



LEGAL GUARDIANSHIPS

What is a legal guardianship?

A legal guardianship is a formal decision by a judge that suspends parents' custody of their child and gives custody to a non-parent.

Who can be a legal guardian?

Any adult, 18 or older, can serve as a legal guardian for a child under 18. Usually, a relative or family friend serves as a child's legal guardian.

Why would a child live with someone other than his or her parents?

Sometimes parents cannot or will not take care of their children because of lack of money or housing. Sometimes a parent cannot provide a safe home because of drug abuse or domestic violence in the home, or the parent might be in jail. In other cases, children don't want to live with their parents because their parents treat them badly or don't pay attention to them.

Can a child live with an adult friend or relative without the adult being named the child's guardian?

Yes, parents can let their children live with other adults, see the fact sheet on *Informal Guardianships*.

Then what is a legal guardianship for?



A legal guardianship gives an adult who is taking care of a child the *formal* authority to provide for the child's needs. For example, with a legal guardianship, a non-parent can give a child a safe home without worrying about being charged with "kidnapping" or "harboring a runaway." A legal guardianship may be necessary because some health insurance companies won't cover a child who is not living with his or her parents if the child's caretaker is not the child's legal guardian. It is hard for a child to get medical care without a parent or legal guardian's signature. Also, if a child is living with someone who is not a relative, a legal guardianship is required for the child to receive government benefits.

In addition, a legal guardianship can be helpful in establishing stability for a child who has come from a troubled family setting.

What are the responsibilities of a legal guardian?

A legal guardian has the same responsibilities for care and control of a child as a parent does. A legal guardian must feed and clothe the child, provide for the child's education and take the child to the doctor when he or she is sick. A legal guardian must also be kind and loving toward the child. If a child causes damage, the legal guardian may be held responsible.



What rights does a legal guardian have?

Once the court has granted the legal guardianship, the legal guardian acts as the child's parent. The legal guardian then has the right to raise the child without interference from anyone -- including the child's parents.



Can the parents still see the minor after the legal guardianship is granted?

Yes, but the legal guardian of the child can decide when and what type of visitation the child should have with the parents. If the parents are not satisfied with this, they can ask the court for a visitation order.

Can parents make decisions about the child's life after the legal guardianship is granted?

No, the legal guardian has all the official powers of custody and control over the child once the legal guardianship has been granted. However, if a parent disagrees with the choices the guardian is making, the parent can return to court and ask for the guardianship to be ended and the child returned to the parent. To end the guardianship, the parent must show that it is in the child's best interest to end the guardianship.

How does an adult get appointed legal guardian of a minor?

Setting up a legal guardianship is a simple process, but it must be done according to the rules of Santa Clara County Superior Court. You must fill out court forms and petitions and give them to the court as well as the child's parents, grandparents and siblings. If the proposed legal guardian is a relative, the Court Investigator's Unit will investigate to see if the legal guardianship will be good for the child. If the proposed legal guardian is not a relative of the child, the investigation is done by the Department of Social Services. The court will schedule a date for a hearing, at which time a judge will decide whether the legal guardianship is in the minor's best interests.



Who can file a petition, or ask the court for a legal guardianship?

Any adult or a child 12 or older can file a petition asking the court for an adult to be named the child's legal guardian. For children under 12, an adult must file the petition asking that a guardian be appointed for the child.

What factors does a judge consider in deciding whether to grant a legal guardianship?

If the child's parents, grandparents, brothers or sisters object to the legal guardianship, the judge will decide what is in the minor's best interests. If there is no objection, the judge will decide if the proposed legal guardianship will be good for the child. The older the child, the more likely the judge will consider the child's wishes. The judge will also see how much the child and the proposed legal guardian care about each other, how long they have known each other or lived together. The judge will consider the proposed guardian's ability to feed, shelter, clothe and provide medical care for the child, as well as the proposed guardian's parenting skills and physical and mental health. The judge may also look at how the proposed legal guardianship will affect the child's schooling and ties to the local community.



Why does the proposed legal guardian's home get investigated? What will the investigator look for?

After looking into the proposed legal guardian's home situation, the investigator will write a report to the judge on whether the legal guardian's home is a safe and stable place. The investigator will also check to see if any adult in the home has a criminal record or past reports of child abuse or neglect.

How long does it take to get a legal guardianship?

The hearing before a judge, who will decide whether or not to grant the legal guardianship, usually takes place six to eight weeks after the papers are filed.