

***Q: Where should a guardianship petition be filed?***

**A:** A guardianship petition must be filed in the Probate Court in the Massachusetts county where the child lives. A child must generally, absent an emergency, have resided in Massachusetts for six months for the Court to have jurisdiction to hear a petition for guardianship. If the child does not live in Massachusetts, the petition should be filed in the state or country where the child lives.

***Q: How much does it cost to petition for guardianship?***

**A:** There is no filing fee for a petition for guardianship. The petitioner must pay for the cost providing notice to the parents and other interested parties. That sometimes requires service by publication in a newspaper selected by the Court. There is a \$75 filing fee for a Bond with sureties. The Court will not generally require a bond with sureties. Certified Letters of Appointment cost \$25 each. A guardian who cannot afford to pay the fees can ask the Court to waive the fees by filing an Affidavit of Indigency.

***Q: Does the guardian need to obtain a bond?***

**A:** A guardian is obligated to sign a bond and to faithfully discharge all duties according to law. The Court may require that a guardian file a bond where two other individuals or a bond company guarantees that the guardian will not improperly spend the child's assets.

***Q: When do a guardian's responsibilities end?***

**A:** Guardianship typically ends when the child reaches age 18, is adopted, dies, marries, or when a judge determines guardianship is no longer necessary. A guardian may resign with permission of the Court. The Court may remove the guardian, at the request of another person or on its own initiative, if the guardian is unsuitable or incapable.

***Q: What should I do if I need legal assistance?***

**A:** Contact the Eastern Region Legal Intake (ERLI) line at 617-603-1700. ERLI will conduct a telephone intake and can provide legal advice or make appropriate referrals.



**Guardianship of a Minor in  
Massachusetts:  
Questions and Answers**

**A Publication of**



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***Q: When does a child need a guardian?***

**A:** A Court will appoint a guardian for a child when the birth parents have passed away, are unfit or unavailable to care for the child. Parents can consent to a guardianship by signing an assent to the petition being filed in court.

***Q: What does a guardian do?***

**A:** A guardian has the powers and responsibilities of a parent regarding a child's support, care, education, health, and welfare. The guardian can make many routine decisions about the child's daily life, and unless the court orders otherwise, whether birth parents can visit the child.

***Q: Who can be a guardian?***

**A:** A guardian must be at least 18 years old, must live in the United States, and must be competent to care for the child. The Court checks the guardian's criminal record and determines whether there has been any Department of Children and Families (formerly known as the Department of Social Services) involvement with the child. A guardian need not be related to the child. A child may have two co-guardians.

***Q: How can a person become a guardian?***

**A:** Any adult may file a petition asking the Court to appoint the person as the child's guardian. If the child is 14 or over, the child must nominate the guardian. The adult must satisfy the Court that they are fit to serve as the child's guardian.

***Q: How is adopting a child different from being the child's guardian?***

**A:** A guardian does not become the child's legal parent. Appointment of a guardian does not sever the birth parent's rights and responsibilities. The birth parent may be able to visit the child, with the guardian's permission or by Court order. The Court can return custody of the child to the parent at any time. Only when birth parents place their child for adoption, or when their parental rights are terminated, do the parents relinquish all rights to, and responsibilities toward the child. Guardianship is not a permanent legal relationship because a parent or another interested party can always seek to have the guardian removed, and because any guardianship will expire when the child turns 18.

***Q: Can children choose their guardians?***

**A:** A child aged 14 and older must nominate their guardian by signing the proposed guardian's petition for guardianship before a notary public. The Court must still approve the child's nominee.

***Q: Does the guardian need to notify anyone of the petition?***

**A:** The guardian must comply with all court instructions to properly notify interested parties, including the following:

- the child's parents, if alive, or the child's nearest relatives over age 18;
- the Veterans Administration (if it owes the child any benefits);
- the child's spouse, if any;
- the child, 14 and over;

- any guardian or conservator for the child; and
- anyone with whom the child has lived during the past 60 days, excluding foster parents.

The Court requires notice to the above by constable. The Court can allow notice by mail to the last and usual address or by publication, if requested.

***Q: Does the court appoint a lawyer to represent the child?***

**A:** The Court has the power to appoint a lawyer to represent the child if the child, or someone on his or her behalf, makes that request. The Court may also appoint counsel for the minor if the Court feels the child's interests are not adequately represented. The Court may also appoint a Guardian Ad Litem to conduct an investigation and make a report to the Court.