

California Guardianship Basics

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A guardianship is a court proceeding in probate court that awards custody of a minor to a non-parent. The grounds for the custody award is “necessary or convenient”.

There are actually two types of guardianships :

1. Guardianship of the Person- food, shelter, health care, education and religious development.
2. Guardianship of the Estate- management of the minor’s estate (assets) often used in case of an inheritance or life insurance payment due to loss of a parent.

Notifications of Guardianship Proceedings:

1. Minor (age 12 or older)
2. Minor’s parents (serve by personal service)
3. Minor’s grandparents
4. Minor’s siblings
5. Minor’s half-siblings
6. Anyone who currently has custody (if not the parents)

If the parents are in agreement to the guardianship then they should each sign a consent form (there is a judicial council form for that purpose, GC-211).

Also, its much easier for the prospective guardian if they ask the parent or other relatives to sign a waiver of notice so service of the papers is minimized. The same judicial council form that is used for consent to the guardianship also has a separate section for waiver of notice.

Finally, this same form asks if the parent nominates the petitioner to act as guardian.

If a relative cannot be located, the court will require a declaration of due diligence or written statement signed under penalty of perjury setting forth the efforts made to locate the person. If the declaration is accepted by the court, service of that person will be excused. The most common reason for the court not to accept the declaration is insufficient effort in trying to locate the relative.

Sometimes, there is a question who is the biological father and the court will require that both the alleged father and the presumed father be served notice. This comes up , for example, when the mother initially names one person as the father say for child support purposes then later names another person as the real father. A prospective guardian such as a grandparent may not know which person is the father so both persons are served to be safe.

This is not a process to determine paternity but a process to name a non-parent guardian and all relevant parties (relatives within the second degree) must be given notice and the opportunity to be heard before the court makes its ruling.

If a parent (or any relative) objects to the guardianship they must file a written objection and appear in court. At this point its advisable to retain counsel if you are not represented. A contested guardianship is beyond what a person should handle on their own.

Before the court makes it determination, there will be a background check as well as an investigation by a probate investigator. Including a home check and interview.

While there are two many forms to list here, the procedure is complex and its advisable to seek the help of an attorney. Also, ask the probate court clerk for a guardianship packet (with the complete set of forms) and if there is a local 'Guardianship Assistance Project" or "GAP" attorney in your area. This is a state bar funded project.

If you are awarded guardianship, the court will require an annual review. This is usually a matter of completing a questionnaire for the court each year.