

## **Purpose of Guardianships of Minor(s):**

Parents are the natural guardians for their children. There are, however, circumstances when a Court appointed guardianship is needed to provide for the personal care or protection of the property of a minor, or both. Under Vermont Law, a minor, up to the age of 18, could have a Court-appointed guardian for one or more of the following reasons:

- The minor(s) has no living parent authorized to act as guardian;
- One or both of the parents are under guardianship or are incompetent or unsuitable to have custody of the person of minor(s);
- The parent of the minor(s) resides outside the state and has so resided for three years and has not contributed to the minor's support during that time, and the minor(s) has resided in the state for three years prior to the date of appointment;
- No parent objects and transfer of custody is in the best interest of the minor(s) and is not solely for the purpose of establishing a residence for school purposes;
- The minor(s) has a parent living and the minor is the owner of real or personal property.

In all situations except the last, the guardian is responsible for both the personal care and property of the ward. In the last situation, the guardian is granted only the powers and duties related to the ward's property.

When petitioned to appoint a guardian for a minor, the Probate Court gives primary consideration to selecting a person or persons who will act in the best interest of this child. The Court can appoint either parent, a family member or an individual who is not related to the ward. Two individuals can be appointed to serve as co-guardians. Minors 14 years or older may choose their guardian, subject to Court approval. Vermont law also allows parents to name their choice for guardian in their will, in case both parents die before the children are 18 years old.

The paramount duty for the guardian charged with responsibility for the personal care of a minor is to provide direction, decision making, and a nurturing environment appropriate to the age and abilities of the ward so that he or she can grow and mature into an independent and responsible person. If the guardian is given responsibility for the property of a minor, decisions about the use and disposition of funds and property are to be made in a prudent and informed manner that will best suit the ward's needs. However, the guardian is not the sole decision maker when it comes to assets in the ward's name. The guardian is required to receive prior authorization from the Court before using the assets. Criminal prosecution or contempt of court may arise from unauthorized use of the ward's assets by a guardian.

## **Powers of a Guardian of a Minor:**

The guardian of a minor may be given power to protect the property and person of the ward. The power to protect property means settling accounts, debts and claims by or against the ward on terms that are just and beneficial to the ward.

### **Process for Creating a Guardianship for a Minor:**

1. Although guardianships can be established without the involvement of an attorney, the assistance of an attorney can simplify such cases and avoid mistakes in the creation and accounting of guardianships.
2. The first step in the process to creating a guardianship is to the Petition the Probate Court. This involves filing a Petition or a request with the Probate Court. The Petition requests that a guardian be appointed for a person who is referred to as the "proposed ward".
3. Please download a copy of the Petition for Guardianship of a Minor from the above link. Forms are also available at the Probate Court.
4. The Petition must be accompanied with the Statement of the Proposed Ward's Assets and Income (Form 73) and by the List of Interested Persons for a Guardianship (Form 75). Once the Petition and accompanying forms have been completed, they need to be filed with the Probate Court Clerk's Office with the filing fee.
5. When a petition for guardianship is filed with Probate Court, a hearing is scheduled, and notice sent to interested parties so they can all attend the hearing and give testimony about the guardianship. A parent who objects to the guardianship should attend the hearing.
6. In processing a guardianship for a minor, the Court's purpose is to gather information from interested parties in order to determine whether the petitioner is correct in requesting whether or not to grant the petition and award custody for the child and management of the child's financial assets to the guardian. A non-custodial parent, or a parent who is giving up custody of a child to a guardian, may consent to the guardianship by signing a written consent or by joining in the petition for guardianship.