



# **Guardianship Applications**

in the District Court



## What is Guardianship?

Guardianship is the right and duty to decide how a child (i.e. under 18 years old) is brought up.

A guardian has the right and responsibility to make all major decisions affecting the child's upbringing, including choice of school, medical treatment, religious matters, health requirements and decisions about leaving the country.

## Who can be made Guardians?

- Where the parents are married, both parents are automatically joint guardians of their child. Where married parents separate, they both retain guardianship rights, even though custody may be given to one parent.
- An unmarried natural mother is automatically a guardian of her child.
- An unmarried father is not automatically entitled to become a guardian of his child. The fact that the father's name is on the register of births does not give him guardianship rights in respect of the child.
- Other guardians may be appointed under a **parent's will or by court order**.

## How does an unmarried father become a guardian?

1. If the mother agrees to the father becoming a joint guardian there is no need to go to court. In this case, both parents must complete a statutory declaration in the presence of a Peace Commissioner or Commissioner for Oaths (Guardianship of Children (Statutory Declaration) Regulations, 1998 (S.I. No. 5 of 1998)). Please see below for standard declaration.
2. If the mother does not agree to the father becoming the child's guardian, then the father can apply to the District Court in order to be appointed joint guardian with the mother. The Court can make him a joint guardian if it is satisfied it is in the best interests of the child to do so. Please see below for procedure and forms.
3. By marrying the mother of his child as long as the child has not been adopted.
4. A mother can, by will, appoint a person, including the father, as guardian upon her death (testamentary guardian).
5. In the case of a mother's death without a will, the Court can appoint the father guardian.

## Guardianship and Access

An unmarried father can apply for access whether or not he is a guardian. He can do this even if his name is not on the child's birth certificate, or where his application for joint guardianship has been refused. (Please see MLRC leaflet on Access applications in the District Court).

## Where to make the Application

An application for Guardianship will be brought in the District Court by issuing a Notice of Application. For people living in Dublin this can be done through Dublin District Court Family Law Office.

### Address

Ground Floor

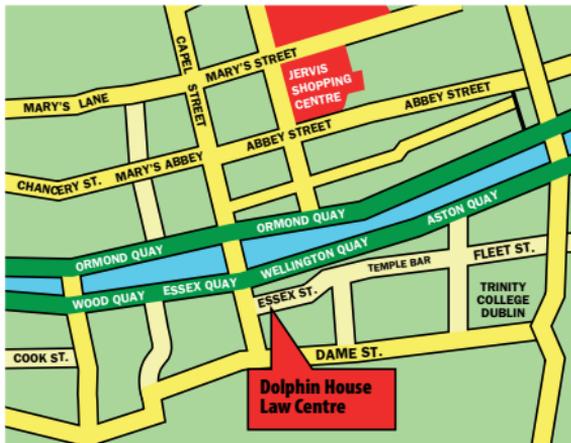
Dolphin House

East Essex Street

Dublin 2

Tel: +353 (0)1 888 6349 / 6344 / 6347 / 6348 / 6353 / 6368

### Map



## How to get there

The District Court Office is located on East Essex St, in the Temple Bar area of Dublin City centre.

**By Dublin Bus:** There are numerous bus routes servicing the city centre - check Dublin Bus timetable, visit [www.dublinbus.ie](http://www.dublinbus.ie) or phone Dublin Bus 01 873 4222.

**By Luas:** Luas red line runs from Tallaght to Connolly Station. The nearest stop is at Jervis Centre on Upper Abbey Street - this is approximately 5 minutes walk to Dolphin House.

### Opening Hours

#### Monday to Friday:

9.30 a.m. to 12.30 p.m. & 2.00 p.m. to 4.30 p.m

## Steps to be taken to bring the Application

The person seeking to be appointed Guardian will present at the public counter of Dublin District Court Family Law office and state that they want to issue a Notice of Application for a father to be appointed guardian.

Please note the “Applicant” is the person who is seeking to be appointed Guardian and the “Respondent” will be the child’s guardian, normally the child’s mother.

The applicant will then be taken to an interview room and will be given assistance with completing the Notice, (please see copy below), by the court staff. All forms will be provided by the District Court Office.

**Please note the court staff will not give legal advice on the possible outcome of the hearing but will assist with getting the application before a judge.**

The court staff will insert a court date and serve the Notice on the Respondent.

Please note, the next available court date will be in approximately 6 weeks from the date the applicant presents at the District Court Office.

**NB: The applicant must arrive at the court at 10 a.m on the morning of the court date and wait for their case to be called. If the Applicant fails to turn up on the given court date on a number of occasions, this may result in a ban, called an Isaac Order, on the application being brought.**

## Matters to consider at the Court Date

The Judge will generally guide you through the process. He or she will consider the child's welfare to be the main consideration and may look at the following matters:

- The age of the child;
- Each party's relationship with the other;
- The length of the relationship of the parties in dispute;
- Whether the relationship was of a permanent nature;
- Each party's involvement with the care of the child (financial, emotional, and physical).

The applicant should consider these matters before the court date and if possible provide witnesses/evidence to strengthen their case.

Evidence may be receipts of monies/gifts/maintenance given to the child/child's primary carer.

Witnesses may include people to vouch for the good character of the applicant, i.e. social workers, key workers, nurses, doctors, or letters from these parties.

A father who has been appointed joint guardian by the courts **OR** by a statutory declaration may later be removed, if the court believes this to be in the child's best interests.

## Legal Aid

Whilst you can make this application yourself, you are also entitled to apply for legal representation through The Legal Aid Board. To qualify for legal aid, your disposable income and assets must be below a certain limit, there must be merit to the case and there must be no more satisfactory way of resolving the problem.

The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, call 1890 615 200. **The following Law Centres are in Dublin City Centre:**

- i. 2nd Floor Dolphin House, East Essex Street, Dublin 2
- ii. 45 Lower Gardiner Street, Dublin 1
- iii. 48/49 Nth Brunswick Street/Georges Lane, Dublin 7.

If you pass the financial and merits test you will be allocated a solicitor from the Law Centre or from the panel of private practitioners. This must be done within 2-4 months or earlier if the case is urgent e.g. involves child care, domestic violence. There is a minimum advice contribution of €10 and representation contribution of €50.

For further information, contact The Legal Aid Board at LoCall 1890 615 200 or visit their website at [www.legalaidboard.ie](http://www.legalaidboard.ie)

### **Disclaimer**

While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. MLRC does not accept any legal liability for the contents of this leaflet. Persons with specific legal problems should consult a solicitor.

## Court Forms

Statutory Declaration of Father and Mother in relation to Joint Guardianship of Child

### S.I. No. 5 of 1998

**THIS DECLARATION IS AN IMPORTANT DOCUMENT AND ON COMPLETION SHOULD BE KEPT IN A SAFE PLACE.**

In the matter of a declaration under paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 —

We \_\_\_\_\_ (father's name)  
of \_\_\_\_\_ (father's address)  
and \_\_\_\_\_ (mother's name)  
of \_\_\_\_\_ (mother's address)

do solemnly and sincerely declare and say as follows:

1. We have not married each other.
2. We are the father and mother of (child's name) \_\_\_\_\_  
\_\_\_\_\_ who was born on \_\_\_ day of \_\_\_\_\_ .
3. We agree to the appointment of (father's name) \_\_\_\_\_  
\_\_\_\_\_

as a guardian of (child's name) \_\_\_\_\_

4. We have entered into arrangements regarding the custody of  
[and access to] \* (child's name) \_\_\_\_\_

**\*Strike out as necessary.**

We make this solemn declaration conscientiously believing the same to be true by virtue of the Statutory Declarations Act, 1938 , and pursuant to paragraph (e) of section 2(4) (inserted by the Children Act, 1997 ) of the Guardianship of Infants Act, 1964 .

Signed \_\_\_\_\_ (Father)

Signed \_\_\_\_\_ (Mother)

**DECLARED BEFORE ME BY**

\_\_\_\_\_ who are personally known to me or  
(who are identified to me by \_\_\_\_\_ who is personally  
known to me at \_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Peace Commissioner/Commissioner for Oaths/Notary Public)

**Notice Of Application by a father to be appointed a guardian -  
Guardianship of Children Acts, 1964 to 1997 Section 6A**

# S.I. No. 5 of 1998

SCHEDULE C

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## AN CHUIRT DUICHE THE DISTRICT COURT

No. 58.1

### GUARDIANSHIP OF CHILDREN ACTS, 1964 TO 1997 Section 6A

#### Notice Of Application By A Father To Be Appointed A Guardian

\*Dublin Metropolitan District

\*District Court Area of

\*District No.

\_\_\_\_\_ Applicant

\_\_\_\_\_ Respondent

TAKE NOTICE that the above-named applicant of \_\_\_\_\_ in the court (area and) district aforesaid, being the father of \_\_\_\_\_ born on \_\_\_\_\_ born on \_\_\_\_\_ residing at \_\_\_\_\_ a) child(ren),

\*[whose father and mother have not married each other and have not made a declaration under section 2(4) of the Act]

\*[whose father was a guardian of the child by virtue of a declaration under section 2(4) of the Act but was removed from office under section 8(4) of the Act]

will apply at the sitting of the District Court to be held at \_\_\_\_\_

on the \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_, at \_\_\_\_ a.m./p.m. for an order

under section 6A of the Act appointing him to be a guardian of the said child(ren).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signed \_\_\_\_\_

Applicant/Solicitor for the Applicant

To The District Court Clerk,

District Court Office,

at \_\_\_\_\_

(and)

\*(To

of

\*Delete inapplicable words





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