



PERMANENT GUARDIANSHIP

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>

Family Court Contact Information

New Castle County

Leonard L Williams
Justice Center
500 N. King Street
Wilmington, DE 19801
302-255-0300

Kent County

Family Courthouse
400 Court Street
Dover, DE 19901
302-672-1000

Sussex County

Family Courthouse
22 The Circle
Georgetown, DE 19947
302-855-7400

All Family Court Forms, FAQs, Filing Instruction Packets, and additional information can be found on the Family Court Website at:
<https://courts.delaware.gov/family>

What is the definition of Permanent Guardianship?

The intent of Permanent Guardianship is to create a relationship between a child and a caretaker which is permanent and self-sustaining and creates a permanent family for the child without having to terminate the parental rights of the child's parents.

Only a relative, foster parent(s), guardian(s), or an individual with whom a child in DSCYF custody is placed may serve as a Permanent Guardian. A relative is defined as a sibling, grandparent, uncle, aunt, first cousin, first cousin once removed, great-grandparent, grandaunt or granduncle, half sibling, stepparent, stepsibling, stepaunt or stepuncle, or step grandparent of the child who is the subject of a guardianship petition (Section 2302 of Title 13). However, neither a parent nor step-parent is eligible to file for Permanent Guardianship. The child must have been placed with the petitioner for at least 6 months immediately preceding the filing of the petition.

What are the responsibilities of a Permanent Guardian?

Assuming the Court places no limitations in the Permanent Guardianship Order, the Permanent Guardian will be responsible for providing for the child both physically and emotionally. The Permanent Guardian must provide a healthy and safe living environment, an education and all the necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric care. Furthermore, the Permanent Guardian will be responsible for making the following decisions:

- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;
- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.

Note: If there is a proposed relocation of a child for a period of 60 days or more involving either a move outside the State of Delaware or a move that materially affects a parent's existing visitation arrangement or order, the guardian must obtain either leave of the court or consent of the child's parents. To such a request, the Court will apply the relocation factors under Section 734 of Title 13.

What are the rights of the child's parent after permanent guardianship is granted?

Because a parent's parental rights are not terminated when a non-parent is given permanent guardianship, the Court will determine the following:

- How much, if any, contact the parent(s) should have with the child after the Permanent Guardianship is granted;
- How much, if any, information about the child the Permanent Guardian should share with the parent(s); **AND**
- A visitation schedule, if appropriate, so that the parent(s) may spend time with the child.

May a parent petition to Modify a permanent guardianship?

Yes. A parent may petition to modify the order as to contact, visitation or sharing of information. The Court would then determine whether there is a substantial change in material circumstances and whether modification is in the best interest of the child.

May a parent petition to terminate a permanent guardianship?

No. Once a permanent guardianship is granted, a parent may not petition to terminate the permanent guardianship.

Will the child inherit from his/her parents or from the permanent guardian?

The child will continue to have the right to inherit from his/her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Permanent Guardian wishes to have the child inherit from him/her, then the Permanent Guardian must state that desire in a will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court.

Will the parent(s) be required to pay child support to the permanent guardian?

The parent(s) may have to continue to provide financial support to the child. In other words, the parents may be required to pay child support to the guardian. Child support is handled in a separate proceeding. If the Court grants you permanent guardianship, you must file a separate Petition for Child Support in order for the Court to consider your request for child support.

Is a social study and report required for permanent guardianship?

Yes. A Social Study and Report is a report that provides detailed information about the petitioner(s) and the child, which will help the Court determine whether they should become the child's permanent guardian. A worker from a child-placing agency will talk to all of the people involved with the case including the petitioner(s), the child's parents, and the child. The worker will then write a report and submit it to the Court. The report will include information about the following:

- The child and the child's background;
- You, the proposed guardian, and your home where the child will be living;
- The child's physical and mental condition;
- The suitability of the placement;
- Whether all of the requirements under Delaware law have been met; **AND**
- The agency's recommendation regarding whether the permanent guardianship should be granted.

How can I file my petition and related paperwork?

Petitions and papers may be filed at or mailed to the Family Court in each county. Family Court also now accepts petitions and papers by email. To file your petition by email, you must send the petition and all required forms to: FC_Guardianship@delaware.gov

- Please see the below list for the forms that must be filed with your petition. Family Court will serve the other parties your petition.

You may also use FC_Guardianship@delaware.gov to file with the Court answers, motions, and any other required papers. Although you can file these documents with the Court by email, you must still serve copies of these documents on the other parties personally or by mail.

****Before filing by email, please review the Civil Filing by Email FAQ:**

<https://courts.delaware.gov/family/faqs>

Permanent Guardianship Required Forms

- [Petition for Permanent Guardianship of a Minor](#) (Form 126P)
- [Custody Separate Statement](#) (Form 346)
- [Information Sheet](#) (Form 240)
- [Permanent Guardianship Order of Reference](#) (Form 110PG)
 - Social Study and Report is mandatory as part of a Permanent Guardianship pleading.
 - To be completed when the Court orders you to have a Social Study and Report completed as part of your Permanent Guardianship pleading.

Situational Forms (Please review all forms and scenarios)

- [Affidavit of Unknown Address](#) (Form 241)
This form should be filed if you do not know where the Respondent(s) lives.
- [Affidavit of Non-Military Service](#) (Form 405)
This form should be filed if you know that the Respondent is NOT in the military service of the United States of America and ONLY if the Respondent has not filed an answer or otherwise entered an appearance with the Court by the day of your hearing.
- [Consent Order - Permanent Guardian of the Person](#) (Form 124P)
File this document only if you and the Respondent(s) have already agreed upon how the permanent guardianship should be arranged.
- [Affidavit of Consent of Child 14 Years of Age or Older](#) (Form 201P)
 - File this document if the child, who is 14 years old or older, agrees to your becoming the permanent guardian.
 - If you are requesting permanent guardianship of more than one child over the age of 14, you must have each child complete their own Affidavit of Consent.
- [Affidavit of Consent of a Child's Parent - Guardianship](#) (Form 202P)
 - This form should be filed if one or both of the child's parents agree that you should be granted guardianship.
 - Each parent must complete their own Affidavit of Consent.
- [Waiver of Rights under the Servicemembers' Civil Relief Act](#) (Form 420)
 - File this form only if the Respondent is in the military.
 - If the Respondent does not file an Answer or Affidavit of Appearance, you must have the Respondent(s) sign the form.
 - If you are unable to reach the Respondent to obtain any of these documents, you must file a Motion to Appoint an Attorney ([see Motion Packet](#)).

For more information on Permanent Guardianship and the forms necessary to file for Permanent Guardianship, please see the Permanent Guardianship Instruction Packet, available at the Family Court Resource Center and on our website.