# WEST VIRGINIA CODE: §44-10-3

**§44-10-3. Appointment and termination of guardian for a minor.**

(a) The circuit court and family court have concurrent jurisdiction to appoint a guardian for a minor.

(b) Venue for a petition for appointment of guardianship is in the county in which the minor has resided for the past six months unless the court finds extraordinary circumstances for a sooner filing. If the child is a nonresident of this state and only the guardianship of the estate is sought the petition may be filed in the county in which the child has an estate.

(c) All proceedings shall be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings.

(d) Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent.

(e) Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hold a hearing upon the petition for the appointment of a guardian within ten days after the petition is filed. If all persons entitled to service in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings have not been served at least five days prior to the hearing or have not waived service the court shall continue the hearing but may appoint a temporary guardian pursuant to subsection (g) below.

(f) The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor’s best interest and:

(1) The parents consent;

(2) The parents' rights have been previously terminated;

(3) The parents are unwilling or unable to exercise their parental rights;

(4) The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or

(5) There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied.

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(g) Whether or not one or more of the conditions of subsection (f) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists or that a period of transition into the custody of a parent is needed so long as the appointment is in the best interest of the minor. The temporary guardian has the authority of a guardian appointed pursuant to subsection (f) but the duration of the temporary guardianship may not exceed six months. A temporary guardianship may be extended beyond six months upon further order of the court finding continued need in the best interest of the minor.

(h) Any suitable person may be appointed as the minor's guardian. A parent shall receive priority subject only to the provisions of subsections (d) and (f) above. However, in every case the competency and fitness of the proposed guardian must be established and a determination made that the appointment is in the best interest of the child.

(i) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian's estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor's best interest.

(j) For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest.

(k) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor. Another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(l) Other than court orders and case indexes, all other records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding, the court presiding over the proceeding or other family or circuit court presiding over another proceeding involving the minor absent a court order permitting examination of such records.

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