

# Adoption and Guardianship

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# Adoption

## Parties to an adoption

In order for an adoption to take place, a person available to be adopted must be placed in the home of a person or persons eligible to adopt.

### Who may adopt?

In Wyoming, any single adult, a husband and wife who maintain a home together or a stepparent seeking to adopt a stepchild may file a petition to adopt. The party or parties seeking to adopt must reside in this state during the sixty (60) days immediately preceding the filing of the petition for adoption and be determined by the court to be fit and competent to be a parent. **W. S. 1-22-103.**

### What is a “putative father”?

"Putative father" means the alleged or reputed father of a child born out of wedlock, whether or not the paternity rights and obligations of the father have been judicially determined.

## "Open" adoption

An open adoption involves an agreement between a child's adoptive family and birth family that says that the two families will keep in touch. In other words, open adoption allows for birth parents, siblings, or other people who may be psychologically important to the child to contact the child through letters, pictures, and visits with the child and his family. These “cooperative adoption” arrangements are often negotiated for children with special needs, older children, and children who have been in foster care before the adoption.

While Wyoming does not have a specific “open” adoption law, an open adoption may be negotiated when doing so would be in the child’s best interest. Certain factors are necessary for an “open” adoption to stand a chance at being successful. First of all, all parties should agree on what contact is appropriate, how often and where it will occur. The primary concern should always be whether an “open” adoption will meet the child’s needs, interests, and desires, not the interests of the adults. In the event, the parties no longer agree to the terms of the adoption once finalized, enforcement of an open adoption agreement is highly unlikely. Upon the entry of a final decree of adoption the former parent, guardian or putative father of the child shall have no right to the control or custody of the child. **W. S. 1-22-114.** The adopting persons shall have all of the rights and obligations respecting the child as if they were natural parents.

## **Consent to Adoption**

Consent refers to the agreement by a parent, or a person or agency acting in place of a parent, to relinquish the child for adoption and to release all rights and duties with respect to that child. Either one or both parents may have these rights terminated for a variety of reasons, including abandonment, failure to support the child, mental incompetence, or a finding of parental unfitness due to abuse or neglect. The consent must be in writing and filed with the petition to adopt and shall be signed by:

- (i) Both parents, if living; or
- (ii) The surviving parent; or
- (iii) The mother and putative (alleged) father of the child if the name of the putative father is known; or
- (iv) The mother alone if she does not know the name of the putative father, in which case she shall sign and file an affidavit so stating and the court shall determine whether the putative father has registered under **W.S. 1-22-117**, the putative father registry, and if so, shall require notice to be given to the putative father; or
- (v) The legal guardian of the person of the child if neither parent is living or if parental rights have been judicially terminated; or
- (vi) The executive head of the agency to whom the child has been relinquished for adoption; or
- (vii) The person having exclusive legal custody of the child by court order; or
- (viii) The legally appointed guardian of any parent or putative father who has been adjudged mentally incompetent.

### **W.S. 1-22-109.**

#### **When Consent Can Be Executed**

In Wyoming, any consent to adoption shall be signed any time after the birth of a child. **W.S. 1-22-109(c).**

#### **Consent of Minors**

In Wyoming, if a child to be adopted is over the age of 14, the child's written consent to adoption shall be filed with a Petition to Adopt. **W.S. 1-22-109(b).**

#### **Consent to Adopt an Adult**

When a petition to adopt an adult is filed, a copy of the Petition together with a summons is issued and served on the adult. If the adult objects to adoption, the petition shall be dismissed. When the consent of the adult is given, the Petition shall be granted and a final decree of adoption made and entered. **W.S. 1-22-113.**

### **Revocation of Consent**

Adoption is meant to create a permanent and stable home for a child; therefore, a validly executed relinquishment and consent to adopt is intended to be final and irrevocable. As a result, the right of a birth parent to revoke consent is strictly limited. In Wyoming, consent to adoption and the relinquishment of a child for adoption are irrevocable unless obtained by fraud or duress. Except that if the court should deny the adoption on account of a claim or objection of the putative father of the child, the court may also allow the mother of the child to withdraw her consent and relinquishment. The consent or relinquishment by a parent who is a minor is valid and may not be revoked solely because of minority. **W.S. 1-22-109(d).**

## **Adoption without Consent**

Adoption of a child may be ordered without the written consent of a parent or the putative father if the Court finds that the non-consenting parent or putative father is unknown and has not registered as the putative father. Again, a “putative father” is the alleged or reputed father of a child born out of wedlock. **W.S. 1-22-110.**

**Putative father registry (W. S. 1-22-117)** Wyoming has established a putative father registry which shall record the names and addresses of:

- (i) Any person adjudicated by a court of this state to be the father of a child born out-of-wedlock;
- (ii) Any person who has filed with the registry before or after the birth of a child out-of-wedlock, a notice of intent to claim paternity of the child;
- (iii) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by that person or any other person; and
- (iv) Any person who has filed with the registry an instrument acknowledging paternity.

The Court may order adoption without written consent if the putative father or the non-consenting parent or parents have:

- Been given notice of a hearing and failed to answer or appear at the hearing;
- Been judicially deprived of parental rights of the child for any reason; or
- Willfully abandoned or deserted the child; or
- Willfully failed to contribute to the support of a child for a period of 1 year immediately prior to the filing of a Petition to Adopt; or
- Willfully permitted the child to be maintained in or by a public or private institution or by the Department of Family Services (DFS) for a period of 1 year immediately prior to filing of the Petition without substantially contributing to the support of the child; or
- Failed, within 30 days after receiving notice of the pending birth or birth of the child, to advise or notify the agency which gave the putative father the notice of pending birth of his interest in or responsibility for the child; or
- Been adjudged by a court to be guilty of cruelty, abuse, neglect or mistreatment of the child; or
- Caused the conception of the child born out of wedlock as a result of sexual assault or incest for which he has been convicted; or
- Willfully failed to pay a total dollar amount of at least 70% of the court ordered support for a period of 2 years or more and has failed to bring the support obligation 100% current within 60 days after service of the Petition to Adopt.

## **Evaluations of Adoptive Parents**

The Court may order the Department of Family Services (DFS) or a private licensed agency to:

- Investigate and report to the Court the background of the child and the petitioners, and
- Investigate the medical, social and psychological background and status of the consenting parent and putative father.

**W.S. 1-22-111(a)(ii).**

## **Medical History of Natural Parents and Adoptive Child**

To the extent available, the medical history of a child subject to adoption and his natural parents, without identifying the natural parents, shall be provided by an authorized agency or may be provided by order of a court to the child's adoptive parent any time after the adoption decree or to the child after he attains the age of majority. The history shall include but not be limited to all available information regarding conditions or diseases believed to be hereditary, any drugs or medication taken during pregnancy by the child's natural mother and any other information which may be a factor influencing the child's present or future health. The Department of Family Services was given the authority to promulgate rules governing the release of medical histories under this section. **W.S. 1-22-116.**

## Using a Confidential Intermediary

A "confidential intermediary" is a person who is at least twenty-one (21) years of age and who has received qualified training to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, biological sibling or biological grandparent who is eighteen (18) years of age or older. **W.S. 1-22-201(a)(viii)**.

Often, the person seeking information wants to determine the whereabouts of the unknown biological relative or relatives, who must also be an adult in order for their whereabouts to be investigated. **W.S. 1-22-203**.

A court may rule to appoint a confidential intermediary. If so, all costs related to the proceeding and investigation are the responsibility of the party filing the motion for appointment and investigation.

Any information obtained by the confidential intermediary during the course of his or her investigation shall be kept strictly confidential and shall be utilized only for the purpose of arranging a contact between the individual who initiated the search and the sought-after biological relative.

When a sought-after biological relative is located by a confidential intermediary on behalf of the individual who initiated the search:

- (i) Contact shall be made between the parties involved in the investigation only when written consent for such contact has been obtained from both parties and filed with the court;
- (ii) If consent for personal communication is not obtained from both parties, all relinquishment and adoption records and any information obtained by any confidential intermediary during the course of his investigation shall be returned to the court and shall remain confidential.

The intermediary must have written consent in order to arrange a personal contact among biological relatives. This service is available to adopted adults age 18 or older, adoptive parents, birth grandparents, or birth siblings age 19 or older.

Contact:

Wyoming Confidential Adoption Intermediary Services  
Hathaway Building, Room 336  
2300 Capitol Avenue  
Cheyenne, WY 82002-0710  
(307) 777-3570  
(307) 777-3693 fax

## Procedure for Adoption

Adoption proceedings are commenced by a Petition filed in District Court. **W.S. 1-22-104(a)**. Along with the Petition, the following documents are filed:

- Consent to adoption; and
- Any relinquishment necessary to show the court that the person or agency legally authorized to have custody and control of the child prior to the adoption, has relinquished the child to the petitioners for adoption.
- Within 30 days immediately preceding the filing of the Petition to Adopt, a report by a licensed Wyoming physician of the medical examination of the child. A medical report is not required when a parent of the child joins in the Petition to Adopt or when the child resides with the adoptive parents for more than 6 months prior to filing a Petition.
- An affidavit from each petitioner which states any previous or current diagnosed psychiatric disorders of the Petitioner(s); all felony convictions of the Petitioner(s) within the preceding 10 years; all misdemeanor convictions of the Petitioner(s) within the preceding 5 years; and the current parole or probation status of the Petitioner(s).

**W.S. 1-22-104(c)**.

After the Petition to Adopt has been filed and a hearing held, the Court acting in the best interest and welfare of the child may make:

- An interlocutory decree giving the care and custody of the child to the Petitioner(s) pending further order of the Court;
- A final decree of adoption if the child has resided in the home of the Petitioner(s) for 6 months.

If an interlocutory decree has been entered, Petitioner(s) may apply for a final decree of adoption after the child has resided in the home of the Petitioner(s) for 6 months. **W.S. 1-22-112(a)**. Otherwise, if an interlocutory decree has not been entered a hearing on the petition for a final decree of adoption will be held. **W.S. 1-22-112(b)**.

## Rights of Birth Fathers

If the putative father (the alleged or reputed father of a child born out of wedlock) files and serves objections to a Petition to Adopt, the Court will hear the evidence in support of the Petition to Adopt and in support of the objection to the Petition and shall then determine whether:

- The putative father's claim to paternity of the child is established;
- The putative father's objections to the Petition to Adopt are valid; and
- The best interests and welfare of the child will be served by granting the putative father's claim to paternity or by allowing the Petition to Adopt.

**W.S. 1-22-108(c)**.

The putative father has no right to assert paternity in adoption, dependency or termination of parental rights proceedings unless he is known and identified by the mother or agency, or unless he has lived with or married the mother after the birth of the child and prior to the filing of the Petition to Adopt, and unless he has acknowledged the child as his own by affirmatively asserting paternity or registered as a putative father. **W.S. 1-22-108(d).**

## **Rights of People Who Have Been Adopted**

Upon entry of a final decree of adoption, the former parent, guardian or putative father of the child shall have no right to the control or custody of the child. The adopting persons shall have all of the rights and obligations respecting the child as if they were natural parents.

Adopted persons may assume the surname of the adoptive parents. They are entitled to the same rights of person and property as children and heirs at law of the persons who adopted them. **W.S. 1-22-114(b).**

“Upon the entry of the final decree of adoption, all records in the proceedings shall be sealed and may be available for inspection only by order of court for good cause shown.” Under this section of the law, you may petition the court for access to your records, and the court will determine if there is “good cause” to release the file information to you. **W. S. 1-22-104(d).**

# Guardianships

## General Provisions for Guardianships of Minors and Incompetents

### What is a guardianship?

Guardianship is established by a court order. The court grants the guardian authority and responsibility to act on behalf of another person. The relationship is *fiduciary* which means that the guardian is obliged to act in the best interests of the ward. **W.S. 3-1-106.** The court supervises the guardian to assure proper actions on behalf of the ward. An individual may serve as guardian of a minor or of an incapacitated person. For a minor, the court considers which individual's appointment will be in the best interest of the minor.

The appointee might be the spouse, an adult child or parent of the ward, or any responsible adult with whom the ward is residing. **W.S. 3-2-107.**

**Minors over 14 years of age:** In Wyoming, a minor ward over fourteen (14) can nominate his or her own choice for guardian. **W.S. 3-2-105.**

To establish a guardianship, a petition is filed in the district court where the ward lives. **W.S. 3-1-103 and 3-2-101.** This petition names the potential guardian and provides information about the parties' relationship (if any). If the ward is a minor, information about the minor's parents and whether and where they are living is generally necessary. In the case of an adult ward, if mental incapacity is the reason for the petition, medical documentation should accompany the filing. Notice of the time and place of the *hearing* is given to the potential ward and other persons specified by *statute*. **W.S. 3-2-102.**

### What is a guardian?

A guardian is a person, association or corporation appointed by the district court judge to be legally responsible for another person and/or another person's property. Most commonly, individuals are appointed to serve as guardians. A person for whom a guardian has been appointed is called a *ward*. **W.S. 3-1-101(v) and W.S. 3-1-101(xv).**

### Why are guardians appointed?

A guardian is appointed by the court to oversee the legal and financial affairs (and/or the personal care) of a minor, or of an adult who is not able to manage his or her own affairs because of advanced age or some other physical or mental disability. Once appointed, a guardian/conservator is answerable to the court for providing proper care and management of the ward's affairs in the ward's best interest.

### Who may be a guardian?

The court may *not* appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian:

- Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian;
- Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian;
- Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or
- Is employed by a person who would be disqualified under the above provisions.

However, *a person may be appointed* as guardian of a respondent (ward), notwithstanding the provisions above that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential *conflict of interest is insubstantial* and that the appointment would clearly be in the *best interests* of the respondent (ward). **W.S. 3-2-107.**

**Priority of appointment for incompetent person.** Qualified persons have priority for appointment as guardian of an *incompetent person* in the following order:

- A person nominated by the respondent if at the time of the nomination the respondent has the capacity to make a reasonably intelligent choice;
- The spouse of the respondent;
- A nomination in the will of the respondent's deceased spouse;
- The parent of the respondent;
- An adult child of the respondent;
- A person named in the will of the respondent's deceased parent;
- A relative of the respondent with whom the respondent has resided for more than six (6) months during the year preceding the filing of the petition;
- A relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the respondent;
- Any other person whose appointment would be in the best interests of the respondent;

- A person with a guardianship program for incompetent persons.
- W.S. 3-2-107(c).**

**Priority of appointment for minor.** Subject to subsection (e) of this section, qualified persons have priority for appointment as guardian of a *minor* in the following order:

- The parent or parents of the minor;
- The person nominated as guardian in the will of the custodial parent;
- The person requested by a minor who has reached the age of fourteen (14) years;
- Any other person whose appointment would be in the best interests of the minor.

**W.S. 3-2-107(d).**

<p><b>The court shall consider the priorities established above, but shall not be bound by those priorities. The court shall appoint the person who is best qualified and willing to serve as guardian.</b></p>
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### **What are the general powers and duties of a guardian?**

The guardian shall:

- Determine and facilitate the least restrictive and most appropriate and available residence for the ward;
- Facilitate the ward's education, social and other activities;
- Subject to certain restrictions, authorize or expressly withhold authorization of medical or other professional care, treatment or advice;
- Take reasonable care of the ward's personal property;
- Commence protective proceedings if necessary to protect the property of the ward;
- Apply to the ward's current needs for support, care and education as much of the money or property paid or delivered to the guardian as may be appropriate under the law;
- Exercise due care to conserve excess funds for the ward's future needs;
- Pay to the conservator excess funds at least annually;

- Request the court to modify the guardian's range of duties if the changed circumstances of the ward require such modification; and
- Following the death of a ward, arrange for the final disposition of the ward's remains according to the ward's expressed wishes if known, if the immediate family is unavailable or unwilling to assume responsibility. For purposes of this paragraph, "immediate family" is defined as parents, spouse, grandparents, siblings and adult children.

**W.S. 3-2-201.**

**The guardian may:**

- Receive money payable from any conservatorship for the support of the ward;
- Receive money or property of the ward paid or delivered to the guardian pursuant to the law (**W.S. 3-3-108**);
- Institute proceedings to compel the performance by any person of the duty to support or contribute to the support of the ward;
- Consent to the marriage or adoption of the ward.

**Liability.** The guardian is not liable for injury to the ward resulting from the negligence or acts of third persons performed by authority given by the guardian for medical or other professional care, treatment or advice, unless it would have been negligent for a parent to have given that authority.

**Same powers as parent.** The guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his unemancipated minor child. A guardian who is not a parent of the minor is not obligated to expend his own funds for the support of the ward. A guardian who is not the parent of a minor is not liable to third persons for acts of the ward by reason of the relationship of guardian and ward.

**Other powers requiring court approval.**

Upon order of the court, after notice and hearing and appointment of a guardian ad litem, the guardian may:

- Commit the ward to a mental health hospital or other mental health facility;
- Consent to the following treatments for the ward:

(A) Electroshock therapy;

- (B) Psychosurgery;
  - (C) Sterilization;
  - (D) Other long-term or permanent contraception.
- Relinquish the ward's minor child for adoption, provided:
    - (A) Notice of any hearing was given to the ward and the legal or putative father; and
    - (B) The ward attended the hearing if the court so ordered.
  - Execute any appropriate advance medical directives, including durable power of attorney for health care.

### **What are the powers of the ward?**

A ward who is a minor or a mentally incompetent person for whom a conservator has been appointed does not have the power to convey, encumber or dispose of property in any manner, *except*:

- By will if he possesses the requisite testamentary capacity; or
- As provided by W.S. 2-1-203(a), 13-7-302 and 34.1-4-405.

**W.S. 3-1-202.**

### **Title to ward's property.**

Title to all property of the ward remains in the ward and is subject to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition as provided by law. **W.S. 3-1-203.**

### **Guardianship of Minors**

Guardianship of a minor is typically appropriate when a child is permanently living with someone other than a parent. This might occur if both parents died, or if one parent died and the other is incarcerated or otherwise absent. Guardianships of minors are often established when neither parent is able to provide a safe, secure home for the child because of drug abuse, alcoholism, and other serious personal problems.

The difference between guardianship and *adoption* is that guardianship does not sever the biological parents' rights and responsibilities. Guardianship of a child means that a caregiver is responsible for the care and *custody* of the child. This arrangement allows the guardian to access services on behalf of the child. Unlike adoption, a birth parent can return to court at any time and ask for the guardianship to be terminated.

When a guardian is appointed for a minor child, the court may impose conditions. For instance, courts sometimes require that grandparent guardians attend grandparent caregiver support groups.

For more information on Grandparent Guardianships, contact:

The Grandparent Information Center  
AARP 601 E Street, N.W.  
Washington, D.C. 20049

“Do-it-yourself” (pro se) packets are available from the AARP web site at: [www.aarp.org/wy](http://www.aarp.org/wy). Scroll down to the heading: Grandparent Resources, click the link and then select "You Are Not Alone" from the bulleted list of options.

Your local Area Agency on Aging may also be able to identify services and supports for grandparents with a variety of needs.

See Also **Temporary Guardianship for Educational, Medical Care and Dental Care Purposes (next section)**

## **Temporary Guardianship for Educational, Medical Care and Dental Care Purposes**

This type of guardianship is new in Wyoming (2006) and was passed in response to the large numbers of grandchildren who are being raised by their grandparents in our state. **W.S. 3-2-301 et seq.**

A temporary guardian for educational, medical care and dental care purposes may be appointed through an ex parte temporary guardianship order without notice to the child's natural parents if the court finds by a preponderance of the evidence from the petition and testimony, if any testimony is deemed necessary by the court, that temporary guardianship is in the best interest of the child and not detrimental to the interests of any other person and that no other person appears to have authority and willingness to act in the circumstances. The court shall cause the ex parte temporary guardianship order, together with notice of right to a hearing, to be served on the natural parents of the child pursuant to Rule 4 of the Wyoming Rules of Civil Procedure.

The notice of right to a hearing shall clearly inform the child's natural parents that a temporary guardianship for educational, medical care and dental care purposes has been granted to the petitioner and that the natural parents, individually or jointly, have the right to request a full hearing on the temporary guardianship by filing a written request for hearing with the court. A request for full hearing by a natural parent shall be filed with the court and shall be served on the temporary guardian pursuant to Rule 4 of the Wyoming Rules of Civil Procedure. Upon receipt of a request for hearing, the court shall set the full hearing at its earliest convenience.

Except upon a showing of good cause, an ex parte order appointing a temporary guardian of a child for educational, medical care and dental care purposes shall be limited to *not more than one (1) year*.

**Temporary Guardianship for Educational, Medical Care and Dental Care Purposes  
“Do-it-yourself” (pro se) packets are available at**

[http://assets.aarp.org/www.aarp.org/articles/image/aboutaarp/statepages/WY-Grandparent\\_12-06-05.pdf](http://assets.aarp.org/www.aarp.org/articles/image/aboutaarp/statepages/WY-Grandparent_12-06-05.pdf)

from the AARP web site at: [www.aarp.org/wy](http://www.aarp.org/wy). Scroll down to the heading: Grandparent Resources, click the link and then select "You Are Not Alone" from the bulleted list of options.

*The information contained in this handbook is general and should not be applied to specific legal problems without first consulting your own attorney.*