

PERMANENT GUARDIANSHIP INSTRUCTION PACKET



<https://courts.state.de.us/family>

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PERMANENT GUARDIANSHIP INSTRUCTION PACKET

Use the Permanent Guardianship Instruction Packet **ONLY** when:

You are at least 18 years old; **AND**

You want to be the Permanent Guardian of a child. A Permanent Guardian is a non-parent charged with caring for a minor; **AND**

You are a relative *, foster parent, guardian of the child, or an individual with whom a child in DSCYF custody is placed **; **AND**

***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 stepgrandparent of the child who is the subject of a guardianship petition (Section 2302 of Title 13).

******The child must have been placed with the petitioner for at least 6 months immediately before the filing of the petition.

Y The child is **younger than 18 years of age**. (Family Court can only grant guardianship of a minor. If you are requesting guardianship of a person who is over the age of 18, you must file your request in the Court of Chancery); **AND**

Y The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your Petition for Permanent 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 to your situation).

Only a relative, foster parent, guardian of a child, or an individual with whom a child in DSCYF custody is placed may become a Permanent Guardian. The Petitioner(s) may not be the biological parent(s) of the child. If you are not a relative, foster parent, guardian of a child, or an individual with whom a child in DSCYF custody is placed, please see the guardianship packet, termination of parental rights packet or contact an attorney for assistance.

You may file for Permanent Guardianship singly or jointly with another person. If you file jointly with another person, the other person must also be at least 18 years old.

This Instruction Packet will explain permanent guardianship as if you wanted to file for permanent guardianship of one child. If you would like to have permanent guardianship of more than one child and all of the children have the same mother **AND** the same father, you may file for permanent guardianship of all of the children on the same petition. Please note that if any of the children for which you are seeking permanent guardianship have different fathers or mothers, you must file for permanent guardianship on separate petitions. For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

HOW TO USE THE PACKET

This packet contains general information about the process of filing 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 also be found on the Family Court website at courts.delaware.gov/family.

You should read the instructions and look at the sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand in ink or typed. **ONLY FILE THE FORMS THAT YOU FILL OUT.** The sample forms are simply to help you understand how to fill out the forms you intend to file. Do not file the sample forms.

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 be sure that 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.



The **EYE** icon indicates a section that should be read carefully.



The **FILE FOLDER** icon indicates a document that 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 the **Frequently Asked Questions (FAQ)** on Guardianship and Permanent Guardianship. The FAQ is located in the Resource Center in each courthouse and is available on the Family Court website at <https://courts.delaware.gov/family/faqs>. The FAQ will help you to better understand the guardianship and 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, in other words, you.
 - 🕒 The **RESPONDENT** is the person(s) answering (responding) to the Petition.
- ✓ **Remember** that just because you fill out the forms correctly does not necessarily mean that 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.**
- ✓ 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.
 - ✓ 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 need a Court form notarized. The identification must be current, have a photo, the signer's physical description, and the signer's signature.
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE EXPENSIVE.**

PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- **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), 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 before the filing of the petition. Neither a parent nor a step-parent is eligible to file for Permanent Guardianship.

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 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 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.



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; **AND**
- 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 modify the contact, information or visitation portions of the Order.



Once a Permanent Guardianship is granted, a parent MAY NOT petition the Court to rescind (end) the permanent guardianship.



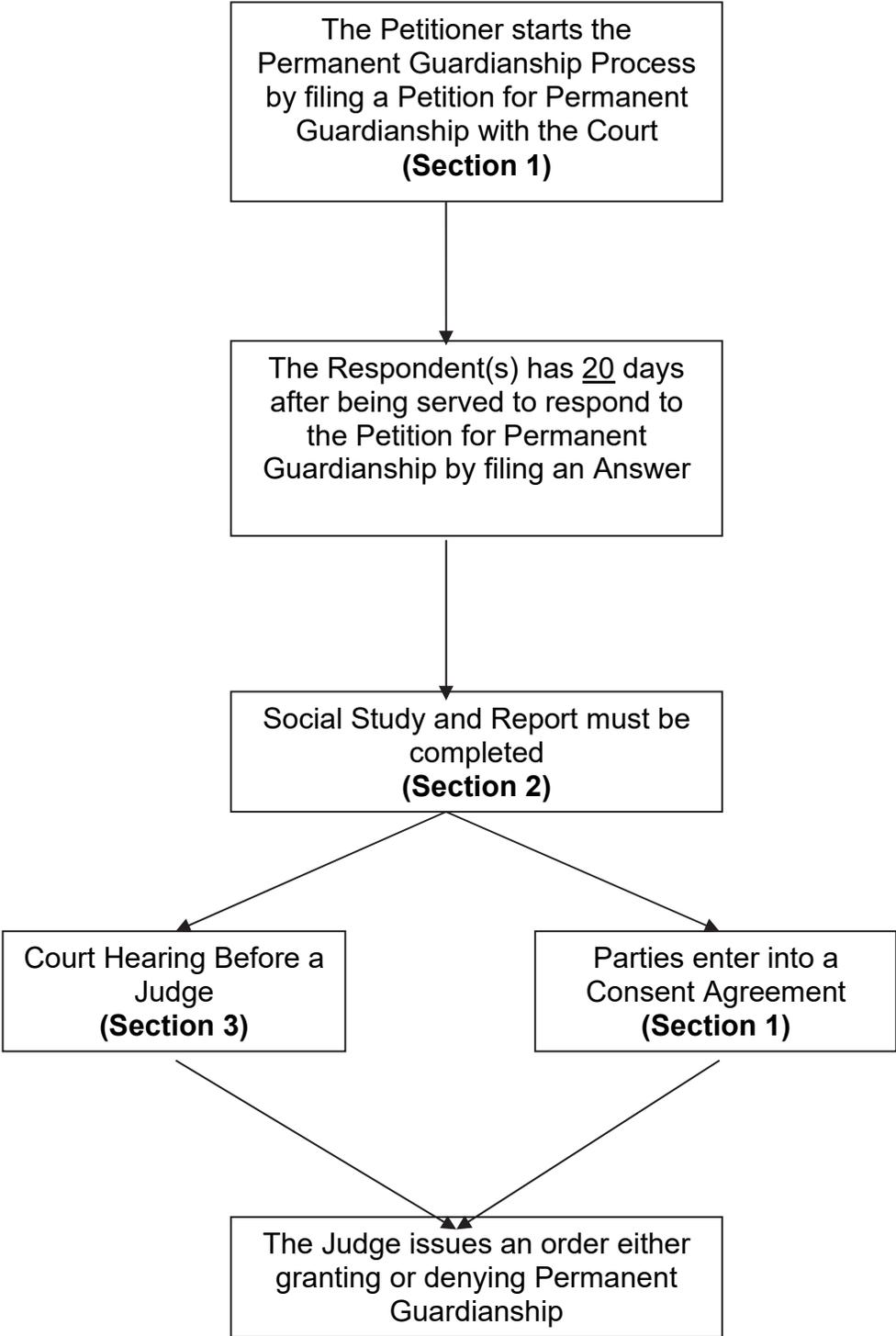
In addition, the child will continue to have the right to inherit from his or her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Permanent Guardian wishes to have the child inherit from him or her, then the Permanent Guardian must state that desire in a 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 you guardianship, you must file a separate Petition for Child Support in order for the Court to consider your request for child support.

Permanent Guardianship Process Flowchart



SECTION 1: STARTING THE PERMANENT GUARDIANSHIP PROCESS

To File for Permanent Guardianship, the following requirements must be met:

- There is **NO** current Permanent Guardianship Order in place in Delaware or anywhere else. (If there is an existing Permanent Guardianship Order regarding the child and you want to **change the Order**, see page 25); **AND**
- The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Permanent 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(s) 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 preceding the filing of the petition.



You **MUST** file the **ORIGINAL** and **ONE (1) COPY FOR EACH RESPONDENT** of each form below with the Court.

- Make a copy of each completed form for your records.
- Have your set of copies “clocked-in” for your file. Having a paper “clocked-in” means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.



Petition for Permanent Guardianship of a Minor (Form 126P)

(File the original and one copy for each Respondent)

- 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 a **non-parent** relative, foster parent, guardian, or an individual with whom a child in DSCYF custody is placed is eligible to serve as a permanent guardian. If you are a parent and would like custody of a child, please see the Custody Instruction Packet for more information.
- The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him or her of the petition. In Guardianship cases, the following people should be named as Respondent(s):
 - The natural or adoptive parents of the child;
 - Any guardian of the child or the person with whom the child is living;
 - Any Guardian ad Litem, or child attorney of the child;
 - Any organization having custody of the child (for example, the Division of Family Services).

If you fail to notify the necessary parties, your petition may be deficient and you may have to start the process over.

- There will likely be more than one Respondent listed on your Petition for Guardianship.
- You **MUST** list **BOTH** of the natural parents as Respondents, even if one of the parents has never had any contact with the child. If the child lives with a step-parent, you must list the natural parent, not the step-parent as the Respondent. For example, if the child lives with his mother and step-father and has had no contact with his natural father, you must name mother and father, not step-father, as the Respondents on your petition.
- If one or both parents are deceased, list the deceased parent(s) as Respondent(s), indicate on the petition that he or she is deceased and the date of death.
- If the Respondent(s) **voluntarily consent** to the permanent guardianship, they must each complete an **Affidavit of Consent of a Child's Parent** (Form 202P). For more information, please see page 17.

- If the child over which you would like to have permanent guardianship is **14 years of age or older**, the child must fill out an **Affidavit of Consent of Child 14 Years of Age or Older** (Form 201P), agreeing to the permanent guardianship. For more information, please see page 16.
- You must sign your Petition for Permanent Guardianship in the presence of a notary public or authorized Court staff.

Grounds for Permanent Guardianship

- When alleging facts in your Petition for Guardianship, you must indicate at least one Ground for Permanent Guardianship for each child. The Petition for Permanent Guardianship lists the grounds and you should place an “x” in front of all the grounds that apply. The grounds can be found in Appendix A of this Instruction packet and can be found on the last three pages of the Petition for Permanent Guardianship.

Custody Separate Statement (Form 346) (*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>
- The Custody Separate Statement explains to the Court a child’s past and present living arrangements, so that the Court can determine if it has authority to decide your Petition for Permanent Guardianship. If all of the children included in your petition have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if the children have **lived apart** from each other sometime during the past five years, you must complete a separate form for each child. For example, if last year, one child resided with one parent and one child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.

Information Sheet (Form 240) (*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>
- This form provides the Court with general information about the parties, which allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.



Permanent Guardianship Order of Reference (Form 110PG)

(File one original and one copy for each Respondent)

- 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>
- The Order of Reference is a form that includes information about the agency chosen and an Order for the Judge to sign.
- On the Order of Reference, you will list the name of the licensed child-placing agency that you have selected to complete the Social Study and Report.
- Once you have completed this form and submitted it to the Court, along with the other forms, a Judge will sign it. A Clerk of Court will then forward the Order to the agency you have selected. The agency can then begin preparing the social study and report.
- You **MUST** pay the licensed child-placing agency to complete the Social Study and Report. This is not a Court fee and cannot be waived by the Court. You are responsible for the entire cost of preparing the Social Study and Report.
- The Social Study and Report can be very expensive so you might want to find out how much different agencies charge before deciding which one to use.
- The agency preparing the Social Study and Report has 4 months 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.**

BELOW ARE OPTIONAL FORMS

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

 **If you do not know where Respondent(s) lives, file: Affidavit that a Party's Address is Unknown (Form 241)**

(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>
- You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **try to locate** him or her. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If, after looking for the Respondent(s), you cannot find his or her current address, you must complete this form. **Do not complete** this form until you have made an effort to locate the Respondent(s).
- You must complete this form before notice of the matter is published in the newspaper or on the Court's legal notice website. Please see page 20 for more information regarding Notice by Publication.

If all parties agree on the permanent guardianship, file:

 **Consent Order-Permanent Guardian of the Person (Form 124P)**
(File one 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>
- File this document only if you and the Respondent(s) have already agreed upon the permanent guardianship.
- On this form, you will describe for the Court the following things:
 - Who shall have permanent guardianship of the child(ren).
 - Whether Respondent(s) shall have visitation with the child(ren).
 - What that 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.

- All Petitioners and Respondents must sign and notarize the Consent Order. If the minor child is over the age of 14, the child must also sign 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 interests of the child, then he or she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Judicial Officer signs the Consent Order, the Court will mail a copy of the signed order to you and the Respondent(s).
- If you are submitting a Consent Order, you must also submit the following forms:
 - Affidavit of Consent of Child 14 Years of Age or Older (if the child is 14 or over)
 - Affidavit of Consent of a Child's Parent (file one for each parent)

If the child(ren) over 14 agree to the permanent guardianship, file:

Affidavit of Consent of Child 14 Years of Age or Older (Form 201P)

(File the original and one copy for each Respondent)

- 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 a child is 14 years of age or older, he or she must file an Affidavit of Consent stating that he or she is in agreement with you becoming his or her permanent guardian.
- If the child does not agree with the permanent guardianship, you must explain to the Court why the permanent guardianship should be granted over the child's objection.
- The child must sign the Affidavit of Consent in the presence of a notary or court staff.
- If you are requesting permanent guardianship of more than one child over the age of 14, you must have each child complete his or her own Affidavit of Consent.

If the Parent(s) agree to the permanent guardianship, file:

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

(File the original and one copy for each Respondent)

- 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 one, or both, of the child's parents agree that you should be granted permanent guardianship, he or she must complete an Affidavit of Consent, stating that he or she agrees.
- Each parent must complete their own Affidavit of Consent.
- The parent must sign the Affidavit of Consent in the presence of a notary or court staff.
- If both parents agree, you should also file **Consent Order - Permanent Guardian** (Form 124P)

If Respondent(s) is in the military, file:

 **Waiver of Rights under the Servicemembers' Civil Relief Act (Form 420)**

(File the original and one copy for each Respondent).

- 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 the Respondent(s) is in the military, the Respondent(s) must file an Answer, an Affidavit of Appearance or **YOU** must have the Respondent(s) sign a Waiver of Rights under the Servicemembers' Civil Relief Act. If the Respondent(s) does not file one of these documents, you must file a **Motion to Appoint an Attorney**. You should start this process as soon as possible because it takes time. The Court will not schedule your guardianship hearing until you complete this process. Instructions on completing a Motion to Appoint an Attorney may be found in the Resource Center in each courthouse.
- If there are multiple Respondents who are in the military, you must file a separate form for each Respondent.



BE SPECIFIC WHEN COMPLETING THE FORMS and make sure that you address **ALL** of the grounds beginning on page 5 in your petition. Grounds can also be found beginning on page 27 of this instruction packet. When you complete a form, write in blue or black ink **AND** write neatly.



WHERE TO FILE

File the forms at the Family Court **in the County where the child currently lives or the county in which a parent of the child currently lives**. If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- 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 petition and required forms by email. The required forms are those referenced beginning on page 18 in this packet. To file by email, you must send the petition and required forms to: 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>



A filing fee is charged for each petition that is filed. **If filing in person**, the filing fee can be paid in cash, by credit card, by check or by money order made payable to “Family Court.” **If you are filing by email**, you may only pay by credit card. Family Court staff will call you for credit card information. It is important that you include your phone number in the email communication to the Court. **Your petition will not be considered filed until the filing fee is paid.** If you are unable to pay by credit card, you may file by mail enclosing a check or money order with your petition. **If you are filing by mail**, you may only pay by check or money order. There may be additional costs if you must publish notice of this action.

➤ **CAN THE FEE BE SOMETIMES WAIVED?**

You may qualify for an administrative fee waiver under the following circumstances:

- You currently have, or had in the past, a Protection From Abuse (PFA) Order against any of the respondents you are naming in this petition.
- You are filing this guardianship petition with a letter of support from the Division of Family Services (DFS).
- You or an immediate household member are currently receiving means-tested governmental assistance, such as TANF (cash assistance/welfare), SNAP (Food Stamps), SSI, or low-income/subsidized housing.

If you believe one of the three above circumstances apply to you, please fill out Form 680- Petitioner's Unsworn Declaration in Support of Waiver of Fees.

If you are represented by a Qualified Legal Services Provider such as Community Legal Aid Society Inc. (CLASI), Delaware Volunteer Legal Services (DVLS), or Legal Services Corporation of Delaware (LSCD), your attorney can file Form 681-Counsel's Certification for Waiver of Fees on your behalf.

If you do not qualify for any of the above, but feel your financial situation makes it difficult for you to pay the costs, fill out an Affidavit in Support of Application to Proceed in Forma Pauperis (fee waiver), Form 257P. This is a detailed financial information form, which requires supporting documentation of your financial situation, and requests that the Court consider waiving the filing fees associated with filing this Petition because you believe that your financial situation makes it difficult for you to pay the costs.

ADDITIONAL INSTRUCTIONS



SERVICE OF PROCESS AND PUBLICATION

- **Each** Respondent **must receive** a copy of the Petition for Permanent Guardianship. The delivery of the Petition for Permanent Guardianship and any other forms you file is called **Service of Process**. The way that you accomplish Service of Process depends on how much information you can provide the Court about where the Respondent(s) lives. Determine from the following options how Service of Process should be accomplished in your case.
 - **The Respondent Lives in Delaware and You Know His or Her Address**
 - If the Respondent lives in Delaware **AND** you know his or her address, a **Process Server** (someone whose job involves delivering Court papers) will give a copy of your petition and other papers to the Respondent(s). This is called **Personal Service** and the Court will do this for you.
 - **The Respondent Does Not Live in Delaware and You Know His or Her Address**
 - If a Respondent(s) does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers via certified mail, return receipt requested, to the Respondent(s). The Court will publish, **AT YOUR EXPENSE**, legal notice of your petition in 1 or more newspapers for three consecutive weeks or will publish notice on the Court's legal notices website.
 - **You Do Not Know Where the Respondent Lives or Works**
 - If you do **NOT** know where a Respondent lives or works so that the Process Server can deliver your petition to that Respondent, The Court will publish **AT YOUR EXPENSE** a legal notice of your petition in 1 or more newspapers for 3 consecutive weeks in the county and state where the Respondent's last known address was located or will publish notice on the Court's legal notices website. You must also complete an **Affidavit that Address is Unknown** (Form 241).



THE ANSWER

Answer (Form 499) (*File the original and one copy*)

- Once the Respondent(s) has been served with the Petition for Permanent Guardianship, each Respondent(s) has **20 days** from the date of service (the date that the court papers are delivered to the Respondent(s) to respond by filing an **Answer** to your Petition for Permanent Guardianship. If there is more than one Respondent in your case, each Respondent must file his or her own separate Answer. You should receive a copy of the Respondent's Answer in the mail.
- On the Answer to your Petition for Permanent Guardianship, the Respondent(s) must **admit** (agree with) or **deny** (disagree with) each of the statements you made in your petition. The Respondent(s) may explain why he or she disagrees with the statement.



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

***Sample forms were created as a guide to assist you in
completing the forms. They are not true
and actual people and cases.**

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 you and the child, which will **help the Court determine whether you 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 child's parents and the child. The worker will then write a report and submit it to the Court.

Information included in the Report:

- 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.

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** and see the environment where the child will be living. 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 you should be awarded guardianship.



YOU must **select** a licensed child-placing agency to do the Social Report and Study. A list of child-placing agencies is available in the Family Court Resource Centers located in each courthouse. You select the agency by filing the **Permanent Guardianship Order of Reference** (Form 110PG) as described in Section 1.

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 copy to the Respondent(s)).

- 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 scheduled Permanent Guardianship 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 Continuance, you must contact each of the Respondent(s) regarding the continuance and then **tell the Court in your motion how the Respondent(s) feels about the continuance**. Because the law is very strict when it comes to rescheduling, 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 dismiss your petition or enter an order granting the Respondent(s) everything that he or she wants.

THE DAY OF THE HEARING

- If the Respondent(s) has not filed an answer or otherwise appeared in the permanent guardianship matter, complete the following form and bring it to Court with you on the day of your hearing.

Affidavit of Non-Military Service (Form 405). (File the 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>
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this Guardianship matter.
- If there is more than one Respondent, you must complete a separate form for each person.

 The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Respondent(s) 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 that 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 has also developed a series of Frequently Asked Questions to help you prepare and organize for your Court Hearing. It will be helpful to read this information before your scheduled hearing. This information is available in the Resource Centers located at each courthouse and on the Family Court website.

 Unless the parent(s) consent to the permanent guardianship, it is up to **YOU** at the hearing to prove that the grounds for Permanent Guardianship are met. These grounds are explained in Appendix A of this packet. Review that information before the hearing, so that you are prepared to present your case to the Court.

Because a parent's parental rights are not terminated when permanent guardianship is granted, the parent(s) may still be entitled to contact with the child. At the hearing, you should also be prepared to present evidence or testimony regarding how much **contact** the parent(s) should have with the child and how much **information** you as the guardian will be required to provide to the parent(s) if the guardianship is granted. Be aware of the following information when preparing for the hearing:

- Contact with the child can include contact by mail, telephone and e-mail, as well as visitation.
- Before the hearing, consider the length, frequency and location of any possible visitation. The Court will determine whether visitation is in the best interest of the child.



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 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 Respondent(s) 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 Respondent(s) 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 you become the permanent guardian of a child, you 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.