



# GUARDIANSHIPS

This brochure has been made available in your community by the following CALDA member:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

SAMPLE

A guardianship is when a court orders someone other than the child's parent to have custody of the child or manage the child's property (called "estate") or to make decisions. We have tried to answer the most frequently asked questions about the guardianship process.

The following information is from © 2018 Judicial Branch of California/American Administrative Office of the Court and is used with the AOC's permission.

The information in this section is about probate guardianships. These cases are brought by the person seeking to be appointed guardian or by someone in the family asking the court to appoint a guardian. If custody of the minor was awarded to a parent through the juvenile dependency court this section does NOT apply.

If Child Protective Services (CPS) is involved with you, you probably have to go to the juvenile court to find out what you can do.

A probate guardianship of the person is set up because the child is living with an adult who is not the child's parent and the adult needs a court order to make decisions on behalf of the child. A guardianship is not the same as adoption. The differences:

Guardianship:	Adoption:
<ul style="list-style-type: none"> <li>• Parents still have parental rights. They can ask for reasonable contact with the child.</li> <li>• The court can end a guardianship and the parents become responsible for care of the child.</li> <li>• Guardians can be supervised by the court.</li> </ul>	<ul style="list-style-type: none"> <li>• The parents' rights are permanently ended. The legal relationship with the adoptive parents is permanent and is exactly the same as a birth family.</li> <li>• An adopted child inherits from his or her adoptive parents, just as a birth child would.</li> <li>• Adoptive families are not supervised by the court.</li> </ul>

## **TYPES OF PROBATE GUARDIANSHIP**

There are two types of probate guardianship:

### **1. GUARDIANSHIP OF THE PERSON**

In a guardianship of the person the guardian has the same responsibilities to care for the child as a parent would. That means the guardian has full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make. A guardian can be anyone; relatives, friends of the family or other people suitable to raise the child and can ask to be legal guardians.

The guardian is responsible for the child's care, including the child's:

- Food, clothing and shelter
- Safety and protection
- Physical and emotional growth
- Medical and dental care
- Education and any special needs

The guardian is also be responsible for supervision of the child and may be liable for any intentional damage the child may cause.

A guardianship of the person is sometimes needed when, no matter how much parents love their child, they are not able to parent. Maybe one or both parents:

- Have a serious physical or mental illness
- Are in the military and have to go overseas
- Have to go to a rehab program for a while
- Are going to jail for a while
- Have a drug or alcohol abuse problem
- Have a history of being abusive
- Cannot take care of the child for some other reason

The court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable and loving environment. A legal guardian can care for a child when the parents are unable to.

### **2. GUARDIANSHIP OF THE ESTATE**

A guardianship of the estate is set up to manage a child's income, money or other property until the child turns 18. A child may need a guardian of the estate if he or she inherits money or assets. In most cases the court appoints the surviving parent to be the guardian of the child's estate.

In some cases the same person can be the guardian of the person and of the estate. In other cases the court will appoint two different people. The guardian of the estate must:

- Manage the child's money
- Make smart investments
- Manage the child's property carefully

A guardianship of the estate is created to manage a child's property, and it is needed when the child owns or receives valuable property, such as if a child inherited a home or a large amount of money.

A guardianship of the estate is not needed when a child only owns income tax returns and clothing or the child receives social security benefits or TANF/CalWorks (welfare).

### **FORMS YOU WILL NEED**

#### Forms needed in all guardianship proceedings:

- Petition for Appointment of Guardian of Minor with Child Inclusion Attachment, GC-210
- Declaration under the Uniform Child Custody and Enforcement Act, GC-120
- Notice of Hearing, GC-020
- Consent of Proposed Guardian, Nomination of Guardian Consent to Appointment and Waiver of Notice, GC-211
- Confidential Guardian Screening Form, GC-212
- Duties of Guardian, GC-248
- Order Dispensing with Notice, GC-249 (you do not know where a person entitled to notice of the proceeds is located)
- Order Appointing Guardian of Minor, GC-240
- Letters of Guardianship, GC-250
- Indian Child Inquiry Attachment, ICWA-01
- Parental Notification of Indian Status, ICWA-02

\*\*Indian inquiry is mandatory. You must state whether or not you believe the child(ren) has/have any Indian heritage.

#### If applying for temporary appointment:

- Petition for Appointment of Temporary Guardian of the Person, GC-110
- Order Appointment Temporary Guardian, GC-140
- Letters of Temporary Guardianship, GC-140

#### To be filed annually after appointment as guardian of a minor's person:

- Confidential Guardianship Status Report, GC-251

#### If you are petitioning to be appointed as guardian of the minor's estate, the following forms are needed:

- Inventory and Appraisal, GC-040
- Attachment to Inventory Appraisal, GC-041



**BEFORE FILING:** Each court has its own local rules and may possibly require additional local forms required to be filed with the Judicial Council forms listed above.

- Check your local court website or contact the court to find out whether or not additional local forms are required.

The court charges a filing fee when opening a Guardianship case. If you qualify for a Fee Waiver. Fee Waivers can be used to request the court waive the entire filing fee, waive part of the filing fee or make payments over time until the fee is paid in full.

If you need to fill-out a Fee Waiver request, the following items are needed:

- Fee Waiver Request Form, FW-001-GC
- Fee Waiver Order, FW-003-GC

---

**THIS INFORMATION IS PROVIDED AS A PUBLIC SERVICE OF THE CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE. IF YOU HAVE ANY LEGAL QUESTIONS YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY.**

**FOR FURTHER INFORMATION REGARDING OUR ORGANIZATION PLEASE WRITE OR CONTACT US THROUGH OUR WEB SITE: [www.calda.org](http://www.calda.org)**

A Legal Document Assistant is not a lawyer. LDAs provide professional self-help services at your specific location. LDAs cannot select your forms or offer legal advice they can offer self-help reference material written or approved by attorneys, such as this brochure. LDAs can assist you procedurally. Many LDAs have self-help manuals in their personal libraries available for purchase or reference. Informational books are also available to you in your local Law Library and book stores. Be sure to seek legal counsel from a licensed attorney if you have any legal questions or require legal advice not addressed by this brochure or other publications.