



LEGAL AID
SOCIETY OF HAWAI'I



ADOPTIONS GUARDIANSHIPS & POWERS OF ATTORNEY



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

- an adoption
- a guardianship
- a power of attorney.

Before you begin an adoption, guardianship or power of attorney, speaking with an attorney is strongly recommended to ensure you pursue that which is truly best for both you and the child. If you are the parent of the child, it is also important that you understand the rights and responsibilities you are giving up before you sign anything.

If there is a Child Protective Services (CPS) case:

If the child at issue is involved in a CPS case, you should contact the CPS social worker, the child's guardian ad litem (GAL), and/or the parents' attorney before you start looking into an adoption, guardianship or power of attorney. Depending on how long the CPS case has been open and its stage, you may or may not be allowed to proceed.

Adoption of a minor

An adoption of a minor child terminates the parental rights of the child's biological and/or legal parents. An adoption gives all parental rights and responsibilities to new parents, who are sometimes referred to as the adoptive parents.

Adoption is permanent and cannot be undone. After an adoption is granted, a new birth certificate is issued by the child's state of birth and lists the adoptive parents as the child's natural parents.

Adoptive parents are viewed under the law as if the child had been theirs since birth. Among adoption, guardianship, and power of attorney, an adoption is the "strongest," but also carries the most responsibilities.

Guardianship of a minor

A guardianship is a legal process that gives a responsible person the authority to make important decisions for a child if the child's legal parents are not willing or able to care for them. If granted, the guardian or co-guardians become responsible for the care of the child, and make all medical, educational, and legal decisions to ensure that the child's needs are met, and to ensure that such decisions are in the child's best interests.

A guardianship does not terminate the parental rights of the child's parents, however, and the parents continue to be financially responsible for the child. Guardianships are recognized and accepted by all schools, doctors, insurance companies, and government agencies.

Power of attorney (POA) for a minor

A power of attorney is a notarized document signed by one or both legal parents of a child giving permission to another person (an agent) to do specific things, or to act on the parents'

behalf in general support of a child. This may include providing care for the child.

A POA is not a court order, and doctors, schools, and government agencies are not required to recognize or accept it. It is advisable to first check with any third parties to ensure they will accept a power of attorney.

Powers of attorney normally expire one (1) year after the date the document is signed and notarized, and must be renewed yearly.

You may contact the following agencies to see if you qualify for free or low-cost related legal assistance:

Legal Aid Society of Hawai'i

924 Bethel Street
Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O'ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

Volunteer Legal Services of Hawai'i

O'ahu: 808.528.7046
Neighbor Islands: 1.800.839.5200

	Adoption	Guardianship	Power of attorney (POA)
Do I have to go court?	Yes. You must attend a family court hearing in front of a judge.	Yes. You must attend a family court hearing in front of a judge.	No. A POA is a notarized document signed by a legal parent for use by a caretaker (the attorney-in-fact).
Do all third parties (doctors, schools, government agencies, etc.) recognize and accept it?	Yes. All third parties must recognize an adoption.	Yes. All third parties must recognize a guardianship.	No. Third parties are not required to recognize or accept a POA. You should check with them first to see if they will accept one.
When will it begin?	When the court orders it, usually at the adoption hearing.	When the court orders it, usually at the guardianship hearing.	When the parent agrees for it to start (usually written on the POA).
When will it end?	Never. Adoption is permanent and does not end even if one or both parents die or become divorced.	It ends (1) when the child turns 18, dies, gets married, or is adopted; (2) when the guardian dies, or (3) by an order of the court dismissing the guardianship.	A power of attorney expires one (1) year from the date the parent signs and notarizes the document, or it can expire earlier as specifically stated by the parent in the POA document. It also ends at any time if a parent revokes the POA.
Does it affect parental rights?	Yes. The parental rights of the biological parents are terminated in an adoption. A new birth certificate is issued after the adoption.	Slightly. The parents stay on the child's birth certificate and do not lose their parental rights, but are not permitted to make any legal, medical or educational decisions for the child as ordered by the court. However, parents continue to be financially responsible for the child.	No. Parental rights are not affected.
What are the child's caretakers called?	Parent(s) or adoptive parent(s)	Guardian(s) or co-guardians	Attorney(s)-in-fact or agent(s)
What are the rights of the child's caretaker(s)?	Adoptive parents have full parental rights and responsibilities for the child.	A guardian makes all legal, medical and educational decisions for the child until the guardianship expires or is terminated by the court.	The attorney-in-fact, or agent, has only those rights specifically indicated by the parent(s) in the POA.

	Adoption	Guardianship	Power of attorney (POA)
Who is required to give their permission?	Natural/legal parents, any guardian (if applicable), the child if age 10 and older, and the Department of Human Services (DHS).	The legal mother and legal father* of the child, any surviving grandparents/next of kin (if the legal parents are deceased), the child if age 14 or older, the child's custodian during the 60 days prior to filing the petition, and the current guardian (if applicable).	Natural/legal parent(s) with custody.
Does the child have to agree?	Yes, if the child is age 10 or older.	Yes, if the child is age 14 or older.	No, there is no legal requirement that the child agree to the POA.
Can the child's name be changed?	Yes. The child's name can be changed in an adoption.	No.	No.
Does the child's birth certificate change?	Yes. A new birth certificate will be issued by the vital statistics office of the state of the child's birth, and will reflect the child's new name (if applicable) as well as the adoptive parents as parents of the child.	No.	No.

*** legal father.** A child's father is recognized as 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,
- (2) he is listed on the child's birth certificate if the child was born before July 1, 1999.
- (3) paternity was established by the court, **OR**
- (4) he is currently paying or has ever paid child support for the child.

REMEMBER:

This is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.