



# GUARDIANSHIP

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>

## Family Court Contact Information

### New Castle County

Leonard L Williams  
Justice Center  
500 N. King Street  
Wilmington, DE 19801  
302-255-0300

### Kent County

Family Courthouse  
400 Court Street  
Dover, DE 19901  
302-672-1000

### Sussex County

Family Courthouse  
100 East Market St  
Georgetown, DE 19947  
302-855-7400

**All Family Court Forms, FAQs, Filing Instruction Packets, and additional information can be found on the Family Court Website at:**  
<https://courts.delaware.gov/family>

### What is Guardianship?

Guardianship is the possession by a non-parent of the **powers, rights, and duties** which are necessary to protect, manage and care for a child. A Guardian has the legal authority to take care of the child as if he/she were the child's parent until the child turns 18 years of age.

### Who Can Be a Guardian?

Any person at least 18 years old may be the Guardian of a child. However, if you are not a relative (sibling, grandparent, aunt, uncle, first cousin, first cousin once removed, great-grandparent, grandaunt or granduncle, halfsibling, stepparent, stepsibling, stepparent or stepuncle, or stepgrandparent), the Department of Services for Children, Youth and their Families must assess the placement.

### What are the Rights of a Guardian?

Assuming the Court places no limitations in the Guardianship Order, the Guardian will be responsible for providing for the child both physically and emotionally. The Guardian must provide a healthy and safe living environment, an education and all the necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric care. Furthermore, the Guardian will be responsible for making the following decisions:

- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;
- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.

**Note:** If there is a proposed relocation of a child for a period of 60 days or more involving either a move outside the State of Delaware or a move that materially affects a parent's existing visitation arrangement or order, the guardian must obtain either leave of the court or consent of the child's parents. To such a request, the Court will apply the relocation factors under Section 734 of Title 13.

### What are the Responsibilities of the Child's Parent after Guardianship is Granted?

Because a parent's parental rights are not terminated when a non-parent is given guardianship, the Court will determine the following:

- ➔ How much, if any, contact the parent(s) should have with the child after the Guardianship is granted;
- ➔ How much, if any, information about the child the Guardian should share with the parent(s); **AND**
- ➔ A visitation schedule, if appropriate, so that the parent(s) may spend time with the child.

## What is included in a Guardianship Order?

Included in a Guardianship Order is a **Custody Order**. Therefore, a Guardian has the same legal authority to care for the child as a parent would. However, unlike a parent, the Guardian cannot be held liable by a third party for something the child has done wrong simply because he/she is the guardian. Additionally, the Court also has the right to limit any of the powers and duties granted to a Guardian.

## How Does Guardianship Affect Inheritance?

The child will continue to have the right to inherit from his/her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Guardian wishes to have the child inherit from him/her, the Guardian must state that desire in a will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court.

## Will the parents continue to be responsible for financial support of the child?

**The parent may have to continue to provide financial support to the child. In other words, the parent(s) may be required to pay child support to the guardian.** Child support is handled in a separate proceeding. If the Court grants guardianship, the Petitioner must file a separate Petition for Child Support in order for the Court to consider their request for child support.

## What are the necessary Court forms related to filing for guardianship?

### Required Forms

- [Petition for Guardianship of a Minor](#) (Form 126)
- [Custody Separate Statement](#) (Form 346)
- [Information Sheet](#) (Form 240)

### Required Form Prior to Mediation or First Court Appearance

- [Custody, Visitation, and Guardianship Disclosure Report](#) (Form 364)

### Situational Forms (Please review all forms and scenarios)

- [Affidavit of Unknown Address](#) (Form 241)  
This form should be filed if you do not know where the Respondent(s) live.
- [Consent Order - Guardian of the Person](#) (Form 124)  
File this document only if you and the Respondent(s) have already agreed upon how the guardianship should be arranged. The Respondent(s) must consent not only to the guardianship, but also to the reason(s) the guardianship is necessary.
- [Affidavit of Non-Military Service](#) (Form 405)  
This form should be filed if you know that the Respondent is NOT in the military service of the United States of America and ONLY if the Respondent has not filed an answer or otherwise entered an appearance with the Court by the day of your hearing.
- [Affidavit of Consent of Child 14 Years of Age or Older](#) (Form 201)  
This form should be filed when the child you are seeking guardianship of is 14 years of age or older.
- [Affidavit of Consent of a Child's Parent - Guardianship](#) (Form 202)
  - This form should be filed if one or both of the child's parents agree that you should be granted guardianship and to the reason(s) the guardianship is necessary.
  - Each parent must complete their own Affidavit of Consent.
- [Order of Reference](#) (Form 209)  
To be completed only if the Court orders you to have a Social Study and Report completed as part of your Guardianship pleading.
- [Waiver of Rights under the Servicemembers' Civil Relief Act](#) (Form 420)
  - File this form only if the Respondent is in the military.
  - If the Respondent does not file an Answer or Affidavit of Appearance, you must have the Respondent(s) sign the form.
  - If you are unable to reach the Respondent to obtain any of these documents, you must file a Motion to Appoint an Attorney ([see Motion Packet](#)).

## How can I file my petition and related paperwork?

Petitions and papers may be filed at or mailed to the Family Court in each county. Family Court also now accepts petitions and papers by email. To file your petition by email, you must send the petition and all required forms to: [FC\\_Guardianship@delaware.gov](mailto:FC_Guardianship@delaware.gov) Family Court will serve the other parties your petition.