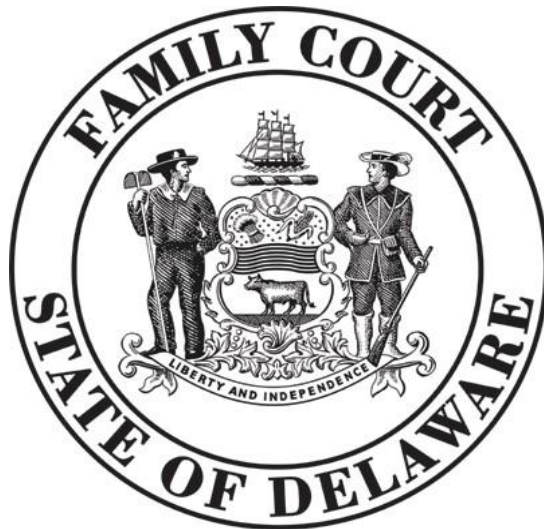


# ANSWER TO PERMANENT GUARDIANSHIP INSTRUCTION PACKET



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

You may be entitled to the appointment of an attorney to assist you with this matter. To learn more about whether you qualify and how to apply, please contact the Termination of Parental Rights/Adoption Clerk in the appropriate county.

New Castle: 302-255-0244

Kent: 302-672-1009

Sussex: 302-855-7444

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# ANSWER TO PERMANENT GUARDIANSHIP INSTRUCTION PACKET

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Use the **Answer to Permanent Guardianship Packet** **ONLY** when:

You have been named as the Respondent in a Petition for Permanent Guardianship.

**FILING AN ANSWER IS YOUR WAY OF TELLING YOUR SIDE OF THE STORY TO THE COURT.** The Court will use the information in your Answer when deciding whether or not the Petitioner should be granted permanent guardianship. If you **do not** file an Answer, the Court will not know how you feel regarding the Petition for Permanent Guardianship. It is **VERY IMPORTANT** that you file an Answer, so the Court knows how you feel about the permanent guardianship petition.

**NOTE:** If you agree that the Petitioner should be granted Permanent Guardianship, you need to fill out the **Affidavit of Consent** (Form 202P). If both parents agree, a **Consent Order - Permanent Guardian of the Person** (Form124P) should also be prepared. This is explained on pages 16-17.

## HOW TO USE THE PACKET

This packet contains general information about the process of filing an Answer to a Petition for Permanent Guardianship and basic instructions on how to complete the Court forms you must file. Blank and sample forms are provided at the Family Court Resource Center in each county, are included in the Permanent Guardianship Forms Packet, and can be found on the Family Court website at <https://courts.delaware.gov/family>.

You should read the instructions and look at the sample forms carefully **before** filling out any forms. **ONLY FILE THE FORMS THAT YOU FILL OUT.** The sample forms included in the Forms Packet are simply to help you understand how to fill out the forms you intend to file.

**YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE.**

For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to ensure you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



**READ THIS SECTION CAREFULLY.**



**THIS DOCUMENT MUST BE FILED.**



**FILL IN THE BLANKS OR WRITE INFORMATION HERE.**



**YOU DO NOT HAVE TO TAKE THESE STEPS NOW.**



## TIPS AND REMINDERS ...

- ✓ Make sure to read any **Frequently Asked Questions (FAQ)** on Permanent Guardianship. These are located in the Resource Center in each Courthouse and they are available on the Family Court Website at <https://courts.delaware.gov/family/faqs>. The FAQs will help you to better understand the Permanent Guardianship process.
- ✓ Remember who is the Petitioner and who is the Respondent.
  - The **PETITIONER** is the person who filed the Petition for Permanent Guardianship.
  - The **RESPONDENT** is the person replying (responding) to the Petition, in other words, you.
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ **You may be entitled to the appointment of an attorney to assist you with this matter. To learn more, please contact the Termination of Parental Rights/Adoption Clerk in the the appropriate county:**

**New Castle County: 302-255-0244**

**Kent County: 302-672-1009**

**Sussex County: 302-855-7444**

- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he or she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.
  
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE EXPENSIVE.**
  
- ✓ If you would like assistance finding an attorney, or to see if you qualify for free legal assistance, you can visit the Delaware Volunteer Legal Services website at <https://delegalhelplink.org>.
  
- ✓ Always bring your photo identification with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.



**PLEASE READ AND REMEMBER THESE IMPORTANT TIPS**

**REMEMBER**

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- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**


## PERMANENT GUARDIANSHIP

### 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, or an individual with whom a child in DSCYF custody is placed may serve as a Permanent Guardian. The child must have been placed with the petitioner for at least 6 months immediately preceding the filing of the petition. Neither a parent nor step-parent is eligible to file for Permanent Guardianship.

**\*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, steppaunt or stepuncle, or stepgrandparent of the child who is the subject of a guardianship petition (Section 2302 of Title 13).

 Included in most Permanent Guardianship Orders is an Order for Custody. Therefore, assuming Custody is also granted, a Permanent Guardian may exercise the same powers, rights and duties respecting the care maintenance and treatment of the child as a parent would. However, unlike a parent, the Permanent Guardian cannot be held liable by a third party for something the child has done wrong simply because he/she is the permanent guardian. The Court also has the right to limit any of the powers and duties granted to the Permanent Guardian.

### 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.


**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.

 **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 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.

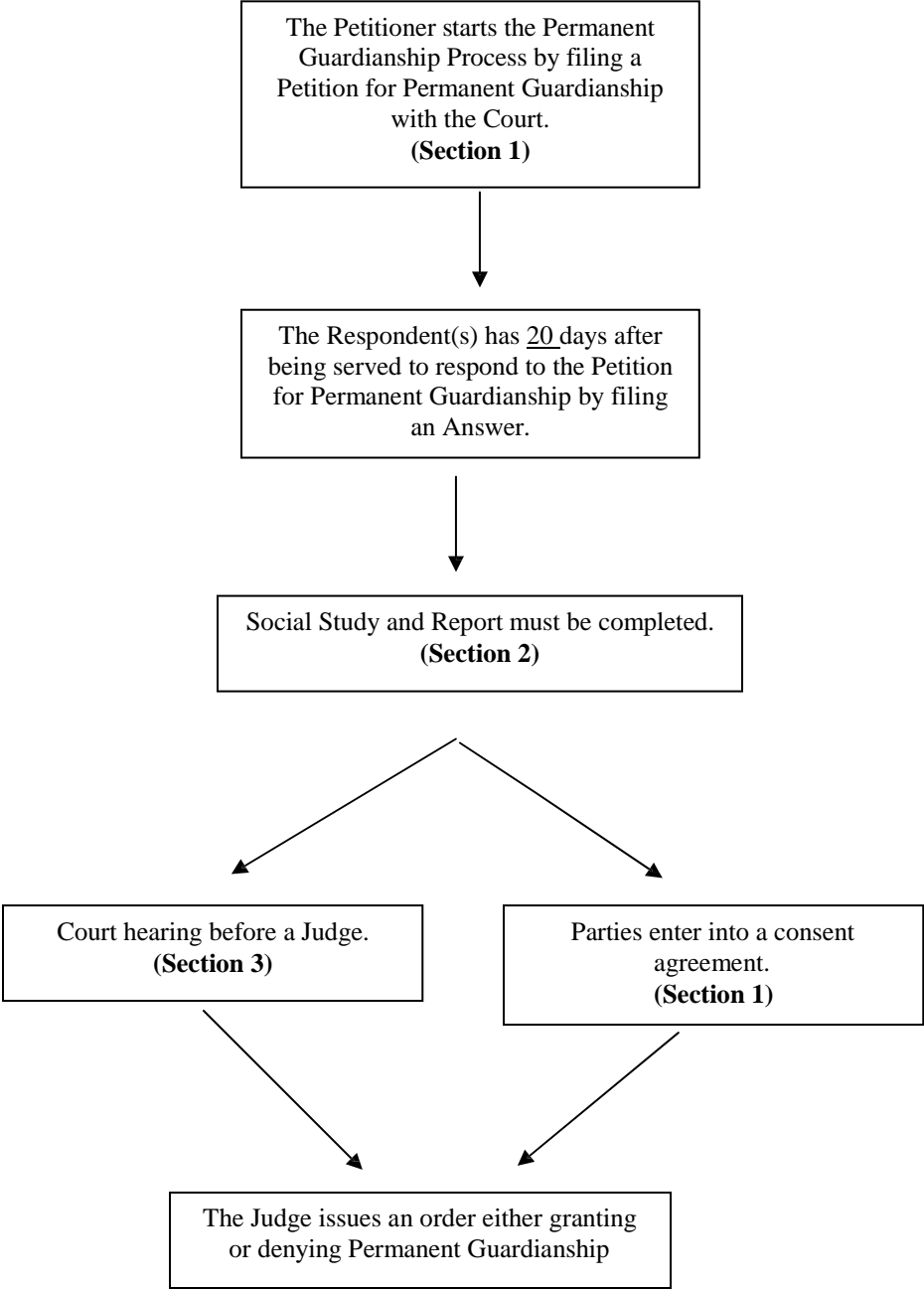
 **Once a Permanent Guardianship is granted, a parent may petition the Court to change the visitation, contact or information portions of the Order. However, a parent may not petition the Court to rescind (end) the permanent guardianship.** (For more information, see page 26).

 In addition, the child will continue to have the right to inherit from his or 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 or 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.

**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 the Petitioner permanent guardianship, the Petitioner must file a separate Petition for Child Support in order for the Court to consider their request for child support.


# PERMANENT GUARDIANSHIP PROCESS



# **SECTION 1:**


## **STARTING THE PERMANENT GUARDIANSHIP**

### **PROCESS**


 After the Petitioner files a Petition for Permanent Guardianship, you will be **served** with notice of the petition. This means that you will receive a **Summons** (a Court document explaining your rights and responsibilities) and **copies** of the petition and any other paperwork the Petitioner filed. Service can be accomplished in the following ways:

- You can be personally served. This means that a person designated by the Court will hand the papers to you directly at your home or your job.
- You can be served by mail. This means the papers will be mailed to you by certified mail.
- You can be served by publication, which means that notice of the Petition for Permanent Guardianship will be placed in a local newspaper or on Family Court's legal notices website. If you read a notice in the newspaper naming you as a Respondent, you must come to Family Court and obtain copies of all the papers that have been filed by the Petitioner.

Regardless of how you receive notice of the petition, it is **VERY IMPORTANT** to read all documents **carefully** so you can properly respond to the allegations in the Petition for Permanent Guardianship.

 The Petitioner can only file for Permanent Guardianship if the jurisdictional requirements on the next page are met. If the statements on the following page are not true, you should request that the Court dismiss the Petition for Permanent Guardianship. Please see page 16 for information on how to file a Motion to Dismiss.

- There is **NO** current Permanent Guardianship Order in place in Delaware or anywhere else; **AND**
- The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Guardianship. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.); **AND**
- The Petitioner is at least 18 years of age and is not a parent of the child; **AND**
- The Petitioner is a relative, foster parent, guardian of the child, or an individual with whom a child in DSCYF custody is placed.
  - \*The child must have been placed with the petitioner for at least 6 months immediately before the filing of the petition.

 To respond to the Petition for Permanent Guardianship, you **MUST** file the **ORIGINAL** with the Court and mail **ONE (1) COPY** of each form below to the Petitioner **within 20** days of receiving the Petition:

 **Answer** (Form 499). (*File one original and mail one copy to the Petitioner*)

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- In your Answer you may do the following:
  - **Admit** (you agree the statement is true) or **deny** (you believe the statement is false) any statements made by the Petitioner in the Petition for Permanent Guardianship. In the Petition, the Petitioner is asked to state (on page 3) why the child is dependent or neglected. You should either admit or deny these statements. Also, the Petitioner was asked to select the

grounds for Permanent Guardianship (on pages 5-7 of the Petition). You should admit or deny each of the grounds that the Petitioner selected. If you deny the statement, explain to the Court **why** the Petitioner's statement is not true. **If you do not respond to a statement, the Court will assume you agree that the statement is true.** If you believe a statement is false, you **must deny** it.

- When responding to the Petition for Permanent Guardianship, you want to give the Court information so that it can decide why the child is not **dependent, neglected, or abused**.
  - A child is **dependent** when a parent is **unable** to provide adequate care for the child.
  - A child is **neglected** when a parent has the ability to care for the child, but **does not** or **will not** provide adequate care.
  - A child is abused by a parent if he or she causes or inflicts sexual abuse on the child or causes or inflicts physical injury through unjustified force, emotional abuse, torture, exploitation, maltreatment, or mistreatment.
- You also want to give the Court information about why the Grounds for Permanent Guardianship are not met. The Grounds are located on pages 5-7 of the Petition for Permanent Guardianship (see appendix "A" of this Packet).
- If you need more space to write, you may attach additional pages to the Answer form. Be sure to state on the form that you have attached more pages, so the Court and the Petitioner will know to look for additional information. Also, number each additional page that you attach by writing the page number at the bottom of the page.
- You must sign your Answer in the presence of a notary public or authorized Court staff.

## BELOW ARE OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.

### **If the jurisdictional requirements on page 14 have not been met, file:**

#### **Motion to Dismiss** (Form 191) (*File original and one copy*)

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- On this form, you will ask the Court to dismiss the Petition for Permanent Guardianship. You **MUST** explain which **specific** jurisdictional requirement was not met.
- When you file the Motion to Dismiss, you must also file a **Notice of Motion** form and a blank **Order form**.
- The Motion form, the Notice of Motion form and the blank Order form are not included in the Forms Packet. They are available in the Resource Centers located in each courthouse and on the Family Court website.

### **If you and the Petitioner agree on the Permanent Guardianship, file:**

#### **Affidavit of Consent of a Child's Parent** (Form 202P)

*(File the original and one copy)*

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- On this form you will explain to the Court that you agree that the Petitioner should be granted permanent guardianship.



## If all parties agree on the permanent guardianship:

### Consent Order-Permanent Guardian of the Person (Form 124P) (File original)

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- On this form you will describe for the Court the following things:
  - Who will have Guardianship of the child,
  - Where the child will be living,
  - Whether the parent(s) will have visitation with the child, and
  - What the visitation schedule will be.
- When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations. Avoid agreements that simply state that “visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Petitioner to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Petitioner be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future.
- You and the Petitioner must both sign and have notarized the Consent Order.
- Once you have filed your agreement with the Court, it will be forwarded to a Judicial Officer who will review your agreement. If the Judicial Officer finds that the agreement is in the best interest of the child, then he/she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Judicial Officer signs the Consent Order, it is a court order and you and the Petitioner **MUST** follow the instructions in the Order. The Court will mail a copy of the signed order to you and the Petitioner.
- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify guardianship. See page 36 for more information.

## If Respondent is in the military, file:

### **Waiver of Rights under the Servicemembers' Civil Relief Act (Form 420)** (File the original and one copy)

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- **ONLY** file this form if you **ARE** in the military and would like to **WAIVE** your rights under the Servicemembers' Civil Relief Act.
- This Waiver allows the Court to proceed with the guardianship process if you are unavailable because of military duties.
- If you are in the military, you **MUST** file a Waiver of Rights under the Servicemembers' Civil Relief Act, an Affidavit of Appearance **OR** an Answer. If you do not file one of the above, the Court will not schedule your Permanent Guardianship Hearing until a Waiver of Rights under the Servicemembers' Civil Relief Act is filed **OR** an attorney is appointed for you.



**\*\*REMEMBER - BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure you respond to all of the Petitioner's grounds. **Remember**, that if you fail to respond to any allegation, the Court will assume you agree that the ground is true. When you complete a form, write in blue or black ink **AND** write neatly.



### **WHERE TO FILE**

The petition would have been filed at the Family Court **in the County where the child currently lives or the county in which a parent of the child currently lives**. You may file your responsive pleadings at any Family Court location.

- In Kent and Sussex Counties, you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at Family Court Intake on Lower Level 1 (LL1) of the Leonard L. Williams Justice Center.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed.



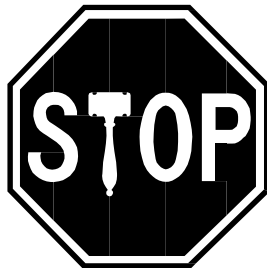
## FILING BY EMAIL

You may also file your answer and other forms by email. To file by email, you must send the petition and required forms to: [FC\\_Guardianship@delaware.gov](mailto:FC_Guardianship@delaware.gov).

For more information on filing by email, please review the Civil Filing by Email FAQ: <https://courts.delaware.gov/family/faqs>



**REMEMBER** to mail a copy of all the papers that you file with the Court to the Petitioner(s). You **MUST** fill out the **Affidavit of Mailing** on the bottom of the form telling the Court that you have mailed a copy of the papers you filed to the Petitioner or the Petitioner's attorney (if there is one). If you do not mail a copy of the Answer form to the Petitioner(s), the Court **may not consider** the information on that form. If there was more than one Respondent you **MUST ALSO** mail a copy of the Answer that you file to each of the Respondents and indicate you have done so on the Affidavit of Mailing.



**YOU SHOULD BEGIN SECTION 2  
ONCE YOU HAVE FILED THE FORMS  
IN SECTION 1.**

## Section 2:

# SOCIAL STUDY AND REPORT

## For Permanent Guardianship, a Social Study and Report is Mandatory.



A Social Study and Report is a report that provides detailed information about the Petitioner and the child, which will **help the Court to determine whether the Petitioner 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 you, the Petitioner 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;
- The proposed guardian, and the 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.

Because the Social Study and Report must contain a lot of information, the worker investigating and preparing the report will probably need to get some information from you. The worker will likely ask you for the **names of people** that he or she can speak with to find out more information about **you**, the **child** and the **child's situation**. Furthermore, the worker may want to **visit your home**. The worker may also ask you to provide him or her with **documents and papers** that are needed to prepare the report. It is **VERY** important that you cooperate with the worker and comply with his or her requests to the best of your ability.

Remember, that the information in the report will guide the Court when deciding whether the Petitioner should be awarded guardianship.



**THE PETITIONER** must **select** a licensed child-placing agency to do the Social Report and Study. The Petitioner must then complete a Permanent Guardianship Order of Reference and the Court will issue an Order to the agency. You will receive a copy of this Order.

- The agency preparing the Social Study and Report has 4 months from the date that the Court orders that the Social Study and Report be conducted to file the completed Report with the Court.
- The Court may allow the agency more time to complete the Social Study and Report, but **ONLY IF** the additional time is reasonable and is to enable the agency to complete the report.

## Section 3: HEARING WITH A JUDGE

### SCHEDULING THE HEARING



- A **Court Hearing** will be scheduled by the Court.

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.

Some judges may schedule a **case management conference** or **pre-trial hearing**. The purpose of these proceedings is to discuss the status of your case prior to scheduling a full hearing where you will present evidence and call witnesses.



If you cannot attend the scheduled hearing, you must file the following form:



**Motion for Continuance** (Form 196) (*file one original and mail one to the Petitioner*)

- Blank and sample forms are provided at the Family Court Resource Center, or can be found on the Family Court website: <https://courts.delaware.gov/family/guardianshippermanent/forms.aspx>
- If, once you receive your Notice, you cannot attend the hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons** why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for a Continuance, you must contact the Petitioner regarding the continuance and then **tell the Court in the Motion how the Petitioner feels about the continuance**. **Because the law is very strict when it comes to rescheduling hearings, these Motions are not always granted.**

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can enter an order granting the Petitioner everything that he or she wants. You would not be given any say in how the guardianship arrangement would work.

## THE DAY OF THE HEARING



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Petitioner will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed **Preparing for Your Court Hearing** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Frequently Asked Questions** to help you prepare and organize for your Court Hearing. It is helpful to read this information before your scheduled hearing. This information is available in the Resource Centers located in each courthouse and on the Family Court website.



At the hearing, it is up to **YOU** to prove to the Judge **WHY** the Grounds for Permanent Guardianship are **NOT** met. These grounds can be found in Appendix “A” of this instruction booklet. Review that information before the hearing, so you are prepared to present your case to the Court. You should come to Court prepared to offer evidence regarding **the Grounds for Permanent Guardianship**.



After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his or her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the Guardianship arrangement is; **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he or she considers all of the information presented during the hearing and issues a written order explaining



the guardianship arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or the Court Order, in the mail or email if you have opted to receive orders by email.

Once the Court has entered a Permanent Guardianship Order, you and the Petitioner should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the other parties can change the Order by filing the proper petition. See Section 4 for information about when a guardianship order can be changed.

## Section 4:

### CHANGING AND ENDING PERMANENT GUARDIANSHIP

A parent may petition the Court to change the visitation, contact, or information portions of the Permanent Guardianship Order. However, a parent **may not** petition the Court to rescind (end) a Permanent Guardianship once it is granted. Once the Court enters a Permanent Guardianship Order, it will only be changed or ended if there is a substantial change in circumstances and if the change or rescission is in the best interests of the child. In other words, once a person becomes the permanent guardian of a child, that person will continue to be that child's permanent guardian until one of the following occurs:

- The child dies;
- The guardian dies;
- The child is adopted;
- The child turns 18 years old; or
- The Court determines that the Order should be modified or ended based on the best interests standard and a substantial change in circumstances.

# GROUNDS FOR PERMANENT GUARDIANSHIP

Complete a separate *Grounds for Permanent Guardianship* form for **each child** named in the *Petition for Permanent Guardianship*. If there are 2 children, then 2 *Grounds for Permanent Guardianship* forms MUST be completed and attached to the Petition.

CHILD'S NAME: \_\_\_\_\_

Indicate the grounds for Permanent Guardianship (Place an "X" next to the grounds that apply). At least one of the boxes numbered 1 through 9 must be checked.

## CONSENT:

1.  A parent of the child, or a person or organization holding parental rights over the child, agrees (consents) that this Petition should be granted.  
 A *Consent to Permanent Guardianship* (Form 202P) is attached to the Petition.

## INTENTIONAL ABANDONMENT:

2.  Respondent(s) have intentionally abandoned the child as evidenced by the fact that (If you check box 2, you must place an "X" next to at least one of the following that apply):
  - a.  The child is younger than 6 months old at the time of filing this Petition and Respondent(s) FAILED to:
    - Pay reasonable prenatal, natal and postnatal expenses for the child; **AND**
    - Visit regularly with the child or file a petition for visitation with the child; **AND**
    - Manifest (show) an ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).
  - b.  The child is at least 6 months old at the time of filing this Petition **AND** for at least 6 consecutive months (6 months in a row) of the 12 months preceding the filing of this Petition, Respondent(s) FAILED to:
    - Communicate or visit regularly with the child; **AND**
    - Manifest (show) the ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).
  - c.  The child is younger than 6 years old at the time of filing this Petition **AND** Respondent(s) have placed the child in circumstances leaving the child in substantial risk of injury or death and, therefore, has manifested (shown) the unwillingness to exercise parental rights and responsibilities.

## UNINTENTIONAL ABANDONMENT:

3.  Respondent(s) have unintentionally abandoned the child because for 12 consecutive months (12 months in a row) in the 18 months before filing this Petition, Respondent(s) FAILED to:
  - Communicate or visit regularly with the child; **AND**
  - File or pursue a pending Petition to establish paternity or to establish a right to have contact or visitation with the child; **AND**
  - Manifest (show) an ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).

**AND** at least one of the below applies (**Place an “X” next to at least one of the following that apply**):

- The child is not in the other parents’ legal and physical custody and Respondent(s) are not able or willing promptly to assume legal and physical custody of the child, and to pay for reasonable support for the child.
- Placing the child in Respondent(s)’ legal and physical custody would pose a risk of substantial harm to the child’s physical or psychological well-being. Respondent(s) are unfit to maintain a relationship of “parent and child” with the child because of at least one (1) of the following reasons:
  - i. The circumstances of the child’s conception; **OR**
  - ii. Respondent(s)’ behavior during pregnancy; **OR**
  - iii. Respondent(s)’ behavior after the child was born; **OR**
  - iv. Respondent(s)’ behavior with respect to another child.
- Failure to grant the Petition for Permanent Guardianship would be detrimental to the child.

**DETRIMENTAL TO THE CHILD**

In determining whether failure to grant the permanent guardianship would be detrimental to the child, the Court will consider all relevant factors, including the following:

- A. The respondent’s efforts to obtain or maintain legal and physical custody of the child.
- B. The role of another person in thwarting the respondent’s efforts to assert parental rights.
- C. The respondent’s ability to care for the child.
- D. The child’s age.
- E. The quality of a previous relationship between the respondent and child, and between the respondent and another child.
- F. The duration and suitability of the child’s current custodial environment.
- G. The effect on the child of a change of physical custody.

**CONVICTION OR ADJUDICATION:**

4.  Respondent(s) have been convicted or adjudicated of the following (or a substantially similar offense in another jurisdiction) (**If you check box 4, you must place an “X” next to at least one of the following that apply**):
- A felony level offense against the person under Subchapter II of Chapter 5 of Title 11, in which the victim was a child; **OR**
  - Aided, abetted, attempted, conspired or solicited to commit a felony level offense against the person under Subchapter II of Chapter 5 of Title 11, in which the victim was a child; **OR**
  - Dealing in Children or attempting to deal in children under § 1100A of Title 11; **OR**
  - Felony level endangering the welfare of a child under § 1102 of Title 11; **OR**
  - Murder or manslaughter of the other parent of the child who is the subject of the petition; **OR**
  - Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of the other parent of the child who is the subject of this petition.

**FAILURE TO PLAN:**

5.  **DSCYF OR LICENSED AGENCY:** the child is in DSCYF custody or placed by a licensed agency and the Respondent(s) are not able or have failed to plan adequately for the child’s physical needs or mental and emotional health and development; **AND** at least **ONE (1)** of the following conditions are met (**CHECK ALL THAT APPLY**):

- The child has been in DSCYF custody or placed by a licensed agency for at least 1 year.
- The child has been in DSCYF custody or placed by a licensed agency for at least 6 months and the child came into care as an infant.
- DSCYF previously had custody of the child or another child of the Respondent(s).
- The Respondent(s) have a history of dependency, neglect, abuse, or lack of care of the child or another child.
- The Respondent(s) are incapable of discharging parental responsibilities due to extended or repeated incarceration (the Court may consider the Respondent(s)' postconviction conduct).

6.  **PRIVATE:** at the time of the Permanent Guardianship Hearing, the child will be a dependent child or neglected child in the Respondent(s)' care and **ALL** of the following are true:
- The Petitioner (or proposed permanent guardian) is the child's guardian, relative, or foster parent.
  - The child has resided in the Petitioner's (or proposed guardian's) home for at least 1 year.
  - The Respondent(s) failed to discharge parental responsibilities for at least 12 of the 18 months preceding the filing of the petition.
  - The Respondent(s) are unlikely to be able to remedy the dependency or neglect in the near future. **\*NOTE\*:** *in making this determination, the Court shall consider the Respondent(s)' efforts to remedy the dependency or neglect.*

**You must also include a detailed statement of why the child would be a dependent child or neglected child in the Respondent(s)' care:**

7.  **PRIOR INVOLUNTARY TERMINATION:** Respondent(s)' parental rights over another child have been involuntarily terminated in a prior proceeding.
8.  **ABUSE:** The Respondent(s) have subjected a child to torture, chronic abuse, sexual abuse, or life-threatening abuse.
9.  **UNEXPLAINED SERIOUS INJURY OR DEATH:** A child has suffered unexplained serious physical injury, near death, or death under circumstances indicating that the injuries, near death, or death resulted from the Respondent(s)' intentional or reckless conduct or willful neglect.