

### **ADDITIONAL INFORMATION**

You can get more information about these programs from your child's social worker or your local child welfare agency. The following is a list of local helpful telephone numbers:

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# GUARDIANSHIP PAMPHLET

(FOR GUARDIANSHIPS OF DEPENDENT CHILDREN  
OF THE JUVENILE COURT UNDER WELFARE AND  
INSTITUTIONS CODE SECTIONS 366.25 AND 366.26)

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*This pamphlet gives basic information to individuals thinking about becoming a legal guardian of a child who has been declared a dependent of the juvenile court. This pamphlet explains how to become a guardian of these children and discusses the basic rights, duties, and obligations of a legal guardian of a dependent child. This pamphlet is for general information only. If you want additional information or have specific questions, you may want to consult with an attorney.*

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Form Adopted by the  
Judicial Council of California  
JV-350 [Rev. Jan. 1, 2001]  
Mandatory Form

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### **WHAT IS A LEGAL GUARDIAN?**

A legal guardian is a person who is given the legal authority and responsibility to care for a child. A guardian may be related or unrelated to the child.

### **HOW TO BECOME A LEGAL GUARDIAN OF A CHILD WHO HAS BEEN DECLARED A DEPENDENT OF THE JUVENILE COURT**

The juvenile court hears all matters related to a child who is a dependent of the juvenile court. In some cases, the juvenile court decides that children who have been declared dependents by the court cannot be returned safely to their parents. This decision can occur six, twelve, or eighteen months after children are removed from their parents. The child welfare agency will prepare and give to the court a report recommending a permanent plan. At this time, the court is required to make an alternate permanent plan for each child. If the court decides that the child cannot go home, the court will order adoption, guardianship, or long-term foster care as the best plan for the child.

### **HOW A LEGAL GUARDIAN MAY BE REMOVED**

Any person with an interest in the child's welfare may ask the court to have the guardian changed. A child who is 14 years or older has the right to ask to have the guardian changed. The judge will look to see if the guardian's duties have been performed properly. The judge will consider what is in the best interest of the child. A guardian can ask the court for permission to resign.

### **TERMINATION OF A LEGAL GUARDIANSHIP**

Unless terminated by court order, a guardianship ends when the child turns 18, is adopted, marries, or legally becomes emancipated.

## **WHEN GUARDIAN IS NOT RELATED** \_\_\_\_\_

In California if the child is not related to you, you can receive the same benefits whether you are the child's foster parent or legal guardian. If the child moves to another state, California will stop making payments. In addition, the other state may not offer the same assistance.

### **Aid To Families With Dependent Children Foster Care (AFDC-FC) Payments**

A legal guardian who is not related to the child may get AFDC Foster Care payments and other foster care services. If an unrelated foster parent of a child has been receiving AFDC Foster Care payments, the same payments will continue after becoming the child's legal guardian. The child's eligibility for this program will be evaluated every six months.

### **Other Available Financial Assistance**

There may be additional benefits available that do not depend on whether the child is related to the legal guardian.

Medi-Cal benefits are available for any child eligible for AFDC. A child who has other sources of income may also qualify for Medi-Cal benefits.

In the event that AFDC benefits are not allowed, the child may be eligible for Social Security benefits, Supplemental Income (SSI), or other government assistance.

You as a relative, foster parent, or interested party may be considered as a potential legal guardian. Foster parents have the right to attend all hearings or to provide any information they feel is important for the court to know. The appointment is made only after a court hearing and only after you have given your consent. There are various legal forms you will have to complete. The child welfare agency will study and write a report on your home situation before you are appointed. You will receive notice of the court hearing and, of course, have a right to be present at the hearing and to talk to the judge. The child's parents or other interested parties will have an opportunity to give their opinion on your appointment as guardian.

### **LEGAL PROCESS**

Guardians are appointed after a court hearing. These hearings may or may not be contested by parents or other interested parties. If the court decides that the proposed guardianship is reasonable and necessary, an order of guardianship will be made.

## **DIFFERENCE BETWEEN GUARDIANSHIP AND ADOPTION**

Guardianship *suspends* the rights and responsibilities of the birth parents. A child may still inherit from the parents if a guardianship exists. The court may order visitation with the parents or other relatives as a part of its decision. While a guardian has the same responsibility as a parent to care for and control a child, a guardian can be removed or the guardianship itself can be terminated by court order. A guardianship usually ends when the child becomes an adult at 18 years, but you always remain the parent of your adopted child.

Adoption ends all rights and responsibilities between the birth parents and the child, including inheritance and visitation rights. The legal relationship with all other relatives will also end. When you adopt a child, your legal relationship with that child is the same as with a child born to you. An adopted child becomes your own child in all respects.

Since adoption is the most permanent plan for a child, it is often the preferred plan. There are government programs (adoption assistance) that can provide financial help and services for children with special needs who are adopted. You may want to discuss this option with your social worker or attorney.

## **FINANCIAL ASSISTANCE AND RESOURCES**

Legal guardians may be able to get public assistance. How much assistance depends on the child's own eligibility and the child's relationship to the guardian.

### **WHEN GUARDIAN IS RELATED** \_\_\_\_\_

A relative who wishes to become a legal guardian may be able to get financial help. If the relative is already receiving aid for the child, guardianship may reduce the amount of aid.

**Before becoming a legal guardian, it is important to discuss the availability of government assistance with your attorney, if you have one, or the social worker.**

### **Aid To Families With Dependent Children Foster Care (AFDC-FC) Payments**

Although state and federal AFDC Foster Care payments may be available to a foster child living with a relative, they are *not* available to a child living with a related legal guardian. If the relative foster parent had been receiving AFDC Foster Care payments for that child before becoming the legal guardian, those payments will stop when the guardianship is granted. Any other aid or services that were available because of participation in the foster care program may also end.

### **Aid To Families With Dependent Children Family Group (AFDC-FG) Benefits**

A child living with a relative legal guardian may be eligible to receive AFDC Family Group Benefits. These benefits generally are much less than the monthly AFDC Foster Care payments. If a relative foster parent receives AFDC Family Group benefits for the relative's family, these payments may increase slightly if the relative becomes the legal guardian of the child.

### ■ **Child's Misconduct**

A guardian, like a parent, is generally liable only for harm resulting from a child's willful misconduct. The law often limits the amount of a guardian's liability for a child's willful misconduct. In some situations a guardian may also be liable for a child's negligent misconduct. A legal guardian should check with an attorney if concerned about possible liability.

### ■ **Support of Child**

Although parents remain legally responsible for the child's support, often the guardian voluntarily accepts this responsibility. Guardians may be able to receive government benefits.

### ■ **Additional Responsibilities**

In addition to these responsibilities, the judge may ask the guardian to agree to other special conditions concerning the child's welfare. For example, the judge may ask the guardian to follow specific visitation orders between the child and the child's parents.

### **DIFFERENCE BETWEEN GUARDIANSHIP AND LONG-TERM FOSTER CARE**

The legal responsibilities of a guardian are much greater than those of a foster parent. Guardianship can add long-term stability to the child's life. It is a formal commitment made between the child and the guardian. Guardianship may affect the amount of government assistance a child living with a relative guardian receives.

A foster parent's main duties are to furnish food, housing, and nurturing to a child under the foster parent's care. The foster parent is always under the supervision of the child welfare agency. Long-term foster care means the continued involvement of the child welfare agency and the court.

The court may dismiss the dependency when guardianship is granted. In these cases the court will no longer be involved.

## **RIGHTS AND RESPONSIBILITIES OF LEGAL GUARDIANS**

Guardians in general must provide for the care, custody, control, and education of the child. There are some specific rights and responsibilities. These include the following:

### **RIGHTS**

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#### **■ Child's Residence**

You have the right to decide in what community the child will live. If the child moves to a different community in California all you have to do is notify the court in writing. However, there is a limit to this right. If you plan to move the child outside of California, the court must give approval before the child leaves the state. Different states have different rules regarding guardianship. If you plan to move out of state you should seek additional information.

#### **■ Medical Care**

The guardian can give consent to medical treatment for the child. However, for any surgery that is not an emergency, when a child 14 or older objects, the guardian must first get court approval. The law also allows older and more mature children to obtain some medical treatment based only upon the child's consent. This is true whether parent or guardian has custody of the child. Some of these situations include outpatient mental health treatment, medical care for the prevention or treatment relating to pregnancy or a sexually transmitted disease, and drug and alcohol treatment.

#### **■ Education**

The guardian can choose the child's school and educational program just as a parent can. In special situations the court may also be involved in this decision. A legal guardian can request special services from schools, regional centers, or any other service providers.

#### **■ Marriage**

Both the court and the guardian must give consent to a child's marriage.

#### **■ Armed Services**

A guardian may consent to the child's enlisting in the armed services.

#### **■ Driver's License**

A guardian may consent to the child's obtaining a driver's license. (See responsibilities listed below.)

### **RESPONSIBILITIES**

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Along with the above rights, the guardian has several responsibilities for the child. While this list of responsibilities may seem great, it is important to keep in mind that parents have the same responsibilities for their child.

#### **■ Child's Driving**

In order for a child to get a driver's license, the guardian must give written consent. When signing the Department of Motor Vehicles (DMV) application, the guardian agrees to be responsible for any civil damages that result from the child's driving. The guardian is responsible for both the child's negligent and willful acts when driving.

However, the law limits the amount of damages for which a parent or guardian can be liable. The law requires anyone signing the DMV application to get insurance to cover the child driver. The guardian, just like any parent, can withdraw consent at any time. This is done by filing a form with the DMV asking that the child's license be cancelled.