

## Guardianship for children under KiwiSaver

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For a person under the age of 18 to join KiwiSaver, there are some special rules that apply:

- Children under 16 may only be enrolled if all their guardians sign the membership form;
- Children aged 16 or 17 who have a guardian, may only be enrolled if they co-sign with one of their guardians;
- Children aged 16 or 17 who do not have a guardian (i.e. they are married, in a civil union or live with someone as a de facto partner) do not need a guardian to co-sign.

For this purpose “guardian” has the same meaning as applies under the Care of Children Act 2004.

### Types of guardians

In most cases the guardians of a child are the child’s parents. However, this is not always the case. There are five different types of guardians:

- Natural guardians;
- Testamentary guardians;
- New partners appointed as guardians by the parent;
- Court appointed guardians;
- Guardianship of the Court.

### Natural guardians

The parents are the “natural” guardians and are usually joint guardians. The mother is automatically a guardian, but the father is only automatically a guardian if:

- (a) he was married to the mother at any time from when the child was conceived until it was born. “Married” in this context means married, in a civil union with or living with as a de facto partner;
- (b) the child was conceived before 1 July 2005 and he was living with the mother when the child was born;
- (c) the child was conceived on or after 1 July 2005 and he was living with the mother at any time between conception and when the child was born, or

#### *The legal stuff*

*This is not an investment statement for the purpose of the Securities Act 1978. An investment statement is available from SuperLife free of charge. Before making a decision to join KiwiSaver, you should consider whether you need to seek financial advice. If you wish to have personalised financial advice, you should talk to an appropriately experienced Authorised Financial Adviser.*

- (d) he was recorded as the father of the child on the birth certificate on or after 1 July 2005.

If the father is not automatically a guardian, the mother is the sole guardian unless the mother agrees to make the father a guardian, or there is a Court order made relating to guardianship.

If a parent who is a guardian dies they can appoint a testamentary guardian for the child. If they do not appoint a testimonial guardian, the surviving parent becomes the sole guardian.

Each parent who is a guardian continues to be a guardian even if the parents separate. This applies even if one parent is living with a new partner.

Typically the following documents will establish the status of the guardianship of the parents:

- (a) The birth certificate of the child will be the evidence of the parents' joint or sole guardianship; and
- (b) The death certificate of a deceased parent will show the guardianship of the surviving parent. A copy of the deed or will of the deceased parent will show whether a testamentary guardian has been appointed.

### **Testamentary guardians**

Where a parent who is a guardian dies, their will or a deed may appoint someone to be a guardian for their child ("testamentary guardian"). A testamentary guardian may become a joint guardian with any other guardians.

A copy of the will or deed will show the guardianship status and whether it is held solely or jointly with the surviving parent.

### **New partners appointed as guardians by the parent**

If one parent has a new partner (married, in a civil union or in a de facto relationship) who is sharing day-to-day care of a child and has done so for at least a year, the parent may be able to appoint the new partner as a guardian of the child. This is subject to the restrictions set out in the Care of Children Act 2004. There is a special form for the appointment. This form is issued under the Care of Children (Appointment of Additional Guardian by Parents) (Forms) Rules 2005.

If the other parent of the children is alive, both parents must make the appointment.

A copy of the form must be approved by a Family Court Registrar and will show the status of the new partner's guardianship and also the effective date of the appointment.

## **Court appointed guardians**

The Family Court can appoint a guardian – for example, if the parents die and no guardians have been appointed under the will or a deed. The Court can also appoint a guardian for a particular purpose or for a limited period of time – for example, if both parents are going to be away for a period or if neither parent is able to look after the child for a period. The person can be appointed as a sole guardian or in addition to other guardians.

A copy of the Court appointment will show who the guardians of the child are, whether it is held solely or jointly and also the nature of the appointment (whether it is for a specific period of time or for a specific purpose only).

## **Guardianship of the Court**

In some cases the High Court or the Family Court will appoint itself to be a child's legal guardian. The Court then usually appoints Child, Youth and Family Services to play the role of guardian as the Court's agent.

In this instance, we will have to establish the person who is authorised to sign the membership form to join the child in KiwiSaver.