

WHAT DO I NEED TO KNOW ABOUT  
**Minor Guardianships?**



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# WHAT IS A MINOR GUARDIANSHIP?

A **minor guardianship** is the legal process by which someone is appointed by a Court to take physical custody of a minor and to make all financial and personal care decisions for the minor. In Tennessee, the age of majority is eighteen (18). In Mississippi, the age of majority is twenty-one (21). The minor child is called the **Ward**.

## GUARDIAN OF THE PERSON

A **Guardian of the Person** is appointed by a Court to take physical custody of the minor Ward and to make personal care decisions for the minor Ward. The minor Ward normally resides or lives with the Guardian of the Person. Other examples of decisions made by the Guardian of the Person include: educational choices; religious choices; dress code; curfews; nutrition, food and meal preparation; medical, dental, and vision care, and personal hygiene.

## GUARDIAN OF THE ESTATE

A **Guardian of the Estate** or Property is appointed by a Court to make financial decisions for the minor Ward. The Guardian of the Property takes possession of the minor Ward's assets and income and is responsible for protecting, investing and spending the assets and income solely for the benefit of the minor Ward. Examples of decisions made by the Guardian of the Property include: investment decisions; payment of bills, invoices and debts; sale of property; budgeting for expenses; and safekeeping of property.

Usually, the same person is appointed as both guardian of the person and of the estate. There are, however, situations in which the Court chooses to appoint separate persons as guardian of the person and of the estate, especially when the guardian of the person has limited financial management skills.

## WHO IS THE GUARDIAN OF MY MINOR CHILD?

You and your spouse, as the natural or adoptive parents of your minor child, are the guardians of the person of your minor child. If you are a single parent who is divorced, then your divorce decree states which parent makes certain decisions for your minor child. If you are a single parent who is widowed, then you are the sole guardian of the person of your minor child.

However, you are not the guardian of any property (such as life insurance proceeds, inheritances, gifts of stock or large sums of cash, or personal injury awards) received by your minor child.

## WHEN IS A COURT APPOINTED GUARDIAN REQUIRED?

A Court appointed guardian is required when: (1) the minor child's natural or adoptive parents are deceased and/or disabled; (2) the minor child has been abandoned; or (3) the minor child receives an inheritance, large monetary gift, or a settlement or judgment in a lawsuit.

## WHO CAN BE APPOINTED GUARDIAN?

Any person "having knowledge of the circumstances necessitating the appointment of a minor guardian" can file a Petition with the Court requesting to be appointed as guardian. After the Petition is filed, a Court hearing is scheduled to determine whether or not it is in the "best interests" of the minor child to appoint a legal guardian.

The Court will consider the appointment of the following persons in the following order: (1) natural parent or parents; (2) person designated in the Last Will and Testament of the natural parents; (3) adult siblings; (4) closest relatives; and (5) other persons.

If you do not have a Last Will and Testament, then the Court may appoint someone to be your minor child's legal guardian that you do not know or do not approve of to be your minor child's legal guardian. Therefore, it is highly recommended that you sign a Last Will and Testament naming a person that you know and trust to be your minor child's legal guardian in the event that you are deceased.

## WHAT ARE THE DUTIES OF A GUARDIAN?

### DUTY TO FILE INVENTORY

A Guardian of the Property must file an Inventory. The Inventory is a detailed list of the minor Ward's assets. The Inventory is divided into categories of assets such as real estate, stock, bonds and cash.



### DUTY TO POST BOND

A Guardian of the Property may also be required to post a bond and pay a bond premium annually. The Bond is similar to an insurance policy. The purpose of the Bond is to insure against the theft or loss of the minor Ward's assets.

### DUTY TO MANAGE ASSETS

A Guardian must prepare and file a written plan for managing the minor Ward's assets and income. This plan must be approved by the Court and must consist of a budget for expenses and an investment plan. The minor's assets must be kept separate from the assets of the guardian and must be used only for the benefit of the minor.

### DUTY TO FILE ACCOUNTING

A Guardian must keep detailed records of all funds going in and coming out of the minor's estate. Each



year, the Guardian must file with the Court an accounting consisting of: (a) a list of the minor's assets, (b) all income received, and (c) all expenses paid.

## HOW CAN GUARDIANSHIP BE AVOIDED?

A Court appointed guardianship can be avoided by: (a) Creating a Family or Minor's Trust in your Will or Living Trust and naming a Trustee of the Family or Minor's Trust to manage your minor child's inheritance if you die; or (b) Utilizing Irrevocable Trusts or Uniform Transfers or Gifts to Minors Act (UTMA or UGMA) Accounts for your minor child to receive gifts and inheritances from other family members.

## WHO SHOULD I ENGAGE TO ASSIST ME WITH A MINOR GUARDIANSHIP?

A probate attorney with experience in representing petitioners and minor wards and in serving as guardians ad litem and attorneys ad litem should be engaged to represent you in a minor guardianship proceeding.

## THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

### OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his Master of Laws (LL.M.) degree in Elder Law with honors from Stetson University College of Law, his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.

### ESTATE PLANNING

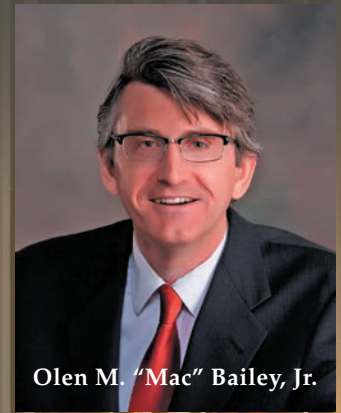
- Wills
- Living Trusts
- Powers of Attorney
- Special Needs Trusts

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- Qualified Income or "Miller" Trusts
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Olen M. "Mac" Bailey, Jr.



Call 901-843-2760 for a consultation  
or visit [www.thebaileylawfirm.com](http://www.thebaileylawfirm.com)  
5100 Wheelis Dr. Suite 215 - Memphis, TN 38117