

Guardianship in New York

What does being a “guardian” of a child mean?

A guardian is a person who has the right and responsibility to act, care for, and make decisions for a child. This includes making sure a child goes to school and agreeing to medical care for the child. The guardianship generally lasts until the child is 18 years old, unless the child agrees to have a guardian until s/he is 21 years old. Although a guardian has many rights to care for the child, a parent still has some of his or her parental rights.

Even when there is a guardian, a parent must still financially support his or her child. The parent also still has the right to go to court and ask for the child back or ask for visitation with the child up until the child is 18 years old. This is because guardianship is generally different from adoption where parental rights are ended and the adoptive parent becomes the legal parent.

Who Can Become a Guardian?

Any adult who is able to care for a child may ask to be a guardian. If you were convicted of a crime against children or a crime involving children, you may not be a guardian. If you were convicted of other crimes, even felonies, you may become a guardian, depending on when the crime was committed and how you have acted since you committed that crime. The court may not make you a guardian if you have drug or alcohol problems or have a mental illness that would affect your ability to care for a child.

What Do I Have to Prove to Become a Guardian?

To become a guardian, you must first show “extraordinary circumstances.” This means you must show that the parent has left the child in your care for an extended period of time, is abusive or neglectful, has a serious drug or alcohol abuse problem, or has a mental illness that prevents him or her from parenting. Once you show extraordinary circumstances, you must then show that it is in the best interests of the child for you to become the child’s guardian. While there is not one thing the court will rely on, the court may look at the care you give the child, the relationship you have with the child, and whether you can give the child the care that he or she needs. Of course, a parent could always consent to you becoming the child’s guardian and then you would not have to show extraordinary circumstances or prove that it is in the best interests of the child to be with you.

How Do I Go About Becoming a Guardian?

First, you would file papers with the family court in the county where the child lives. As part of the process, you will be fingerprinted. Anyone 18 or older who lives in your home will also be fingerprinted. There will be a home study and a social worker will look at your home to see that you have enough food and space for the child. The court will also check whether there are any reports of child abuse or neglect against you. Once the court gathers all the information, it may hold a hearing to determine whether guardianship is in the best interests of the child.

Who Do I Have to Notify that I'm Filing for Guardianship?

Generally, you must serve copies of your papers on both biological parents. You yourself cannot serve the parents, but must have someone over 18 who is not part of the case serve them. You must have proof that you gave them the papers.

If you aren't currently caring for the child, you must also give notice to the person who is currently caring for the child, and anyone else who has legal custody of the child your papers as well. If the child is 14 years or older, you must serve the child with the papers.

What If I Can't Find the Parents?

If you do not know where one or both of the biological parents are, you should send the notice, using certified mail, to their last address. If you don't even have an address, the court may ask that you search for the parents and possibly put the notice in the newspaper.

Do I Get Paid for Being a Guardian?

Currently New York does not pay guardians to take care of children. You may apply for a "non-parent/child-only" welfare grant for the child. The amount of money you get depends on the income of the child. You may also file for child support against the parents. As long as the parents still have their rights, even if they don't take care of the children, they must still support their children. You may also be eligible for other benefits, such as Medicaid, child care, and food stamps.

Note: You may become a **permanent** guardian only if both parents are deceased OR if both parents' rights have been terminated. As a permanent guardian, you would have the right to consent to the adoption of the child.

How Can I Get Free Legal Help to Become a Guardian?

If you are a grandparent or other relative wanting to become the guardian of a child for whom you have been caring, you can contact **MFY's Pro Bono Kinship Caregiver Law Project** for advice and possible free legal representation. You can speak with an attorney on Mondays and Wednesdays between 10 a.m. and 4 p.m. by calling 212-417-3850.

Other sources of assistance include www.lawhelp.org, a website that includes information on free legal services providers, Legal Information for Families Today (LIFT) at 212-343-1122 or by visiting www.liftonline.org or the New York State Kinship Navigator which offers a variety of resources to kinship caregivers at 877-4KinInfo (877-454-6463) or visit www.nysnavigator.org.