

Guardianship of Minor – General Information

Q: How does a guardianship of minor case generally flow through the court process?

A: This is a basic overview of a guardianship proceeding.

Once the petition and all other required documents are filed, the court will schedule a hearing on the petition and provide all interested parties with notice by certified mail. The person filing the petition must pay the cost of the certified mailing. Interested parties include the petitioner, the minor's parents, other relatives if the minor's parents are deceased, a child placing agency if one is involved, and also the minor if the minor is more than 14 years old. Others may be provided with notice as well.

In certain "emergency" circumstances, the court may also issue a temporary order on an "ex parte" basis, meaning without notice to the other parties.

The court may appoint a guardian *ad litem* (a person, sometimes an attorney) whose role in the court proceeding is to assist the court in determining what is in the best interests of the minor.

The court will require that the proposed guardian (not the guardian *ad litem*) submit to a criminal background check as well as a check of the abuse and neglect registry. Forms to permit those checks will be required of the proposed guardian and possibly others living in the same household with the minor.

At the hearing it will be the burden of the person seeking the guardianship over the person of the minor to prove by a preponderance of the evidence that the guardianship is in the best interests of the minor. If, however, the person seeking guardianship is not a parent of the minor, the person must prove by clear and convincing evidence that the best interests of the minor require substitution or supplementation of parental care and supervision to provide for the essential physical and safety needs of the minor or to prevent specific, significant psychological harm to the minor.

For the purpose of a guardianship over the minor's estate, the petitioner must establish by a preponderance of the evidence that the guardianship is necessary to provide for the proper management of the property and financial affairs of the minor.

The court hearings and most of the documents in the court file are not open to the public.

If the guardianship is granted, the guardian will be required to file reports during the pendency of the guardianship.

Q: What are some of the terms used in guardianship of minor cases?

A: **Minor** - For purposes of a minor guardianship, a "minor" is a child who is under the age of 18 and who is unmarried and unemancipated.

Guardian *ad litem* – a guardian *ad litem* (sometimes referred to as a GAL) is a disinterested person (disinterested meaning has no personal or financial stake in the case) who is appointed by the court to represent the minor's interest in the case. A GAL may be appointed when it appears to the court that the interests of the minor are not fully represented or if any interested party asks that a GAL be appointed.

Authorized Agency - an "authorized agency" is an agency which is licensed as a child placing agency under New Hampshire law (RSA Chapter 170-E).

Preponderance of the evidence – this is a standard of proof required in certain court proceedings and has been defined to mean just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true.

Clear and convincing evidence – this is a standard of proof required in certain court proceedings and is a higher standard of proof than a “preponderance of the evidence” but not as high a standard as “beyond a reasonable doubt.” It is generally accepted to mean that the evidence presented by a party during the hearing must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

Parent – in a minor guardianship proceeding, the term parent means mother, father, or adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

Department - means the Department of Health and Human Services as well as any agencies within DHHS.

Order of Notice – this is a hearing notice prepared by the court which lets all who are entitled to notice of a proceeding know that the proceeding will happen and when/where it will happen. It is sent by mail.

Jurisdiction – jurisdiction refers to which court may hold a particular type of proceeding. Minor guardianships are within the jurisdiction of the Circuit Court Family Division if the guardianship is over the person only and within the jurisdiction of the Circuit Court Probate Division if an estate is involved.

Guardianship over person – this refers to a guardianship over only the person and not the property of the minor. The guardian is given decision making authority over only the person, for example where the minor resides and what medical treatment will be provided.

Guardianship over the estate – this refers to a guardianship over the property of the minor. The guardian is given decision making authority over the property and financial affairs of the minor, for example assets inherited under a will of a relative.

Guardianship over person and estate – this refers to a guardianship over both the person and the property of the minor. The guardian is given decision making authority over both.

Q: What information should I have available to file a Guardianship of Minor petition?*

- A:
1. a copy of the death certificate for deceased parent(s) if applies.
 2. Name and address information of the petitioner(s)
 3. Name and address information of the proposed guardian(s)
 4. Information about the child date of birth, location of school, and address history
 5. Name and address information of the child's mother and father.
 6. If the child's parents are deceased, the name of the child's grandparents and any siblings (if you do not know this information, there will be a place for you to write that).
 7. The places where the minor child has lived in the last five (5) years and the names of the people they lived with at that time, if you know.

*Certain situations require additional documents to be filed.

Q: Are guardianship cases confidential to the public?

A: Court hearings are not open to the public unless requested by a party to the case and allowed by the judge.

All documents filed with or issued by the court in guardianship cases under RSA 463 or RSA 464 are confidential except:

- (A) A Certificate of Appointment of Guardian;
- (B) An Order on Appointment of Guardian;
- (C) A Motion/License to Sell Real Estate or Personal Property in Guardianship or Conservatorship;
- (D) A Motion/License to Mortgage Real Estate;
- (E) A Return/Notice of Sale;
- (F) An Appointment of Resident Agent.

The public may have access to and make copies of the above documents. Access to any other document by the general public is restricted and may be viewed only upon order of the court for good cause shown.

Q: How long will this take?

A: Guardianship of Minor – in certain emergency situations, an emergency or “ex parte” order may be requested which, if granted by the court, would provide an immediate order. Further hearings will be scheduled. If the situation is not an emergency, the court will generally schedule a hearing to be held in approximately 30 days depending upon the court’s schedule and other factors. An order will be issued shortly thereafter.

Q: What can hold up the process?

A: Missing or incomplete information on documents filed with the court, missing documents, unknown or missing addresses for persons entitled to notice of the proceeding, unavailability of parties or counsel. The court must have all necessary documents to begin the process and, once begun, the court must be able to provide notice to all necessary persons. Missing or incomplete information which prevents this will delay the proceedings as will the unavailability of persons who are required to participate.

Q: What is a “petition?”

A: A “petition” is a court form which begins a court case, in this situation a guardianship of a minor.

Q: What does “estate” mean?

A: The word “estate” means the personal property, monies, stocks, real estate, etc. belonging to the minor.

Q: What is “RSA 463:4?”

A: RSA 463:4 refers to “Revised Statutes Annotated” Chapter 463, Section 4. This is the law which governs where the Petition for Minor Guardianship is to be filed.

Q: What is meant by the term “minor?”

A: For purposes of a minor guardianship, a “minor” is a child who is under the age of 18 and who is unmarried and unemancipated.

Q: What is an “authorized agency?”

A: An “authorized agency” is an agency which is licensed as a child placing agency under New Hampshire law (RSA Chapter 170-E).