

GC-206-INFO Information on Probate Guardianship of the Estate

This form is about acting as a *guardian of the estate* to manage a child's money or other property and preserving it until the child reaches 18 years of age.

The form explains:

- Ÿ What is a guardian of the estate and who can be appointed as one;
- Ÿ Who can nominate a guardian of the estate, and how;
- Ÿ The court process for appointment of a guardian of the estate;
- Ÿ The powers, duties, and liabilities of a guardian of the estate;
- Ÿ The court's authority to oversee the guardian of the estate in the performance of the guardian's duties; and
- Ÿ The procedures for removing and replacing a guardian or terminating a guardianship of the estate.

For information about probate *guardianship of the person*, read Judicial Council form GC-205-INFO. For information about *juvenile court guardianship*, read form JV-350-INFO. For a comparison of guardianship with *juvenile court placement* with a relative caregiver or foster (resource) family, read form GC-207-INFO/JV-352-INFO.

Before asking a court to appoint a guardian, a parent, potential guardian, or other benefactor may find it useful to think about these questions:

- Ÿ Does the child really need a guardianship?
- Ÿ What alternatives are available?
- Ÿ Would any of the alternatives be better for the child?
- Ÿ Do the parents agree to the guardianship?
- Ÿ If the parents don't agree, is there enough evidence to show that the child needs a guardian?
- Ÿ Do you need legal advice or assistance?

CAUTION: This form is not a substitute for legal advice. Only a licensed attorney can give advice about how the law applies to a specific situation. Click this link, www.courts.ca.gov/selfhelp-findlawyer.htm, for help finding a lawyer. For more information, visit the *California Courts Online Self-Help Center* or talk to your court's *self-help center*.

1 What is a guardian of the estate?

A guardian of the estate is a person appointed by the probate court to take control of a child's money or other property, manage that property, and preserve it for the child until the child reaches the age of 18 and can take control of the property for themselves. The court takes appointment of a guardian of the estate very seriously, and the law requires the guardian to collect and make an *inventory and appraisal* of the property, keep accurate financial records, and file regular financial accountings with the court. Consulting an attorney for legal advice in managing the estate is highly recommended.

measures can be used without the appointment of a guardian of the estate. These financial arrangements can be complicated; consulting with an attorney before choosing one over another is highly encouraged.

Note: *Some financial institutions, insurance companies, and courts require the appointment of a guardian of the estate before they will release funds to a person acting on behalf of a minor child.*

2 Are there alternatives to guardianship?

Yes. The law allows a parent or any other person from whom the child receives property to make financial arrangements for the child's property. For example, money received by a child may be deposited in an account accessible only in specified circumstances or by court order until the child reaches 18 years of age. This and other protective

3 Who can be appointed as guardian?

To become the court-appointed guardian of a child's estate, you must:

- 1 Be an adult (18 years old or older); and
- 1 Show the court that your appointment would be in the best interest of the child, considering both:
 - i Your ability to manage and preserve the child's estate (money and property); and
 - i Your concern for and interest in the welfare of the child.

4 Can a parent or other person name a person they want to be appointed as guardian?

Yes. A parent can *nominate* a guardian of the estate if:

- 1 The other parent(s) nominate or consent *in writing* to the nomination of the same guardian for the same child; or
- 1 At the time the petition for appointment is filed, either the other parent(s) are dead or lack legal capacity to consent, or the consent of the other parent(s) would not be required for adoption of the child.

In addition, any person from whom, or by designation of whom, a minor child receives property may nominate a guardian of that property.

The nomination must be made in the petition for appointment of the guardian, at the hearing on the petition, or in a writing signed either before or after the petition is filed.

A nomination is valid when made, except that a written nomination may specify that it is to take effect only if one or more events, such as the incapacity, detention, or death of the person making the nomination, occur.

Unless a written nomination provides expressly otherwise, a nomination remains effective even if the person making the nomination dies or becomes legally incapacitated.

5 Who can file a petition for appointment of a guardian of the estate?

A relative or other person, or the child if 12 years of age or older, may file a petition for appointment of a guardian in probate court using *Petition for Appointment of Guardian of Minor* (form GC-210) in probate court.

THE APPOINTMENT PROCESS

6 Filing the petition

Once a person has decided that a child needs a guardian, the first step in the process is to complete *Petition for Appointment of Guardian of Minor* (form GC-210) and all other required documents. Then, file the forms with the clerk of the court in the county where the child lives unless it would be better for *the child* to file in a different county.

Some courts have additional local forms that need to be filed along with the statewide forms.

The petition needs to ask the court to appoint a guardian of the estate or a guardian of both the person and the estate; give the proposed guardian's name and address and the child's name and date of birth; and state that the appointment is necessary or convenient. The petition must also give the names and addresses of the child's parents and other persons who have specific relationships with the child. If the child is an Indian child, the petition must state that fact and give the name and address of any Indian custodian and the child's tribe. The petition must also tell the court whether there are any adoption, child custody, juvenile court, family law, or other guardianship proceedings affecting the child in progress in California or any other state or country.

The court charges a fee for filing a guardianship petition. If the child or the child's estate cannot afford to pay the fees, the petitioner may request that the court waive the fee requirement. The court clerk can provide the required fee waiver forms.

7 Notice of the hearing

Before the court can hold a hearing to decide the petition, the person who filed the petition must give *notice* of the hearing to specific persons unless the court finds that the petitioner tried diligently and couldn't give notice to a person or that notice would be against the interests of justice. The notice must include a copy of the petition and a copy of *Comparison of Guardians With Other Nonparent Caregivers* (form GC-207-INFO/JV-352-INFO).

Notice must be given to the child if 12 years old or older, the parents, anyone else with legal custody, and anyone nominated to be the guardian by *-serving* them personally or, if that's not possible, by first-class mail with an acknowledgment of receipt requested. For more information about *service* of notice, see *What Is "Proof of Service" in a Guardianship?* (form GC-510). Other persons may be given notice personally, by mail, or, if they consent, electronically. If the child is an Indian child, notice must be mailed to any Indian custodian and the child's tribe as required by the Indian Child Welfare Act.

8 Investigation

Unless it finds a good reason not to, the court will order an investigation before the hearing on the petition to appoint a guardian. The court investigator will contact the proposed guardian, the child, and any other persons who might know about the child's family and their needs. The investigator will give a report to the court and make a recommendation on what decision the court should make.

The court or county charges a fee for conducting the guardianship investigation. The court can waive its fee if it would cause a hardship to the child or the child's estate. The county can also waive its fee because of hardship.

If someone objects to the appointment of a guardian or to the petitioner's appointment as guardian at or before the hearing, the court may decide it needs to hold a trial. Based on its determination of the child's best interest, the court may grant the petition, may grant another person's petition, or may find that the child doesn't need a guardianship and deny all the petitions.

If the probate court thinks the child has been, or is at risk of being, abused or neglected by a parent, the court may refer the child to the county child welfare agency for an investigation and commencement of juvenile court proceedings. If the probate court makes a referral, the guardianship proceedings are paused, but the probate court can make any order necessary to protect the child, including an order appointing a temporary guardian or issuing a temporary restraining order.

If, after three weeks, the agency has not notified the probate court that it has filed a petition to begin proceedings in juvenile court, the probate court or the child's attorney, if the probate court has appointed one, may file a request with the juvenile court to review the agency's decision not to begin juvenile court proceedings and to order the agency to file a petition to begin those proceedings.

If the juvenile court begins proceedings, the guardianship proceedings must remain paused. If the juvenile court does not begin proceedings, the probate court can hold a hearing and decide whether to appoint a guardian.

9 Hearing and standard for appointment

An interested person may appear and object or respond to the petition *in writing* at or before the hearing. In addition, an interested person may appear and object or respond *orally* at the hearing. If no one objects, the court may decide the matter on the verified petition and declarations. If a person objects, then the court will consider evidence, determine any issues, and make appropriate orders.

Based on its determination of the child's best interest, the court may grant the petition, may grant another person's petition, or may find that the child doesn't need a guardianship and deny all the petitions. The probate court may appoint a guardian for a child when the appointment is *necessary or convenient*. The petitioner must prove to the court that a guardianship is needed.

The court must appoint the person nominated as guardian of the estate unless the court determines that the nominee is not suitable. Subject to the preference for a nominee, the court will consider the best interest of the child, taking into account the proposed guardian's ability to manage and preserve the estate property and their concern for and interest in the welfare of the child. If the child is old enough to form an intelligent preference about whom should be appointed, the court must also consider that preference.

10 Oath, letters, and bond

For an appointment as guardian to be valid, the court must sign the *Order Appointing Guardian or Extending Guardianship of the Person* (form GC-240). The guardian then needs to complete *Letters of Guardianship* (form GC-250) and take both forms to the clerk's office. After the guardian affirms that they will perform their duties according to law and posts the court-ordered bond, the clerk will issue *Letters of Guardianship* as proof of appointment as guardian of the child's estate. The clerk will keep the original *Letters* in the case file. The guardian should buy a certified copy from the clerk, make copies of it for use, and keep the certified copy in a safe place. Showing the *Letters* to banks and other financial institutions will help the guardian perform duties, such as opening accounts or making investments, by verifying the legal authority to act on the child's behalf.

MANAGING THE ESTATE—POWERS AND DUTIES

11 Prudent investments

As guardian of the estate, you must manage the child's money and property with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make speculative or risky investments.

12 Separation of estate money and property

As guardian of the estate, you must keep the money and property of the child's estate separate from everyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is a *guardianship* account and not your personal account.

You should use the child's Social Security number when opening estate accounts. You should never deposit estate funds in your personal account or otherwise mix them with your own funds or anyone else's funds, even for brief periods.

Securities in the estate must be held in a name that shows that they are estate property and not your personal property.

13 Interest-bearing accounts and other investments

Except for checking accounts intended for ordinary expenses, you should place estate funds in interest-bearing accounts. You may deposit estate funds in insured accounts in federally insured financial institutions, but you should not put more than \$250,000 in any single institution. You should consult with an attorney before making other kinds of investments.

14 Blocked accounts

A *blocked account* is a type of account with a financial institution in which money or securities are placed. No person may withdraw funds from a blocked account without the court's permission.

Depending on the amount and character of the child's property, the guardian may choose **or the court may require** that estate money or other assets be placed in a blocked account. As guardian of the estate, you must follow the directions of the court and the procedures required to deposit funds in this type of account. The use of a blocked account is a safeguard and may save the estate the cost of a bond.

15 Other restrictions

Other restrictions on your authority to deal with estate assets exist. Without a prior court order, you may not pay fees to yourself or your attorney. You may not make a gift of estate assets to anyone. You may not borrow money from the estate. You may not use estate funds to purchase real property without prior court order.

If you spend estate funds without court permission, the court may compel you to reimburse the estate from your own funds and remove you as guardian. You should consult with an attorney concerning the legal requirements relating to sales, leases, mortgages, and investment of estate property.

If the child whose estate you are managing has a living parent, or if that child receives assets or is entitled to support from another source, you must obtain court approval before using *guardianship* assets for the child's support, maintenance, or education. You must file a petition or request approval in the original petition and set forth exceptional circumstances that justify any use of guardianship assets for the child's support. The court ordinarily will grant such a petition for only a limited period of time, usually not more than one year, and only for specific and limited purposes.

16 Inventory and appraisal of estate property

You must locate, take possession of, and protect the child's income and property that will be part of the estate. You must change the ownership of all assets into the guardianship estate's name. For real estate, you should record a copy of your *Letters of Guardianship* with the county recorder in each county where the child owns real property.

Next, you must arrange to have a designated probate referee determine the value of the estate property unless this requirement is waived by the court. You, not the referee, must determine the value of certain "cash items." An attorney can advise you on this.

After you have gathered all the child's money and property and determined how much it is worth, you must complete and file an *Inventory and Appraisal* with the court within 90 days of appointment using forms GC-040 and GC-041. The court may order you to return 90 days after your appointment to ensure that you properly file the inventory and appraisal.

17 Insurance

You should make sure that the property of the estate and any risks to it are protected by appropriate and sufficient insurance. You should maintain the insurance coverage throughout the entire period of the guardianship or until the insured property is sold.

18 Records and accounts

You must keep complete, accurate records of each financial transaction affecting the estate. The checkbook for the guardianship checking account is an indispensable tool for keeping records of income and expenditures. You should also keep receipts for all purchases.

Record keeping is critical because you will have to prepare periodic accountings of all money and property you have received, what you have spent, the date of each transaction, and its purpose. You will also have to describe in detail the money and property remaining after you have paid the estate's expenses.

Beginning one year after initial appointment as guardian of the estate and then at least every two years after that, you must file an accounting for the previous period with a petition asking the court to review and approve the accounting. The court may ask that you explain or justify some or all expenses charged to the estate. You should have receipts, account statements, and other related documents available for inspection in case the court requests them.

If you do not file your accounting as required, the court will order you to do so. You may be removed as guardian if you don't file an accounting. If you know you are going to need extra time to prepare and file an accounting, be sure to ask the court for an extension ahead of the deadline.

You must comply with all state and local rules when filing your accounting. The Probate Code requires that all accounts be submitted on Judicial Council forms. There is a set of forms for standard accounts; the numbers of all these forms start with GC-400. There is also a set of forms for simplified accounts; the numbers of these forms start with GC-405.

California Rules of Court, rule 7.575 explains the accounting process and the forms. You should also check local rules for any special local requirements.

An attorney can advise you and help you prepare the inventory, accountings, and petitions. If you have any questions, you should consult with an attorney.

FURTHER COURT PROCEEDINGS**19 Court oversight**

The guardian is subject to the regulation and control of the court in performing their duties. In addition to reviewing periodic accountings, the court may order you to enter into specific transactions or prohibit transactions for the benefit of the child. The guardian, the child, or any interested person can ask the court for such an order. After notice and a hearing, the court will make orders in the best interest of the child.

20 Removal and replacement of guardian

After notice and a hearing on a petition filed by the child, a relative or friend of the child, or any other interested person, the probate court may remove a guardian for specific reasons or when it is in the child's best interest. The court may also suspend the powers of the guardian until it can hold a hearing on the petition for removal. A guardian may also file a petition to resign, and the court must allow the resignation if it appears proper.

If for any reason there is a vacancy, the court may appoint a *successor* guardian after notice and a hearing as in the case of the original appointment.

21 Termination of guardianship

A guardianship of the estate terminates when the child reaches age 18 or if the child dies before age 18, subject to the duty to keep and preserve the estate until it is delivered to the child's personal representative and to settle the estate's accounts.

The court may also terminate the guardianship if it decides that is in the child's best interest. At termination, the guardian must distribute the estate property and file a final account and petition for discharge with the court.