

Family Preparedness

Helping immigrant families prepare for their children's future



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Immigration Concerns

- With the current immigration climate, many families with mixed immigration status are faced with the harsh reality that they could be torn apart.
- Immigrant parents without lawful status or with criminal convictions are more susceptible to being detained and/or deported
- What can they do to secure their child's safety and stability in their absence?

Communication

- Advise clients to speak to their children, friends, and family and come to an agreement about who should be the caretaker for their children in the event of detention/removal from the US
- Does the parent want the children to reunite with them abroad in the future?
- Does the parent prefer to have their child stay in the United States?

Communication, cont.

- Regardless, the child will most likely be without parent for some time and the parent should decide who will care for his/her child during that time
- There are two types of caregivers:
 - Informal Caregivers
 - Legal Guardians

Informal Caregivers

- Those who have assumed responsibility for a child in need without involvement from the court system, child protective services, or other authorities
- May have physical custody of the child, but have limited rights to make decisions regarding a child in their care because they do not have legal custody

Caregiver's Affidavit

- Some parents are reluctant to give up their parental rights in this moment
- They can still hold a copy of a filled-out Caregiver's Affidavit in the event they are unavailable to make educational and medical related decisions for their child
- This Affidavit identifies an individual they consent to making these decisions

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 of age or older.

1. Name of minor: _____
2. Minor's birth date: _____
3. My name (adult giving authorization): _____
4. My home address: _____

5. I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").
6. Check one or both (for example, if one parent was advised and the other cannot be located):
 - I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care and have received no objection.
 - I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time to notify them of my intended authorization.
7. My date of birth: _____
8. My California driver's license or identification card number: _____

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Signed: _____

Legal Guardianship

- A legal process where an informal caregiver files a petition with the Probate Court to ask for legal custody of a child
- Does not terminate the child's parent's rights; rather it *suspends* a parent's rights temporarily

What are the Rights of a Guardian

- Once the court grants the guardianship petition, the caregiver becomes a Legal Guardian
- A legal guardian has the ability to act on the child's behalf and make decisions regarding the child as if the guardian were actually the child's parent

What Benefits are Available?

- Children being raised by a caregiver or legal guardian are eligible for:
 - Monthly cash assistance from CalWORKs
 - Health insurance through Medi-Cal
 - SSI (where the child has a disability)
 - Survivorship Benefits

What's the Difference?

Informal Custody vs. Legal Guardianship	
<ul style="list-style-type: none">• Parents have full rights, including the right to reclaim the child at any time	<ul style="list-style-type: none">• Parents' rights suspended and transferred temporarily to legal guardian; parent must go to court to terminate the legal guardianship before reclaiming the child
<ul style="list-style-type: none">• Child ineligible for caregiver's work insurance plans	<ul style="list-style-type: none">• Child eligible for caregiver's work insurance plans
<ul style="list-style-type: none">• Caregiver can't consent if "parent or legal guardian consent required"	<ul style="list-style-type: none">• Legal guardian can give consent
<ul style="list-style-type: none">• Parents have responsibility to financially support child	<ul style="list-style-type: none">• Parents have responsibility to financially support child

DISTINGUISH – CAREGIVER’S AFFIDAVIT

Right to care, custody, and control of minor

v.

Power to enroll minor in school and authorize
medical care

DISTINGUISH - ADOPTION

Temporary suspension of rights

v.

Permanent termination of parental rights

STANDING

- The following individuals have the legal standing to petition for appointment of guardian for minor:
 - Proposed guardian.
 - Minor child over 12 years of age.
 - Minor's parents.
 - Minor's relative.
 - Any other person on minor's behalf.

Guardian considerations

- The caretaker should be over 18
- The caretaker does not need to have lawful status him/herself
- The caretaker could be a family member or a family friend
- The caretaker must be willing to become responsible for the child until their 18th birthday
- The caretaker will need to undergo an investigation by the Probate Court (if a family member) or the Department of Children and Family Services (if not a relative caretaker)

NOTICE REQUIREMENTS: GUARDIANSHIP

Personal service at least 15 days prior to hearing to:

- Child subject to proceeding if over age 12.
- Child's parents.
- Proposed guardian.
- Child's legal custodian.

AND...

NOTICE REQUIREMENTS: GUARDIANSHIP

Mail service at least 15 days prior to hearing to:

- Paternal and maternal grandparents.
- Siblings & half-siblings over the age of 12.
- Person presently having the care of minor.
- Department of Children and Family Services*
- California Department of Social Services*

*notice is needed for this agency **ONLY** if the petitioner is not related to the minor

NOTICE REQUIREMENTS: EXCEPTIONS

Two exceptions

- Providing notice would be contrary to the interest of justice.
- Individual cannot with reasonable diligence be given notice.

GUARDIANSHIP TIMELINE

- Complete & Sign petition.
- File Petition.
- Attend hearing for appointment of temporary guardian (if necessary).
- Probate investigation / Case Review Conference.
- Provide notice.
- Attend hearing for appointment of guardian.
- File Letters of Guardianship.

ATTENDING HEARING FOR TEMPORARY GUARDIANSHIP

- Child(ren) and Petitioner(s) must attend.
- Explain necessity for temporary guardianship.
- File Order Appointing Temporary Guardian of the Minor and Letters of Temporary Guardianship.

PROBATE INVESTIGATION

- Investigation of proposed guardian's home and background.
- Type of investigation depends on relationship between child and proposed guardian.
 - If proposed guardian a relative: probate investigator.
 - If proposed guardian a non-relative: DCFS social worker.

ATTENDING HEARING FOR GUARDIANSHIP

- Child(ren) and Petitioner(s) must attend.
- File Order Appointing Guardian of the Minor and Letters of Guardianship.

WHEN DOES A GUARDIANSHIP END?

- Child turns 18.
- Child enters military.
- Child passes away.
- Child marries.
- Child emancipates.
- Court terminates guardianship