

Kinship Guardianship

Shadow Foster Care System



New Mexico 2010 Census

- 71,2206 NM children under the age of 18 live in homes where the householders are grandparents or other relatives (13.8% of children).
- 30,022 NM children live in homes with grandparent householders where the grandparents are responsible for the day to day care of the child.

How Children End Up in Kinship Care

- Abandonment
- CYFD Safety Plan
- Removal of Child by family

Legal Tools for Kinship Caregivers

- Caregiver's Authorization Affidavit
 - Domestic Relations Code NMSA §40-10B-15
- Power of Attorney
 - Probate Code NMSA §45-5-104
- Kinship Guardianship
 - Domestic Relations Code NMSA §40-10B-1

Caregiver's Authorization Affidavit

NMSA §40-10B-15

- Used by a caregiver with whom a child is living for any amount of time.
 - Valid for one year
 - Protects person who provides services from civil or criminal liability or disciplinary action
 - Must be signed by a caregiver and notarized

Power of Attorney

NMSA §45-5-104

- Used by a caregiver with whom a child is living for any amount of time.
 - Valid for six months
 - Protects person who provides services from civil or criminal liability or disciplinary action
 - Must be signed by a custodial parent and notarized
 - Any power can be delegated except power to authorize marriage or adoption
 - Revocable at will

Kinship Care

- Informal
 - Caregiver has no legal authority or only revocable legal authority (e.g. power of attorney or caregiver's authorization affidavit) to make decisions regarding a child.
- Formal
 - Caregiver has gone to Court to obtain guardianship of a child.
- Institutional
 - State has legal custody but the child is in the home of a relative (Foster Care Family Placement or Fictive Kin)

Guardianship in New Mexico

- Permanent Guardianship
 - Children's Code NMSA §32A-4-31 et seq.
- Guardianship of Minors
 - Probate Code NMSA §45-5-201 et seq.
- Kinship Guardianship
 - Domestic Relations Code NMSA §40-10B-1 et seq.

The Caregiver's Dilemma

- Allow the parent to pick-up or drop-off the child whenever they wish.
- Refuse to allow the parent to leave the child with you anymore.
- Call CYFD, report the parent as abusing or neglecting the child.
- File a case against the parent to gain custody of the child.

Kinship Guardianship Act

Policy and Purpose

- (1) Establish procedures to effect a legal relationship between a child and kinship caregiver...; and
- (2) provide a child with a stable and consistent relationship with a kinship caregiver...when the parents are not willing or able to do so.
 - NMSA 30-10B-2

Definitions

- Kinship
 - Relationship that exists between a child AND relative, godparent, member of the child's tribe or clan, or an adult with whom the child has a significant bond.
- Caregiver
 - An adult who is not the parent of a child, with whom the child resides and who provides that child with the care, maintenance, and supervision consistent with the duties and responsibilities of a parent to that child.

NMSA 40-10B-3

Petition

- Caregiver must file a Petition for Kinship Guardianship which must contain:
 - Petitioner's relation or bond to the child(ren)
 - Whether the parent consents
 - The date of birth of the child and where the child resides
 - Marital status of child
 - Name and address of petitioner
 - Names and address of each parent
 - Names and address of anyone having custody
 - Petitioner agrees to the duties and responsibilities of guardianship
 - Other pending cases
 - Whether the child is an Indian Child
 - If so, tribal affiliation of child's parents and notification to the tribe.
 - **OTHER FACTS SUPPORTING GUARDIANSHIP**

NMSA 40-10B-5

Temporary Kinship Guardianship

- Kinship Caregiver must file for guardianship in order to file for Temporary Kinship Guardianship.
 - The court may appoint a temporary guardian for 180 days or until the case is decided on the merits, whichever occurs first.
- Expires at the end of the 180 days so there must be a hearing on the Petition prior to the expiration.

NMSA 40-10B-7

Who is served with the Petition

- Parent(s) of the child
- The child if fourteen or older
- CYFD if a case is filed
- A person having custody of the child or visitation rights granted by a court order
- If the child is an Indian Child as defined by the Indian Child Welfare Act, the tribe

NMSA 40-10B-6

What Do I Have to Prove at Court

- Kinship Caregiver bond
- Venue is proper
- Respondents have been served
- All requirements of subsection B (Next Slide)
- The appointment is in the child's best interest

NMSA 40-10B-8(A)

What Do I Have to Prove at Court

- (a) a parent of the child is living and consents;
- (b) a parent of the child is living but all parental rights have been terminated or suspended by a prior court order; or
- (c) the child has resided with the petitioner without the objecting parent for at least 90 days prior to filing the petition

And

- A Parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child.

Or

- There are extraordinary circumstances.

NMSA 40-10B-8(B)

Children 14+

- The court shall appoint a person nominated by a child who is 14 or older unless the judge finds the nomination contrary to the best interest of the child.
- The Court shall not appoint a person as guardian if a child is 14 or older files a written objection before the person accepts the appointment as guardian.

NMSA 40-10B-11

Revocation

- Any person, including a child who is 14+ may move to revoke a guardianship.
 - Must include a proposed transition plan to reintegrate the child with the parent or new guardian.
 - A transition plan shall take into consideration the child's age, development, and bond with the parent.
- If the court finds by a preponderance of the evidence a change in circumstances and the revocation is in the best interest of the child, it shall grant the motion.

NMSA 40-10B-12

Rights and Duties of a Guardian

- Legal rights and duties of a parent.
 - Medical
 - Educational
 - Legal
 - VISITATION-who/what/when/where/how
 - Unless some specific visitation is ordered by the Court
- Parents can retain rights, as ordered by the Court.
- Guardian's duty is to provide adequate care, maintenance, and supervision.
- Guardian cannot consent to an adoption.
 - Different process

NMSA 40-10B-13

Take Aways

- Relationships that lead to Kinship Guardianships are complicated
- There are alternatives and/or stop-gaps to Kinship Guardianship
 - Caregiver's Authorization Affidavit, McKinney-Vento Act, Power of Attorney
- There is no true emergency Kinship Guardianship

Kinship Guardianship Help

- Pegasus Kinship Guardianship Legal Helpline (505) 217-1660
- Pegasus Kinship Navigator Hotline (855) 546-1212
- Grandparents Raising Grandchildren Support Groups
- Senior Citizens' Law Office