

RE: Legal Custody for Minors

1. Who has legal custody / guardianship for minors in Afghanistan?

According to Afghanistan law, the guardianship of child is divided to two periods, the first period which is 7 years for male child and 9 years for female child, is under guardianship of mother, in her absence to her successors, which are written as below. The second period which is more than 7 years for male child and 9 years for female child until their adulthood are subject to father.

According to Afghanistan Civil Code, guardianship is protection and nurture of a child during the period which he/she is in need of a woman's protection and care. However, this period is limited to 7 years for male child and to 9 years for female child. The mother has priority right to the protection and care of the child, whether married or divorced, providing that she has the qualifications required for child care. The qualifications of guardian woman, according to Afghanistan Civil Code are: the guardian woman should be wise, mature and honest. There shouldn't be any fear of waste of the child in her hands and she should have the ability to protect and take care of the child.

If the child's mother is not alive or not qualified for the guardianship of the child, following women are entitled for the child's guardianship accordingly:

1. Grandmother, and great-grandmother
2. Father's mother
3. Sister
4. Stepsister
5. Niece (Daughter of sister)
6. Half niece
7. Aunt (sister of mother)
8. Half-aunt
9. Father's aunt (sister of the mother of the father)
10. Father's half-aunt
11. Mother's aunt (Sister of mother's father)
12. Father's aunt (Sister of father's father)

However, in all cases the father is responsible for child support (Alimony) of male child until he is able to work, and for female child until she got married.

2. Who has legal custody / guardianship for minors in following cases:

- If one parent, or both parents, are deceased?

If the father is deceased, the guardianship of child will be according to the above (question number 1), but it's child's support will responsibility of grandfather.

If mother is deceased, the guardianship of child will be to its mother's successors, according to the above (question number 1), but it's child's support will responsibility of father.

If both parents are deceased, the guardianship of child will be to its mother's successors, according to the above (question number 1), but it's child's support will responsibility of grandfather.

- If one parent, or both parents have disappeared, they are missing or their current place of living is unknown?

If one or both parents are disappeared, or missing, or their living place is unknown, the same answers (question number 2.1) applies.

- if one parent or both parents are living in a foreign country, but their exact location is known and contact can be established?

In this case, the court can assign the next person which is entitled for guardianship and child support accordingly.

- if one parent or both parents cannot fulfill their duties regarding custody and guardianship towards a minor for other reasons?

In this case, the court can assign the next person which is entitled for guardianship and child support accordingly.

3. Which pre-requisites must be fulfilled in order to transfer the legal custody or guardianship of a minor to another person?

Un-qualification of the first guardian due to any reason (death, absence, or inability) qualifies the next person for the guardianship.

4. Is it mandatory to keep formal regulations in order to transfer legal custody or guardianship?

In practice, no such formal regulations are kept and very rarely it happens that such formalities and authorizations are adhered. But if there is any dispute or claim, and the case is referred to court, it's mandatory to keep formal regulations in order to transfer legal custody or guardianship.

5. Is it possible to fully or partially transfer legal custody or guardianship from one parent to other relatives / family members, if this person is migrating to another country or quitting the family?

Yes, it is possible to transfer guardianship of child from parents to other relatives (according to the above mentioned ranking row), but in all cases, the child support remains responsibility of the father, whether he migrates, quit the family or not.

6. Which relatives / family members are entitled to take over legal custody / guardianship for a minor?

Following relatives / family members are entitled to take over legal custody / guardianship for a minor:

1. Grandmother, and great-grandmother
2. Father's mother
3. Sister
4. Stepsister
5. Niece (Daughter of sister)
6. Half niece
7. Aunt (sister of mother)
8. Half-aunt
9. Father's aunt (sister of the mother of the father)
10. Father's half-aunt
11. Mother's aunt (Sister of mother's father)
12. Father's aunt (Sister of father's father)

7. Which formal regulations and which formal prerequisites must be fulfilled to transfer legal custody / guardianship?

If it's about the procedural formalities, the petition for such case is made to Civil Department of Ministry of Justice, the case is later referred to Court and Court decides on it.

8. Is it possible to transfer legal custody / guardianship in an informal way?

In practice, it is possible and lots of cases are done informally and without adherence of the ranking which is mentioned above. In most cases, a gracious relative whether priority entitlement or not, takes care of the child. But if it comes to any formal dispute or lawsuit, it is done formally through court.

Note: The Afghanistan Civil Code has a “right approach” to the guardianship of the child, and don’t have a “responsibility approach” to it, so it can be easily transferred from parents to other people in the row, and court can transfer the guardianship to other people in the row as well, even if they are alive, off course if the parents are not entitled to have the guardianship due to some reasons which are mentioned above, but in all circumstance child support (covering financial costs) are responsibility of father.

The father is also responsible to pay a guardianship fee to the guardian (relatives), if they request such payments.