

# MINOR'S GUARDIANSHIP INFORMATION

This information on guardianship of a minor is based on Idaho Code Sections 15-5-201 through 15-5-212, which is the law in the state of Idaho. There may be variations in the procedures of different court districts or counties. Check with your Court Clerk's Office or your Court Assistance Office for local court rules.

## **When can a guardianship be granted?**

A guardian may be appointed for an unmarried minor if all parental rights of custody have been terminated, the child is neglected, abused, abandoned, or when the parents are unable to provide a stable home environment.

## **What is the proper court?**

A petition for guardianship should be filed with the magistrate court in the county where the minor lives.

## **Who may petition to be a guardian?**

Any relative of the minor, the minor if he/she is over 14 years old, or any person interested in the welfare of the minor may file the petition for guardianship.

## **What are the powers and responsibilities of a guardian?**

Guardians have the powers and responsibilities of a parent of a child except they are not legally obligated to provide for the minor from their own funds. A guardian must take reasonable care of the minor's personal effects. A guardian may receive money for the support of the minor, but not as personal compensation, and may seek support from the parents of the minor. A guardian must exercise due care to conserve funds for future use. A guardian has the power to make decisions about the minor's education, social and other activities, and to authorize medical or other professional care, treatment or advice. A guardian must report to the court and any person as ordered by the court the condition of the minor

and the minor's estate which is under the guardian's control.

## **What if the case is contested?**

If at any time the case becomes contested, (when anyone objects to any part of the proceedings), whether the opposing party hires an attorney or not, you should consult an attorney.

There are several reasons why you should consult an attorney:

1. A contested case may quickly become very legally complicated.
2. You will probably face an attorney representing the opposing party.
3. You will be held to the same standard as an attorney for paperwork filed and legal knowledge for handling your case.
4. Any lack of legal knowledge may be harmful to your case.

## **What is the court process to appoint a guardian of a minor?**

First, a petition and supporting documents must be filed with the magistrate court.

Second, notice of the time and place of the hearing must be given to the minor (if over 14 years old), the person having principal care and custody of the minor for the last 60 days, and any living parent of the minor. If the parents do not consent they must be personally served with a copy of the petition and notice of hearing. If the parents do not consent, you should consult an attorney.

Third, if all legal requirements have been satisfied, and it is in the best interest of the minor, the court shall appoint the guardian.

Note: If at any time the court determines that the minor's interest may not be adequately represented, it may appoint an attorney to represent the minor.

## **How can a guardianship end?**

A guardian's responsibility ends upon the death, removal or resignation of the guardian or the minor's death, adoption, marriage or upon turning 18 years old. A guardian may petition the court for permission to resign, which may be granted after proper notice and hearing is held. Resignation of a guardian is not effective until approval from the court has been given.

## **Where can I get assistance with this type of case?**

You can seek assistance from the following resources:

The Idaho Volunteer Lawyers Program offers volunteer attorney representation without charge if you qualify for the program. Their phone number is (208) 334-4510 or 1-800-221-3295.

The state law library has a probate and guardianship formbook. This book was designed as a guide for attorneys to develop their own forms which may require extensive revision for your circumstances. The

phone number for the law library is (208) 334-3316.

Legal form shops may have packets of forms available for sale. These forms are not guaranteed to be adequate or acceptable in court. Form shops are listed in the yellow pages under "legal forms"

The Ada County Court Assistance Office has forms available for guardianship of a minor. These forms are appropriate only when parents consent to the guardianship. The office is at the Ada County Courthouse located at 200 W. Front Street, Boise, ID 83702. Phone number (208) 287-6963.