

Guardianship or Power of Attorney—Which Is Right For You?

Guardianship

Guardians are people who can make legal decisions about a child and they are appointed through a court process to have the legal authority to make decisions about a specific child. A guardian must provide food, clothing, shelter, education and all medical and dental needs of the child. A guardian must provide for the safety, protection and physical and emotional growth of the child. Like a parent, a guardian must maintain close contact with the child's school and physician. A guardian's authority focuses on the personal welfare of the child, but the guardian must also handle basic financial affairs of the child. For example, a Guardian must file income tax returns for the minor if a tax return is required.

In order to obtain a guardianship over a minor child, a petition must be filed in the Probate Court. Parents and other people who may have the right to make legal decisions about a child, like a trustee, must have an opportunity to object, and a judge must sign an order granting the guardianship.

The types of guardianships discussed here are NOT guardianships that are created by a juvenile court in a dependency matter (when children are within the jurisdiction of the State of Oregon, such as in a foster care situation).

Guardianships usually last until the minor child reaches 18 years of age. In order to end the guardianship before the child turns 18, a parent would need to petition the court to end or "vacate" the guardianship. A judge may hold a hearing prior to granting or vacating a guardianship.

Under Oregon law, guardians have the right to decide where the child lives, either in or out of Oregon, unless the order of appointment says they can't. Guardians have all the rights and responsibilities that a parent would, including agreeing to the marriage or adoption of the child.

Guardians are not responsible, however, to support the child beyond the support that could be provided from the estate (money and other assets) of the minor. Even when a child has a guardian, the parents are still obligated to support the child financially. The guardian may take action to obtain child support and may apply for public assistance and / or private funds on the child's behalf, for which the child is eligible. Money and property of the child's estate must be kept separate from the Guardian's or Conservator's personal assets, therefore a separate bank account for the estate is opened. Guardians are not liable for the child's torts (damage or injury due to acts of negligence or willful misconduct).

Power of Attorney

A power of attorney over a child is a document signed and notarized by a parent giving another person called the “attorney-in-fact” authority to make decisions for a minor child. It is not a court order. It is accepted by many, but not all, people or organizations as proof that the person has the legal right to make decisions for the child.

Powers of attorney are typically used by a parent who is unavailable for a period of time and wants to grant authority to another person over their child. It can be used to authorize a person to get medical treatment for a child or for making other significant decisions. Powers can also be limited to something very specific (for example, to take a child on vacation).

A parent who does not agree with the decisions of the attorney-in-fact has more authority over the child than the attorney-in-fact. A power of attorney can not be used to transfer custody or to supersede the right of the other parent. A parent cannot give another person the power to consent to marriage or adoption through a power of attorney. The power of attorney does not affect the rights of the child’s parents regarding the care, custody and control of the child and can be withdrawn at any time.

A power of attorney over a child is generally accepted by Oregon school districts for enrolling a child in school. A power of attorney may or may not be accepted by your insurance company for purposes of adding the child to an insurance policy.

Under Oregon law, a power of attorney over a minor child is effective for a maximum of six months. You can limit this time period to as little as you want, but you cannot extend it beyond six months. If you need another power of attorney after six months, a new power of attorney may be signed. Persons in the US Armed Forces called to active duty can have a power of attorney last through the active duty period plus 30 days.

The parent granting the power of attorney can revoke (end) that power at any time, even before the ending date on the power of attorney. It is best to revoke the power of attorney in writing. Revoking a power of attorney is effective immediately as soon as you give it to the person named in the power of attorney form.

INSTRUCTIONS FOR DELEGATION OF PARENTAL/GUARDIAN POWERS FORM

This delegation designates another person (called the “attorney-in-fact”) to make decisions regarding a minor child/ren in lieu of the child/ren’s parent or legal guardian. The “attorney-in-fact” can be any reliable person and does not have to be a lawyer. It is not a court order. It is accepted by many, but not all, people or organizations as proof that the person has the legal right to make decisions for the child/ren.

A parent who does not agree with the decisions of the attorney-in-fact has more authority over the child than the attorney-in-fact. This form cannot be used to transfer custody or to supersede the right of the other parent. It does not affect the rights of the child’s parents regarding the care, custody and control of the child and can be withdrawn at any time.

Please note: You may either print out this form and fill it in, or fill it in on-line and print it out. If you fill it in on-line, you will be unable to save any changes, so be sure to print out at least two copies of your form.

First, fill out the specific information regarding the child/ren and the attorney-in-fact as designated on the form.

Next, indicate what powers you are giving to the attorney-in-fact over your minor child/ren. The first box is for a general delegation granting all powers a parent would ordinarily have over the child/ren. The second box allows you to state the specific responsibilities and powers you want to grant. If you choose to select specific powers, be sure to list what those powers are in the box provided.

The completed delegation form must be signed by both the parent or legal guardian and the attorney-in-fact. Make several copies of the form since you will probably have to give a copy to each person or organization that the attorney-in-fact will need to deal with on behalf of the child/ren. Show them the original, and give them the copy. Keep the original in a safe place.

Under Oregon law, a delegation of parental/guardian rights is effective for a maximum of six months. You can limit this time period to as little as you want, but you cannot extend it beyond six months. If you need another power of attorney after six months, a new power of attorney may be signed. Persons in the US Armed Forces called to active duty can have a power of attorney last through the active duty period plus 30 days.

The parent granting the power can withdraw (revoke) that power at any time, even before the expiration date on the power of attorney. It is best that the withdrawal be in writing. A form called *Revocation of Power of Attorney* is attached. If you are a parent withdrawing the power, be sure to fill out the revocation form and deliver it to the person to whom you granted the power and to those people or organizations to whom you gave a copy of the delegation form. The withdrawal is effective immediately upon delivery.

DELEGATION OF PARENTAL/GUARDIAN POWERS

I certify that I am the parent or legal guardian of:

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(“minor child/ren”). I designate

(FULL NAME OF ATTORNEY-IN-FACT)

(STREET ADDRESS, CITY, STATE AND ZIP CODE OF ATTORNEY-IN-FACT)

(HOME PHONE OF ATTORNEY-IN-FACT)

(WORK PHONE OF ATTORNEY-IN-FACT)

as the undersigned’s attorney-in-fact with respect to the minor child/ren under ORS 109.056.

I delegate to the attorney-in-fact all of my power and authority regarding the care, custody and property of the minor child/ren, including but not limited to the right to enroll the minor child/ren in school, inspect and obtain copies of education records and other records concerning the minor child/ren, the right to attend school activities and other functions concerning the minor child/ren, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the minor child/ren. **OR**

I delegate to the attorney-in-fact the following specific powers and responsibilities (write in):

This delegation does not include the power or authority of the attorney-in-fact to consent to the minor child/ren's marriage or adoption.

SELECT ONE:

This power of attorney is effective for a period not to exceed six months, beginning _____, 20__, and ending _____, 20__. I reserve the right to revoke this authority at any time.

I am in the US Armed Forces and have been called to active duty This power of attorney is effective through my active duty period plus 30 days.

By: _____
(PARENT/LEGAL GUARDIAN SIGNATURE)

I hereby accept my designation as attorney-in-fact for _____
(MINOR CHILD/REN)
as specified in this power of attorney.

(ATTORNEY-IN-FACT SIGNATURE)

REVOCATION OF DELEGATION OF PARENTAL/GUARDIAN POWERS

I hereby revoke (withdraw) the delegation of parental/guardian powers over my minor child/ren:

(check one)

(check one)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

that was granted to _____ on the
(FULL NAME OF ATTORNEY-IN-FACT)

following date _____. That delegation is now revoked.

By: _____
(PARENT/LEGAL GUARDIAN SIGNATURE)

Today's date: _____