

WHAT ARE THE DIFFERENCES BETWEEN ADOPTION & GUARDIANSHIP?

The following chart is taken from the State of Alaska Department of Health and Social Services Office of Children's Services Website at <http://dhss.alaska.gov/ocs/Pages/adoptions/comparisonchart.aspx>

	Adoption	Guardianship
Legal Status	<p>Birth parent's rights are voluntarily relinquished or involuntarily terminated.</p> <p>The adoptive parent is given all the rights and responsibilities that once belonged to the birth parent.</p> <p>Adoption is a permanent, lifelong, legal relationship.</p> <p>Both persons in a married couple must adopt, unless a judge has excused the other spouse from adopting.</p>	<p>Birth parent/s' rights may or may not be voluntarily relinquished or involuntarily terminated. The birth parent retains "residual rights" when parental rights have not been relinquished or terminated.</p> <p>The guardian is given legal responsibility for the child and assumes the rights of care, custody, and supervision of the child.</p> <p>When married, either one or both spouses may be named guardian.</p> <p>The court makes all decisions regarding the transfer of guardianship, but the birth parent/s can request that guardianship be taken away from the caregiver and that the child be returned to their care if parental rights have not been terminated.</p> <p>Although guardianship legally ends when the child turns 18, most legal guardians enter into this commitment intending it to be a lifetime relationship.</p> <p>The guardian must file an annual report with the court.</p>
Decision Making	<p>All decisions are made by the adoptive parent, except for provisions in court orders establishing parental retained privileges.</p>	<p>Decisions regarding school, medical treatment and most other life decisions are made by the guardian.</p> <p>When parental rights have not been relinquished or terminated, the birth parent/s retain important rights, e.g., visitation, choice of religion, consent to adoption, consent to marriage, consent to military enlistment, and the right to claim the body of a deceased child.</p>
Child's Legal Name	<p>The adoptive parent determines the child's legal name.</p>	<p>Usually the child retains his/her name.</p>
Inheritance	<p>An adopted child has all of the same rights as birth children when the adoptive parent does not have a will. Otherwise, inheritance rights are established through a valid will as they are for birth children.</p>	<p>The child has no rights of inheritance from the guardian unless the child has been included in the guardian's will.</p>

Consent of the child

A child who is 10 years of age or older must consent to his/her own adoption, unless the court in the best interest of the minor dispenses with minor's consent.

A child who is 10 years of age or older must consent to his/her own guardianship

Death of Adoptive Parent/ Guardian

The adoption subsidy ends with the death or termination of rights of the adoptive parents. The child most likely will remain eligible for adoption assistance in a subsequent adoption. Please contact OCS regarding requirements well before the second adoption is finalized.

A guardianship subsidy ends due to the death or incapacitation of his/her guardian/s.

A subsidy may be offered to the successor guardian listed in the subsidy agreement for IV-E Federal Guardianship Subsidies

Termination of Adoption/ Guardianship

The commitment entered into by adopting a child is one that lasts for a lifetime.

Guardianship is a strong commitment to the child and is intended to be a lifetime relationship. The guardian may petition the court for permission to resign or another person, such as the biological parent may petition to dissolve the guardianship.

Adoptive parents retain their parental rights until such time as a court terminates parental rights.

Financial Matters

A child in foster care is almost always eligible for adoption assistance in the form of a subsidy. Rarely, a child not in custody may be eligible for a subsidy if they are determined to be special needs by state statute. The adoptive parent/s are financially responsible for the support of the child. The adoption subsidy lasts until the child is 18 with no exceptions.

A child in foster care is almost always eligible for Guardianship Assistance in the form of a subsidy. Non-custody children are not eligible for a guardianship subsidy. A guardian is financially responsible for the child. Guardianship subsidy lasts until the child is 18.

Any PFD Funds held in trust by OCS are released when the child turns 18.

Effective October 24, 2016, any PFD Funds held in trust by OCS are released when the child turns 18. Adoptive parent files for PFD's subsequent to adoption.

Guardian file for PFD's subsequent to guardianship.

Check with your tax professional regarding the Federal Adoption Tax Credit.

Relationship with the Birth Parent/s

The adoptive parent has the right to determine if the child will have any relationship with the birth parents and how that will occur, unless there are other provisions in a specific court order.

If the birth parent/s' rights have not been terminated, they have the right to visit the child unless a court orders no visits. The guardian will have input into how the visits are structured, but cannot prevent visits from occurring. If the guardian and the parent/s cannot work out visitation scheduling one of the parties may wish to seek court involvement.