



PERMANENT GUARDIANSHIP

A GUIDE TO PERMANENT GUARDIANSHIP IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

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

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.

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), or guardian(s) of the child may serve as a Permanent Guardian. A relative is defined as immediate family members, grandparent, aunt, uncle, first cousin, great-grandparent, grand aunt or grand uncle, half brother or half sister (10 Del. C. §901(20)). However, neither a parent nor step-parent is eligible to file for Permanent Guardianship. A foster parent must have been caring for the child for at least 6 months. A guardian must have held guardianship for at least 6 months.

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 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.

What are the responsibilities 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 Guardianship is granted;

How much, if any, information about the child the 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 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.