

GUARDIANSHIP OF A MINOR
INSTRUCTIONS
FOR ACCEPTING AN APPOINTMENT MADE IN A WILL

Introduction

In a parent’s will, the parent may appoint a guardian for an unmarried minor child. This is called a “testamentary” appointment. In order for this appointment to become effective, the guardian must file an “acceptance” with the court as described in these instructions.

Lawyers

Before starting this process, it may help to talk to a lawyer who is familiar with guardianship procedure. If you are unsure about whether you should hire a lawyer, it is a good idea to talk to one about your case before you decide whether you can handle it alone. 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
Phone: 272-0352 or 800-770-9999 outside Anchorage (toll free within Alaska)

Indian Children

If the child is an “Indian child” (see definition below), you should talk to a lawyer about whether the federal Indian Child Welfare Act¹ requires you to give notice of this proceeding to additional people and whether those additional people have a right to intervene in the matter. Note that “Indian child” includes children who are members of an Alaska Native village or eligible for membership in a village as well as children who are members or eligible for membership in Indian tribes outside Alaska.

Definitions of Some Terms Used in These Instructions²

- 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.³
- 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 43.⁴

¹ 25 USC 1901 – 1923. The Indian Child Welfare Act (ICWA) is a federal law which establishes special procedures that must be followed whenever the placement of an Indian child is being decided. For more information about this, see page 3 of the PG-605 instructions.

² AS 13.26.005

³ 25 USC 1903(4)

⁴ 25 USC 1903(8)

Definitions, continued

- Minor: A minor is a person who is under 18 years of age.⁵
- Probate: For purposes of these instructions, a will is probated by filing it in court according to statutory procedures.
- Testamentary: Pertaining to a will. A “testamentary appointment” is an appointment made in a will.
- Ward: A ward is a person for whom a guardian has been appointed.

⁵ AS 13.06.050(29)

How To File

Step 1. Fill out the attached *Acceptance* form (PG-652).

If you are accepting guardianship of more than one child, fill out a separate *Acceptance* for each child.

If two people (for example, a husband and wife) are appointed as guardian, you can both fill out and sign the same *Acceptance* form. Change “I” to “We” throughout the form.

Fill in the top of the form as shown in the following illustration:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>City Where Court is Located</u>	
In the Matter of the Protective Proceeding of)
)
)
)
)
<u>Name of Child Who Needs a Guardian</u>) CASE NO. _____
Minor) Estate Case No. <u>xxx-xx-xxx PR</u>
Date of Birth: <u>xx/xx/xx</u>) GUARDIAN’S ACCEPTANCE OF APPOINTMENT IN A WILL (AS 13.26.035)

Print clearly, using black ink.

- a. Court Location. At the top of the form, fill in the location (city) where the parent’s will was filed for probate. This is the court where your acceptance must be filed.
- b. Case No. Leave this line blank. The court will assign a new case number.
- c. Estate Case No. Fill in the case number the court assigned when the will was filed for probate.
- d. In paragraph 6, check the box indicating whether both parents are deceased or just one parent is deceased. If one parent is still alive, the appointment of a guardian in the deceased parent’s will does not take effect unless there is a court order stating that the living parent is incapacitated⁶ or that his/her parental rights have been terminated.

⁶ The term “incapacitated” is defined in AS 13.26.005. An example of a court order declaring a person to be incapacitated is an order appointing a full guardian for the person. Before a full guardian can be appointed, the court must determine that the person is incapacitated. AS 13.26.090 - .113.

- e. Paragraph 7 of the *Acceptance* requires you to read Alaska Statute 13.26.070 about the duties and powers of a guardian of a minor. This statute is printed on page 8.
- f. Signature. Sign and date the *Acceptance*. You will also need to complete the “Verification” section that follows your signature. You must do this in front of a notary public. A court clerk can provide this notary service for you (at no charge) if you bring the *Acceptance* to court. You must bring a photo ID with you for the notarization.
- g. Certificate of Service. See Step 2 below about how to fill out this section. You must send a copy of your *Acceptance* to everyone to whom you send the notice of your appointment.

Step 2. Fill in all the lines on the attached *Notice to Minor Ward of Guardian’s Appointment and Minor’s 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 send the *Notice*. You must send it to:

- a. the child, and
- b. either
 - (1) the person who takes care of the child, or
 - (2) the child’s nearest adult relation.

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

Step 4. Make copies of the *Acceptance* and the *Notice* for yourself and for each of the people to whom you are required to send the *Notice*. (You will file the original of both forms with the court.) If the child is age 14 or older, also make a copy for yourself of the *Minor’s Objection* form that you prepared in Step 3. (The original is for the child to use.)

Step 5. Mail or personally deliver⁷ copies of the *Notice* and the *Acceptance* to:

- a. the child (along with a *Minor’s Objection* form if the child is 14 or older), and
- b. either
 - (1) the person who takes care of the child, or
 - (2) the child’s nearest adult relation.

Proof That Notice Was Given. After you send the *Notice* to everyone, you must file proof with the court that this has been done. Your proof is the original *Notice* form with your completed “certificate of service” at the bottom and your original signature at the bottom of the certificate.

⁷ AS 13.06.110

Step 6. File the original *Acceptance* and the original *Notice* at the superior court filing location where the will was filed for probate. (See list of court addresses on page 7.) You can deliver these documents to the court in person or by mail. There is no filing fee.

Note: If the will was filed for probate in another state, you must follow that state's procedures for accepting the appointment.

Step 7. If an Objection is Filed.

If the child is age 14 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 the child receives notice of your acceptance of the appointment. The child should also send you a copy of 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.⁸

The hearing will be before a judge or master.

The child has the right to be present at the hearing.

Usually these hearings are closed to the public.

At any time during the proceeding, the judge can appoint an attorney to represent the child if the judge determines that the child's interests are or may be inadequately represented.⁹

Step 9. Letters of Guardianship.¹⁰

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, schools, hospitals, government agencies, etc.)

⁸ AS 13.26.060

⁹ AS 13.26.085(c)

¹⁰ Probate Rule 15.1(e)

Additional Information

A. Annual Reports

A guardian appointed by will is not required to file an annual report unless ordered to do so by the court upon a showing of good cause.¹¹

B. Requests to Change the Guardianship

At any time, the guardian, the child or any other interested party may ask the court to remove the guardian and replace him/her 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 at any state court and on the court system's website: <http://www.state.ak.us/courts/forms/index.htm>

C. Termination of Guardianship

The guardianship will end when the child turns age 18 unless it is terminated earlier by court order.¹² A guardian cannot simply stop performing the guardian's duties without court permission before the child turns 18. If something happens that leads the guardian to believe the guardianship should end, the guardian must first file a request with the court. Form PG-190, described in paragraph "B" above, can be used for this.

The Alaska Statute concerning termination of appointment of guardians (AS 13.26.075) states:

“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, but termination does not affect the guardian's liability for prior acts, nor the obligation to account for funds and assets of the ward. 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.”

¹¹ Probate Rule 15.1(f)

¹² AS 13.26.075

SUPERIOR COURT FILING LOCATIONS FOR GUARDIANSHIPS

ANCHORAGE:	Probate Office, 303 K Street, Anchorage, AK 99501-2099	(264-0433)
BARROW:	Box 270, Barrow, AK 99723-0270	(852-4800)
BETHEL:	Box 130, Bethel, AK 99559-0130	(543-2298)
CORDOVA:	Box 898, Cordova, AK 99574-0898	(424-7312)
DILLINGHAM:	Box 909, Dillingham, AK 99576-0909	(842-5215)
FAIRBANKS:	Probate Dept., 101 Lacey Street, Fairbanks, AK 99701-4765	(452-9257)
GLENNALLEN:	Box 86, Glennallen, AK 99588-0086	(822-3405)
HOMER:	3670 Lake St., Suite 400, Homer, AK 99603-7686	(235-8171)
JUNEAU:	Box 114100, Juneau, AK 99811-4100	(463-4707)
KENAI:	125 Trading Bay Drive, Suite 100, Kenai, AK 99611-7717	(283-3110)
KETCHIKAN:	415 Main St., Rm 400, Ketchikan, AK 99901-6399	(225-3195)
KODIAK:	204 Mission Road, Rm 10, Kodiak, AK 99615-7312	(486-1600)
KOTZEBUE:	Box 317, Kotzebue, AK 99752-0317	(442-3208)
NAKNEK:	Box 229, Naknek, AK 99633-0229	(246-4240)
NOME:	Box 1110, Nome, AK 99762-1110	(443-5612)
PALMER:	435 S. Denali, Palmer, AK 99645-6437	(746-8181)
PETERSBURG:	Box 1009, Petersburg, AK 99833-1009	(772-3824)
SEWARD:	Box 1929, Seward, AK 99664-1929	(224-3077)
SITKA:	304 Lake St., Rm 203, Sitka, AK 99835-7759	(747-3291)
UNALASKA	Box 245, Unalaska, AK 99685-0245	(581-1379)
VALDEZ:	Box 127, Valdez, AK 99686-0127	(835-2266)
WRANGELL:	Box 869, Wrangell, AK 99929-0869	(874-2311)

If your nearest court is not on this list, check with that court to find out if guardianship cases can be filed there.

Alaska Statute 13.26.070
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 13.26.015; 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.

(§ 1 ch 78 SLA 1972; am § 26 ch 56 SLA 1973)