



This is basic information and does not constitute legal advice.

Substituted Judgment – Temporary Guardianship

What is a temporary guardianship?

A temporary guardianship is a guardianship of limited duration (a limited period of time) in which the court appoints a temporary guardian to handle an emergency situation.

When should I seek a temporary guardianship?

In an emergency situation. Such an emergency may result from the death or incapacity of your guardian, e.g., your guardian is in jail and unable to do his or her job.

What powers does a temporary guardian have?

A temporary guardian has only the rights necessary to address the emergency. A temporary guardian can ask the court for authority to access funds in a frozen bank account that has your money to meet your basic needs.

Who can be a temporary guardian?

Any competent person or a suitable institution may be appointed a temporary guardian so long as the institution is not an agency or someone affiliated with an agency providing residential care in an institution or community-based setting. If you have no guardian, and an emergency exists, then the court may exercise the power of a guardian or enter an order appointing a temporary guardian to address the emergency.

How do I file for a temporary guardianship?

You or another interested person can file a request with the court to have a hearing as soon as possible to decide whether you need a temporary guardianship. This is also called an "expedited hearing." At a temporary guardianship hearing, the petitioner must show that temporary guardianship is necessary for the emergency situation. Neb. Rev. Stat. §30-2626 (2011). *You may also request the court to enter an ex parte order (an order in which not all parties are involved) appointing a temporary guardian to address the emergency.*

Do I still need a full guardianship?

If you believe you are able to make decisions on your own, you may ask the court to review your case to decide if a "limited guardianship" may be more appropriate or you can ask that no guardianship be continued.

[SAMPLE LETTER TO COURT]

Date

[name of county] Court Judge
c/o Clerk of the County Court
Address of Court
City/State/Zip

Re: In the Guardianship of [Name of Ward], case number PR xx-xxxx

Dear Judge:

I am [the named ward/a person of interest for the named ward] in the above-captioned case. At the present time, the named guardian in this action is [Guardian's Name]. This individual is currently [incapacitated, e.g., in jail in Scotts Bluff County on a felony charge] and, by reason of such [incapacity, e.g., incarceration], is not able to perform the duties of guardian, and as a result an emergency exists. Pursuant to Neb. Rev. Stat. § 30-2623, we request that the court immediately remove [Guardian's Name] as guardian in the above-captioned action, and either the court should act as temporary guardian or some other individual should be appointed as temporary guardian, pending notice and hearing, consistent with Neb. Rev. Stat. § 30-2626. I also request that the court review my situation to determine whether a limited guardianship, or no guardianship, is appropriate.

Sincerely,

[name of person making request]