

# Guardianship of Minors

	Current Montana Law	Uniform Law
<i>Appointment of guardian</i>	By court order or by parent in parent's will (72-5-201)	By court order <i>only</i> (201)
<i>Standard for appointment of guardian</i>	<ul style="list-style-type: none"> <li>• Court may appoint a guardian if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order (72-5-222)</li> <li>• Court shall make the appointment if it finds that the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment (72-5-225)</li> </ul>	<ul style="list-style-type: none"> <li>• Court may appoint a guardian if the appointment is in the minor's best interest and: (1) each parent of the minor, after being fully informed of the nature and consequences of the guardianship, consents; (2) all parental rights have been terminated; or (3) there is clear and convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian (201)</li> </ul>
<i>Notice requirement for hearing on appointment of guardian for a minor</i>	Notice of the hearing must be given to: (1) the minor (if 14+ years old); (2) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and (3) any living parent of the minor (72-5-225)	<ul style="list-style-type: none"> <li>• Personal notice must be given to: (1) the minor if 12+ years old at time of the hearing; (2) each parent or adult nearest in kinship; (3) any adult with whom the minor resides; (4) any person who had primary care or custody of the minor for at least 60 days during the 2 years immediately before the petition was filed or at least 730 days during the 5 years immediately before the filing; and (5) any other person the court directs</li> <li>• Notice must also be provided to: (1) a person nominated to serve as guardian; (2) each grandparent of the minor; (3) each adult sibling; (4) any guardian or conservator already acting for the minor; and (5) any other person determined by the court</li> <li>• If a petitioner cannot serve notice on a parent or alleges that the parent waived the right to notice, the court is required to appoint a visitor to interview the petitioner and minor, locate the parent, and investigate any other matter (203)</li> </ul>

<i>Rights afforded older minors</i>	A minor 14+ years old: <ul style="list-style-type: none"> <li>• may object to appointment of guardian, nominate a guardian, or petition to remove a guardian; and</li> <li>• is entitled to notice re: hearing for appointment of a guardian</li> </ul>	Lowers age to 12+ years old
<i>Representation</i>	In appointment proceedings and proceedings involving the removal or resignation of a guardian, the court may order the Office of State Public Defender to assign counsel to represent a minor if the court determines that the interests of the minor are or may be inadequately represented (72-5-225; 72-5-72-5-234)	<ul style="list-style-type: none"> <li>• Court is required to appoint an attorney for a minor if: (1) requested by a minor 12+ years old; (2) recommended by a guardian ad litem; or (3) the court determines the minor needs representation</li> <li>• Sets standards for attorney for advocating for minor</li> <li>• Court is required to appoint an attorney for a parent if: (1) the parent objects to the appointment of a guardian; (2) the court determines that counsel is needed to ensure that consent is informed; or (3) court otherwise determines parent needs representation (204)</li> </ul>
<i>Emergency/temporary guardian</i>	If necessary, court may appoint temporary guardian for up to 6 months (72-5-224)	Court may appoint an emergency guardian for a period not to exceed 60 days, which may be extended once for an additional 60 days (208)
<i>Duties &amp; powers of guardian</i>	<ul style="list-style-type: none"> <li>• That of a parent, take reasonable care of minor's personal effects; may receive money payable for the support of the minor; facilitate social, educational, and other activities; authorize medical or other professional care; and consent to marriage or adoption</li> <li>• Requires the guardian to report on the condition of the minor and of the estate as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule (72-5-231)</li> </ul>	<ul style="list-style-type: none"> <li>• Similar and also includes requirements that a guardian become or remain acquainted with the minor and learn the minor's preferences</li> <li>• Requires the guardian to report to the court and account for the minor's money and assets and inform the court of any change in the minor's dwelling or address (209; 210)</li> </ul>
<i>Removal of guardian</i>	A minor 14+ years old or any interested person may petition for removal of a guardian (72-5-234)	A minor or any interested person may petition for removal of a guardian (211)
<i>Termination of guardianship</i>	Occurs on death, resignation, or removal of guardian or on the minor's death, adoption, marriage, or attainment of majority. Resignation does not terminate guardianship until approved by the court. Testamentary appointment under informally	<ul style="list-style-type: none"> <li>• Similar (except no testamentary appointment/termination) and also provides for termination when the court finds that the standard for appointment of a guardian is not satisfied, unless the court finds that: (1) termination would be</li> </ul>

	<p>probated will terminates if the will is later denied probate in a formal proceeding (72-5-233)</p>	<p>harmful to the minor; and (2) the minor’s interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent’s right to make decisions for the minor (211)</p> <ul style="list-style-type: none"> <li>• Authorizes court to issue an order providing for transitional arrangements when terminating guardianship</li> </ul>
<p><i>Other</i></p>	<ul style="list-style-type: none"> <li>• No attendance requirement</li> <li>• 72-5-103 allows a parent or guardian, by a properly executed power of attorney, to delegate to another person, for a period not exceeding 6 months (6-month limit does not apply if the person is a member of the military), any powers regarding care, custody, or property of a minor except the power to consent to marriage or adoption</li> <li>• No detailed requirements regarding what information must be contained in the petition</li> </ul>	<ul style="list-style-type: none"> <li>• Attendance of minor at hearing to appoint a guardian is required unless the court determines by clear and convincing evidence at the hearing or a separate hearing that: (1) the minor refused to attend; (2) there is no practicable way for the minor to attend; (3) the minor lacks the ability or maturity to participate meaningfully; or (4) attendance would be harmful to the minor (205)</li> <li>• Establishes a process for appointing, without a hearing, a standby guardian who can exercise the duties granted to a guardian when a parent is no longer able and willing to act (207)</li> <li>• Provides detailed requirements for what information must be included in a petition for appointment of a guardian for a minor (202)</li> </ul>