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Advancing Fairness and Justice for All

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Guardianship

What is kinship care?

Kinship care is the full-time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who had a kinship bond with a child. (Child Welfare League of America)

Informal kinship care: when an adult only has revocable legal authority (power of attorney or caregiver's affidavit) or no legal authority. When kinship care is informal, a parent can remove the child without notice. Police and child protective services will not prevent the child's removal unless there is recent evidence of significant abuse or neglect.

Formal kinship care: when an adult has legal guardianship or custody of the child.

Institutional kinship care: when a child is in the home of an adult with a kinship bond, but the state has custody.

What are the advantages of formal kinship guardianship?

Preservation of family, community and cultural ties

Avoidance of trauma resulting from moving in with strangers

Less likelihood of multiple placements

Legally established formal kinship caregivers have legal authority and can prevent the parents from removing the child.

How do children end up in kinship care?

Parents place children with kin because they are unable or unwilling to take care of the children themselves, often due to substance abuse, incarceration, mental illness, or other dysfunction.

Family members intervene and remove a child or prevent a parent from removing a child from home.

CYFD worker suggests placement with kin after referral for abuse or neglect.

What are the legal tools I need when I'm taking care of a child of kin?

- Power of attorney
 - Must be signed by a parent before a notary
 - Can limit which authority is delegated (school, health, etc.)
 - Any power can be delegated except power to authorize marriage or adoption
 - Must be renewed every six months
 - Revocable at will
- Caregiver's Authorization Affidavit (Kinship Guardianship Act, NMSA §40-10B-15)
 - Used by a caregiver with whom a child is living for any amount of time
 - Any caregiver can receive authorization to enroll a child in school and school-related medical services.
 - Only "classified relatives," including adults with whom children have a significant bond, can authorize any other medical care.

- Valid for one year
- Protects a person who provides services pursuant to a Caregiver's Authorization Affidavit from criminal or civil liability
- Must be signed by the caregiver before a notary
- Kinship Guardianship (NMSA §40-10B-1 et seq.)
 - Kinship guardianship establishes a legal relationship between a child and a kinship caregiver and provides the child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally and emotionally when the parents are not willing to do so.
 - Proceedings shall be in the court of the county of the child's legal residence or the county where the child resides if different from the county of legal residence.
 - A kinship guardianship petition may be filed by a kinship caregiver; or by a caregiver who has reached his twenty-first birthday, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached his fourteenth birthday or a caregiver designated by a parent in writing.
 - After the petition is filed, the court may appoint a temporary guardian to serve for 180 days or less or until the case is decided on the merits, whichever comes first.
 - At the court hearing on the petition, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of the statute have been proven, and the best interests of the child will be served by the requested appointment, it shall make the appointment of guardianship.
 - A kinship guardian may be appointed only if:
 - A parent of the child is living and has consented in writing to the appointment of a guardian, and the consent has not been withdrawn
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A parent of the child is living, but all parental rights regarding the child have been terminated or suspended by prior court order

- The child has resided with the petitioner without the parent for a period of ninety (90) days or more immediately preceding the date the petition is filed 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 extreme circumstances; and no guardian of the child is currently appointed.
- A guardian has the legal rights and duties of a parent, except the right to consent to an adoption of a child and rights and duties that the court orders retained by a parent.

Where can I obtain legal assistance if I am caring for a child of kin and I am low-income?

The Guardianship Legal Helpline is a statewide legal helpline that provides information, advice, and assistance to in kinship guardianship cases. For more information, call 505-244-1101.

Printed: January 27, 2021

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