

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form is to be used when you have filed for guardianship and you feel the child(ren) involved are in danger by their current living arrangements or are being taken advantage of and you want temporary guardianship of the child(ren) until the court holds a hearing on the request. Only use this form has filed for guardianship.

The court has the authority to grant emergency orders for guardianship and custody when the court is satisfied that a true emergency exists by virtue of a sworn affidavit establishing the facts to the satisfaction of the court. Such Orders will be good for not more than 10 days. Within the 10 days, the court will hold a hearing on the question of whether a more permanent type guardianship or custody arrangement should be ordered.

The code doesn't define what constitutes an emergency but courts have found an emergency when the child's well-being is endangered by their current living situation or were there is an immediate need for a decision to be made on behalf of the child and there is no one with the authority to make such a decision.

**FORM INVOLVED.** The form is a **Motion and Affidavit for Emergency Temporary Guardianship**. You will need to fill in the necessary information with help from the instructions below and then file the form with the court when you file your petition for guardianship.

**How to file a Motion and Affidavit for Emergency Temporary Guardianship.** You must file your motion and affidavit for emergency temporary guardianship by filing the original with the court. The court will set your case for hearing on your motion for emergency temporary guardianship.

**BURDEN OF PROOF.** If you file a Motion Affidavit for Emergency Temporary Guardianship, you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your claim by a preponderance of the evidence. This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the moving party have the burden of showing the following to the court:

1. That it would be in the child(ren)'s best interest that you be awarded temporary custody of them. What this means is that the petitioner and their witnesses need to testify that the petitioner has the ability to care for the child(ren) such as taking them to medical appointments, dealing with their education needs, bathing them, sheltering them, feeding them and generally caring for the children.
2. That a true emergency exists to warrant temporary guardianship. For example, you must prove facts that show the child(ren) would be in danger by being in another other party's care such as the party currently caring for the child(ren) is neglecting or abusing the minor child(ren). An example of another true emergency could be if the party caring for the minor child(ren) is

improperly using the child's property for their own benefit. You will need to prove these allegations with witnesses and other evidence such as documents. Use the **Subpoena** forms to find out how to subpoena witnesses and evidence for your hearing.

**INSTRUCTIONS FOR FILLING OUT THE FORM.** To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion and affidavit:

- (1) on this line insert the name of the child(ren) you are seeking guardianship of and their date of birth.
- (2) on this line insert your name
- (3) insert the facts why an emergency guardianship is warranted . You must show the court with facts that a true emergency exists warranting a temporary guardian. The court will schedule a hearing within 10 days on the Motion so be prepared to prove your allegations at that hearing. See the Burden of Proof above.
- (4) on this line insert the day.
- (5) on this line insert the month.
- (6) on this line insert the year.
- (7) on this line insert your name by signing.



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Wherefore, the undersigned prays this court to issue an order:

A. Granting Petitioner the temporary emergency guardianship of the above-named child(ren) pending hearing on the matter.

B. Set this matter for hearing.

C. For any other relief the court finds just and equitable.

Dated this (4)\_\_\_\_\_ day of (5)\_\_\_\_\_,(6) \_\_\_\_\_.

(7)\_\_\_\_\_  
Petitioner

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(SEAL)