

Guardianship of a Minor

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State statutes outline the powers of the Guardian of a minor. This NebGuide, seventh in a series of seven, discusses legal Guardianship.

There are circumstances that require that a Guardian be appointed for a child or adolescent who has not yet reached the age of majority (19). There may be different requirements for the Guardian depending upon the reasons for their appointment.

Guardianship of a Minor — Probate Court

Parents might decide who they would like to have as Guardian for their child by making that selection in their will. If the parents die before their child reaches the age of majority, the Court can make a testamentary appointment of that person as Guardian when he/she files an acceptance with the Court.

The Court may also be petitioned to appoint a Guardian when the parental rights of minor's parents have been suspended by the circumstances or terminated. These rights could have been suspended by a prior Court action or for other reasons, including a sudden illness or incapacity of the parents, overseas work, a death or abandonment of the child with no prearrangements.

These types of guardianships follow the same process as adult guardianships. A typical result is the appointment of a full Guardian because the law already presumes that the child does not have the ability to exercise his or her rights until the age of 19. The only exception would be if the Court determines that the child is emancipated prior to turning the age of 19.

The Nebraska Statute regarding the powers of the Guardian of a minor is Neb. Rev. Statute 30-2613, 1998 cum. Supp.

Here is a summary of the powers of the Guardian of a minor.

1. A Guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child. A Guardian is not legally obligated to provide from his own funds for the Ward and is not liable to third persons by reason of the parental relationship for acts of the Ward. A Guardian has the following powers and duties:
 - a. He/she must take reasonable care of and take steps to protect the Ward's personal effects.
 - b. He/she may receive assets payable for the support of the Ward and must apply these assets to the support and care of the Ward.
 - c. The Guardian is empowered to facilitate the Ward's education, social or other activities and to authorize medical or other professional care, treatment or advice. When giving consent, the Guardian is not liable for injuries to the minor caused by the negligence of other individuals unless it was illegal to consent. A Guardian may consent to the marriage or adoption of his Ward.
 - d. A Guardian must report the condition of his Ward and of the Ward's estate which has been subject to his possession or control at least annually or at such other times as ordered by the court.

2. Appointment of a Guardian for a minor shall not relieve as parent or parents, liable for the support of such minor, from their obligation to provide for such minor. The application of guardianship, income, and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance, and education of the minor shall be:
 - a. The income and property of the parents in such manner as they can reasonably afford, with regard given to the situation of the family and to all the circumstances of the case.
 - b. The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford.
 - c. The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his support.
3. The Court may from time to time authorize the Guardian to use so much of the guardianship income or principal, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the Court can, with reasonable certainty, ascertain such purpose.

Note: The Guardian, acting as conservator of the assets and income of the minor, cannot accept payment of any amount (even room and board) without approval of the Court. A bill should be submitted with the annual report to the Court. The judge will then approve or disapprove the amounts requested. If funds need to be paid to the Guardian prior to the annual report, the Guardian should obtain Court approval. Any investing or management of the assets and income should be done prudently. Decisions regarding purchases and expenditures for the minor also should be made in a prudent manner.

4. The Court may require a Guardian to furnish a bond.

Termination of the guardianship and the authority of the Guardian occurs when the child dies or

reaches the age of majority. A final accounting of funds and a final report must be submitted to the Court. If the child is 19, he or she must receive notice of this accounting and report. If the child who has turned 19 is still in need of guardianship due to a disability or some other incapacity to exercise his or her own rights, a new petition needs to be filed for appointment of a Guardian for an adult.

The filing and reporting requirements and forms for these Guardians of minors is the same as discussed in the NebGuide: *G1592, Guardianship Responsibilities to the Court*.

Guardianship of a Minor — Juvenile Court

Another circumstance exists when a Guardian may be appointed for a minor. At times, there may be action taken by a county attorney against a parent or parents charging them as being unfit or unable to continue to raise their child, and the child is placed in the care of the Department of Health and Human Services. In these cases there would be significant steps taken in Juvenile Court, at the end of which, the child may be permanently removed from the home of his/her biological parents and it has been determined that all efforts to reunite the family have failed. The child cannot be returned to the care and natural guardianship of the parents. Sometimes instead of the rights of these biological parents being terminated and the child made eligible for adoption, a guardianship is sought. Usually, the Guardian who is appointed also has physical custody and care of the child as well. The duties of these Guardians are the same as discussed above with the following exceptions:

- A Guardian appointed in these circumstances has guardianship of the person, but does not have conservator responsibilities for any assets the child may have. Often, children in the circumstances above do not have significant financial resources.
- Within 30 days of appointment, the Guardian must file an initial report stating the location of the child and any needs that child may have. There is no special form for this report. If this report is not filed, the Guardian will receive

notice to show cause from the Court and will have to appear in Court to explain the inaction.

- Every six months thereafter, or more frequently if ordered by the Court, the Guardian must file a report updating the location of the child and any needs the child may have. There is no special form for this report. If this report is not filed, the Guardian will receive notice from the Court to show cause and will have to appear in Court to explain the inaction.
- If the Guardian needs to consider some alternative placement for the child, such as a mental health treatment facility, specialized educational program, etc., a notice must be filed with the Court at least seven days prior to the change to receive approval. If the change is needed and an emergency exists, the placement can be made and the Court notified within 24 hours.
- Because of the circumstances that led to the appointment of the Guardian in Juvenile Court, the judge can intervene on behalf of the child and will be more proactive in monitoring the situation than in other types of Guardianship.

- A Guardian appointed in these circumstances can come to the Court as a party to the action and seek to resign, change the guardianship or return the guardianship to the Department of Health and Human Services.

Termination of the guardianship and the authority of the Guardian occurs when the child dies or reaches the age of majority. A final accounting of funds and a final report must be submitted to the Court, and if the child is 19, he or she must receive notice of this accounting and report. If the child who has turned 19 is still in need of guardianship due to a disability or some other incapacity to exercise his or her own rights, a new guardianship proceeding needs to be filed for appointment of a Guardian as an adult.

Reference

Nebraska Revised Statutes, Article 26, Section 30-2601-2661 and Section 43-284-295.

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