

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

**PENAL CODE §993
INFORMATION PACKET**



FORMS INCLUDED IN THIS PACKET

Guardianship Pamphlet	Judicial Council Form #GC-205
AB 2380 PC 993 Information Sheet	Judicial Council unnumbered form

GUARDIANSHIP PAMPHLET

(FOR GUARDIANSHIPS OF
CHILDREN IN THE
PROBATE COURT)

This pamphlet provides basic information about probate guardianships for children. It includes general information about court procedures, the duties and responsibilities of probate guardians, and other helpful material to assist you in fulfilling the obligations of a guardian. (For information about becoming a guardian of a dependent or ward of the Juvenile Court, you should consult the separate pamphlet on that subject.) Further information about probate guardianships may be obtained from an attorney, the Probate Code, and private publications and resources. You should also consult the court or the court clerk's office regarding special procedures or rules in your county.

What is Guardianship?

Guardianship is a court process by which a person other than a parent is given custody of a child or authority over a child's property. Appointment as guardian requires the filing of a petition and approval by the court. This pamphlet will provide you with some basic information about guardianships. If the court establishes a probate guardianship, the guardianship may be:

- A guardianship of the person of the child (custody);
- A guardianship of the child's "estate" (property); or
- Both.

If the court appoints you as a guardian for a child, you will assume important duties and obligations. You will become responsible to the court. It is essential that you clearly understand your duties and responsibilities as guardian. If you have any questions, you should consult with an attorney who is qualified to advise you in these matters.

What is a Legal Guardian?

A legal guardian is an adult to whom the court has given authority and responsibility to provide care for a child, or to manage the child's assets, or both.

Who May Be Legal Guardians?

Relatives, friends of the family, or other interested persons may be considered as potential legal guardians.

Before You File the Petition

Before you file a petition for guardianship, you should consider the following:

- Is a guardianship really necessary?
- Have you considered the alternatives?
- Do the parents consent to the guardianship?
- Without parental consent, is there enough evidence for you to prove the need for a guardianship?
- Do you need legal advice or assistance?

Some Alternatives to Guardianship

Private agreements – You can make a private agreement with the child's parents to provide care for the child. A written agreement can be made showing that you have "custody" of the child with the parents' consent. Normally it is also beneficial to secure a medical release for emergencies, especially if a parent is not readily available. *Note: The parents may revoke this type of agreement at any time.*

Caregiver's Authorization Affidavit – The California Family Code allows a person who is related to a child to fill out a *Caregiver's Authorization Affidavit*. The affidavit normally allows that person, as a caregiver, to enroll the child in school and secure medical treatment for the child.

You may read Family Code section 6550 for details about this law. The caregiver form may be available through your local county clerk's office, through private legal publications, or from a private attorney. *Note: The parents may revoke your authority or override your decision under this type of agreement at any time.*

Other financial arrangements – The law allows parents to make other financial arrangements for property inherited by or given to their children. For instance, a blocked account and other protective measures can be used without the appointment of a guardian of the estate. Consultation with an attorney for these types of matters is highly recommended.

Note: Some financial institutions, insurance companies, and courts require the appointment of a guardian of the estate before they will release funds on behalf of a minor.

THE PROCESS – BRIEFLY

If you decide that a child needs a probate guardianship, the first step in the process of establishing guardianship is to fill out and file the petition and other required documents with the clerk of the court. Some counties have additional "local forms" that need to be filed along with the standard forms.

Any interested party or the child, if 12 years or older, may file the petition. Specific persons must be given notice of the petition, unless excused by the court, before the court can hear the case.

The court may order that an investigation be completed before it makes its decision. If this occurs, you, the child, and any other persons deemed essential will probably be contacted about the case. The investigator will give the court a report and make a recommendation on what should occur. At that stage, the case may go to trial. The court may grant the petition or may find that there are insufficient grounds to establish a guardianship.

There is a fee for filing a guardianship petition. In addition, you may be charged a fee for a guardianship investigation. If neither you nor the child's estate can afford to pay the fees, you may request that the court waive the fee requirement. The court clerk can provide you with a fee waiver form.

GUARDIANSHIP OF THE PERSON

The probate court may appoint a *guardian of the person* for a child when no parent is available to meet the needs of the child because of the parents' death, incapacity, abandonment, military obligations, or other reasons.

Fundamental Responsibilities – The guardian of the person of a child has the care, custody, and control of the child. As guardian, you are responsible for providing for food, clothing, shelter, education, and all the medical and dental needs of the child. You must provide for the safety, protection, and physical and emotional growth of the child. Like a parent, you should maintain close contact with the child's school and physician.

Raising children is not always easy. You should become familiar with community resources that can assist both you and the child. You may get help and information from a support group for guardians.

Custody – As guardian of the person of the child, you have full legal and physical custody of the child and are responsible for all decisions relating to the child. The child's parents can no longer make decisions for the child while there is a guardianship. The parents' rights are suspended—not terminated—as long as a guardian is appointed for a minor. If you wish, you may ask the parents for their opinions about matters relating to the child.

Education – As guardian of the person of the child, you are responsible for the child's education. You determine where the child should attend school. As the child's advocate within the school system, you should attend conferences and play an active role in the child's education. For younger children, you may want to consider enrolling the child in Head Start or other similar programs. For older children, you should consider their future educational needs such as college or a specialized school. You must assist the child in obtaining services if the child has special educational needs. You should help the child in setting and attaining his or her educational goals.

Residence – As guardian, you have the right to determine where the child lives. The child normally will live with you, but when it is necessary, you are allowed to make other arrangements if they are in the best interest of the child. You should obtain court approval before placing the child back with his or her parents.

As guardian, you **do not** have the right to change the child's residence to a place outside California unless you first receive the court's permission. If the court grants permission, California law requires that you establish legal guardianship in the state where the child will be living. Individual states have different rules regarding guardianships. You should seek additional information about guardianships in the state where you want the child to live.

Medical treatment – As guardian, you are responsible for meeting the medical needs of the child. In most cases, you have the authority to consent to the child's medical treatment. However, if the child is 14 years or older, surgery may not be performed on the child unless either (1) both the child and the guardian consent or (2) a court order is obtained that specifically authorizes the surgery. This holds true except in emergencies.

A guardian may not place a child involuntarily in a mental health treatment facility under a probate guardianship. A mental health conservatorship proceeding is required for such an involuntary commitment. However, the guardian may secure counseling and other necessary mental health services for the child. A variety of counseling services is available to

help children. As guardian, you are expected to secure necessary services, cooperate with counselors, and maintain regular contacts with the child's treatment providers.

The law allows older and more mature children to consent to their own treatment in certain situations, such as outpatient mental health treatment, medical care related to pregnancy or sexually transmitted diseases, and drug and alcohol treatment.

Community resources – There are agencies in each county that may be helpful in meeting the specific needs of children who come from conflicted, troubled, or deprived environments. If the child has special needs, you must strive to meet those needs or secure appropriate services. Some children may have physical or learning disabilities. Other children come from abusive homes or have been victims of abuse. Counseling and other services may be necessary to assist a child who has special needs or has had unpleasant life experiences. If you need assistance, you should check with the court or with your local child protective services agency for a referral to agencies that can help you and the child.

Financial support – Even when the child has a guardian, the parents are still obligated to support the child financially. The guardian may take action to obtain child support. You may contact the local child support agency in your county to collect support from a parent. The child may also be eligible for Temporary Aid for Needy Families, TANF, formerly known as AFDC, social security benefits, Veterans Administration benefits, Indian child welfare benefits, and other public or private funds.

Visitation – The court may require that you allow visitation or contact between the child and his or her parents. The child's needs often require that the parent-child relationship be maintained, within reason. However, the court may place restrictions on the visits, such as the requirement of supervision. The court may also impose other conditions in the child's best interest.

Under most circumstances, it is best for you to have a working relationship with the parents if possible. However, in every case, you must follow all orders of the court, including those that may restrict contacts and visitation.

Driver's license – As guardian of the person, you have the authority to consent to the minor's application for a driver's license. If you consent, you will become liable for any civil damages that may result if the minor causes an accident. The law requires that anyone signing the DMV application obtain insurance to cover the minor.

Enlistment in the armed services – The guardian may consent to a minor's enlistment in the armed services. If the minor enters into active duty with the armed forces, the minor becomes emancipated under California law.

Marriage – For the minor to marry, the guardian **and the court** must give permission. If the minor enters a valid marriage, the minor becomes emancipated under California law.

Change of address – A guardian must notify the court in writing of any change in the address of either the child or the guardian. This includes any changes that result from the child's leaving the guardian's home or returning to the parent's home. You **must** always obtain **court permission** before you move the child to another state or country.

Court visitors and status reports – Some counties have a program which "court visitors" track and review guardianships. If your county has such a program, you will be expected to cooperate with all requests of the court visitor. Also, as guardian, you may be required to fill out and file status reports. In all counties, you must cooperate with the court and court investigators.

Misconduct of the child – A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused the use of a firearm. If you are concerned about your possible liability, you should consult an attorney.

Additional responsibilities – The court may place other conditions on the guardianship or additional duties upon you, as guardian. For example, the court may require the guardian to complete counseling or parenting classes, to obtain specific

services for the child, or to follow a scheduled visitation plan between the child and the child's parents or relatives. As guardian, you must follow all court orders.

Termination of guardianship of the person – A guardianship of the person automatically ends when the child reaches the age of 18, is adopted, marries, is emancipated by court order, enters military service, or dies. If none of these events has occurred, the child, a parent, or the guardian may petition the court for termination of guardianship. But it must be shown that the guardianship is no longer necessary or that termination of the guardianship is in the child's best interest.

GUARDIANSHIP OF THE ESTATE

If the court appoints you as guardian of the child's estate, you will have additional duties and obligations. The money and other assets of the child are called the child's "estate." Appointment as guardian of a child's estate is a solemn matter. It is taken very seriously by the court. The guardian of the estate is required to manage the child's funds, collect and make an inventory of the assets, keep accurate financial records, and regularly file financial accountings with the court. The use of an attorney for legal advice in managing the estate is recommended.

MANAGING THE ESTATE

Prudent investments – As guardian of the estate, you must manage the child's assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make speculative or risky investments.

Keeping estate assets separate – As guardian of the estate, you must keep the money and property of the child's estate separate from everyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is a **guardianship** account and not your personal account.

You should use the child's social security number when opening estate accounts. You should never deposit estate funds in your personal account or otherwise mix them with your own funds or anyone else's funds, even for brief periods.

Securities in the estate must be held in a name that shows that they are estate property and not your personal property.

Interest-bearing accounts and other investments – Except for checking accounts intended for ordinary expenses, you should place estate funds in interest-bearing accounts. You may deposit estate funds in insured accounts in federally insured financial institutions, but you should not put more than

\$100,000 in any single institution. You should consult with an attorney before making other kinds of investments.

Blocked accounts – A *blocked account* is an account with a financial institution in which money or securities are placed. No person may withdraw funds from a blocked account without the court's permission.

Depending on the amount and character of the child's property, the guardian may elect **or the court may require** that estate assets be placed in a blocked account. As guardian of the estate, you must follow the direction of the court and the procedures required to deposit funds in this type of account. The use of a blocked account is a safeguard and may save the estate the cost of a bond.

Other restrictions – As guardian of the estate, you will have other restrictions on your authority to deal with estate assets. Without prior court order of the court, you may not pay fees to yourself or your attorney. You may not make a gift of estate assets to anyone. You may not borrow money from the estate. You may not use estate funds to purchase real property without prior court order.

If you do not obtain the court's permission to spend estate funds, you may be compelled to reimburse the estate from your own personal funds and may be removed as guardian. You should consult with an attorney concerning the legal requirements relating to sales, leases, mortgages, and investment of estate property.

If the child of whose estate you are the guardian has a living parent or if that child receives assets or is entitled to support from another source, you must obtain court approval before using guardianship assets for the child's support, maintenance, or education. You must file a petition or include a request for approval in the original petition, and set forth which exceptional circumstances justify any use of guardianship assets for the child's support. The court ordinarily will grant such a petition for only a limited period of time, usually not more than one year, and only for specific and limited purposes.

INVENTORY OF ESTATE PROPERTY

Locate the estate's property – As guardian of the estate, you must locate, take possession of, and protect the child's income and assets that will be administered in the estate. You must change the ownership of all assets into the guardianship estate's name. For real estate, you should record a copy of your *Letters of Guardianship* with the county recorder in each county where the child owns real property.

Determine the value of the property – As guardian of the estate, you must arrange to have a court-appointed referee determine the value of the estate property unless the appointment is waived by the court. You, rather than the referee, must determine the value of certain "cash items." An attorney can advise you about how to do this.

File an inventory and appraisal – As guardian of the estate, you must file an inventory and appraisal within 90 days after your appointment. You may be required to return to court 90 days after your appointment as guardian of the estate, to ensure that you have properly filed the inventory and appraisal.

INSURANCE

Insurance coverage – As guardian of the estate, you should make sure that there is appropriate and sufficient insurance covering the assets and risks of the estate. You should maintain the insurance in force throughout the entire period of the guardianship or until the insured asset is sold.

RECORD KEEPING AND ACCOUNTING

Records – As guardian of the estate, you must keep complete, accurate records of each financial transaction affecting the estate. The checkbook for the guardianship checking account is your indispensable tool for keeping records of income and expenditures. You should also keep receipts for all purchases.

Record keeping is critical because you will have to prepare an accounting of all money and property you have received, what you have spent, the date of each transaction, and its purpose. You will also have to be able to describe in detail what is left after you have paid the estate's expenses.

Accountings – As guardian of the estate, you must file a petition requesting that the court review and approve your accounting one year after your appointment and at least every two years after that. The court may ask that you justify some or all expenditures. You should have receipts and other documents available for the court's review, if requested.

If you do not file your accounting as required, the court will order you to do so. You may be removed as guardian for failure to file an accounting.

Format – As guardian of the estate, you must comply with all state and local rules when filing your accounting. A particular format is specified in the Probate Code, which you must follow when you present your account to the court. You should check local rules for any special local requirements.

Legal advice – An attorney can advise you and help you prepare your inventories, accountings, and petitions to the court. If you have any questions, you should consult with an attorney.

OTHER GENERAL INFORMATION

Removal of a guardian – A guardian may be removed for specific reasons or when it is in the child's best interest. A guardian may be removed either on the court's own motion or by a petition filed by the child, a relative of the child, or any other interested person. If necessary, the court may appoint a successor guardian, or the court may return the child to a parent if that is found to be in the child's best interest.

Legal documents – For your appointment as guardian to be valid, the *Order Appointing Guardian of Minor* must be signed. Once the court signs the order, the guardian must take prepared *Letters of Guardianship* to the clerk's office where the clerk will issue the letters. *Letters of Guardianship* is a legal document that provides proof that you have been appointed and are serving as the guardian for a minor. You should obtain several certified copies of the *Letters* from the clerk.

These legal documents will be of assistance to you in the performance of your duties, such as enrolling the child in school, obtaining medical care, and taking care of estate business.

Attorneys and legal resources – If you have an attorney, the attorney will advise you on your duties and responsibilities, the limits of your authority, the rights of the child, and your dealings with the court. **If you have legal questions, you should consult with your attorney.** Please remember that the court staff cannot give you legal advice.

If you are not represented by an attorney, you may obtain answers to your questions by contacting community resources, private publications, or your local law library.

ARRANGING CHILD CARE AND CUSTODY IF YOU ARE IN JAIL OR PRISON

If you have sole custody of your child, this handout lists a few options for arranging to have someone else to take care of your child if you can't.

If you haven't been able to make a phone call, ask your attorney to get a court order allowing you to make emergency calls to find your child and arrange for your child's care.

Whatever option(s) you pick, consider whether you want your child to visit you if you go to jail or prison and how to make sure that will happen.

1. Caregiver's Authorization Affidavit (Family Code, §§ 6550–6552)

If you're not able to do anything except make a phone call or two to arrange for your child's care, then this option might work best for you.

If an adult relative—including your child's noncustodial parent—or a trusted friend is willing to have your child live with them and take care of your child, that person can get legal authority to make some child care decisions in California. An adult caregiver who fills out and signs a Caregiver's Authorization Affidavit can then enroll your child in school and consent to school-related medical care. If a child's adult *relative* caregiver completes the affidavit, that person can also consent to other medical and dental care for your child. A sample form is available at www.courts.ca.gov/documents/caregiver.pdf.

Even though the caregiver will have authority to make some decisions, you keep your right to make decisions for your child. This means that you can override (veto) any decision the caregiver makes. You may revoke (cancel) the authorization at any time.

After you contact someone who agrees to care for your child, you won't need to do anything else. The caregiver needs to complete the affidavit. More information about a Caregiver's Authorization Affidavit is available online at www.courts.ca.gov/1210.htm.

2. Power of Attorney for Care of Minor Child

If you have access to a computer or paper and a pen, you may be able to make more detailed arrangements for an adult relative—including your child's noncustodial parent—or a trusted friend to care for your child. If you want the caregiver to make other types of decisions, or if your child lives or travels outside California, the affidavit discussed in #1 won't be enough. You will need to create a *power of attorney* (POA), a document that tells everyone who reads it that you have authorized the caregiver to make the decisions listed.

If you pick this option, you and the caregiver will need to decide what decisions you want the caregiver to make for your child. You can be very specific. For example, you may want the caregiver to register your child for school but not to be able to consent to the child's medical or dental care except in an emergency. Or you may want to allow a nonrelative caregiver to consent to some or all of your child's medical or dental care.

You do not need to go to court to create a POA, but you do need to sign it in front of a notary. You will still have the right to make all decisions for your child, too, unless you give up that right in writing on the POA. You may revoke (cancel) the POA at any time.

Additional information about a POA for child care is available online at www.courts.ca.gov/1210.htm. You can find free sample forms for creating a POA by searching “California power of attorney minor child” online. The law does not require you to use any specific form to create a POA for child care. But if you don’t write down all the decisions you want to allow the caregiver to make, some businesses or government agencies, including schools, might not let the caregiver make those decisions.

3. Guardianship of the Person (Probate Code, §§ 1510, 1514 & 2351)

If you want a more formal custody and care arrangement, you have a couple of options. If your child will live with his or her noncustodial parent, that parent can ask the family court for a custody order. If your child will live with another relative or a friend, your relative or friend can ask the probate court to appoint them as your child’s legal guardian.

The Judicial Council’s [Guardianship Pamphlet](#) (form GC-205) discusses alternatives to guardianship, how to ask the court to establish a guardianship, the guardian’s responsibilities for child care and custody, and what to do if your child has property. The court should have copy of the pamphlet for you.

It is important to know that if a guardian is appointed, you won’t have the legal right to make any decisions for your child as long as the guardianship lasts. The guardian alone will have the right to make those decisions. And, even if you ask and the guardian agrees, the court can only end a guardianship if that would be in the child’s best interest. In addition, after your child has lived with a guardian for two years or more, the court can permanently take away (terminate) your parental rights and permit the guardian to adopt your child.

4. TrustLine Provider Registration

You can try to learn more about a person before you ask them to take care of your child or arrange for your child to live with them. This is especially useful if you need to hire a professional caregiver.

One way to get more information is to check whether the care provider is registered on *TrustLine*. *TrustLine* is California’s registry of in-home child care providers. All caregivers listed on *TrustLine* have been fingerprinted and passed a background check by the California Department of Justice. This means that they have no criminal convictions or substantiated child abuse reports in California that would make it illegal for them to take care of children.

All professional child care providers should be registered on *TrustLine*. You can check whether a provider is registered by calling 800-822-8490. You’ll need to give the person’s full name and driver’s license number. More information about *Trustline* is available online at <http://trustline.org/>.