

# GUARDIANSHIP PAMPHLET



## **What is Guardianship?**

Guardianship is a court process by which a person other than the parent is given custody of a child. Appointment as guardian requires the filing of a petition and approval by the court. This pamphlet will provide you with some basic information about guardianships.

If the court appoints you as a guardian for a child, you will assume important duties and obligations. You will become responsible to the court. It is essential that you clearly understand your duties and responsibilities as guardian. If you have any legal questions you should consult with an attorney who is qualified to advise you about these matters.

### **What is a legal Guardian?**

A legal guardian is an adult to whom the court has given authority and responsibility to provide care for a child.

### **Who May Be Legal Guardians?**

Relatives, friends of the family, or other interested persons may be considered as potential legal guardians.

### **Before You File a Petition**

Before you file a petition for guardianship, you should consider the following:

- Is a guardianship necessary?
- Have you considered the alternatives?
- **Do the parents' consent to the guardianship?**
- Without parental consent, is there enough evidence for you to prove the need for a guardianship?
- Do you need legal advice or assistance?

### **The Process-Briefly**

If you decide that a child needs a guardianship, the first step is to fill out and file a petition with the clerk of the court.

Any interested party may file the petition. Specific persons must be given notice of the petition, before the court can hear the case.

The court will order a report by a LCSW and Tribal Services be completed before making its decision. When this occurs you, the child and any other persons deemed essential will be contacted. Any persons living in the home over the age of 18 years will be requested to complete a background check. Having a past minor violation is not automatic terms for disqualification. Each item will be reviewed on a case by case basis. The LCSW and Tribal Services will give the court a report and make a recommendation on what should occur. The court may grant the petition or may find that there are insufficient grounds to establish a guardianship. After guardianship is established reports will be conducted every 6 to 12 months.

**A child may not be placed** with a guardian, or in a home where an individual resides, who has been found guilty of any of the following crimes:

- a. Assaulting another with intent to commit mayhem, rape, sodomy, oral copulation;
- b. Touching an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse;
- c. Rape;

- d. Receiving money or anything of value for the placement, the adoption or for the consent to an adoption of a child;
- e. Lewd or lascivious acts against a child;
- f. Sexual penetration when the act is accomplished against the victim's will by means of forces, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- g. Sex offender fails to register;
- h. Abuse against an Elder.

Other events may create a follow-up visit by Tribal Services and/or the LCSW.

- Any event involving the Tribal Police, Rancheria Security or El Dorado County Sheriff's Department.
- Change in members of the household.

### **Guardianship of the Person**

The court may appoint a guardian for a child when no parent is available to meet the needs of the child because of the parents' death, incapacity, abandonment, military obligations or other reasons.

**Fundamental Responsibilities-**The guardian of the child has the care, custody, and control of the child. As guardian, you are responsible for providing for food, clothing, shelter, education, and all the medical and dental needs of the child. Like a parent, you should maintain close contact with the child's school and physician.

Raising children is not always easy. You should become familiar with community resources that can

assist both you and the child. You may get help and information from Tribal Services.

**Custody**-As guardian of the child, you have full legal and physical custody of the child and are responsible for all decisions relating to the child. The child's parents can no longer make decisions for the child while there is a guardianship. The parents' rights are suspended-not terminated-as long as a guardian is appointed for a minor. If you wish, you may ask the parents for their opinions about matters relating to the child.

**Education**-As guardian of the child, you are responsible for the child's education. You determine where the child should attend school. As the child's advocate within the school system, you should attend conferences and play an active role in the child's education. For younger children, you may want to consider enrolling the child in a pre-school program. For older children, you should consider their future educational needs such as college or specialized school. You must assist the child in obtaining services if the child has special educational needs. You should help the child in setting and attaining his or her educational goals.

**Residence**-As guardian, you have the right to determine where the child lives. The child will normally live with you, but when necessary, you are allowed to make other arrangements if they are in the best interest of the child. You must obtain court approval before placing the child back with his or her parents. As guardian, you must get permission from the court before you change a child's residence.

**Medical Treatment**-As guardian, you are responsible for meeting the medical needs of the child. In most

cases, you have the authority to consent to the child's medical treatment. The guardian may secure counseling and other necessary mental health services for the child. A variety of counseling services are available through the Health and Wellness Center. As guardian, you are expected to secure necessary services, cooperate with counselors, and maintain regular contacts with the child's treatment providers.

**Community Resources**-Check with Tribal Services for programs that may be available to the child.

**Financial Support**-Even when the child has a guardian, the parents are still obligated to support the child financially. The guardian may file a Petition for Child Support with the Clerk of the Court.

**Visitation**-The court will require that you allow visitation or contact between the child and his or her parents. The child's needs often require that the parent-child relationship be maintained. The court may place restrictions on the visits, such as the requirement of supervision. The court may also impose other conditions in the child's best interest. It is best to have a working relationship with the parents when possible.

**Driver's License**-As guardian, you have the authority to consent to the minor's application for a driver's license. If you consent, you will become liable for any civil damages that may result if the minor causes an accident. The law requires anyone signing the DMV application obtain insurance to cover the minor.

**Change of Address**-A guardian must notify the court in writing of any change in the address of either the child or the guardian. This includes any changes that result from the child's leaving the guardian's home or

returning to the parents' home. You must always obtain court permission before you move the child.

**Court Status Reports**-Periodically Tribal Services will make visits to obtain status reports to file with the court. You must cooperate with these requests.

**Misconduct of the Child**-A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child.

**Additional Responsibilities**-The court may place other conditions on the guardianship or additional duties upon you, as guardian. The court may require the guardian to complete counseling or parenting classes, to obtain specific services for the child, or to follow a scheduled visitation plan between the child and the child's parents or relatives. As guardian, you must follow all court orders.

### **Other General Information**

**Removal of the Guardian**-a guardian may be removed for specific reasons or when it is in the child's best interest. A guardian may be removed either on the court's own motion or by a petition filed by the child, a relative of the child or any other interested person. If necessary, the court may appoint a successor guardian, or the court may return the child to a parent if that is found to be in the child's best interest.

### **Information for Parents**

Parents still have parental rights. Guardians can be supervised by the court. The court can end a guardianship if the parents become able to take care of the child. If the parent wants the child to live with him or her again, the judge will want proof that the parent:

- Has a stable place to live;
- Has a source of income;
- Is ‘fit’ or has been sufficiently rehabilitated, and
- Can provide a good home for the child.

Additional information on Guardianships may be obtained by contacting the local state court:

**Superior Court of California,  
County of El Dorado**

**Placerville Fair Lane Branch**

295 Fair Lane

Placerville, CA 95667

Juvenile / Probate / Guardianships

(530) 621-7470

<http://www.eldoradocourt.org>