



TYPES of GUARDIANSHIP

Frequently Asked Questions

**Part of 1 of 3: Resources for
Guardianship of a Minor in Wisconsin**

developed for you by

KIDS MATTER INC.



Relatives often step up informally to assist parents during difficult times or take in a child after a parent has died. This is called informal caregiving if child protection or the courts are not involved. As a relative caregiver, you need to understand your legal options when raising a child. Do you want to continue as an informal caregiver? Or do you need to consider a formal guardianship? This guide can help you determine which type of guardianship best fits the rights and duties you need to care for the child.

Wisconsin's current guardianship law Wis. Stat. § 48.9795 went into effect August 1, 2020. It has four options to better fit the needs of children and families. With more options, you can choose the guardianship that best fits your situation. *For a visual comparison of the four types of guardianship, see "Types of Guardianship Chart."*

What is guardianship of a minor child?

Guardianship is a legal relationship between an adult and the child in their care. A guardian is given the legal authority to make important decisions about the child's future. This may include decisions about their education, medical needs, shelter and more.

Is guardianship the same as adoption?

Guardianship is **not** adoption. Guardianship does not legally end the child's relationship with parents. Unlike adoption, guardianship transfers rights to the guardian but parents' rights are not terminated. Typically, parents are still allowed visitation and may be obligated to financially support their child.

Why is guardianship important?

Parental substance abuse, untreated mental health that interferes with the ability to parent, domestic violence, incarceration, child abuse, death or a combination of factors that result in an inability to parent are common reasons that relatives or like-kin come forward to care for a child when a parent is not able to raise a child. Often when safe and willing relatives step forward, child protective services does not become involved. Sometimes an informal arrangement between parents and a caregiver is enough. However, without a legal relationship, the caregiver may not be able to legally consent for the child's educational, medical and other needs when the parent is unable to consent. As a result, a private guardianship may be needed. In certain circumstances, a power of attorney over a child or advanced permission from the parent for limited decisions may be sufficient.

What are the four types of guardianship?

Under the law, the four types of guardianship are emergency, temporary, limited and full.

▶ **Emergency guardianship**

The guardian's authority is limited to the required decisions to resolve the emergency. Emergency guardianship is limited to 60 days. For example, this can be used when there is a medical or surgical emergency and the parent is not available or able to consent.

▶ **Temporary guardianship**

The guardianship is based on the inability of the parent to provide care, custody and control for a temporary period. The guardianship is limited to 180 days and can be extended for an additional 180 days if good cause is shown. A temporary guardianship may be used when a parent is unable to care for their child for a short period, not expected to be more than six months to one year. For example, this can be used when a parent is undergoing medical treatment or is incarcerated.

▶ **Limited guardianship**

The guardianship is limited to certain decisions if the parent needs help caring for the child. Parents may keep some decision-making powers. Limited guardianship also allows for shared physical custody between the parent and guardian. The court sets the time period for the limited guardianship. For example, routine medical and educational decisions may be transferred to the guardian if the parent needs help caring for the child, but the parent keeps other decision-making abilities.

▶ **Full guardianship**

The guardianship lasts until the child turns 18 and includes the full legal authority to make decisions for the child if the child's parents are unfit, unwilling or unable to care for the child or there are other compelling facts. A full guardianship may be needed if the parents are deceased or have abandoned the child, or if other temporary arrangements have been tried and failed.



What are my rights and duties as a minor child's guardian?

The rights and duties differ based on the type of guardianship.

Emergency guardianship – the rights and duties are limited to what is related to the circumstances of the emergency. For example, if the child needs a blood transfusion and the parent is unable or unavailable to consent, the emergency guardianship would be limited to the authority to consent for the blood transfusion.

Temporary guardianship – any of the duties and authorities allowed under full guardianship but the duties and authorities will be limited to the acts that are reasonably related for the appointment. For example, if a temporary guardianship is granted while a parent is incarcerated and the main concerns are getting the child enrolled in school and updating medical exams, the temporary guardianship order may only allow for those decisions.

Limited guardianship – any of the duties and authorities under full guardianship may be transferred to the guardian to the extent relevant. Physical custody may be shared between the parent and guardian, if in the child's best interest. For example, you and the parent may share physical custody, but routine medical and educational decision making is transferred to you as guardian for a set period while the parent needs help.

Full guardianship – duties and decisions transferred to the guardian include:

- ▶ Ability to consent to major medical, psychiatric, and surgical treatments; child obtaining a driver's license; enlistment in US armed forces; and child's marriage.
- ▶ Ability to represent the child's legal interests.
- ▶ Right to determine reasonable visitation with the child and others, including the parents.
- ▶ Rights and responsibilities of legal custody.
- ▶ Right to move the child to another state.
- ▶ Duty to tell the court of changes in address, annual reports of the child's condition.

How do I know which type of guardianship is best for my personal situation?

To figure out what type of guardianship is best for your situation, you should look at:

1. The time frame that you expect to care for the child.
2. The decisions that you need to make while the child is in your care.

In situations that require immediate appointment of a guardian for medical or surgical treatment, emergency guardianship is the best option. If you expect to only need guardianship for a short time (six months up to one year) or the parent is still able to make some decisions, you should consider temporary or limited guardianship. Full guardianship is most appropriate if you anticipate that the child will be in your care until 18 years of age and full decision-making is needed.



With guardianship, what decisions can the child's parent still make?

Parents may still make decisions regarding any rights not given to the guardian. The court order will specify which rights and duties are transferred to you as the guardian. The court order may also outline a specific visitation schedule with the parents.

How can I become a child's guardian?

You must petition to become the child's guardian. This is essentially an application telling the court you would like to become the child's guardian. The process of becoming a minor child's guardian involves filing papers in court, giving notice of the hearing to the parents and other interested persons, and attending court hearings to form the legal relationship.

What if there is an active child safety issue?

If you have immediate safety concerns about a child, such as concerns that a child is being abused or neglected, you should always call the child protective services reporting line for your county. If there is an active child protection investigation, you can potentially become the child's placement by working with child protective services. However, if there is already an open child protection case in court, known as a CHIPS (Child in Need of Protection or Services) proceeding, a private guardianship petition cannot be used to change the placement of the child. For example, if your grandson is placed with an aunt under a CHIPS order and you wish for him to be placed with you, you cannot use a private guardianship petition as a way to have the court change the placement to you.

This is general information about Wisconsin law and/or procedure, and is not intended to serve as legal advice. Every situation is unique. General information is not a substitute for legal counsel. Individuals needing legal advice or legal assistance should consult an attorney.

Find additional information in parts 2 and 3 of the Kids Matter Inc. series *Resources for Guardianship of a Minor in Wisconsin*.

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