



Legal Aid  
Society of  
Hawai`i

I'm Taking Care of Someone Else's Child, or  
Someone Else is Taking Care of My Child:  
Information on Adoption, Guardianship,  
& Powers of Attorney

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If you are caring for someone else's child and need to be able to make decisions for that child, or if someone else is caring for your child and needs to be able to make decisions for your child, three common options are:

- Adoption
- Guardianship
- Power of Attorney

Read these materials to help you understand the differences between each and to help you figure out which one fits your situation the best.

Before doing an Adoption, Guardianship, or Power of Attorney, you should talk to a lawyer about your situation to make sure you are doing the right thing for you and the child. If you are the child's parent, make sure you understand what rights and responsibilities you are giving up before you sign anything.

**If There's a Child Protective Services (CPS) Case:**

If the child at issue is involved in a CPS case, your situation may be different. Talk to the CPS worker, child's Guardian Ad Litem (GAL), or the parent's attorney to find out if Adoption, Guardianship, or Power of Attorney are options for you.

**Adoption**

An adoption is a legal process that permanently ends the rights and responsibilities of a child's biological parent(s). An adoption also permanently gives parental rights and responsibilities to new parents; these new parents are sometimes called adoptive parents. Under the law, adoptive parents are treated just as if the child had been their's since birth. Between adoption, guardianship, and POAs, an adoption is the strongest, but it's also the least flexible.

**Guardianship of the Person of a Minor**

A guardianship is a legal process that gives third parties (a guardian or co-guardians) most of the rights and responsibilities of a parent. Guardians are responsible for caring for the child, making medical, educational, and other decisions for the child, and for making sure the child's needs are met. However, the child's legal parents are still the child's parents, and are still financially responsible for the child.

**Power of Attorney (POA)**

A Power of Attorney is a written document in which a parent (the principal) can give another person (an agent) the power to do certain things, including taking care of the parent's child. Between adoption, guardianship, and POAs, a POA is usually the least strong. For example, third parties such

as doctors, schools, and government agencies are not required to follow it. You should check with those third parties to make sure they will recognize the POA. It's also the most flexible document and can be written to give the agent very broad or very limited powers.

Can Anyone Help Me With an Adoption, Guardianship, or Power of Attorney?

You may be able to get free legal help from the following agencies:

**Legal Aid Society of Hawai'i**

Call Mon-Fri 9-11:30am & 1-3:30pm

Oahu .....	536-4302
Hilo .....	934-0678
Kona .....	329-8331
Maui .....	242-0724
Lanai .....	565-6089
Molokai .....	553-3251
Kauai .....	245-7580

**Affordable Lawyers**

A Legal Aid Project - leave a message

Oahu .....	527-8027
Hilo .....	935-4374
Kona .....	331-1124
Maui .....	244-5400
Kauai .....	245-4728

**Volunteer Legal Services of Hawai'i**

Leave a message.

Oahu .....	528-7046
Other Islands .....	(800)839-5200

**Na Keiki Law Center**

Oahu .....	536-3412
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What Are the Differences Between Adoption, Guardianship, and Power of Attorney?

The next two pages show a chart that

explains some of the important differences between Adoptions, Guardianships, and Powers of Attorney. See the left column for some common questions. Then look under each option (Adoption, Guardianship, and POA) to find out how each process is different.

Question	Adoption	Guardianship of Minor	Power of Attorney (POA)
<b>Do You Need to Go To Court To Get?</b>	Yes, there must be a Family Court hearing and order by a judge.	Yes, there must be a Family Court hearing and order by a judge.	No. A POA is a signed & notarized agreement between parent & caretaker.
<b>Do Third Parties (doctors, schools, government agencies, etc.) Need To Follow It?</b>	Yes, all third parties must recognize the adoption.	Yes, all third parties must recognize the guardianship.	No, third parties are not required to recognize the POA. Check with them to see if they will.
<b>When Does It Begin?</b>	Whenever the court orders it to start.	Whenever the court orders it to start.	Whenever the parent agrees to start it (should be written in the POA).
<b>When Does It End?</b>	It doesn't end, even if the adoptive parents die or get divorced.	It ends when (1) the child turns 18, dies, gets married, or gets adopted (2) the guardian dies, or (3) the court orders the guardianship to end.	Ends upon (1) death or incapacity of caretaker, (2) death of parent who signed, (3) revocation by parent who signed, or (4) death of child. Depending on what the POA says, it can also end upon a certain date or event, or incapacity of the parent who signed.
<b>Birth Parents' Rights</b>	The birth parents' rights and responsibilities to the child, if any, end permanently.	The child's legal parents are still the child's parents and still have legal responsibilities to the child, such as taking care of the child's financial needs (child support).	The child's legal parents are still the child's parents and still have all the rights and responsibilities of parents.

Question	Adoption	Guardianship of Minor	Power of Attorney (POA)
<b>What are the Child's Caretakers Called?</b>	Parent(s) or Adoptive Parent(s)	Guardian or co-guardians	Agent(s)
<b>What Are the Rights of the Child's Caretaker?</b>	Adoptive parents have all the rights and responsibilities of regular parents. They are treated just as if the child was their's since birth.	Guardians have almost all the same rights and responsibilities as a legal parent. They care for and make decisions for the child.	The agent has only those rights agreed to by the parent(s) in the POA.
<b>Who Needs to Be Asked If They Agree?</b>	Both biological parents, anyone else who has been taking care of the child, and the Department of Human Services (DHS).	The child's mother, child's legal father?, child's legal grandparents??, anyone who has been taking care of the child 60 days before filing the guardianship, and any other legal guardian.	The parent with custody needs to agree to the POA.
<b>Does the Child Have to Agree?</b>	Usually children 10 years or older must agree to their own adoption.	Usually children 14 years or older must agree to the guardianship.	No, there is no legal requirement that the child agree to the POA.
<b>Can the Child's Name Be Changed?</b>	Yes, the child's name can be changed.	No.	No.
<b>Does the Child's Birth Certificate Change?</b>	Yes, a new birth certificate is issued by the Department of Health.	No.	No.

? *Legal Father*: the child's *legal father* (if any) must be notified of the guardianship.

A father is a *legal father* if (1) he was married to the child's mother when the child was born or 300 days before the child was born, or (2) he was not married to the child's mother during those times but Paternity has been established either through a court process or through Voluntary Establishment of Paternity. For more information on Paternity, call Legal Aid or look at the Legal Aid web site.

?? *Legal Grandparents*:

The child's maternal grandmother must be notified.

The child's maternal grandfather must be notified if he is the *legal father* of the child's mother.

The child's paternal grandmother must be notified if the child's father is the child's *legal father*.

The child's paternal grandfather must be notified if he is the *legal father* of the child's father AND the child's father is the child's *legal father*.