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Petitioning for Guardianship Under New Mexico's Kinship Guardianship Act

What should you do if a family member or friend has left their child with you for an extended period of time? In New Mexico, if a child has resided with you for an extended period of time and you want to continue to care for the child, you may be able acquire guardianship over the child through New Mexico's Kinship Guardianship Act.

Though there are numerous requirements under the Act, you do not have to be a blood relative in order to file a Kinship Guardianship petition. However, if you are not a relative, or a member of the child's tribe, you will have to demonstrate that you have a significant bond with the child. The grounds for guardianship, the bonds with the child, the best interests of the child and other considerations must be set forth clearly in the Petition for Guardianship.

The Kinship Guardianship Act is meant to address situations in which a parent has left a child with another person for more than ninety (90) days without "appropriate care, guidance or supervision." If you are appointed the legal guardian of a child, the parent's rights are temporarily suspended and transferred to you. This also means that you are responsible for caring for the child as if he or she were your own, which not only means feeding and clothing the child, but making decisions about things like medical care and education for the child too.

The New Mexico Courts will only appoint a Kinship Guardian if that appointment is in the best interest of the child. If both of the child's parents agree to appointment of a legal guardian, then they can sign a Consent of Appointment of Guardian and they can also waive the requirement that a child live with you for at least ninety days before you can file a petition for kinship guardianship. However, if one or both of the child's parents dispute the guardianship, the Court must appoint a Guardian Ad Litem to represent the child's interest.

Once guardianship has been appointed, the legal guardian has full physical custody and financial responsibility for the care of the child. The financial burdens associated with custody of a child can be significant for a guardian. As such, the guardian can petition and the court will generally award child support from one or both parents for the care of their children while the guardianship is in effect.

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