

Guardianship

What is guardianship?

Guardianship is a legal term for the rights and responsibilities that a parent has in relation to their child. These responsibilities include the duty to financially maintain and care for their child. It also includes the right to make decisions in important areas of the child's life such as their religion, the schools they attend, adoption, consent to medical treatment, where the child lives, obtaining a passport and whether the child can be taken out of the country/county and any other matters affecting the child's welfare.

Who can be a guardian?

When a child is born outside of marriage the mother is automatically the sole legal guardian.

An unmarried father may be an automatic guardian, in certain circumstances, as there have been changes recently around fathers' rights and guardianship with the partial enactment of The Child and Family Relationships Act 2015.

Married parents of a child are both automatically joint guardians to their child.

A step parent, civil partner or a person who has cohabited with a partner for a period of at least 3 years can also apply to the court to become a guardian of their partner's child where they have been a co-parent to that child for over 2 years.

Unmarried fathers and guardianship

The Child and Family Relationships Act 2015 was partly enacted on the 18th January 2016 bringing in new rights for unmarried fathers. This Act grants automatic guardianship to fathers under the following circumstances:

- Unmarried fathers will automatically become a guardian of their child if they have lived with the mother on a continuous basis for 12 months, after the 18th January 2016, where at least 3 of these months were following the birth of the child. Therefore it is only since 18th January 2017 that fathers who have lived with the mother of their child may now be automatic legal guardians, providing they have lived with the mother for the required length of time.
- When a child's mother does not agree to sign a statutory declaration nor agree that the child's father can be appointed as a joint guardian then he can apply to the District Court to be appointed as one. An application can be made in the District court and, whilst legal representation is not necessary, a person may wish to get legal advice beforehand to ensure they are fully aware of what guardianship means. The father's name does not have to be on their child's birth certificate to apply for guardianship.

- Where the mother does not agree to joint guardianship the court will take her views into account but will make a decision based on the best interests of the child. In most instances guardianship will be awarded to the father.
- Where the mother agrees, the father can become a joint guardian. In order for this to happen, both parents need to sign a statutory declaration naming the father. This declaration must be signed in the presence of a Commissioner for Oaths or a Peace Commissioner. The relevant statutory declaration - S.I. 5/1998 Guardianship of Children (Statutory Declaration) regulations can be found on the electronic Irish Statute Book - www.irishstatutebook.ie.

On this declaration the names of both parents are listed, it states that they are unmarried and that they both consent to the father being made a joint-guardian. The declaration will also state that the parents have made agreements around the custody of and access to the child. If there is more than one child involved then a separate declaration should be made for each child.

It is important to note that this is a legal document and at present there is no provision for registration of a statutory declaration that has been completed by the parents of a child. Therefore it is highly advisable that a copy is kept safely by both parents.

Family members and guardianship

- For other family members, such as grandparents, civil partners, step-parents and others who have acted in “loco parentis” (in the place of the parent) of a child they may apply to court for guardianship. The requirements for this is that a person is in a relationship, either in marriage or civil partnership, or has lived with the parent of a child for over 3 years and has shared the day to day care of the child for at least 2 years.
- If a person has cared for a child on a day to day to basis, continuously for 12 months and there is no parent or guardian able or willing to exercise the rights and responsibilities for the child then they may apply for guardianship, so for example this may be a grandparent caring for their grandchild or a foster parent caring for a child.

This is a brief outline of the issue. It is not intended as a substitute for a proper consultation with a legal advisor. It is essential that anyone dealing with these issues seeks legal advice in order to decide how best to proceed in the individual circumstances.

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