

Third party means anyone other than a parent or de facto parent. This usually includes grandparents and other close family members and friends. Maryland law does not give third parties the right to seek custody or visitation of a child, unless they petition the court and can prove that the parents are unfit, that there are exceptional circumstances justifying an award of custody, or both.

What Courts consider:

- Presume parents are the natural and rightful custodians of their children.
- Natural parents can be biological, adoptive, or de facto parents.
- Third parties, such as grandparents, close friends and family do not have legal rights to custody and visitation of children.
- Third Party must show evidence the parents are unfit to raise children (abuse, neglect, abandonment, mental illness) and/or extraordinary circumstances exist that interfere with parents caring for child, such as:
 - How long have parents been separated from their children.
 - The relationship between the child and parents.
 - The nature and strength of the third party's relationship with children.
 - The impact of custody on the physical and emotional welfare of the children.
- The court always makes its custody decisions based on the best interest of the children.

DE FACTO PARENTING

A de facto parent is not a biological or adoptive parent, or even a third-party custodian, but rather a person who has formed a strong bond with a child and, as a result, would like to petition the court for custody and visitation rights. This allows individuals who have assumed a parental role with the child, such as stepparents and same-sex couples, to continue that relationship with the child, all in the child's best interest.

What Courts consider:

- Individual seeking child custody and visitation is no longer considered a third party.
- Individual is **NOT** required to prove parental unfitness or exceptional circumstances with respect to the biological or adoptive parents if the following criteria are met:
 - The biological or adoptive parent must have consented to and fostered the relationship between the de facto parent and the child;
 - The de facto parent and the child lived in the same household;
 - The de facto parent provided significant parental functions to support the child's overall development and care; **AND**
 - A parent-child bond was formed.

The court always makes its de facto custody decisions based on the best interest of the children.

Guardianship is a legal process in which the individual seeking guardianship petitions the court for appointment to manage the physical and/or financial affairs of the child. The naming of a guardian for a child in a Last Will and Testament is not enough to obtain guardianship. Guardianship is an appointment made solely by the court.

There are three types of guardianship:

1. Guardianship of person (cares for the physical and personal needs of the child);
2. Guardianship of property (oversees and makes decisions regarding the child's financial affairs); and
3. Guardianship of both person and property

What Courts consider:

- More than one person may be appointed as a guardian – depending on the facts and circumstances of the matter and considering what is in the best interest of the child.
- The consent of the parents should be obtained.
- All interested parties must be notified of the impending proceeding and be given an opportunity to accept or reject the appointment and to request a different guardian than the one who is petitioning the court.

Obtaining guardianship for a child is a complicated procedure and, as in most legal matters, should be handled by a skilled attorney who practices in this area of the law.

ADOPTION

A person may file a petition with the court and have a court hearing to seek adoption of a child. Any adult, other than natural parents, may petition for adoption.

What Courts consider:

- Fitness of the adoptive parents to care for the child.
- What is in the best interest of the child?
- Natural parents and guardians of a child must be notified of intent to adopt to allow to object.

Adoption, once granted, establishes a new parent-child relationship, and severs the natural, biological parents' duties and responsibilities for the child.

There are several types of adoption – public agency, private agency, and independent adoptions. Each type is associated with distinct rules and regulations, including time constraints related to consent matters and court rulings.

If you have a limited income and are interested in pursuing legal help or have questions regarding the topics discussed in this article, feel free to contact Maryland Volunteer Lawyers Service at **410-547-6537**. Our intake line is open Monday through Thursday from 9 a.m. to 12 p.m.

Nancy Grimm is a family law staff attorney at Maryland Volunteer Lawyers Service.