

OBTAINING FORMAL CUSTODY

Many informal caregivers reach a certain point when a more formal custody arrangement becomes necessary or desirable. A formal custody arrangement can be obtained through two very different court systems called probate and dependency. Adoption is a third alternative. The following sections contain information regarding these court systems, how they differ, and what benefits and services are available for the caretaker and child under each system.

PROBATE COURT LEGAL GUARDIANSHIP

Example:

Michael has cared for his grandson, Charles, since Charles was 11 years old. Charles is now a freshman in high school and is a member of the school band. In order for Charles to travel with the band to the regional competition this year, the school requires written permission from a parent or legal guardian. No one in the family has heard from Charles' parents for years. Michael has never had any problems before but was told to call a lawyer to get legal guardianship.

This section will explain the process for obtaining custody through probate court. Probate court can grant custody orders—called guardianships—to non-parents. Unlike adoption, guardianship does not terminate the child's parental rights but merely suspends them by taking away the parent's custody while the guardianship is in place.

Before deciding to pursue a probate court legal guardianship, review the sections on Dependency and Adoption. In certain circumstances, for example, if a social worker placed the child with you, you can request that the child be placed in your home through the foster care system. In these situations, if you file instead for probate court legal guardianship, you will not be eligible later for services from the foster care system and your financial assistance may be lower.

THE PROBATE GUARDIANSHIP COURT PROCESS

A non-parent who is caring for a child can apply for custody (guardianship) through probate court. The process of obtaining legal guardianship through probate court involves completing a

packet of forms which are then filed in court, having a home investigation, notifying family members of the court proceeding, and going to at least one court hearing. The entire process can be completed in as little as six weeks. The court requires a fee to file the papers for the legal guardianship. In Los Angeles County, the fee is substantial—approximately \$1300.00. However, if you are low-income, you can apply for a fee waiver. This means that if your request for a fee waiver is granted you can file the papers for free. The process is different from legal guardianship obtained through dependency court, which is described in the following section starting on page 16.

Probate court legal guardianship can be granted with or without the parents' consent or cooperation. A parent who consents to the guardianship can sign a guardianship nomination/consent. This nomination will be considered by the court. If the parent does not consent to the guardianship, the guardianship may still be granted. However, the person who requests the guardianship must serve the parent a copy of the guardianship application—called the "Petition"—and information regarding the time, date, and place of the court hearing. The child's grandparents and siblings must also be notified or consent to the guardianship.

After the guardianship petition is filed, the proposed guardian's home will be investigated. In Los Angeles County, if the proposed guardian is related to the child, the investigation is completed by the court investigator's office. If the proposed guardian is not related, the investigation will be completed by a social worker from the Department of Children and

Family Services. In both cases, the investigation will typically take about two hours and include a background check of all the adults in the household, an interview with the proposed guardian and the child (if old enough), a review of the child's medical and educational records, and a check of the home to ensure that the child is safe and well-cared for. The information is used to prepare a report to the judge, which either recommends or does not recommend the guardianship. The report is confidential but the proposed guardian and parents can request a copy of it. If the investigation uncovers potential issues of abuse, abandonment, or neglect by the proposed guardian, the investigator or social worker may initiate a child abuse referral and the proceeding may be transferred to dependency court. (See the section on dependency court starting on page 16 for information on what happens after a child abuse referral is made).

A parent or other interested person can object to the guardianship either by filing written paperwork or verbally stating an objection at the court hearing. The investigator will interview any person who objects and include this information in their report.

If a parent or other person objects, the guardianship is a "contested guardianship." The court may, in these instances, appoint an attorney to represent the interests of the child and to make a recommendation to the court. If you think that your petition for guardianship will be contested, it is probably in your best interest to find an attorney to assist you.

If the child in your care has financial assets, you may be required to apply for legal guardianship of the child and his or her estate. This will require additional record keeping and has reporting requirements.

JOINT PROBATE GAURDIANSHIPS

If you are caring for a child with a terminally ill parent, you can petition the court to become a joint guardian with the child's parent. Through this process, the terminally ill parent will continue to have custody of the child. However, you will have joint custody and be able to make decisions and care for the child if the parent is

too sick to do so or passes away. If you are a terminally ill parent, you can contact one of the Legal Services providers listed on page 48 to see if you qualify for free legal representation.

TIP!

In Los Angeles County, Public Counsel runs a Pro Per Guardianship Clinic at the Los Angeles Superior Court. At this free clinic, you can receive help from trained staff and volunteers to fill out guardianship papers and file them with the court. See the Services Directory/Legal Resources section of this booklet on page 48 for additional information.

GUARDIANS' RIGHTS AND RESPONSIBILITIES

Once the guardianship is approved by the court, the caregiver is called a "guardian." A guardian has the ability to act on the child's behalf and make decisions regarding the child as if the guardian were actually the child's parent. The guardian has legal and physical custody. The child's parents are prohibited from taking the child without the guardian's permission. A parent who takes the child without permission can be criminally prosecuted. However, the establishment of a guardianship does not terminate parental rights altogether, and a parent can petition the court to terminate the guardianship. In addition, a parent, or any other interested person, can petition to transfer the guardianship to another person, or to have formal visits with the child. Absent a court order, the guardian has the discretion to decide who can visit the child, and when. The guardian can decide where the child will live, but must notify the court of any change of address and get court approval before moving to a different state.

PUBLIC BENEFITS (FINANCIAL ASSISTANCE) FOR PROBATE COURT LEGAL GUARDIANSHIP

The parent of a child in a legal guardianship remains financially responsible for the child. A parent and guardian can work out an informal child support arrangement that is agreeable to both without involving any government agencies.

The guardian can receive child support payments through the Child Support Services Department. The guardian can also apply for other types of government financial assistance for the child, which may be higher (or lower) than child support payments, depending on the parents' income. If the guardian does apply for these benefits, the Child Support Services Department will often attempt to seek reimbursement from the parents by garnishing (taking) their wages. Below is information on a few types of financial assistance guardians qualify for, and how to apply for those benefits.

RELATED GUARDIANS

A related legal guardian is eligible to receive the same benefits as an informal relative caregiver, as discussed above, including:

- *a monthly cash assistance payment from CalWORKs,*
- *healthcare coverage through Medi-Cal.*

In order to qualify, the child must be a U.S. citizen, permanent resident, or other qualified immigrant.

Please refer to the Informal Caregiver- Financial Assistance and Health Care Sections above starting on page 11 for additional information on CalWORKs and Medi-Cal.

UNRELATED LEGAL GUARDIANS

An unrelated legal guardian can receive:

- *A monthly cash payment through AFDC-FC or the state foster care program. This includes eligibility for specialized "D" or "F" rates available to foster care providers. (See the section on foster care for more information).*
- *Healthcare coverage through Medi-Cal*
- *The child must be a U.S. citizen, resident, or qualified immigrant*

To apply for state foster care benefits, an unrelated legal guardian should call the Department of Children and Family Services (DCFS) Child Abuse Hotline at (800) 540-4000, or talk to the DCFS social worker who comes to your house to do the home inspection. When calling the Hotline, you should inform the social

worker that you are an unrelated guardian appointed through the probate court and want to apply for foster care benefits for the child. You should call as soon as you obtain temporary or permanent guardianship, because the benefits will be paid retroactively from the date that you first called and asked for them. After calling, a DCFS social worker will come to your home to meet with you. This is not the same social worker who completed the home inspection for the guardianship. Your benefits should begin shortly after that and they should be retroactive to the date you first called and asked for them.

TIP!

You should not be required to undergo additional home approvals (other than the home inspection required in the guardianship case) in order to obtain foster care benefits. If you do not hear from a DCFS social worker or your benefits are not retroactive, you should contact one of the Legal Service providers listed on page 48, or request a state fair hearing. You can request a hearing by calling (800) 952-8349.

OTHER BENEFITS

As with informal caregivers, probate court legal guardians (whether related or unrelated) can become the payee for Social Security Disability, Survivor's, and other benefits on behalf of the child.

For further information on these topics, please consult the section entitled Other Benefits on page 31.