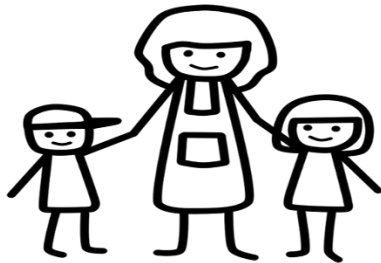


Temporary Transfers of Custody and Relative Caregiver Affidavits as Alternative Tools to Child Guardianships in Missouri

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1.0 MCLE credits



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Many Clients Seek Guardianships Because That Is The Term They Have Heard

Is Guardianship the appropriate tool?



- It is a probate court proceeding
- Governed by the Probate Code, RS Mo 475.030
- Guardianships are intended to be permanent until the child reaches 18
- Reasons are: a) the minor has no living parent; or b) the parents or sole surviving parent of the minor are unwilling, unable or adjudged unfit to assume the duties of guardianship; or c) the parents or the sole surviving parent have had their parental rights terminated under chapter 211 RSMo; and d) the best interests of the minor require letters of conservatorship for all his/her estate

- Guardian remains under the court's jurisdiction for duration of guardianship



- Guardian must file annual report

St Louis City Guardianship Petition Filing Checklist:

- Need filing fee in the amount of \$140.00;
 - Need certified birth certificate;
 - Need Affidavit;
 - Need Nomination of Fiduciary by Minor if over 14;
 - Need corporate surety bond in the amount of the personal property rounded to the next thousand;
 - Need Authorization for Release of Information Form;
 - Need Request for Child Abuse or Neglect/Criminal Record Form;
 - Need Motion for Service by Publication;
 - Need Affidavit of Due and Diligent Search for anyone whose name or whereabouts are unknown
 - Need Police Records Check;
 - Need the location and value of any real property owned by the minor(s) outside Missouri;
 - Need the name and address of the trustee(s) of any trust of which the minor(s) is a beneficiary;
 - Need the purpose of any trust where the minor(s) is a qualified beneficiary.
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- Home study will be conducted and/or GAL will be appointed depending on jurisdiction

Non-court tools: Relative Caregiver Affidavits and Powers of Attorney



Who Is The Client?



- If you are preparing a relative caregiver affidavit, the caregiver is your client
- If you are preparing a temporary transfer of custody/power of attorney, the natural parent is your client

Relative Caregiver Affidavits

- RS Mo. § 431.058 and § 431.061:

A **relative caregiver** may consent to the **medical treatment** provided for under § 431.061 RSMo and for **educational services**

Either a parent delegates in writing the parent's authority to consent to medical and educational services

Or, if after reasonable efforts to obtain the parent's consent, the caregiver is unable to obtain the consent (appears to be interpreted as unable to contact the parent)

- Note that Relative Caregiver Affidavits do not relieve a natural parent of financial liabilities for medical treatment or other liabilities incurred on the child's behalf

Definitions Under § 431.058

- **“Adult”**, a person who is eighteen years of age or older;
- **“Child”** or **“minor”**, a person who is under eighteen years of age;
- **“Educational services”**, enrollment of a child in a school to which the child has been or will be accepted for attendance and participation in any school activities, including extracurricular activities;
- **“Health care provider”**, a person who is licensed, certified, registered, or otherwise authorized by law in this state to administer medical treatment in the practice of a health care profession or at a health care facility, and includes a health care facility;
- **“Parent”**: (a) A child's parent by birth or adoption; (b) A child's legal guardian; or (c) Any person who under court order is authorized to give consent for a child;
- **“Relative caregiver”**, a competent adult who is related to a child by blood, marriage, or adoption who is not the parent and who represents in the affidavit described under subsection 8 of this section that the child lives with the adult and that the adult is responsible for the care of the child.

Required Elements of Affidavit

A relative caregiver affidavit given to a health care provider or school must be signed and notarized, and contain, at a minimum, the following information:

- (1) The name of the child;
- (2) The child's date of birth;
- (3) The relative caregiver's name and date of birth and the address at which the relative caregiver lives with the child;
- (4) The relationship of the relative caregiver to the child;
- (5) The driver's license or identification card number of the relative caregiver;
- (6) The contact information of the parent;
- (7) A description of any attempts that the relative caregiver has made to advise the parent of the relative caregiver's intent to consent to medical treatment or educational services for the child, and of any response to the relative caregiver provided by the parent;
- (8) If applicable, a signed and dated delegation of authority to the relative caregiver by the parent to consent to educational services or medical treatment;
- (9) If applicable, the reason why the relative caregiver is unable to contact the parent to advise the parent of the relative caregiver's intent to consent to medical treatment or educational services for the child;
- (10) The date the relative caregiver signed the affidavit; and
- (11) A declaration under penalty of perjury that the named child lives with the relative caregiver, that the relative caregiver is a competent adult and eighteen years of age or older and that the information provided in the affidavit is true and correct.

Sample Affidavit Provided In RS Mo 431.058

STATE OF MISSOURI

COUNTY OF _____

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____ (relative caregiver), who, being by me duly sworn, deposed as follows:

My name is _____, and I am of sound mind and am over eighteen (18) years of age. My date of birth, address, contact information, and driver's license or identification card numbers are _____. I am competent to testify to the following facts and matters:

I am a relative caregiver to _____ (name of child), whose date of birth is _____. My relationship to the child is _____. The above-mentioned child is living with me at _____ (address) because of the following _____ (description of reasons why child lives with relative caregiver and any attempts that the relative caregiver has made to advise the parent of the relative caregiver's intent to consent to medical treatment or educational services for the child, and any response to the relative caregiver provided by the parent). The contact information for the parent is _____ (if known).

(If applicable) Attached is a signed and dated delegation of authority to me by the parent to consent to educational services or medical treatment.

(If applicable) The reason why I am unable to contact the parent to advise the parent of my intent to consent to medical treatment or educational services for the child is _____

Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this _____ day of _____, 20____.

(Signed)

(Seal)

Temporary Transfer of Custody, also called Power of Attorney

- RS Mo. § 475.024 allows a parent to delegate temporary powers regarding care of custody through a properly executed power of attorney.
- “A parent of a minor, by a properly executed power of attorney, may delegate to another individual, for a period not exceeding one year, any of his or her powers regarding care or custody of the minor child, except his or her power to consent to marriage or adoption of the minor child.” RSMo § 475.024

Temporary Transfer of Custody Document

SPECIAL POWER OF ATTORNEY
AND
AUTHORIZATION FOR TEMPORARY TRANSFER OF PHYSICAL CUSTODY OF
A CHILD BY A PARENT

Pursuant to R.S. Mo. 5 475.024.1, I, (Name of Custodial Parent), born (Date of Birth) (Social Security #) and the custodial parent of the following child: (Name of Child), born (Date of Birth) (Social Security #), do hereby give temporary custody to (Name of Guardian), (Social Security #) (Date of Birth), for the period of (Start Date) until (Ending Date), for the purpose of caring for my daughter/son, until such time that I am able to resume my custodial responsibilities.

I hereby appoint (Name of Guardian), my Attorney in Fact for this purpose.

I further give my permission for (Name of Guardian) to care for my child in her home and to apply for, consent to, or otherwise obtain any medical treatment or any economic, social, educational, or other services that my daughter/son may require.

I currently do not contribute to the financial support of the minor child.

All business transacted hereunder for me or for my account shall be transacted in my name, and all endorsements and instruments executed by my Attorney in Fact, (Name of Guardian) for the purpose of carrying out the foregoing powers shall contain my name, followed by that of (Name of Guardian).

Furthermore, I am not aware of any pending litigation concerning the custody of my minor child, (Name of Child), whose mother/father, (Name of Other Biological Parent) has no knowledge of this agreement and does not contribute to the support of my minor child, (Name of Child).

Rules of School Enrollment



- A student must demonstrate that he or she lives in the district and is domiciled there. R.S. Mo § 167.020(2)(1)
- The domicile of a student will be that of the student's parent, court appointed legal guardian, or military guardian designated pursuant to a military guardianship. R.S. Mo § 475.060(11)
- School district should not require a court ordered guardianship before enrolling a child who is not living with a parent. R.S. Mo § 167.020(2),(6)

School Enrollment

- If a child does not live with a parent or a court appointed legal guardian in the district, then the temporary guardian should be able to enroll the child in school with a temporary transfer of custody (TTC).
- TTC must include statement that “the legal guardian or biological parent does not provide support to the minor child.”
- “Orphan children, children with only one parent living, and children whose parents do not contribute to their support-if the children are between the ages of six and twenty years and are unable to pay tuition-may attend the schools of any district in the state in which they have a permanent or temporary home without paying a tuition fee.” R.S.Mo § 167.151(2)
- TTC allows student to fall under the exception provided in § 167.151(2).
- Confirmed by U.S. District Court of Eastern Missouri in *Polk v. Normandy School District*, Case No. 4:96CV01864 ERW

Temporary Custody Transfers

- Note that a Temporary Transfer of Custody may be introduced as evidence against a parent in a later termination of parental rights proceeding
- Best practice is to advise client to destroy the document if s/he wishes to retract it early and/or when it expires so that someone is not still trying to use it; may also put retraction in writing
- Expires in one year but may enact a new one in subsequent years

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