

# **INSTRUCTIONS FOR ACCEPTING A MINOR GUARDIANSHIP APPOINTMENT MADE IN A WILL**

## **Introduction**

In a parent's will, the parent may appoint a specific person to be a guardian for their minor child if the parent dies. This is called a "testamentary" appointment. The appointment is not effective until the guardian files an "acceptance" with the court. These instructions explain how to accept this appointment and become the child's guardian.

## **Lawyers**

Many lawyers will do a free or low-cost consultation for a short period of time to help you decide if it is a good idea to have legal help in your case. If you do not know a lawyer, you can call or write:

Lawyer Referral Service of the Alaska Bar Association  
P.O. Box 100279  
Anchorage, AK 99510-0279  
Anchorage Phone: 272-0352  
Statewide Phone: 800-770-9999 (toll free within Alaska)

## **Indian Children**

If the child is an "Indian child" (see definition below), the federal Indian Child Welfare Act (ICWA)<sup>1</sup> may require you to give notice of this proceeding to additional people, who may have a right to intervene in the matter. If this situation applies to you, you may want to speak with a lawyer about the additional procedure that is required. You can read more about minor guardianship in ICWA cases in form [PG-606](#).

### **Definitions of Some Terms Used in These Instructions<sup>2</sup>**

- Indian child: Any unmarried person who is under the age of 18 and who is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.<sup>3</sup>
- Indian tribe: Any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43.<sup>4</sup>
- Minor: A person who is under 18 years of age.<sup>5</sup>
- Probate: For purposes of these instructions, a will is "probated" by filing it in court according to statutory procedures.
- Testamentary: Relating to a will. A "testamentary appointment" is when the decedent names (appoints) a guardian in their will.
- Ward: A person who has a guardian appointed for them.

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<sup>1</sup> 25 U.S.C. § 1901 – 1923. ICWA is a federal law that establishes special procedures that must be followed whenever the placement of an Indian child is being decided.

<sup>2</sup> AS 13.26.005.

<sup>3</sup> 25 U.S.C. § 1903(4).

<sup>4</sup> 25 U.S.C. § 1903(8).

<sup>5</sup> AS 13.06.050(29).

## How To File

**This procedure can only be used if the will has been filed in probate court in Alaska. If the will was filed for probate in another state, you must follow that state's procedures for accepting the appointment. If the will has not been filed in probate court in Alaska or any other state, use the [PG-600](#) or [PG-601](#) packet to petition for appointment of a guardian for a minor.**

Step 1. Fill out *Acceptance of Guardian Appointment in a Will* (form [PG-652](#)). If you are accepting guardianship of more than one child, fill out a separate form for each child. If two people (for example, a married couple) are appointed as guardians together, you can both fill out and sign the same form. Be sure to change "I" to "We" throughout the form.

Type or print clearly, using black ink. The following is additional information about certain sections:

- a. Court Location. You must file in the same court location where the will that appoints you as guardian is being probated.
- b. Case No. Leave this line blank. The court will assign a new case number.
- c. Estate Case No. Fill in the case number for the case that involves probating the will of the parent who appointed you guardian.
- d. In section 6, check the box indicating whether both parents are deceased or just one parent is deceased. If both parents are deceased, and the wills name different guardians, then the appointment in the will of the parent who died later is used. If only one parent's will named a guardian, then that parent's appointment is used. If one parent is still alive, the appointment of a guardian in the deceased parent's will is **not** effective unless there is a **court order** stating that the living parent is incapacitated<sup>6</sup> or that their parental rights have been terminated.
- e. Section 7 requires you to read Alaska Statute 13.26.167 about the duties and powers of a guardian of a minor. This statute is printed on page 5 of these instructions. Taking on a guardianship is a big decision—you will essentially fill the role of the child's parent, with all the rights and responsibilities that entails. It is also a final decision—you cannot simply stop being the guardian without coming back to court to request permission to end the guardianship.
- f. Certificate of Service. See Step 2 below about how to fill out this section. You must give a copy of your acceptance to the same people you give your notice of appointment to.

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<sup>6</sup> The term "incapacitated person" is defined in AS 13.26.005. It means that the person's ability to receive and evaluate information or to communicate decisions is so impaired that the person is not able to provide at a basic level for the person's physical health or safety (healthcare, food, shelter, clothing, personal hygiene, and protection) without court-ordered assistance. An example would be a court order appointing a guardian for the person when they are an adult. If you are alleging that the living parent is incapacitated, you must provide information about the court order proving this.

- Step 2. Fill out *Notice to Minor of Guardian's Appointment and of Right to Object* ([PG-653](#)) and sign it.

Fill out the "Certificate of Service" section at the bottom of the notice, showing when, how, and to whom you are going to give the notice. You must send it to

- a. the minor child, **and**
- b. either
  - (1) the person who currently takes care of the child, **or**
  - (2) the child's nearest adult relative.

The probate court may also order you to give notice to other specific persons. Be sure to send them both the notice and your acceptance (form PG-652 from Step 1).

- Step 3. If the minor child is age 14 years old or older, also fill out the top of the *Minor's Objection to Appointment of Testamentary Guardian* (form [PG-654](#)). Fill in the location of the court, the minor's name and DOB, and the case number. Leave the rest blank.

- Step 4. Make enough copies of the acceptance form (PG-652) and the notice form (PG-653) for yourself and for each of the people you are required to send the notice to (you will save the originals to file with the court). If the child is age 14 years old or older, also make a copy for yourself of the objection form (PG-654) that you prepared in Step 3 (the original is for the child to use if they want).

- Step 5. Mail or hand-deliver<sup>7</sup> copies of the acceptance form (PG-652) and the notice form (PG-653) to
- a. the minor child (along with a *Minor's Objection* form if the child is 14 years old or older), **and**
  - b. either
    - (1) the person who takes care of the child, **or**
    - (2) the child's nearest adult relative.

After you send the notice to everyone, complete the "certificate of service" at the bottom of PG-652 and PG-653 as your proof that you did this. Be sure to sign again at the bottom of the certificate.

- Step 6. File the **originals** of the acceptance form (PG-642) and the notice form (PG-653) at the superior court filing location where the will was filed for probate. A list of court addresses is available at [ak-courts.info/dir](http://ak-courts.info/dir). You can deliver these documents to the court in person or by mail. There is no filing fee.

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<sup>7</sup> AS 13.06.110.

- Step 7. If an Objection is Filed. If the minor child is 14 years old or older, the child may file a written objection with the court opposing your appointment as guardian. The child must file the objection within 30 days after they receive notice of your acceptance of the appointment. The child should also send you a copy of the objection. If you receive an objection from the child, but it has not been filed in the court, you are still legally obligated to let the court know about the objection. If the child files an objection, the court will schedule a hearing on the matter. The court clerk will notify you of the time and place of your hearing and the name of the judge or master who will preside.
- Step 8. Court Hearing.<sup>8</sup> The hearing will be before a judge or master. The minor child has the right to be present at the hearing. Usually, these hearings are closed to the public. During the hearing, the judge can appoint a lawyer to represent the child if the judge determines that the child's interests are or may be inadequately represented.<sup>9</sup>
- Step 9. Letters of Guardianship.<sup>10</sup> After you file your acceptance of the appointment, the court will issue a document called *Letters of Guardianship of a Minor* (form PG-635). You can get certified copies of this document from the court and use them if you need to prove to someone that you are the child's guardian (for example, for schools, hospitals, government agencies, etc.).

### **Additional Information**

Annual Reports. A guardian appointed by will is not required to file an annual report unless unless the court specifically orders it. The court must have good cause to do so.<sup>11</sup>

Requests to Change the Guardianship. At any time, the guardian, the minor ward, or any other interested party may ask the court to remove the guardian and replace them with another guardian, appoint a co-guardian, or end the guardianship. You may use court form [PG-190](#), *Petition for Review of Guardianship/Conservatorship*, to ask the court to do this. Form PG-190 is available in paper copy at any state court and on the court system's website at <https://courts.alaska.gov/forms/index2.htm>.

Terminating (Ending) the Guardianship.<sup>12</sup> The guardianship will end when the child turns 18 years old unless it is terminated earlier by court order. A guardian cannot simply stop performing the guardian's duties without court permission before the child turns 18. If something happens where you think the guardianship should end, you **must** first file a request with the court. You may use court form [PG-190](#), *Petition for Review of Guardianship*, to ask the court to do this. Form PG-190 is available in paper copy at any state court and on the court system's website at <https://courts.alaska.gov/forms/index2.htm>.

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<sup>8</sup> AS 13.26.147.

<sup>9</sup> AS 13.26.186(c).

<sup>10</sup> Probate Rule 15.1(e).

<sup>11</sup> Probate Rule 15.1(f).

<sup>12</sup> "A guardian's authority and responsibility terminate upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority.... Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding." AS 13.26.171.

Alaska Statute 13.26.167  
**Powers and Duties of Guardian of a Minor**

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian:

- (1) must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
- (2) may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship; the guardian also may receive money or property of the ward paid or delivered by virtue of AS 13.26.031; any sums so received shall be applied to the ward's current needs for support, care and education; the guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator; sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian; a guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;
- (3) may facilitate the ward's education, social, or other activities and authorize medical or other professional care, treatment, or advice; a guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented; a guardian may consent to the marriage or adoption of the ward;
- (4) must report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.