dental, and mental health care; and apply for public benefits on behalf of the child. An unrelated caregiver has less authority than a related caregiver and may only enroll the child in school and consent to school-related medical care.

How is Legal Guardianship different from Adoption?

A guardian does not become the legal parent. When a legal guardian is appointed for a child, the biological parents' rights to care, supervision, and custody of the child are suspended and given to the legal guardian. Guardianship may be preferred over adoption when a biological parent is likely to regain custody of the child, the child's relationship with other relatives is important, or inheritance rights must be preserved.

What is Joint Guardianship?

A joint guardianship may be established when a parent is diagnosed with a life-threatening or terminal illness. The parent chooses a caregiver for his or her children, and the parent and caregiver become joint guardians. The parent continues to care for the children, and the future caregiver only steps in when the parent becomes too ill or passes away.



How do I become a Legal Guardian?

GUARDIANSHIP DOCUMENTS

You must file guardianship documents with a Superior Court. In Los Angeles County, filing fees for a guardianship are currently \$1,100-1,200. However, the court may waive the filing fees in whole or in part if you qualify for a fee waiver.

HEARING

Courts usually schedule hearing dates within two months from the filing. The prospective guardian and child must appear in court on the hearing date.

NOTICE

Notice that guardianship papers have been filed must be given to the child's biological parents, maternal and paternal grandparents, and adult siblings of the child. Courts will not grant a guardianship if notice requirements are not met.

HOME STUDY

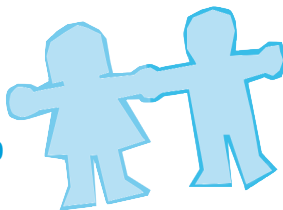
The Court will appoint someone to conduct an investigation or "home study." The investigator visits the home and interviews the proposed guardian, the child, and any other residents of the home. Based on the home visit and interviews, the investigator submits a written report to the court. The court considers the investigator's report in granting or denying a petition for guardianship.

LEGAL ASSISTANCE

An attorney is not required to file the guardianship petition. A prospective guardian may, however, wish to consult with an attorney to avoid mistakes in paperwork, in providing proper notice, or in cases where a parent or other individual might object to the guardianship.

The Alliance for Children's Rights provides free legal assistance and representation to eligible people seeking guardianships in probate court. Contact **The Alliance** for more information. We are here to help.

In an emergency, how can I get Guardianship more quickly?



The court may establish a temporary guardianship in emergency circumstances that require the caretaker to have a legal relationship. A temporary guardian has only the powers and duties of a guardian necessary to provide for the immediate care of a child. The court will not issue a temporary guardianship unless a permanent guardianship is also being sought. The temporary guardianship only lasts until the date of the permanent hearing. Contact **The Alliance for Children's Rights** to see whether you need a temporary guardianship.

You do not need to be documented to get legal guardianship of a child.

This booklet is designed to answer questions for people who care for other people's children. Please remember that individual circumstances vary greatly, and laws can change at any time. For personal assistance or more information about legal guardianship, please contact **The Alliance for Children's Rights**.

The Alliance for Children's Rights

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protecting the future of all children

Raising a child who is not your own?

You may need
Legal Guardianship



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