



The New Civil Code for Everyone

THE FAMILY COUNCIL

- A new institution, provided by the New Civil Code under articles 124 – 132
- *The Family Council* in the New Civil Code is totally different by its composition, role and the situations in which it is established from the homonymous institution regulated under Law no. 217/2003 on the prevention and fight against family violence, defined as an "association without legal personality and non profit-making, consisting of the family members with full legal competence", meant to prevent conflict situations and mediate between the family members.

What is the Family Council?

From the contents of the texts referring to the family council it results that this is a advisory body (without legal personality) established by guardianship court, which is meant to supervise the manner in which the guardian exerts his/her rights and fulfills his/her duties concerning the person and the assets of the under age child. Until the guardianship courts are established, their competences are exerted by local courts.

Who may be a member of the family council?

- relatives, persons connected by consanguinity, taking into account the degree of kinship and the personal relations with the family of the under age person.
- in default of relatives or persons connected by consanguinity, other persons who had friendship relationships with the parents of the under age person or who show interest for the situation of the latter may also be appointed.
- The husband and the wife cannot be, together, members of the same family council.

The following cannot be members of the family council:

- the guardian;
- the under age person, the person under judicial adjudication of incapacity or the person under statutory guardianship of property;
- the person who has been deprived of the parental authority or was declared disqualified as a guardian;
- the person for whom the capacity to exercise their civil rights has been limited, either pursuant to law, or by judgment and decree, as well as the one with bad behaviors retained as such by a court of law;
- the one who, exercising a guardianship, was deprived of it under the provisions of art. 158 of the Code;
- the one in a state of insolvency;
- the one who, due to his/her interests contrary to those of the under age person, would not be able to fulfill the task of guardianship;
- The one excluded by authenticated document or by testament by the parent who was exerting the parental authority on his/her own at the time of their death.

The person who, due to illness, infirmity, the nature of his/her activity, the distance of their domicile from the place where the assets of the under age persona are situated or to other justified reasons, would not be able to fulfill this task, **may refuse to become a member of the family council.**

In what situations is the family council established?

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- The family council is instituted when the minor needs a guardianship to be implemented. The guardianship of the under age person is instituted when both parents are, as the case may be, deceased, unknown, have lost their parental authority or were subject to the penal sentencing of deprivation of parental rights, subject to injunction, disappeared or declared legally deceased, as well as in case, at the end of the adoption, the court decides that the establishment of a guardianship is in the interest of the under age person.
- In case the under age person is under the protection of parents, by placement in foster care or, as the case may be, by other special protection measures provided by law, the family council shall not be established.

What is the procedure of establishing a family council?

- The family council can be established by the guardianship court only on request of the interested persons
- the persons fulfilling the necessary conditions in order to become members of the family council are summoned at the residence of the under age person by the guardianship court, ex officio or on request of the under age person, if the latter has turned 14, of the designated guardian, of whatever personas are familiar with the situation of the under age person.
- The guardianship court establishes the family council consisting in three persons among the one with vocation, taking into account the degree of kinship of the members and the personal relationships with the family of the minor.
- the appointment of the members of the family council takes place with their consent.
- the under age person who has turned 10 is heard.
- along the three members of the family council, the guardianship court also appoints 2 deputies.

What are the competences of the family council?

The family council, chaired by the senior person, fulfills its role to monitor the way in which the guardian exerts his/her rights and fulfils his/her duties concerning the person and the assets of the minor as follows:

► It issues **advisory opinions**, on request of the guardian or of the guardianship court, and makes **decisions**, in cases provided by law. Advisory opinions and decisions are taken validly by the majority vote of its members. On making the decisions, the minor who has turned 10 will be heard. The decisions of the family council will be motivated and written in a specially established register, held by one of the members of the council, designated to that effect by the guardianship court. The documents signed by the guardian in absence of the advisory opinion can be cancelled. The fact of signing a document in the event of default of the opinion only attracts the responsibility of the guardian.

Examples of **advisory opinions**

- the measures concerning *the person of the minor* are taken by the guardian, taking into account the **opinion** of the family council, except for measures with routine character.
- **the opinion** of the family council and the authorization of the guardianship court are necessary for any *acts of disposal, apportionment, mortgaging or encumbrance* with other real encumbrances of the assets of the under age person signed de by the guardian, waiver of property rights of the minor and to validly sign any other deed which goes beyond the right of administration.
- in case of recognition of the full exercise of capacity of the under age person under guardianship, who has turned 16, the guardianship court will also ask for the **opinion** of the family council.
- the guardianship court, with the **approval** of the family council, may, taking into account the size and structure of the assets of the under age person, decide that the administration of the assets or of just a part of it be entrusted, according to the law, to a specialized natural or legal person.
- Although guardianship is a free task, nevertheless, during the exertion of the guardianship tasks the guardian may receive a compensation, the amount of which shall be established by the guardianship court, with the **approval** of the family council and also with the approval of the latter the guardianship court shall be able to modify or suppress this compensation.

Examples of **decisions**:

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- the family council **establishes the annual amount** necessary for the maintenance of the minor and for the administration of his/her assets and may modify this amount according to circumstances.
 - the family council **indicates the credit institution** where the amounts are deposited, on the name of the minor, which exceed the needs for maintenance of the minor and the administration of his/her assets, as well as the financial instruments
- ▶ It files suits or formulates claims before the guardianship court:
- the family council may file a **complaint** with the guardianship court concerning the documents issued or the acts of the guardian which are damaging for the minor.
 - the family council or any of its members may file an **action for annulment** of the deeds of disposal or which go beyond the right of administration, issued by the guardian.
 - On appointment or, as the case may be, during the guardianship, the family council may file a claim with the guardianship court for the guardian to present real or personal guarantees.
- ▶ Other competences:
- the members of the family council must be present at the inventory of the assets of the under age person. The members of the family council must declare in writing, at the express request of the delegate of the guardianship court, the bonds, debts or other claims they hold towards the under age person. If under these circumstances these have not been declared, they are supposed to have waived them.
 - In the absence of an appointed guardian, if the guardianship court has established the family council, the guardian will be appointed by **consultation** of the family council.
- ▶ *In case no family council is established, its competences will be exercised by the guardianship court.*

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