

GUARDIANSHIP OF MINORS



NINETEENTH JUDICIAL CIRCUIT

LAKE COUNTY, ILLINOIS

PREPARED BY
THE JUDGES OF THE
NINETEENTH JUDICIAL CIRCUIT

The materials contained herein are accurate as of the publication - September 2011, but are subject to legislative or administrative amendments after this date.

INTRODUCTION

Many people appear before the Court seeking to be appointed as guardians for minor children, without the assistance of an attorney.

This booklet is designed to inform prospective guardians of the requirements for obtaining and terminating a guardianship.

This booklet also explains the important duties and responsibilities of court appointed guardians.

The Probate Help Desk volunteers are available on Friday mornings to assist in the completion of the court forms. The forms must be filled out before you appear in court.

This booklet is intended to answer general questions about a guardianship. There are alternative forms of guardianship available. To obtain information on alternative forms of guardianship or if you need legal advice, you should consult an attorney.

For information about legal services, you can contact:

Lake County Bar Association

Lawyer Referral Service: 847.244.3140

Prairie State Legal Services: 847.662.6925

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WHEN DOES A MINOR NEED A GUARDIAN?

Who is a minor?

A **minor** is a person under the age of 18.

Guardian of the Person

A minor needs a guardian of his or her **person** when the minor has no living parents, when the parents cannot be found, or when the parents are unable or unwilling to care for the minor.

Guardian of the Estate

A minor needs a guardian of his or her **estate** when he or she has, or is about to receive, any money or property with a value of at least \$10,000 (such as insurance, from an inheritance, or from the settlement of a personal injury case). A guardianship of the estate is not needed if the only asset of the minor is the right to collect social security benefits.

Family and Divorce Court Issues

Probate Court is not the proper court for the determination of custody rights between the two legal parents of the minor child.

If the legal parents are divorced from one another, or if they were never married to each other, custody proceedings between them take place in either Family Court or Divorce Court.

WHO CAN BE A GUARDIAN?

To be the guardian of a minor's **person** you must be:

- at least 18 years old;
- a United States resident;
- of sound mind and not under legal disability;
- not convicted of a felony; and
- capable of providing an active and suitable program of guardianship.

One person may be appointed guardian of the **person** and another person appointed guardian of the **estate**.

A petition for guardianship of the **person** of a minor should be filed in Probate Court only when the person seeking guardianship is not a legal parent. On the other hand, a legal parent may be named to serve as guardian of the **estate** of a minor.

HOW CAN YOU BECOME A GUARDIAN?

1. Petition

Obtain a **Petition for Guardianship of a Minor** form from the Probate Clerk in the Circuit Clerk's Office in the Lake County Courthouse. Complete all information requested on the Petition and bring it to the Probate Clerk and pay the filing fee. At this time, have the clerk schedule your case for hearing on the Guardianship call. The filing fee may be waived in cases of financial hardship. The hearing will be scheduled on a Friday at 9:00 a.m. so that volunteers at the Probate Help Desk can assist with completion of the remaining court forms.

The guardianship process will typically require two (2) court appearances. At the first hearing, the Court may appoint a Temporary Guardian if adequate notice has been sent. The second hearing is necessary for the court to review the background check for the proposed guardian and to file any paperwork that was not present at the first court hearing.

2. Notice

Give **written** notice of the date, time, and place of the hearing by mail or in person, to the parents or nearest relatives of the minor (and to any person who already has legal custody or guardianship of the minor) at least four days before the hearing date.

The “nearest relatives” of an unmarried minor are the parents and adult brothers and sisters of the minor. If there are no living parents or adult brothers and sisters of the minor, then the next nearest adult relatives such as grandparents and/or aunts and uncles are considered the “nearest relatives.”

A non-custodial parent is entitled to notice of a hearing on a guardianship petition.

Notice may be sent by using a **Notice of Motion** form available from the Clerk.

At the hearing, you must either:

a. present proof to the Court that you gave notice to the parents or nearest relatives,

or

b. present a written consent **Appearance and Consent Petition for Appointment of Guardian** form or similar letter signed by the

parents or nearest relatives saying that they agree that you should become the guardian for the minor child. Be sure the letter contains the child's name and your name. **The letter needs to be notarized (signed by the parents or relatives in the presence of notary public).**

or

- c. if after a diligent search you cannot locate one or more of the living parents of the minor, the Court may authorize the service of the Petition on the parent(s) by publication. The necessary forms will be completed at the Help Desk. In the case of unmarried parents, you should determine whether the parent signed a Voluntary Acknowledgement of Paternity or was later found to be the legal parent by a court of law.

If one or both parents of the minor are dead, you must file their death certificates with the Petition.

If a parent cannot be located, you must show the last known address of the missing parent and send notice to that parent at the last known address.

If the minor is 14 years old or older, he or she must either consent in writing to the guardianship **Nomination of Guardian for Minor** form or be given written notice of the hearing on the Petition.

3. Hearing

Check in with the Probate Help Desk by 9:00 a.m. prior to going to the courtroom. The Help Desk is located next to the Probate Courtroom. After you have completed the remaining paperwork with the Probate Help Desk volunteer, you will be directed to the courtroom. When the Judge calls the name of the minor, step up to the bench. The Judge will review the documents and may have some additional questions for you.

After the first hearing, if the Court has agreed to appoint you as the minor's temporary guardian, the Probate Clerk will send you **Letters of Office** that you can take to the school or to anyone else who needs to know you have authority to act for the minor. After the second hearing, if the Court has approved the background check and you have brought all the required paperwork, the Court may appoint you as the guardian.

4. Bonds

If you are named to be the guardian of the **estate** of the minor, you must file a bond approved by the court.

Unless excused by the Court, every bond must be guaranteed by at least two individual sureties or by a corporate surety company.

A surety guarantees that a guardian will faithfully discharge the duties of guardian. A surety may have to pay back money that a guardian loses, steals, misuses, or mismanages up to the amount of the bond.

If two individuals act as sureties, the amount of the bond must be double the value of the minor's estate. The individual sureties must sign a notarized list of their assets which must be attached to the bond.

If a corporate surety is used, the amount of the bond is one and one-half times the value of the minor's estate. A surety company will charge the estate an annual premium like a premium on an insurance policy.

In determining the value of a minor's estate, it is not necessary to add in the value of real estate held in the name of the minor.

Surety on the bond may be excused if the money in the estate is deposited either:

- a. in trust with a trust company, or
- b. in a government insured account in a bank, savings and loan association, or credit union, subject to withdrawal only upon court order, or
- c. in United States obligations deposited for safekeeping in an approved depository, subject to withdrawal only upon court order.

If the money may be withdrawn only upon court order, a receipt of the depository showing that no withdrawals will be allowed without court order must be filed with the Clerk of the Court. The receipt is called a **Certificate of Depository**. Forms are available from the Probate Clerk.

WHAT ARE THE GUARDIAN'S DUTIES?

A **guardian of the person** must make arrangements for the minor's care, comfort, health, and education, and consent to any medical care or treatment the minor may need. The Court may require a guardian of the person to make a report to the Court periodically about the minor's mental, physical, and social condition, his current living arrangements, and any medical, educational, and other professional services the minor has received.

A **guardian of the estate** must care for, manage, and invest the ward's estate and spend what money is needed for the ward's comfort, support, and education, subject to approval by the Probate Court.

Rules for the **guardian of the estate**:

1. Inventory

A *guardian of the estate* must file an inventory with the court within 60 days after the guardian is appointed, listing all the minor's assets. (The requirement of filing an inventory is excused if the minor's money has all been deposited in an account subject to withdrawal only upon court order.)

2. Certificate of Depository

If money is deposited in an account subject to withdrawal only upon court order, the guardian of the estate must file with the Clerk a receipt from the bank. The receipt is called the **Certificate of Depository**.

3. Withdrawals of Minor's Funds

If the ward's money is deposited in a government insured account subject to withdrawal only upon court order, a petition must be filed with the court any time a parent or guardian wants to withdraw any money to spend for the minor's needs.

4. Annual Accounts

The guardian of the estate must file an account with the Court once a year showing all money received and all money spent and the cash remaining on hand at the end of the accounting period. The guardian must appear in court to have the accounting approved by the Judge. Call the Probate Clerk to obtain a court date for approval of the account when it is ready.

The requirement of filing an account is excused if the minor's money has all been deposited in an account subject to withdrawal only upon court order.

It is important to keep detailed records of all money spent on behalf of the minor. If the guardian cannot explain to the Court what has been done with the money of the minor, or if the money has been lost, stolen, mismanaged, or misused, the guardian may be held liable for the money and have to pay it back to the minor.

5. Settlement of a Claim for Personal Injuries

A *guardian of the estate* must obtain the approval of the court to settle a personal injury claim of a minor by filing a petition with the Court. A

form petition for court approval is available in the Clerk's Office. A report from the attending physician stating the nature and extent of the injury must be filed with the petition. The minor must appear in court on the hearing date. The Court may appoint an independent attorney to investigate the settlement and to report back to the Court.

WHAT HAPPENS WHEN YOU DIE, RESIGN, OR CAN NO LONGER BE GUARDIAN?

A petition to appoint a new guardian may be filed without payment of a new filing fee. Notice or consent is required in the same manner as when the original petition for guardianship was filed.

If a guardian of the person of a minor resigns and there is no parent or any other qualified adult able or willing to be appointed as the new guardian, the minor may have to be placed in foster care under the supervision of the Illinois Department of Children and Family Services.

CAN THE GUARDIAN BE REMOVED OR THE GUARDIANSHIP TERMINATED?

1. A guardian may be involuntarily removed as the guardian on the motion of the Court or on the motion of any interested person if the guardian fails to perform the duties of the guardian. A guardian may also be removed if the Court finds that because of change in circumstances the guardianship is no longer necessary or appropriate to serve the best interests of the minor.
2. A guardian may voluntarily resign as the guardian of a minor by signing a statement of resignation and presenting the statement of resignation to the Court. The Court may ask the guardian to explain what arrangements will exist for the care of the minor after the guardian is discharged. If there is no parent or other qualified adult able and willing to care for the minor, the minor may be placed in foster care under the supervision of the Department of Children and Family Services.
3. An order appointing a guardian does not terminate the parental rights of the parents of the minor. A parent may file a Petition to Terminate the Guardianship and discharge the guardian. The Petition to Terminate the Guardianship must allege that a material change in the circumstances of the minor or the parent has occurred since the entry of the order appointing the guardian. The Petition must contain factual details showing the change of circumstances. If the parent can establish a material change of circumstances, and the guardian objects to the termination of the guardianship, the guardian must establish by clear and convincing evidence, that termination of the guardianship would not be in the best interests of

the minor. In determining the minor's best interests the court will consider all relevant factors including:

- a. The interaction and interrelationship of the minor with the parent and members of the parent's household;
- b. The ability of the parent to provide a safe, nurturing environment for the minor;
- c. The relative stability of the parties and the minor;
- d. The minor's adjustment to his or her home, school, and community, including the length of time that the minor has lived with the parent and the guardian.
- e. The nature and extent of visitation between the parent and the minor and the guardian's ability and willingness to facilitate visitation.

WHAT HAPPENS WHEN THE MINOR TURNS 18?

When the minor turns 18 years of age, the guardianship of the person ends and the guardian's Letters of Office are revoked.

Even though a guardianship ends automatically when the minor reaches 18, the guardian of the estate of the minor is not discharged until a final account has been filed with and approved by the Court. Unless excused by the Court, a minor who has reached the age of 18 must appear in court with the guardian for the hearing on the final account.

If the funds of the minor are being held in a government insured account or in United States obligations subject to withdrawal only upon court order, it may be necessary for the guardian to obtain a court order to authorize the release of the funds to a minor who has reached the age of 18.

GENERAL INFORMATION/QUESTIONS

When and where can you obtain the forms to obtain a guardianship in Lake County?

You are advised to obtain the necessary papers from the Clerk's Office in advance of your court date. In order to get your case on the court call, you must notify the Clerk before the day you wish to go to court.

Place: Probate Clerk
Office of the Clerk of the Circuit Court
Lake County Courthouse
18 North County Street
Waukegan, Illinois 60085
847.377.3386

Time: 8:30 a.m. to 5:00 p.m.
Monday through Friday

When and where do you go to Court to obtain a guardianship in Lake County?

Check with the Probate Clerk in the Circuit Clerk's office to be assigned the time and court room for the Guardianship call.

What is the filing fee for filing a petition for guardianship?

For a guardianship of the **person** only the filing fee is \$96.00. Verify with the Probate Clerk whether there has been any increase in the filing fee. The filing fee can be paid by cash, money order, certified or cashier's check, debit card or other major credit card.

For a guardianship of the **estate** of a minor, the fee depends on the value of the estate. Check with the Probate Clerk for the amount of the fee for your estate.

By court order, the filing fee may be waived in cases of financial hardship.

Additional copies of this pamphlet are available on the Nineteenth Judicial Circuit website: www.19thcircuitcourt.state.il.us.

