

Benefits of being a Probate Legal Guardian:

Permanent Resident Children and United States Citizens living with a legal guardian may qualify for:

- CalWORKS monthly cash assistance (the guardian's income should not be used to determine if the child qualifies for any of the programs).
- Health insurance through Medi-Cal.
- SSI (in cases of a child with an eligible disability).
- Survivorship benefits.

What if the Department of Children and Family Services (DCFS) takes the children?

In general, a relative receives a call from DCFS after the child has been taken out of the home of their parents. *It is important that your children know who to call in case DCFS asks them whom they want to live with.* The person you appoint to care for your children can call the DCFS helpline (1-800-540-4000) and say that they want to take care of the child and that they need the name and number of the emergency social worker. They should be ready to give the child's name, address, and age, and the parents' names.

For additional information:


Please contact Diego Cartagena at (323) 549-5839 or at dcartagena@bettzedek.org

To download additional copies of the caregiver's affidavit or of this packet, please visit our website at www.bettzedek.org/our-services/rapid-response



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HOW TO PREPARE FOR A FAMILY EMERGENCY



With the current immigration climate, many families with mixed immigration status are faced with the harsh reality that they could be torn apart. We advise you to make a family emergency plan in preparation for this worst-case scenario. Hopefully, you will not have to make use of this plan, but if you do not have legal status, or you are not a citizen and have minor children in the United States, it is important to keep the following in mind:

1. Talk to your children and family:

Talk to your children in advance about who will care for them while you are not available. Identify an adult who is willing to take responsibility for your children and talk to them about that responsibility.

2. Prepare important documents:

Keep all important documents and information in a folder, such as:

- Birth certificates;
- Passports;
- Social security cards or ITIN number;
- A-Number and any immigration documents (work permit, green card, visa, etc.);
- Name and telephone number of your children's school and teachers;
- Your children's vaccination cards;
- Copies of your children's health insurance cards;
- Children(s)' medical information, including health insurance, doctor's contact information and medication list;
- Emergency numbers and important contact information;
- Any restraining/protective order involving your children;
- Caregiver Affidavit;
- Any other documents you would want to be able to quickly find.

Tell your children, family members and emergency caregiver where to find this file in an emergency.

3. Decide who will take care of your children:

Talk to your family and friends in advance about the best plan for your family if you are unable to care for your minor children.

- Have the contact information of the person you assign as the caregiver of your children so that individual can take care of your children in your absence.
- Name this person as an emergency contact in your child's schools.
- You and your children should memorize this person's phone number.

4. Types of Caregivers:

The person you designate to care for your children can take on the role as an *informal caregiver* or a *formal caregiver*.

Informal Caregivers:

- Have *physical care* of a minor (that is, the minor is living with the caregiver).
- Do not have *legal custody*, so they have limited rights to make decisions about a child in their care (for example, an informal caregiver cannot consent if “parent or legal guardian consent is required”).
- The parents retain full rights to care, custody, and control of the minor (including the right to reclaim the child at any time).

We do not recommend that you obtain a power of attorney as a means of transferring custody of your children to the caregiver because in California this document is not valid (in California, legal custody can only be transferred from a parent to a caregiver by a judge). Parents should instead consider preparing a Caregiver Affidavit for the caregiver’s use.

To view and download a copy of a Caregiver Affidavit, please visit www.bettzedek.org/our-services/rapid-response.

Caregiver’s Affidavit:

This form does not affect the rights of the child’s parent with regard to the care, custody, and control of the child and does not mean that the caregiver has the legal guardianship of the child.

- This form allows the caregiver to:
 - ▶ enroll the minor in school.
 - ▶ consent to medical and dental treatment, including immunizations.
- It is valid for one year from the date it is signed, and does not need to be notarized or submitted to a court.
- The information requested in the form relates only to the child and the caregiver (not the parent).
- The form must be signed by the caregiver (not the parent)
- One form is required for each minor.
- The Caregiver’s Affidavit can be given to your child’s school and/or health care provider so that the person you name on the affidavit can make certain decisions for the child.

The powers and limitations of the affidavit are also listed on the back of the form.

Who can be listed as a caregiver on a Caregiver’s Affidavit?

- The person you want to be your child’s caregiver needs to be at least 18 years old. (If you have children over the age of 18, they can be the caregiver of your minor children.)
- They can be a relative or a nonrelative. (If they are a non-relative, they can only consent to school-based medical treatment.)
- They do not need to have legal status.

Legal Guardians are formal caregivers whose petitions to be appointed legal guardians have been approved by the Probate Court.

- They have *physical and legal custody* of the minor.
- A legal guardian can act on the minor’s behalf and make decisions regarding the minor as if the guardian were actually the minor’s parents.
- If a parent wishes to regain their rights and custody of their child, they may file a petition to terminate the guardianship;
- Otherwise, the legal guardianship ends automatically upon the earliest of the following:
 - ▶ when the minor turns 18,
 - ▶ the minor marries,
 - ▶ the minor emancipates,
 - ▶ the minor enlists in the armed services,
 - ▶ or death of either the minor or the guardian.

Who can be a Legal Guardian?

- The person you want to be your child’s guardian needs to be at least 18 years old. (If you have children over the age of 18, they can be the guardian of your minor children.)
- They can be a relative or a nonrelative.
- They do not need to have legal status, but must be willing to be investigated by the court, if relative, or the Department of Children and Family Services (DCFS), if nonrelative. (This is to ensure that this individual has no serious criminal history, drug or alcohol problems, or allegations of child abuse/neglect against them.)
- A parent may nominate and/or consent to the appointment of a guardian and the Court usually respects those wishes.
- A person may file a petition requesting legal guardianship of the child even when a parent has not given consent or cannot be located. (However, the law requires that the parents of the child, siblings, half-siblings, and grandparents be advised that this process is being conducted, to give them an opportunity to oppose the request if they so wish.)
- The whole process usually takes between one and three months.