

## LEGAL FACT SHEET

### Enabling New York's Kinship Caregivers: Custody, Guardianship, Parental Designation: Basic Procedure

LEGAL ARRANGEMENT	DOCUMENTS REQUIRED	PROCEDURE	PROS	CONS
<p><b>CUSTODY</b></p> <p>An order of Custody gives responsibility for the care, control, and maintenance of a child to one or both children's parents to another party</p>	<p><b>Custody Petition</b></p> <p>Some Courts require an information sheet to be completed. Check with your local Family Court clerk to obtain this form.</p>	<ul style="list-style-type: none"> <li>• File forms at Family Court in county in which child resides.</li> <li>• The petitioner will sign in front of a notary, which can be done at court.</li> <li>• Although notice must be provided to the parents, if a parent is unavailable, the case can usually proceed.</li> <li>• Court appearance is required, but the Court may allow a parent in a different country to appear by phone.</li> </ul>	<p>Less paperwork than guardianship; outcome very similar.</p>	<p>If parent changes her mind, the parent can file a modification to switch custody back; May have less authority than guardian</p>

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<p><b>GUARDIANSHIP</b></p> <p>A Guardian is a person to whom the court gives authority to take responsibility for the care of a child</p>	<ul style="list-style-type: none"> <li>Guardianship Petition</li> <li>Certified copy of birth certificate</li> <li>Oath and Designation for Service of Process</li> <li>Consent of Person over Age 18 or Preference of Minor Over age 14</li> <li>Request for Information Guardianship Form (OCFS-3909)</li> <li>Waiver of Process, Renunciation, Consent (if parents are unavailable to come to Court)</li> <li>Certified death certificate (if a parent is deceased)</li> </ul>	<ul style="list-style-type: none"> <li>Forms get filed at Family Court in county in which child resides, except for OCFS 3909, which gets mailed to OCFS.</li> <li>If the parent signs a waiver of process/renunciation, consent, the parent may not be required to come to Court.</li> <li>Many of these forms must be notarized.</li> </ul>	<p>Accomplishes basically the same thing as custody.</p>	<p>Paperwork is very onerous. The OCFS 3909 form requires 28 years of prior addresses for every member of the household.</p>

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<b>PARENTAL DESIGNATION FORM</b> (6 months)  Allows for designee to enroll the child in school and make medical decisions	Designation form	The parent's signature must be notarized.	No court involvement	Parent must issue a new designation every 6 months.  Only provides for school and medical decision-making authority

Note: Sample custody, guardianship and parental designation forms can be found at <http://www.nysnavigator.org/> or <https://www.nycourts.gov/forms/familycourt>. Certain Family Courts may prefer that their own forms be used, although the referenced forms are accepted statewide. Always consult your local court clerk with any questions regarding local procedure. This chart should not be substituted for the advice of an attorney.

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.