

Probate

WHAT IS GUARDIANSHIP?

In Connecticut, a person under the age of 18 is considered to be a minor. A guardian is a person who has the legal right and duty to take care of a minor or a minor's property. Guardianship results either by virtue of the role as parent of the minor or appointment by a Probate Court or other Court of competent jurisdiction. This right and duty includes the obligation of care and control of that minor and/or his property and the authority to make major decisions affecting the minor's welfare. In some states, guardianship also refers to persons who manage the estate or person of an adult, but guardianship in Connecticut refers only to minors, except in the case of mentally retarded persons.

TYPES OF GUARDIANSHIP FOR MINORS

There are two types of guardianship for minors: guardianship of the person of a minor and guardianship of the estate of a minor. A guardian of the person has the responsibility to care for the person of the minor. A guardian of the estate is required to manage the property of the minor. The following is a description of the duties and responsibilities of guardians for minors.

A. Guardian of the Person of a Minor

The guardian of the person of a minor is an adult authorized by law to take physical control of and provide care for the minor. That broad authority includes making medical and personal decisions concerning the welfare of the minor. By law, the birth parents of a child born in wedlock are entitled to and expected to exercise the care of, and the control over, the minor on a daily basis. For this reason, they are automatically the guardians of the person of the minor. They are also "joint guardians" of their minor, which means that their powers, rights, and responsibilities with respect to their minor are equal, unless altered by a Court.

The father and mother of a child born out of wedlock are also joint guardians, provided the father's paternity has been determined under the laws of Connecticut. In cases where this has not occurred, the mother is the sole guardian of the person of a minor.

B. Temporary Guardian of the Person of a Minor

If a parent or guardian of the person of a minor is unable to care for the minor for a period of time due to illness or absence from the area or for some other reason, the parent or guardian may file an application for appointment of a temporary guardian of the person of a minor in the Probate Court for the district in which the minor resides.

The temporary guardian serves with, but does not replace, the parent as natural guardian, so that important decisions affecting the child may be made by either the parent or temporary guardian. The temporary guardianship will immediately terminate whenever the parent notifies the Probate Court and the temporary guardian to that effect. Unless revoked, the appointment may not last for more than one year, unless a reappointment is granted by the Court.

C. Standby Guardian

C.G.S. §45a-624 allows a parent or guardian to designate a standby guardian. The standby guardianship will take effect upon the occurrence of a specified contingency, including, but not limited to, the mental incapacity, physical debilitation, or death of the parent or guardian. The designation must be in writing, it must be signed by the parent or guardian, and it must be witnessed by at least two witnesses. The standby guardianship may be revoked at any time. The revocation must be made in writing, and the standby guardian must be notified. In order for the guardianship to take effect, the standby guardian must complete an affidavit indicating that the contingency upon which the guardianship is based has occurred. The affidavit must be signed, witnessed, and sworn to under oath. The standby guardianship will cease when the specified contingency no longer exists or at the end of one year, whichever is sooner. If the parent or guardian dies while the guardianship is in effect, the guardianship will cease 90 days after such

death, unless the standby guardian files an application for guardianship with the probate court in the district in which the minor resides, and temporary custody of the minor is granted to the standby guardian or the Court appoints the standby guardian as guardian of the person of the minor.

Like the temporary guardian, the standby guardian does not replace the parent, unless the parent is no longer physically or mentally able to carry out his or her responsibilities as parent.

D. Co-Guardians

Pursuant to the provisions of C.G.S. §45a-616, a parent or guardian who is the sole guardian of the person of a minor child may apply to the probate court in the district in which the child resides for the appointment of one or more persons to serve as co-guardian(s). The Commissioner of Children and Families may also make such application with regard to a child in the department's care, providing the child's parent/guardian consents to the application. Upon receipt of an application for the appointment of a co-guardian(s), the Court will, in most cases, order an investigation and report to be completed by the Department of Children and Families as required by C.G.S. §45a-619. The hearing will be held within 30 days of receipt of the results of the investigation. If the Court waives the investigation requirement for cause shown, the hearing will be held within 30 days of the receipt of the application. If the minor child is over 12 years of age, the Court will order notice to him or her by certified mail, return receipt requested, deliverable to the addressee only, at least 10 days prior to the date of the hearing. The Court will notify the petitioner and all other interested parties by regular mail.

Whenever the Court appoints a guardian or co-guardian, it must take into consideration the following factors:

- (1) the ability of the prospective co-guardian(s) to meet the physical, emotional, moral, and educational needs of the minor on a continuing day-to-day basis;
- (2) the minor's wishes if he or she is over the age of 12 OR is of sufficient maturity and capable of forming an intelligent preference;
- (3) the existence or nonexistence of an established relationship between the minor and the prospective co-guardian(s); and
- (4) the best interests of the child.

When the appointment takes effect, the co-guardian(s) have the obligation of care and control and the authority to make major decisions affecting the minor's welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric, or surgical treatment. These rights and obligations are to be shared with the parent or the previously-appointed guardian of the person of the minor, and they may be exercised independently by the parent/guardian or the co-guardian(s). In the event of a dispute between a parent/guardian and the co-guardian(s), the matter may be submitted to the probate court that appointed the co-guardian(s).

The appointment of the co-guardian(s) may take effect immediately after the hearing or, if requested by the parent/guardian, it may take effect upon the occurrence of a specified contingency. The specified contingency may include, but is not limited to, the mental incapacity, physical debilitation, or death of the parent or guardian. When the contingency occurs, the prospective co-guardian(s) must notify the Court by written affidavit. The Court may hold a hearing to verify the occurrence of the contingency. Upon verification, the appointment will take effect and will continue until further order of the Court. The co-guardian(s) must accept the appointment in writing. If the Court deems it necessary, a probate bond may be required.

Upon the death of the parent/guardian, any appointed co-guardian(s) of the person of a minor child shall become the sole guardian(s) of the person of the minor child.

E. Guardian of the Estate of a Minor

The guardian of the estate of a minor provides the legal care of, and control over, the financial affairs of a minor. However, the minor, not the guardian, has legal title to the property.

F. Guardian Ad Litem

A guardian ad litem of a minor is a person appointed by a Court to represent the minor's interests in a particular court proceeding. The guardian ad litem does not act as a guardian of the person or estate of the minor. A parent or attorney will often be appointed guardian ad litem.

G. Testamentary Guardian

A surviving parent has the right to appoint a guardian of the person and/or estate of the minor in her will. A guardian appointed in this manner is called a testamentary guardian. If the custody of a minor has been given to either parent by the Superior Court, that parent alone has the power of appointing a guardian by will.

Even though a testamentary guardian is appointed by will rather than by the Probate Court, the guardianship is under the supervision of the Court. An application must be made to the probate court for confirmation of the guardianship. Probate bond will be required of a guardian of the estate and may be required of a guardian of the person.

Please note the following exception to these bonding requirements. A probate judge may waive the requirement of a bond if the assets of the estate are less than \$20,000. The duties and powers of a testamentary guardian are the same as guardians appointed by the Probate Court.

REMOVAL OF PARENT OR OTHER GUARDIAN OF THE PERSON OF THE MINOR

One or both parents of a minor may have their rights as guardian of the person removed by a Probate Court if the Court finds certain conditions to be present or if the parent consents to be removed as guardian. Any adult relative of the minor or an attorney representing the minor may file an application for the removal of one or both parents as guardian in the probate court for the district in which the minor resides. Under certain circumstances, the Court may also initiate such an action on its own motion.

Upon receipt of an application for removal of guardian, the Court will set a time and place for a hearing on the application and notify all interested parties. Both parents of the minor and the minor, if 12 years of age or over, will be personally notified of the hearing. If a parent resides in another state or is absent from the state, he or she may be notified by registered or certified mail. If the whereabouts of a parent are unknown, the Court may order notice to be given by publication in a newspaper that has a circulation at the parent's last known place of residence.

Any parent who is the subject of such an application has the right to be represented by an attorney and may request the Court to appoint an attorney if he cannot obtain or pay for one. The Court will appoint a guardian ad litem to protect the rights of any minor or incompetent parent. In all cases involving abuse or neglect, the Court must appoint counsel to represent the minor child. The Court may also appoint counsel to represent the child in other types of proceedings. Federal law requires the appointment of a guardian ad litem to represent the best interests of the child in all cases involving child abuse or neglect. Under state law, the Court must also appoint a guardian ad litem in all other matters where the Court deems it appropriate.

If the proceeding is contested, the Court may transfer the case to another probate judge, either on its own motion or that of any interested party, before a hearing on the merits of the case. The probate judge shall be appointed by the Probate Court Administrator from a panel of qualified probate judges who specialize in children's matters. The hearing shall be held in the original probate court, unless the parties and the Department of Children and Families agree to hold the hearing at another probate court. A contested proceeding may also be transferred to the superior court on the motion of the probate court or any legal party (except the petitioner) before a hearing on the merits of the case. If the matter is heard by the probate court, any party may appeal to the superior court, where a new trial will be held without regard to the findings of the probate court.

When an application for removal of a guardian has been filed in a probate court, the Court will, in most cases, order an investigation and report to be completed by the Department of Children and

Families. An investigation is required in cases where the applicant has alleged abuse or neglect or in cases where the probate judge has reason to believe the minor child has been abused or neglected.

The Department of Children and Families investigates and reports to the Probate Court any facts that may be relevant in assisting the Court with its decision.

Pursuant to C.G.S. §45a-609, the Court may order the examination of the child by a physician, psychiatrist, or licensed clinical psychologist. The Court may also order the examination of a parent or custodian whose competency or ability to care for the child is at issue. The expenses of any examination ordered by the Court on its own motion will be paid by the applicant; the expenses of any examination requested by another party shall be paid by the party requesting the examination. If such applicant or the party requesting the examination is unable to pay for the examination, payment will be made by the Probate Court Administration Fund. If the matter has been transferred to superior court, payment will be made from funds appropriated to the judicial department.

After a hearing, the Court may remove a parent or other Court-appointed guardian as guardian if it finds by clear and convincing evidence that one or more of the following conditions are present:

- (1)** The parent consents to removal as guardian.
- (2)** The minor child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare.
- (3)** The minor child has been denied the care, guidance, or control necessary for her physical, educational, moral, or emotional well-being as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct, or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interest of the minor child be permitted to exercise, parental rights and duties at this time.
- (4)** The minor child has had physical injury or injuries inflicted upon him by a person responsible for such child's health, welfare, or care or by a person given access to such child by such responsible person, other than by accidental means, or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment, or cruel punishment.
- (5)** the minor child has been found to be neglected or uncared for, as defined in C.G.S. §46b-120.

Due to the serious consequences resulting from filing an application for removal of a parent or other person as guardian and the complex nature of the legal grounds for the removal, anyone considering such action should seek legal advice prior to filing such an application. There are legal penalties for willfully filing a false application, conspiring with another to file a false application, or testifying falsely in any removal proceeding.

A. Temporary Custody or Immediate Temporary Custody of the Minor Pending Removal of Guardian

After holding a hearing on the matter, the Court may award temporary custody of the minor to an appropriate custodian pending the removal hearing if:

- (1) the Court determines that the parent has either abandoned the minor in the sense that the parent has failed to maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare, OR
- (2) the Court determines that the minor has been denied the care, guidance, or control necessary for his physical, educational, moral, or emotional well-being, OR
- (3) the Court determines that the minor has had physical injury or injuries inflicted upon her by a person responsible for such child's health, welfare, or care, or by a person given access to such child by such responsible person, other than by accidental means or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment,

AND THAT

(4) these acts place the health or welfare of the minor in danger.

Under certain stringent conditions, the Court may order immediate temporary custody without a hearing if the Court finds that:

- (1) the child was not taken or kept from the custodial parents, AND
- (2) there is a substantial likelihood that the child will be removed from the probate court district prior to a hearing, OR
- (3) to return the child to the parent would place the child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger prior to a hearing for temporary custody.

If the child is hospitalized as a result of a serious physical illness or injury, even if the child is in the custody of the parent, the Court may grant an application for immediate temporary custody if a certificate signed by two Connecticut doctors is filed with the Court stating that (1) the child is in need of immediate medical or surgical treatment, the delay of which would be life-threatening, (2) the parent refuses or is unable to consent to such treatment, and (3) determination of the need for temporary custody cannot await a formal hearing.

If immediate temporary custody is ordered by the Court without prior notice to the parents, a hearing must be held within five business days after the date of the order to determine whether the statutory requirements exist to continue temporary custody.

The rights and duties of the temporary custodian are: the obligation of care and control, the authority to make decisions regarding routine medical treatment or school counseling and psychological, emergency medical, psychiatric, or surgical treatment, and any other rights and duties that the Probate Court may order.

An order for temporary custody is not permanent, and the order will be in effect only until a determination can be made on the application for removal of the guardian.

B. Visitation Rights of Parent Removed as Guardian

A Probate Court may grant visitation rights to any person who has been removed as guardian of any minor child or children, any relative of any minor child or children, or any parent who has been denied temporary custody of any minor child or children pending a removal or termination of parental rights hearing. An order to this effect must be made by the Court after the hearing. The Court must be guided by the best interest of the minor, giving consideration to the minor's wishes if he or she is of sufficient age and is capable of forming an intelligent opinion.

C. Reinstatement of Guardianship Rights

Any parent or other guardian of the person of a minor who has been removed as guardian may apply to the Probate Court that removed her for reinstatement if, in her opinion, the factors that resulted in the removal have been resolved satisfactorily.

After the hearing, if the Court determines that the factors that resulted in the removal of the parent have been resolved satisfactorily, the Court may reinstate the parent as guardian of the person of the minor.

APPOINTMENT OF GUARDIAN OF THE PERSON OF THE MINOR

In the case of a minor who has no guardian of the person due to the death of his parents, the probate court for the district in which the minor resides may appoint a guardian for the minor on its own initiative. When the Court has removed both parents as guardians of the minor's person,

it must appoint a successor guardian. If the Court removes only one parent as guardian, or if one parent dies, the remaining parent is the sole guardian of the person of the minor.

If the minor is age 12 or over, the Court shall take into consideration the minor's wishes in appointing a guardian of the person. Factors the Court will consider when selecting an appropriate person to be guardian are the ability of the prospective guardian to meet, on a continuing day-to-day basis, the physical, emotional, moral, and educational needs of the minor and the existence or nonexistence of an established relationship between the minor and the prospective guardian.

The guardian of the person of a minor must present an annual report about the minor's condition to the Probate Court that appointed the guardian. The report form, PC-570, will be given to the guardian at the time of appointment, with instructions to submit the report to the Court one year from the date of appointment.

Guardianship of the person will terminate when the minor reaches the age of 18, dies, or if the guardian is removed by a Court.

REVIEW OF CASES INVOLVING CHILDREN WITH MENTAL ILLNESS OR EMOTIONAL DISTURBANCES.

C.G.S. §17a-11 provides for the review of those mentally ill or emotionally disturbed children who are at risk of being placed outside of their home and are receiving voluntary services from the Department of Children and Families (DCF). The Commissioner of DCF may admit to the Department on a voluntary basis any child whom she believes would benefit from services offered by the Department. The application for voluntary admission may be made by the parent or guardian of the child, if the child is under the age of 14, or by the child himself or herself if he or she is 14 years old or older.

Not more than 120 days after admitting a child on a voluntary basis, the Department must petition the Probate Court for a determination as to whether continuation of care is in the child's best interests. After giving notice to all interested parties of the hearing, the Court must consider the following factors:

- (1) the appropriateness of the Department's plan,
- (2) the treatment and support services that have been provided to the child to strengthen and reunite the family,
- (3) if return home is not likely for the child, the efforts that have been made or should be made to evaluate and plan for other kinds of care, and
- (4) any further efforts which have been made or will be made to promote the best interests of the child.

Every 12 months, the Commissioner must file a motion with the Probate Court requesting a review of the case, based upon the same standards as set forth in the previous paragraph, and the Court shall enter an appropriate order of disposition.

If you have a child with these special needs, you should call the Regional Office of the Department of Children and Families.

SUBSIDIZED GUARDIANSHIPS

C.G.S. §17a-126 provides for the establishment of a program by the Department of Children and Families to subsidize certain guardianships for children in the care or custody of the Commissioner who have been living with and cared for by other relatives aside from the parents and who have been in foster care or certified relative care for not less than 18 months.

If the guardian qualifies for the program, the Commissioner may grant a special needs subsidy, consisting of a lump sum payment for one-time expenses involved in taking initial care of the child, as well as a medical subsidy and a monthly cash subsidy equal to the prevailing foster care rate.

These subsidies shall continue until the child reaches the age of 18, or the age of 21 if the child is in full time attendance at a secondary school, technical school, or college or is in a state accredited job training program.

Each year, the subsidized guardian must submit a report to the Commissioner that would justify the continuation of the subsidy.

For further information on this subsidy program, you should consult with your local office of DCF.

PROBATE COURT JURISDICTION OVER EMANCIPATION OF MINORS

C.G.S. §§46b-150 — 150c give the probate courts concurrent jurisdiction with the superior courts to emancipate a minor. Under the provisions of this section, a minor is defined as a person who has reached his sixteenth birthday. Jurisdiction is in the district in which the minor or his parents or guardian reside, and the petition may be filed by a minor who has reached the age of 16 and is residing in this state or by any parent or guardian of such minor. The petition shall be verified and must plainly state: 1) the facts which bring the minor within the Court's jurisdiction; 2) the name, date of birth, sex, and residence of the minor, 3) the name and residence of the parent, 4) the name of the petitioner and his relationship to the minor.

The hearing must be held not later than 30 days after the filing of the petition, and the minor and his parent (if the parent is not the petitioner) must be notified by personal service at least seven days prior to the hearing. If the parent is the petitioner, notice must be given by certified mail. The Probate Court must give such notice as it directs to the Commissioner of the Department of Children and Families and other persons having an interest in the minor. In most cases, the Court will order the Department of Children and Families to investigate the matter and report to the Probate Court any facts that may be relevant in assisting the Court with its decision. The Court will also appoint counsel to represent the minor. The minor must pay the cost of counsel, unless he or she is unable to pay and files an affidavit to that effect with the Court, in which case the Probate Court Administration Fund will pay.

Pursuant to C.G.S. §46b-150a, the Court may make a finding at the hearing or at any time while the emancipation proceeding is pending that an examination is warranted. If this finding is made, the Court, on its own motion or on the motion of any party, may order the minor to be examined by a physician, psychiatrist, or licensed clinical psychologist appointed by the Court. The Court may also order the examination of a parent or custodian whose competency or ability to care for the minor is at issue. The expenses of any examination ordered by the Court on its own motion will be paid by the petitioner; the expenses of any examination requested by another party shall be paid by the party requesting the examination. If such petitioner or the party requesting the examination is unable to pay for the examination, payment will be made by the Probate Court Administration Fund. The Court may consider the results of the examination in ruling on the merits of the petition.

After the hearing, the Probate Court may enter an order of emancipation if the judge finds that:

- (1) the minor has entered into a valid marriage; or
- (2) the minor is on active duty with any of the armed forces; or
- (3) the minor willingly lives separate and apart from his parents and is managing his own financial affairs, regardless of the source of lawful income; or
- (4) for good cause shown, emancipation will be in the best interest of the minor, any child of the minor, or the parent or guardian of the minor.

Any person named in the petition who is aggrieved by the Probate Court's order may appeal.

APPOINTMENT OF GUARDIAN OF THE ESTATE OF A MINOR

A guardian of the estate of a minor is one who has legal control over the financial affairs of the minor. The parent or guardian of the person of a minor may give a valid release for and manage the property of the minor if the estate is \$10,000 or less in value. If the minor's estate exceeds \$10,000 in value, a guardian of the estate of the minor must be appointed by the Probate Court for the district in which the minor resides. A parent, guardian, or spouse may hold property for a minor under the Uniform Transfers to Minors Act without being appointed by the Court. If the minor is not a resident of Connecticut, the Probate Court for the district in which the minor owns property may, after a hearing, appoint a guardian of the estate who shall manage the minor's property.

Although the Probate Court can appoint any suitable person as the guardian of the estate of a minor, the Court will ordinarily look first to the parents or the guardian of the person of the minor.

If that person is unwilling or unqualified for the appointment, the Probate Court will appoint some suitable person as guardian, and, if the minor is 12 years of age or over, she may propose a guardian to the Court.

A guardian of the estate may be referred to as a "fiduciary," a term used to describe a person who is responsible for administering the property of another. The Court will require the guardian of the estate to furnish a probate bond for the protection of the minor's property. The value of the probate bond is usually equal to the value of the assets of the minor's estate, excluding any real property. The appointment of a guardian of the estate is not effective until the probate bond is filed with the court, but a bond may not be required if a bank is the guardian of the estate. In addition, the judge may waive the requirement of a bond if the minor's assets are less than \$20,000.

Upon furnishing the probate bond, the guardian will be issued a Fiduciary's Probate Certificate that will allow the guardian to negotiate the assets of the minor within the limits imposed by law.

Duties of the Guardian of the Estate of the Minor

The guardian of the estate of a minor has control over all the minor's property, whether acquired before or after the guardian's appointment, except for property managed under the Uniform Transfers to Minors Act or bequests managed under a trust. Investments of a minor's property by a guardian are strictly limited by law. The minor's property may only be used for the benefit of the minor. It may not be used to pay the expenses that a parent or guardian of the person is legally responsible to provide.

The guardian of the estate should file copies of the Fiduciary's Probate Certificate with persons or agencies where the minor's ownership of property is a matter of record. The certificate provides notice that the minor's property has come under the jurisdiction of the Probate Court and that the guardian of the estate has been given custody of such property.

Within two months of appointment, the guardian must file an inventory with the Court listing all the minor's property at its fair market value as of the date of the appointment.

If the guardian of the estate wishes to sell or mortgage any of the real property belonging to the minor, he must file an application in the probate court that made the appointment. The Court will hold a hearing on the application after publishing notice in the local newspaper and notifying interested parties. If the Court determines that the requested transaction is in the best interest of the minor, the application will be granted.

A guardian of the estate may also arrange to lease the real property of the minor upon application to the Court, notice, a hearing, and the Court's approval.

The guardian must file periodic accounts with the probate court showing all financial transactions that occurred on the minor's behalf during the accounting period. Upon receipt of the periodic account, the Probate Court will notify interested parties of its availability for examination. A

periodic account hearing must be held at least once in every three-year period. More frequent account hearings may be ordered by the Probate Court or requested by an interested party.

A guardian of the estate who becomes incapable, neglects to perform the required duties, or mishandles the minor's assets may be removed as guardian by the Court that appointed him. The Court will then appoint another guardian of the estate.

The guardianship of the estate will terminate when the minor reaches the age of 18, dies, or if the guardian is removed by the Court.

The guardian should file the estate's final account in the probate court with a receipt and release signed by the minor. If the Court approves the account, the remaining assets must be delivered to the former minor. The probate bond will then be released.

CONCLUSION

Guardianship has been described as a trust of the highest and most sacred character. The guardian is lawfully invested with the power and charged with the duty of taking care of a minor person and, in appropriate cases, the minor's property. The minor is a person under the age of full legal rights and, in many circumstances, is legally unable to act for herself.

In view of these serious responsibilities, a person acting as guardian for a minor's person and/or estate should always seek competent professional advice when making decisions on behalf of the minor.

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