

# Legal Assistance of Western New York, Inc. ®

What is Guardianship?

We provide free legal aid to people with civil legal problems in western New York.

[www.lawny.org](http://www.lawny.org)

---

## What is Guardianship?

### **What is Guardianship?**

There are 3 types of guardianship petitions: Guardianship, Kinship Guardianship, and Standby Guardianship.

- All types of guardianship allow the guardian to have physical custody of your child and to make decisions for your child. You, as a parent, will continue to have the right to have visitation with your child.

### **Guardianship:**

Anyone with a pre-existing relationship with your child can apply for guardianship. This is often used to avoid a termination of your parental rights if your child remains in foster care or kinship care for 15 out of 22 months.

A proposed guardian files a petition with the Family Court seeking an order of guardianship. The guardian must name all persons living in their home, especially all adults over 18 years of age. They must show that none of the adults in the home has had any Child Protective proceedings or criminal convictions against them.

The petition allows the guardian to propose a successor guardian, or someone who can take over caring for the child in the event the guardian is unable to care for the child any longer. If both the guardian and the successor are unable to care for the child, he or she can become a ward of the state if no fit and willing adult is able to care for him or her.

### **Kinship Guardianship, or KinGap:**

Kinship Guardianship, or KinGap, is a special kind of guardianship. The requirements for a Kinship Guardian are as follows:

- The proposed guardian must have a pre-existing, close relationship with the child. For example, a grandparent, an aunt or an uncle, a Godparent, or a close family friend may

apply to be a Kinship Guardian.

- The proposed guardian must be a foster parent. They can either be a foster parent before becoming a placement resource for the child or they can become a foster parent while caring for the child. Either way, they must complete the foster parent training through their local Child Protective Services office.
- The proposed guardian must provide care for the child for a period of 6 months immediately before filing the Kinship Guardianship petition.

Once a Kinship Guardian is approved and appointed by the Court, they are entitled to financial benefits through the Kinship Guardianship program. They would have to apply for these financial benefits through the Child Protective office in their county.

### **Standby Guardianship:**

Standby Guardianship is a temporary grant of permission to another adult to care for and make decisions for your child. There are, typically, 2 reasons for standby guardianship:

- *Administrative Separation:* When a parent expects to be detained or jailed or receives a government notice of immigration proceedings that may temporarily separate them from their child.
- *Incapacity or Debilitation:*
  - Incapacity means the parent has a mental impairment that prevents them from understanding the nature and consequences of decisions for their children.
  - Debilitation means the parent has a medical condition that is either fatal or could prevent them from caring for their children (Example: planned surgery, treatment for chronic illness, an illness which could potentially lead to death or disability, etc.)

How to name a Standby Guardian:

The form for to name a Standby Guardian is here:

<https://www.nycourts.gov/LegacyPDFS/FORMS/surrogates/pdfs/standbygd17A.pdf>

The form must be completed and witnessed by 2 witnesses over the age of 18. The parent can name both a primary Standby Guardian and an alternate Standby Guardian. More than 1 child can be listed on the same form. If both parents do not sign the form, there must be an explanation as to why (Example: other parent is deceased or absent, having both parents sign

would be a risk to the parent's or child's safety, etc.)

Once named, if the parent needs the Standby Guardian to assume responsibility, the Standby Guardian will have 60 days to file a custody petition in the Family Court in the County where the child resides.

Last Reviewed: May 7th, 2020

---

Printed: May 9, 2021

<http://www.lawny.org/node/391/what-guardianship>

©Legal Assistance of Western New York, Inc. ®