

HOW TO FILE A GUARDIANSHIP APPLICATION (CHILD) IN THE SUPREME COURT OF NOVA SCOTIA

1. Civil Procedure Rule 71 allows a person to apply to be appointed as a guardian for the property of a child under the *Guardianship Act* or apply to approve a contract on behalf of a child. The Act also authorizes the Court to appoint a guardian of the person of the child: however, the appointment is usually done by a person who has custody of the child.
2. The person seeking appointment as guardian under the *Guardianship Act* must open a court file by filing a Notice of Application in Chambers (Form 5.03.).

The filing fee is \$218.05 plus the law stamp fee of \$25.00 + HST.

3. A copy of a Notice of Application to appoint a guardian for a child must be delivered to each of the following persons in accordance with Civil Procedure Rule 71.03 and 71.04, unless a judge otherwise directs:
 - a) the child who is the subject of the application by means of delivery to their parent or guardian with whom they reside, in accordance with Civil Procedure Rule 31.03(1);
 - b) each parent of the child other than the Applicant or, if the child has no parent who is not an applicant, the child's next of kin other than the Applicant; and
 - c) a person, other than the Applicant, who has custody of the child under an agreement or order.

A child who is 12 years of age or older must be informed about each step in the proceeding, unless a judge direct otherwise.

4. An Applicant must file the following documents no less than 10 days before the day the application is to be heard in accordance with Civil Procedure Rule 71.05(1):
 - a) Notice of Application in Chambers (Form 5.03);
 - b) Affidavit in support of application (Form 39.08) including the following information for an appointment under the *Guardianship Act*:
 1. proof of the child's date of birth by birth certificate (or by other means if a birth certificate cannot be obtained);
 2. if the child is over 12 years old but less than 16 years old, the child's position on the proposed appointment;
 3. if the child is 16 years old or more, whether the child consents to the proposed appointment and, if not, the reasons for going against the child's wishes.
 - c) An Affidavit proving notice outlined in **3** above was done no less than 10 days before the day the application is heard and in accordance with Civil Procedure Rule 31 - Notice.
 - d) Draft Order appointing guardian (Form 78.05) - no less than 3 copies of draft, providing for the following:
 1. appointment of the guardian;

2. the filing of a bond in compliance with the *Guardianship Act*, or a statement dispensing of the requirement of the bond in accordance with that *Act*;
 3. if the bond is being filed, the order must provide for the amount of the bond, calculated at 1.25 X the value of the property to be administered by the guardian, excluding real property; and a deadline for the filing of the bond (typically 30 days after the date of the order);
 4. a requirement that the guardian file an inventory of all property of the person who is the subject of the order and a deadline for doing so;
 5. a requirement for the guardian to account as directed by a judge;
 6. a requirement for the guardian to account to the child, and file the accounts, by a deadline after the child's 19th birthday;
 7. a requirement that the guardian produce a copy of the inventory or accounting to an interested person who demands the production;
 8. termination of the guardianship of a child on the child's 19th birthday;
 9. the powers and other obligations of the guardian;
- e) Brief of Law (2 copies).

Please Note: when an Order appointing a guardian for the property of the child provides for the filing of a performance bond, this bond may be executed by either a recognized surety company or the Applicant personally with 2 sureties.

When the Applicant's bond is required,

- **it must be supported by 2 sureties, and**
 - **the sureties must provide affidavits of justification showing that the sureties personally have unencumbered (debt free) assets, worth at least the amount of the bond, available for realization on a judgment.**
6. After a guardianship is appointed by the court, the guardian will be required to file an inventory in accordance with the order. This must include:
 - a) a concise description of each item of property,
 - b) a concise description of the basis on which it was valued,
 - c) the valuation amount, and
 - d) a total.
 7. After a guardian is appointed by the court, a guardian may make a motion for an order for sale, mortgage, lease or other disposition of property in the proceeding in which the guardian is appointed.

A party who obtains an order for disposition of property must file a report on the sale no more than twenty-five (25) days after the day it is completed.

Further information is available on

- the Public Trustee Website:
https://novascotia.ca/just/pto/FAQ_ct.asp
- the Nova Scotia Family Law Website:
<https://www.nsfamilylaw.ca/custody-access/guardianship/faqs>