



# Senior Supplement

An Educational Service of Legal Resources for the Elderly Program

1-800-876-6657

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## Kinship Guardianships

For more information call LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque)

### What is a Kinship Guardianship?

A Kinship Guardianship gives an adult, appointed by the district court, the power to make health, educational and other decisions on behalf of a minor child. The purpose of the Kinship Guardianship is to provide a child with a kinship caregiver that will enable the child to develop physically, mentally and emotionally when the child's parents are not willing or able to provide such an environment for the child themselves.

Kinship Guardianships require court appearances and the appointment of a guardian ad litem (an attorney that represents the interests of the child) during the proceedings. The child's parent or parents, and/or the child's current caregiver must be notified of the proceedings.

### What is a Kinship Caregiver?

A kinship caregiver is an adult over the age of 21 who:

- has a relationship with the child, either by being a relative, a god-parent, a member of the child's tribe or clan, or by having a close association with the child; and

- provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent.

### Why does a child need a Kinship Guardian?

As a minor, a child may not make decisions

regarding health care, education and other matters. Generally these important decisions are made by the child's parents. When a child's parents are not able or willing to make these decisions, a Kinship Guardian can be appointed to make these decisions on behalf of the child.

### How is a Kinship Guardian chosen?

A petition is filed in the district court by:

- a kinship caregiver;
- by a caregiver over 21 nominated by the child, if the child is over 14 years of age; or

- by a caregiver designated by the parent in writing, indicating that the parent understands the effect of the guardianship, that the parent has the right to be served with the petition and notices of hearings in the action, and that the parent may appear in court to contest the guardianship.



### What rights and duties does a Kinship Guardian have?

A Kinship Guardian has the legal rights and duties of a parent except for the right to consent to adoption of the child, and except for any parental rights and duties that the court orders retained by a parent. Unless otherwise ordered by the court, a Kinship Guardian has authority to make all decisions regarding visitation between a parent and a child.

### **Can a Kinship Guardian qualify for benefits or financial assistance?**

Yes, in some circumstances, both relative and non-relative Kinship Guardians can qualify for benefits or financial assistance.

These may include Medicaid, private health insurance, food stamps, social security or veterans benefits. A Kinship Guardian's ability to qualify for benefits or assistance may be affected by the policies of the different agencies and companies based on individual situations. You should contact the relevant agency or company to find out if you as a Kinship Guardian can qualify for any benefits or assistance. Sometimes, a court may order the child's parent to pay the reasonable costs of support and maintenance of the child if that parent is financially able to pay.

### **What consideration is given to the child's wishes in the appointment of a Kinship Guardian?**

The court will consider the opinion of a child who has reached 14 years of age. The court will appoint a Kinship Guardian nominated by the child unless the nomination is contrary to the best interests of the child. Additionally, a court will not appoint a person as Kinship Guardian if a child (who is 14 or older) objects to the appointment in writing before that person has accepted the guardianship.

### **How is a Kinship Guardianship revoked?**

A Kinship Guardianship can be revoked by any person, including the child who has reached 14 years of age, by telling the court why the change is needed. A petition to revoke must also include a plan to help the child adjust either to moving back in with the parents, or in with a new guardian.

### **What other ways can a caregiver be authorized to make decisions for a child?**

Other ways for a non-parental caregiver to have decision-making power on behalf of a

child are through a parental power of attorney, a caregiver's authorization affidavit, custody, and adoption.

### **What is Parental Power of Attorney?**

A power of attorney is signed by a parent, giving an adult decision-making authority for the child. The Power of Attorney automatically expires after six months, and the parents retain all rights regarding the child.

### **What is a Caregiver's Authorization Affidavit?**

Unlike a POA, which must be signed by a parent, a CAA needs only to be signed by the caregiver and notarized. The CAA gives the caregiver authorization to enroll a child in school, and to authorize school-related medical care. A CAA may also give authorization to the caregiver for the child's other medical, dental or mental health care. The CAA does not change any parental rights, and does not give the caregiver legal custody of the child. The CAA is only valid for one year after signing. A new affidavit can be signed when the first expires. If a parent has made a different decision about the child's care than the caregiver, the parent's wishes will be followed unless that decision endangers the life, health, or safety of the child.

### **What is legal custody?**

Legal custody is ordered by the court, and, depending on the situation, may have no effect on parental rights. Before custody will be granted to a non-parent, the non-parent must show the court substantial evidence that the parent is unfit either through abuse or neglect of the child.

### **What is adoption?**

Adoption is a permanent change that completely terminates all parental rights. The adoptive caregiver becomes the child's legal parent.

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