

INSTRUCTIONS FOR MOTION TO TERMINATE GUARDIANSHIP OF A MINOR CHILD

These standard instructions are for informational purposes only and are not meant to be legal advice about your specific case. If you choose to represent yourself, you must follow the same procedures and rules as an attorney.

GENERAL INFORMATION

1. You will file these documents in the existing guardianship file, under the same case number. You can find a directory of the District Courts here:
<https://www.courts.state.wy.us/district-courts/district-court-locations/>.
2. The Court appointed a Guardian for your child because it found that it was in the best interests of your child at that time, and that, unless you consented to the guardianship, that you were unwilling or unable to care for your child. You must be prepared to testify and give enough evidence to convince the judge that you are now able to care for your child.
3. You can read **Frequently Asked Questions** on pages 8-11, or access **Common Questions about Guardianship for a Minor** at <http://www.legalhelpwy.org/index.php/get-legal-help/self-help-2/family-law/guardianships/guardianship-of-a-minor-child/common-questions/> . These may help you to better understand the Guardianship process.
4. For additional information, please review Wyoming Statutes 3-1-101 through 3-2-303.

COMMON TERMS

1. “Movant” is the person filing the Motion to Terminate Guardianship.
2. “Respondent” is the person responding to the Motion to Terminate Guardianship.
3. “Guardian” means a person who has been appointed by the court to exercise the powers granted by the court. The term includes a plenary (full), limited, emergency and standby guardian, but does not include a Guardian Ad Litem.
4. “Ward” means an individual for whom a guardian or conservator has been appointed by the court. In this case, it will be the minor child or children.
5. “Minor” means a child under the age of 18 that has not been emancipated.
6. “Order” means the official decree signed by the judge. If the Guardianship is terminated, the Judge will issue an Order Terminating Guardianship. You will want to keep this document handy at all times, to prove that you now have legal authority over the child/children, and not the previous Guardian.

FEES

There is no filing fee to file a Motion to Terminate Guardianship in Wyoming, however, there may be other costs or fees. See the **Frequently Asked Questions** section below for more information on various fees.

FORMS

Read these instructions carefully to determine what forms you may need. You may not need all of the listed forms. **Check with the District Court Clerk** where you plan to file your case to determine if they have any special requirements. You can find a directory of the District Courts at: <https://www.courts.state.wy.us/district-courts/district-court-locations/> .

STEPS TO FILING YOUR CASE

Step 1: Complete the Forms.

Before you file, make sure that you make copies of all the forms listed. NOTE: You can only use the forms for more than one child if the children have the SAME parents. If they have different parents, you MUST file separate forms.

- **Summons and Return**
 - ✓ This completed form will need to be served upon the current guardian or guardians of the minor child/children.
 - ✓ You must provide a file-stamped copy of the Motion to Terminate Guardianship for each person that will be served. See below in the **Frequently Asked Questions** section for more information on “service.”
- **Motion to Terminate Guardianship**
 - ✓ Complete and sign the Motion. Make as many copies of the Motion as there are Summons to be served.

Step 2: You are Ready to File your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above. You will need to make copies of the documents for each of the following persons (Interested Persons) and give them notice of the filing (see below for how to serve):

- a. The current guardian or guardians of the minor child/children, and other interested persons.
- b. The other parent of the minor child/children that is not joining you in this Motion to Terminate Guardianship.

Step 3: Notice to current Guardian or Guardians of the minor child/children and Other Interested Persons, if any.

If you know where the Guardian(s) or other interested persons (above) are located, you will need to have them served. Service is required for the *Motion to Terminate Guardianship* and *Summons* so the Court has proof that the other party received the papers. Personal service of the *Motion to Terminate Guardianship* and *Summons* are required to be made on the Respondent by a Sheriff, unless the Respondent completes an *Acknowledgment and Acceptance of Service* form. Other forms of service exist, but these are the two easiest methods that meet the formal service requirement for termination of a guardianship. If you cannot serve the Respondent by either of these methods, you may request alternative methods of service, such as service by publication, in limited circumstances.

You MUST give all parties in the case official notice that you have filed the *Motion to Terminate Guardianship*. See below in the **Frequently Asked Questions** section for more information on service. In addition to copies of the above forms, you will also need to prepare this form:

- **Return (second page of the Summons)**
 - ✓ This document must be filled out by the sheriff or process server who serves the Motion upon the guardians and/or other interested persons. It must be notarized or signed by the District Court Clerk and filed with the District Court Clerk after service is completed.

OR

You can avoid paying for personal service if the guardian(s) and/or other interested persons agree to the service. Each person who agrees must complete the following form:

- **Acknowledgment and Acceptance of Service form**
 - ✓ This form may be signed by the guardian(s) or other interested person who is required to receive notice of the filing of the Motion. If the Guardian or other person agrees, you will not need to have the Summons and Motion formally

served on him or her. See the **Frequently Asked Questions** section below for more information on “service.”

- ✓ You must still provide file-stamped copies of the *Summons* and *Motion* to the guardian(s) or other interested person even if they accept service with this form.
- ✓ If the guardian or other interested person signs this form, it must be signed **in the presence of a Court Clerk or Notarial Officer (Notary Public);**

OR

If you do not have a current address for the guardian or other interested persons, or if their identity is not known and cannot be found with reasonable efforts (diligence), you must publish the notice of the motion in the newspaper. You will have to prove to the court that you tried to locate the person. You should look in the phone book, search the internet and Facebook, contact prior employers, family, friends, etc. to locate a current address. You will need these forms:

- **Motion and Affidavit to Allow Service by Publication (Form available in Packet 18)**
 - ✓ If you do not know how to locate the guardian or other interested person, you will need to complete this form and the next two forms.
 - ✓ You must detail the efforts you made to obtain an address.
- **Order for Service by Publication (Form available in Packet 18)**
 - ✓ Fill out the top part of this form. The Judge will sign and date the order.
- **Notice of Publication (Form available in Packet 18)**
 - ✓ Complete this form and have it published for four (4) consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held.
 - ✓ Do not sign where the District Court Clerk needs to sign. **The Clerk must sign the Notice of Publication BEFORE you take it to the newspaper.**
- **Affidavit Following Service by Publication (Form available in Packet 18)**
 - ✓ You will complete this form after you have published the notice in the newspaper for four (4) consecutive weeks, and obtained an **Affidavit of Publisher** from the newspaper.

Step 4: Wait for the Answer Period to Expire.

Once the guardian(s) and/or other interested persons have been properly served, you must wait for the answer period to expire. If the other party was personally served or acknowledged service, he or she has **20 days to respond, or 30 days if served out of state**. If the other party was served by publication, he or she has **30 days after the last day of publication** to respond. Once the time to file an Answer has expired, you can move forward with your case.

Step 5: Default.

If the guardian(s) or other interested persons were served, but did not sign a notarized Consent or did not respond to the Motion, then you will want to have the District Court Clerk enter a default into the case record before the hearing. You should prepare and file these forms with the District Court Clerk:

- **Affidavit in Support of Default**
 - ✓ This form must be signed by the Movant **in the presence of a Court Clerk or Notarial Officer (Notary Public)**.
- **Motion for Entry of Default**
 - ✓ Make sure you give the correct date when the Guardian was served or signed the affidavit acknowledging service.
- **Entry of Default**
 - ✓ If you know the Guardian's address, you must give it to the District Court Clerk, along with a pre-addressed, stamped envelope.

Step 6: Ask for a Hearing Date

It is almost certain that if the Guardian does not agree to terminate the guardianship, that the Court will require a hearing. The District Court Clerk or Judge's office will tell you if a hearing is required. **DO NOT ASSUME THAT THE HEARING WILL BE SCHEDULED AUTOMATICALLY**. Once the answer period has expired (see above), you will have to formally request a hearing date from the Court.

Your Court may have forms to request a hearing date, or you can fill out these forms to request a hearing date:

- **Request for Setting**
- **Order Setting Hearing**
 - ✓ The District Court Clerk or Judicial Assistant will fill in the date, time and courtroom/Judge for the hearing.
 - ✓ You must send a copy of the Order Setting Hearing to all interested parties who consent or respond, Guardian ad Litem, or anyone else required by the Judge.
 - ✓ You will probably need to send the Order Setting Hearing to:
 - Any legal guardians or interested persons who consented to the Motion (although they do not need to attend the hearing);
 - Any other interested persons who responded to the Motion and do not have an entry of default against them (see above);
 - Any Guardian ad Litem assigned to the case; and
 - Any other person required by the Judge or Court.

NOTE: Individual courts have different policies on scheduling, so it is important to contact the court where your case is filed to determine when and how to schedule your appearance in front of the Judge.

Step 7: Before the Hearing.

Pretrial Disclosures. If someone responded to the Motion and is objecting to the termination, you will need to prepare your evidence in advance. See below for more information about the evidence you should present at the hearing. Prior to the hearing, the Judge may order that you send a list of your witnesses and other evidence to the Court and other parties to the case a certain number of days before the hearing or by a specific date. If you do not follow these instructions, the Judge may not allow you to use your witnesses or other evidence. You can use this form to prepare your evidence lists for the other parties:

- **Pretrial Disclosures form**

- ✓ Fill in the information at the top of the first page. The names, case number and court information should match the information on the Motion to Terminate Guardianship.
- ✓ Enter the names and contact information for any witnesses in the first table on page 4.
- ✓ For each witness, check whether you expect to use them or if you will only use them if necessary.
- ✓ In the second table, enter a name for each piece of evidence (“Document or Exhibit”) you might want to show the court. Example: “Exhibit A: Ward’s Medical Records.”
- ✓ Enter a short description (“Summary of Evidence”) for each piece of evidence. Example: “These medical records describe the child’s special care needs.”
- ✓ For each piece of evidence, check whether you expect to use it or if you will only use it if necessary.
- ✓ Sign the Pretrial Disclosures form.
- ✓ Complete the Certificate of Service section on the same day you file the document.
- ✓ Make at least two copies of the completed form (one for yourself and one for the Respondent). Hand deliver, fax, or use first class mail to send a copy of the Pretrial Disclosures to the Respondent. If the Respondent has a lawyer, you would send the Pretrial Disclosures to his or her lawyer instead.

Step 8: Prepare for the Hearing.

Regardless of whether anyone objects or not, you will need to complete this form to bring to the hearing:

- **Order on Motion to Terminate Guardianship**
 - ✓ The Judge will fill out and sign this form, or you may be asked to fill out the Order after the hearing. Complete only the top portion (case name and number) of this form before the hearing.
 - ✓ Bring it to the court hearing and present it to the Judge or District Court Clerk when he or she requests it.

You will also want to prepare your evidence. See below for information about the evidence you should bring to your hearing.

Step 9: The Hearing

You must appear at the hearing and should be prepared to present evidence as to why the guardianship should be terminated, even if no one has objected.

- a. Be prepared to take notes.
- b. You must prove to the Court that you are now a fit parent to care for your child. Be prepared to offer exhibits such as proof of employment, stable housing, medical records, social services records, and testimony of witnesses such as friends, family, or medical or mental health professionals. Be prepared to show what has changed in your life since the Guardianship was put in place.

Step 10: After the Hearing

1. A copy of the Order must be sent to all interested persons. After the Order is entered, the District Court Clerk will send a copy to all parties including:
 - a. Any guardians or other interested persons who consented to the motion (even if they did not attend the hearing);
 - b. Any guardians or other interested persons who received notice of the motion and do not have an Entry of Default against them (see above);
 - c. Any Guardian ad Litem assigned to the case; and
 - d. Any other person required by the Judge or Court.

FREQUENTLY ASKED QUESTIONS:

1. What is “Service” in a Guardianship?

When you are involved in a court case, you are responsible for delivery (service) of copies of important papers you file with the court to other people involved in the case (like the Minor’s current legal guardian, or other interested persons, for example). Depending on the circumstances, the papers must be served by personal delivery (called personal service), or if the person agrees, they can waive personal delivery with a notarized statement. In limited circumstances, you may be allowed to serve by publishing a notice in a newspaper or by registered mail. Service lets these people know that you are asking the court to terminate the guardianship, and the date and time when the Guardian must respond to your request.

2. **How to Serve the Guardian.** Choose **ONLY ONE** of the following options to serve each party:

Option 1– Service by Sheriff

Summons. It is recommended to have a Sheriff in the county where the Guardian can be found serve him or her with the papers. There will be a separate **service fee** (usually fifty (\$50.00) dollars in Wyoming). You can contact the Sheriff’s department in the county where the Guardian lives to determine the fee charged by the Sheriff. This is also true if the Guardian is going to be served in a different state. You will need to provide the Sheriff with a file-stamped copy of the *Summons* and *Motion* to be served on the Guardian.

Proof of Service. The Sheriff’s Office will complete the last page of the *Summons* called the “*Return*” (or they may have their own form - an “*Affidavit of Service*”) and will usually file the original with the District Court Clerk’s office and send you a copy. If you receive what looks like the original “*Return*” or “*Affidavit of Service*” from the Sheriff, call the District Court Clerk’s office to make sure the original has been filed. If it has not, then file the original with the District Court Clerk’s office and keep a copy for yourself. This is the proof that the guardian(s) and/or other interested persons were given proper notice.

Note: Once the Guardian has been served, you **MUST** file the original *Summons* and the original *Return* (or *Affidavit of Service*) with the District Court Clerk’s office so that the Judge knows that proper service was made.

Option 2 – Acknowledgement and Acceptance of Service.

If the Guardian agrees, he or she may sign a form stating that a copy of the *Summons* and *Motion* were received. If the Guardian agrees, you will need to fill out an *Acknowledgement and Acceptance of Service* form. The Guardian must sign this document in front of a Court Clerk or Notarial Officer (Notary Public).

Proof of Service. Once the *Acknowledgement and Acceptance of Service* form is signed, take the original and two (2) copies of the signed form to the District Court Clerk’s office for filing. You should keep one copy for your records and provide the other copy to the Guardian.

Note: You must file the signed *Acknowledgment and Acceptance of Service* form and the original *Summons* with the District Court Clerk’s office so that the Judge knows that proper service was made on the Guardian.

Option 3 – Service by publication if you cannot find the Guardian.

If you were unable to serve the Guardian either by the Sheriff or by obtaining an *Acknowledgement or Acceptance of Service*, then you may make a request to serve the Guardian(s) and/or other interested persons by publication. **(Forms available in Packet 18)**

There are additional fees for service by publication and it will take more time. If you are unsure whether or not you are allowed to serve the Guardian by publication, you need to consult with a lawyer. However, if you can demonstrate that you have made every effort to find the Guardian's address, completely fill out a *Motion and Affidavit to Allow Service by Publication* and *Notice of Publication*.

After the District Court Clerk signs and files the *Notice of Publication*, it is your responsibility to contact the appropriate newspaper and to arrange for the publication and pay the appropriate fees. An appropriate newspaper is one that has been regularly issued at least once each week for a period of fifty-two (52) consecutive weeks prior to the date of the first publication of notice or advertisements. It must have a paid circulation of at least five hundred (500) and each page must not be less than ten (10) inches by twelve and one-half inches in size. The newspaper must publish the notice once a week for four (4) consecutive weeks.

Proof of Service. The other party will have thirty (30) days after the **last** date of publication to file a written Answer to your Motion. After the thirty (30) day waiting period, fill out, sign and notarize the *Affidavit Following Service by Publication*. You must also attach an *Affidavit of Publisher*, which is a form the newspaper will prepare and send to you after it completes the publishing.

Note: You must file the *Affidavit Following Service by Publication* and the *Affidavit of Publisher* with the Court so that the Judge knows that proper service was made on the Guardian(s) and/or other interested persons.

3. Who can serve?

Ask a private process server, or a representative of the county sheriff's civil division, to personally serve copies of the forms to the persons named above. The forms cannot be sent by mail. You will have to pay this person for his or her services. The District Court Clerk in the county where you need to make service may have a list of local process servers.

4. **What if I cannot locate one or both of the Guardians or he or she is avoiding service of process?**

You will have to publish notice of the hearing in the newspaper in the county where you have filed the Motion. See information above for forms and instructions on service by publication.

5. **What if one or both of the Guardians do not agree to terminate the guardianship?**

If the Guardians do not agree, then the Court will most likely schedule a court hearing where you will present your evidence as to why the guardianship is no longer necessary. At the hearing, you will be given a chance to show the judge why a guardianship is not necessary, and to demonstrate your fitness as a parent. If a hearing is scheduled, you should consult with an attorney.

6. **What if the Guardian(s) give her/his consent to terminate the guardianship?**

If the Guardian gives consent to terminate the guardianship, then you may not need a hearing. However, some Judges may still require a hearing.

7. **What if I previously consented to the guardianship (temporary or permanent), and then my circumstances have changed and I now believe I can care for my child/children?**

You, as the parent, have the right to ask for your child back at any time, unless your parental rights have been terminated. However, the Guardian has legal custody of the child until the guardianship end date (usually when the child turns 18 for a permanent guardianship) or until the Court says otherwise. **If the term for the guardianship has not ended**, you will have to file a Motion to Terminate Guardianship to ask the court to set aside the guardianship. The Court will most likely set a hearing on the matter. Be sure that the Court always has your current address and phone numbers at all times, and read all mail you may get from the Court, and follow any instructions carefully and on time.