

Guardianship Actions In Surrogate's Court

I want to appoint someone as the legal guardian of my child. What court do I go to?

The Surrogate's Court located at 92 Franklin Street in Buffalo, New York on the second floor. The appointment of a guardian is a serious step and we recommend that you discuss it first with a lawyer.

Do I need a lawyer to go to court?

That depends. You do not need a lawyer as long as the parent or parents and the proposed guardian agree to the appointment.

How do I start a guardianship action?

To begin a guardianship action, go to the Guardianship Office in the Erie County Surrogate's Court, 92 Franklin Street, Buffalo, New York, Second. Ask the clerk for Guardianship forms and instructions. Have the clerk check for any prior guardianship action.

Who has to sign the forms?

The Petition to Appoint a Guardian must be signed by:

1. the person bringing the petition;
2. the parents;
3. the proposed guardian; and
4. the child if the child is 14 or older.

What do I do with the forms?

After all the forms are filled in, signed and notarized, take the forms and the child's birth certificate to the Legal Department of the Surrogate's Court. A lawyer will review the papers. If the papers are complete, the lawyer will initial the papers and send you to the cashier to pay the filing fee.

How much does this cost?

The current filing fee for a Guardianship Petition is \$20.00 for each Petition. The Court accepts cash, money orders or bank drafts payable to the Erie County Surrogate's Court in the exact amount. The Court will not accept a personal check.

Does the Court require a home study of the guardian?

In cases where the proposed guardian is not a close relative, the Court usually requires a home study of the proposed guardian. The Surrogate's Court lawyer will explain how to arrange for the home study.

What will the Court do with the Petition?

After the papers are filed, the Court will send an inquiry to the New York State Central Register of Child Abuse and Maltreatment to make sure there have been no indicated reports of child abuse or maltreatment regarding the petitioner, the proposed guardian, or the child. The Court will also conduct a criminal records check. Individuals with serious criminal records may not be permitted to be guardians. It usually takes five or six weeks before the information comes back to the Court.

When the court receives the report, will the action be finished?

If there are no indicated reports of child abuse or maltreatment, or records of a criminal conviction, the Petition will probably be approved. The Court will notify the Guardian of his/her appointment and ask the Guardian to come in and pick up Letters of Guardianship.

Does the Guardian get some proof of the guardianship?

When the Guardian picks up the Letters of Guardianship, she/he may want to obtain short form Certificates of Guardianship to give to a school or agency as proof of the Guardianship appointment. There is a small fee of \$5.00 for each short form.

Can I get some proof of guardianship when I file the petition?

After you have filed the petition, ask the guardianship clerk for a letter showing the petition has been filed.

What if there are indicated reports of child abuse or maltreatment?

If there are indicated reports of child abuse or maltreatment or if there is some other complicating factor, the Court may schedule a Hearing. In that case, you will need a lawyer. If you can't afford a lawyer, contact Neighborhood Legal Services, Inc. or Volunteer Lawyers' Project.

Will I have to go to court?

Not unless the other parent refuses to sign consent or if there is a problem uncovered by the Child Abuse Registry or the home study.

What if I'm not able to go to court?

The court may allow your attorney to make other arrangements.

Will the proposed guardian need a lawyer?

Maybe; if the court schedules a hearing.

Does my children's other parent have to consent?

Usually, yes. However, if the other parent has abandoned the child, has been deprived of civil rights, or was divorced from you and you were granted legal custody, the court may not require his/her consent.

What if I don't know where the other parent is?

If the other parent has abandoned the child by failing to visit or support the child for several years, the court will probably grant the guardianship without notice to him/her. If the other parent has not abandoned the child, the court will require you to serve a citation (notice) on the other parent. You will need a lawyer to arrange for the alternative service.

If I change my mind and decide I'm ready to care for my child again, is it hard to cancel the guardianship?

It is simple as long as the Guardian and the other parent agree to sign a Petition to Discharge.

What if the Guardian won't sign the Petition to Discharge?

If the Guardian refuses to consent to sign the Petition to Discharge, the process to revoke Guardianship can be difficult. You will have to have a lawyer represent you in a contested action in Surrogate's Court. The filing fee for that action is \$25.00 for each Petition. You will have to prove to the Court that you are now the person who should be caring for your child(ren). The action can take a long time to complete.

What if I change my mind and want a different person taking care of my children?

You could file a petition to appoint that person as successor guardian or that person could file the successor guardian petition. If the current guardian signs consent, the Surrogate may appoint the successor guardian without a hearing. However, if the current guardian refuses to consent, the court will schedule a hearing. You will need a lawyer.

What if the guardian won't let me visit with my children?

You could file a visitation petition in Family Court.

What if another person tries to get custody of my children?

When Family Court learns that a guardian has already been appointed, they will probably refer the custody petitioner to Surrogate's Court. That person would then have to petition to be named successor guardian.

Will this arrangement continue after I have died?

Yes, unless someone else files a successor guardianship petition.

Will I be giving up my parental rights & authority?

Once the court appoints the guardian, he/she will have control over your child. Unless the guardian permits it, you will no longer have control over where your child lives or what your child does while living with the guardian. However, you will still be the child's parent and may be entitled to visitation with the child.