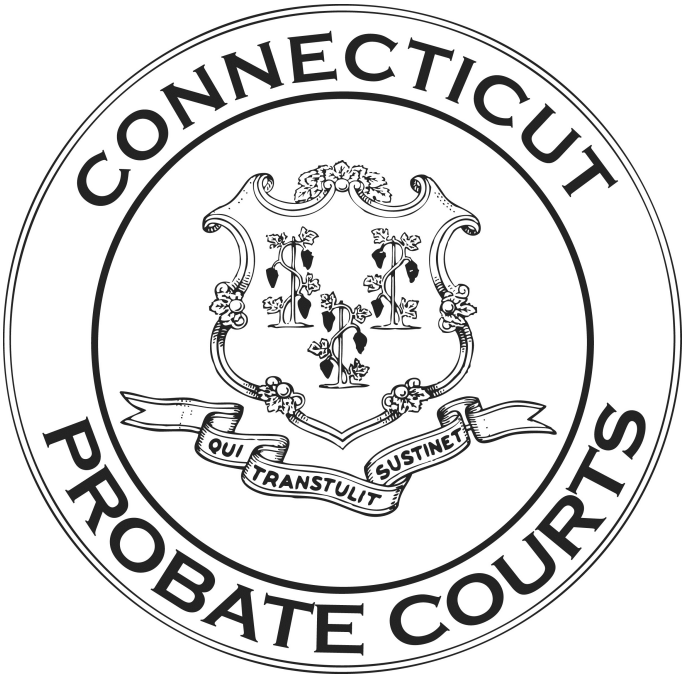
Probate Court User Guide

Guardians of Minors



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INTRODUCTION

The Probate Courts become involved in the lives of children when their parents are unable to appropriately care for them. Guardianship also becomes necessary when a minor acquires assets. The courts, and the guardians they appoint, are entrusted with the responsibility of protecting the interests and assets of the minors.

This user guide is intended to answer some of the questions you may have regarding the procedures, roles and responsibilities of the Probate Court and the guardian of a minor whom the court appoints. This booklet should be considered only as a guide on the guardianship process and not as a substitute for competent professional advice. For specific information regarding probate procedures, please review the relevant Connecticut General Statutes and the Probate Court Rules of Procedure.

Court Forms for guardianships are available online at ctprobate.gov. Click on “Forms.” Forms are also available at the Probate Courts.

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What Is Guardianship?

In Connecticut, a person under the age of 18 is considered to be a minor. A guardian is a person who has the legal right and duty to take care of a minor or a minor's assets.

There are two types of guardianship for minors: guardianship of the person and guardianship of the estate. A guardian of the person has the responsibility to care for the minor. A guardian of the estate manages the minor's assets. The following is a description of the duties and responsibilities of guardians. Part I covers guardianship of the person. Part II summarizes the laws governing removal of a parent as guardian. Part III covers guardianship of the estate.

Part I. Guardian of the Person of a Minor

The guardian of the person of a minor is an adult authorized by law to take physical control of, and provide care for, the minor. That broad authority includes making medical and personal decisions concerning the welfare of the minor.

The parents of a child are joint guardians of the person of the minor by law. This means that each parent has equal powers, rights and responsibilities with respect to the minor, unless otherwise ordered by a court. If either parent dies or is removed as a guardian, the other parent of the child is the sole guardian of the person of the child. The father and mother are joint guardians even if the child is born out of wedlock, provided the father's paternity has been determined under the laws of Connecticut. If paternity has not been established, the mother is the sole guardian of the person. A Probate Court may appoint a guardian of the person of a minor 1) at the request of a parent or another court-appointed guardian, or 2) if the child has no guardian.

Temporary Guardian

If a parent of a minor is unable to care for the minor for a period of time due to illness, absence from the area or for some other reason, the parent may file a petition for appointment of a temporary guardian of the person. This can be done in the Probate Court for the district in which the minor's permanent home is located or where the minor currently resides or is located. Upon receipt of a petition for the appointment of a temporary guardian, the Probate Court may request an investigation report from the Department of Children and Families (DCF).

The temporary guardian serves **with**, but does not replace, the parent as guardian, so that either the parent or the temporary guardian may make important decisions affecting the minor. The appointment expires in 12 months from the date of the Probate Court's decree. The parent has the right to terminate the temporary guardianship at any time by notifying the temporary guardian and the court in writing.

Coguardian

A parent or a court-appointed guardian who is the sole guardian of the person of a minor may petition for the appointment of another person to serve as coguardian in addition to the sole guardian. This can be done in the Probate Court for the district in

which the minor's permanent home is located or where the minor currently resides or is located. Upon receipt of a petition for the appointment of a coguardian, the court may request an investigation report from the Department of Children and Families (DCF). A hearing will be held within 30 days of receipt of the DCF report.

When the appointment takes effect, the coguardian has the obligation of care and control and the authority to make major decisions affecting the minor's welfare. These rights and obligations are shared with the parent or court-appointed guardian, and they may be exercised independently. In the event of a dispute between the parent or court-appointed guardian and the coguardian, either may file a petition with the appointing court asking for the court to resolve the dispute.

The appointment of the coguardian may take effect immediately after the hearing or upon the occurrence of a specified contingency, such as serious illness or death of the parent. When the contingency occurs, the prospective coguardian must notify the court by written affidavit. The court may hold a hearing to verify the occurrence of the contingency. Upon verification, the appointment will take effect and will continue until further order of the court.

No Guardian of the Person of the Minor

If a minor's parents or the court-appointed guardians are deceased, an adult relative, a person with actual physical custody of the minor or an attorney for the minor may petition for the appointment of a guardian. This may be done in the Probate Court for the district where the minor's permanent home is located or where the minor currently resides or is located. Upon receipt of a petition, the court may request an investigation report from the Department of Children and Families (DCF).

In appointing a guardian, the court considers the following factors:

(1) The ability of the prospective guardian to meet the physical, emotional, moral and educational needs of the minor on a continuing day-to-day basis;

(2) The minor's wishes if he or she is over the age 12 or is of sufficient maturity to form an intelligent preference;

(3) The existence or nonexistence of an established relationship between the minor and the prospective guardian;

(4) The best interests of the minor.

Testamentary Guardian

A parent who has not been removed as guardian may, by will or other written instrument, designate a person to serve as guardian of the person and/or estate of the minor after the death of both parents. Following the death of both parents, the designated person must file a petition with the Probate Court seeking confirmation as guardian.

Duties of the Guardian of the Person of a Minor

A guardian of the person of a minor has the duty to provide care and control of the minor and make all decisions affecting the minor's education and welfare. Each year, a guardian of the person is required to submit an annual report on the minor's condition to the court.

Guardianship terminates when the minor becomes 18.

Standby Guardian

Connecticut law also permits a parent to designate a standby guardian of his or her child that takes effect on the occurrence of a specified contingency (for example, the parent's illness, death or absence from the country). Unlike other forms of guardianship, the Probate Court is not involved in the designation of a standby guardian. Standby guardianship forms are not filed with a Probate Court, but forms and information regarding standby guardians are available on the ctprobate.gov website.

The standby guardianship ceases when the contingency no longer exists or at the end of one year, whichever is sooner. If the parent dies while the standby guardianship is in effect, the guardianship ceases 90 days after death. The standby guardian may then petition the Probate Court to be appointed as guardian on an ongoing basis.

Like the temporary guardian, the standby guardian does not replace the parent. The legal rights and duties of the standby guardian become effective only when the parent is no longer physically or mentally able to carry out parental responsibilities.

Part II. Removal of Parent or Guardian

One or both parents of a minor may be removed as guardian of the person by a Probate Court if the court finds certain conditions to be present or if the parent consents to be removed as guardian. An adult relative of the minor (including a parent), an adult with actual physical custody of the minor or an attorney representing the minor may file a petition for the removal of one or both parents as guardian. The petition is filed in the Probate Court for the district where the minor's permanent home is located or where the minor currently resides or is located. The petitioner is responsible for paying various court fees unless the court finds that the petitioner is indigent and unable to pay the fees. For example, the petitioner is responsible for paying the filing fee, for serving notice of the hearing on various parties, for any required newspaper publication, for additional notices, for additional copies and for recording documents.

Upon receipt of a petition for removal of a parent, the court will set a time and place for a hearing on the petition and notify all interested parties. Notice of the hearing will be sent to the parents of the minor and the minor, if he or she is 12 years of age or older. If the whereabouts of a parent are unknown, the court may publish notice in a newspaper.

Any parent who is the subject of a removal petition has the right to be represented by an attorney and may request the court to appoint an attorney if he or she cannot obtain or pay for one. The court may also appoint an attorney to represent the minor.

When a petition for removal of a guardian has been filed, the court may request an investigation report from the Department of Children and Families (DCF). The DCF investigation report will include facts that may be relevant to the court's determination of whether the action sought will be in the minor's best interests.

The court may order the examination of the minor by a physician, psychiatrist or licensed clinical psychologist. The court may also order the examination of a parent whose ability to care for the minor is in question. The cost of any examination ordered by the court will be charged to the petitioner, respondent or the party who requested the examination as determined by the court. If the party responsible for payment is indigent, the cost of the examination may be paid from the Probate Court Administration Fund.

After a hearing, the court may remove a parent as guardian if it finds by clear and convincing evidence that **one or more** of the following conditions are present:

(1) The parent consents to removal as guardian.

(2) The minor has been abandoned by the parent.

(3) The minor has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being as a result of acts of parental commission or omission.

(4) The minor has had physical injury or injuries other than by accidental means **or** has injuries that are at variance with the history given of them **or** is in a condition that is the result of maltreatment.

(5) The minor has been found to be neglected or uncared for, as defined in C.G.S. section 46b-120.

If one parent is removed, the court will confirm the other parent as the minor's sole guardian. If both parents are removed, the court will appoint another person to serve as guardian of the person.

Due to the serious consequences resulting from filing a petition for removal of a parent or other person as guardian and the complex nature of the legal grounds for the removal, anyone considering such action should seek legal advice prior to filing the petition. There are legal penalties for willfully filing a false petition, conspiring with another to file a false petition or giving false testimony in a removal proceeding.

Temporary Custody or Immediate Temporary Custody of the Minor Pending Removal of Guardian

Temporary custody concerns the physical custody and care of the minor until the court renders a decision on a petition to remove the parent. After holding a hearing, the court may award temporary custody of the minor to an appropriate custodian if the court finds that one or more of the grounds for removal are present and that the health or welfare of the minor is at risk.

Under certain stringent conditions, the court may order **immediate** temporary custody **without notice and hearing** if the court finds that:

(1) the minor was not taken or kept from the custodial parents, **AND**

(2) there is a substantial likelihood that the minor will be removed from the Probate Court district before a hearing, **OR** to return the child to the parents would result in serious physical illness or injury or risk of physical danger before a hearing.

Generally, the court may not grant **immediate temporary custody** of a minor who is in the physical custody of a parent. However, it may do so if the minor is hospitalized as a result of a serious physical illness or injury, and

(1) the minor is in need of immediate medical or surgical treatment, the delay of which would be life-threatening;

(2) the parent refuses or is unable to consent to such treatment; and

(3) determination of the need for temporary custody cannot await a formal hearing.

If the court orders immediate temporary custody without prior notice to the parents, a hearing must be held within five business days after the date of the order to determine whether the temporary custody should continue.

The rights and duties of the temporary custodian are: the obligation of care and control, the authority to make decisions regarding school counseling or routine and emergency medical, surgical, psychological or psychiatric treatment and any other rights and duties that the Probate Court may approve.

An order for temporary custody is not permanent, and the order will be in effect only until a determination can be made on the petition for removal of the parent as guardian.

Child Support Orders in Removal and Custody Matters

If a minor is the subject of a pre-existing child support order issued by the Superior Court, certain procedures must be followed. The Support Enforcement Services Unit at the Department of Social Services must be notified when:

(1) The court grants guardianship or custody to a new guardian, **OR**

(2) The custody of the minor is returned to the parent ordered to pay child support, in which case the child support order will be suspended.

The telephone number of the Support Enforcement Unit is (800) 228-5437.

Visitation Rights of Parent Removed as Guardian

A Probate Court may grant visitation to 1) a parent or guardian, if temporary custody has been granted, 2) a person who has been removed as guardian or 3) any relative of the minor. The court will be guided by the best interest of the minor, giving consideration to the minor's wishes if he or she is of sufficient age to form an intelligent opinion.

Reinstatement of Guardianship Rights

Any parent who has been removed as guardian may petition the Probate Court that removed the parent for reinstatement. If the court determines that the factors that resulted in the removal of the parent have been resolved satisfactorily, the court may reinstate the parent as guardian.

Appointment of Permanent Guardian

Following the removal of parents as guardians in the manner discussed above, the court may appoint a permanent guardian if certain additional steps are followed. A permanent guardianship is intended to last until the minor reaches age 18 and to provide permanency for the minor without terminating the parental rights of the parents.

In addition to the evidence required for removal of the parents as guardians, the court will appoint a permanent guardian if it finds by clear and convincing evidence that:

(1) One of the grounds for termination of parental rights exists, or the parents consent.

(2) Adoption of the minor is not possible or appropriate.

(3) If the minor is age 12 or older, the minor consents.

(4) If the minor is under age 12, the proposed permanent guardian is a relative or is already permanent guardian of a sibling of the minor.

(5) The minor has resided with the proposed permanent guardian for at least one year.

(6) The proposed permanent guardian is suitable and is committed to remaining as permanent guardian until the minor reaches age 18.

After the appointment of a permanent guardian, the removed parents may not seek reinstatement as guardians, nor may they petition the court for removal of the permanent guardian. The removed parents may seek visitation.

Special Immigrant Juvenile Status

At any time during or after a case involving the custody or guardianship of a minor, a party may file a petition requesting that the Probate Court make findings in connection with a petition to the United States Citizenship and Immigration Services (USCIS) for the designation of a minor child who is not a U.S. citizen as having special immigrant juvenile status. The minor child may be eligible to remain in the United States if USCIS grants this status.

Most matters involving custody or guardianship pertain only to individuals under age 18. The Probate Court can, however, hear a matter relating to Special Immigrant Juvenile Status for an individual who is over 18, but not yet 21, if the court removed a guardian, appointed a guardian or co-guardian, terminated parental rights or approved the

adoption of the individual before age 18. In addition, the court can appoint a guardian for an 18, 19 or 20-year-old individual seeking Special Immigrant Juvenile Status if the individual consents to the guardianship, is dependent on the care of a competent caregiver and is unmarried.

A petitioner may use the form *Petition/Special Immigrant Juvenile Findings under 8 U.S.C. section 1101, PC-609,* to request that the court make these findings.

Part III. Appointment of Guardian of the Estate of a Minor

A guardian of the estate of a minor has legal control over the financial affairs of the minor. A parent may, without appointment by the court, manage the property of the minor if the assets are valued at $10,000 or less. However, if the minor's assets exceed $10,000 in value, a guardian of the estate of the minor must be appointed by the Probate Court for the district in which the minor lives.

Although the Probate Court may appoint any suitable person as the guardian of the estate, the court will ordinarily look first to the parents to serve as guardian. If the parents are unwilling or unqualified for the appointment, the Probate Court will appoint another person as guardian. A minor who is 12 or older may indicate his or her preference regarding who will serve as guardian.

Probate Bond and Restricted Access Accounts

The court may require the guardian of the estate to furnish a probate bond for the protection of the minor's property. The amount of the probate bond is usually equal to the value of the minor’s assets. When a bond is required, the appointment of a guardian of the estate is not effective until the probate bond is filed with the court. The judge may waive the requirement of a bond if the minor's assets are less than $20,000. The bond may also be waived if the assets are held in a restricted account. This requires a written agreement on a form available from the court, under which a bank agrees not to release any funds without prior court approval.

For further information, see Rule 35 of the Probate Court Rules of Procedure.

Duties of the Guardian of the Estate of a Minor

The guardian of the estate of a minor has control over all of the minor's assets, whether acquired before or after the guardian's appointment, except for property managed under the Uniform Transfers to Minors Act or under a trust. The minor's property may be used only for the benefit of the minor. It may not be used to pay the expenses that a parent is legally responsible to provide. The minor’s assets must be held in separate accounts from the guardian’s personal assets. Connecticut law strictly limits the investments of a minor's property by a guardian.

The guardian of the estate should file copies of the *Fiduciary's Probate Certificate, PC-450,* with financial institutions at which the minor's assets are held. The certificate provides notice that the guardianship estate is under the jurisdiction of the Probate Court and that the guardian of the estate has authority to manage the minor’s assets. If

the minor owns real estate, notice of the guardianship should be recorded on the land records.

Within two months of appointment, the guardian must file an inventory with the court listing all of the minor's assets at fair market value as of the date of the appointment. The guardian must provide copies of the inventory to each party and attorney of record.

If the guardian of the estate wishes to sell or mortgage any real estate belonging to the minor, the guardian must file a petition in the Probate Court. The court will hold a hearing after notifying interested parties. The court may authorize the sale if it determines that it will be in the best interests of the minor.

The guardian of the estate must file periodic financial reports or accounts with the Probate Court to report on the guardian's management of the minor's assets. Upon receipt of the periodic financial report or account, the Probate Court will set a hearing or notify interested parties of the right to a hearing upon request. A periodic financial report or account *must* be filed for the first year following appointment and at least once in every three-year period thereafter. The Probate Court may order more frequent financial reports or accounts. Whenever the guardian files a financial report or account, copies must be provided to each party and attorney of record. The guardian of the estate is responsible for payment of the court fee associated with the filing and review of periodic financial reports and accounts from the minor's assets.

The court may remove a guardian of the estate who becomes incapable, neglects to perform the required duties or mishandles the minor's assets. The court will then appoint another guardian of the estate.

The guardianship of the estate will terminate when the minor reaches age 18. The guardian must file a final financial report or account upon termination of the guardianship and transfer all remaining assets to the minor.

Probate Appeals

Any party in the guardianship matter who is aggrieved by an order of the Probate Court may appeal to the Superior Court. The deadline for filing the appeal is 30 days after the date on which the court sent the order.

Conclusion

Guardianship has been described as a trust of the highest character. In view of these serious responsibilities, a person acting as guardian for a minor should always seek competent professional advice when making decisions on behalf of a minor.