



Standby Guardianship– A Means to Provide for the Future Care of Your Children

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Overview

STANDBY GUARDIANSHIP is a legal way to select someone to care for your child in the future if you are unable to. A standby guardianship can be put into place now, while you are still healthy. You will not give up any of your parental rights. If you cannot care for your child in the future, everything will be arranged.

What is a "standby guardian"?

A standby guardian is a person selected by a parent and approved by the Probate Court to act as guardian of the parent's child. Once approved by the Court, the standby guardian remains on "standby", and the parent still has complete authority over the child until one of the following occurs:

1. The parent agrees in writing that the standby guardian can exercise their guardianship duties over the child: OR
2. The parent's physician determines that the parent is incapacitated and currently unable to care for their child: OR
3. The parent dies.

If the parent initially agrees, in writing, to activate the standby guardian, the parent can also, at any time, revoke that decision in writing. The standby guardian will once again remains on "standby", with the parent having full legal authority over the child.



If the parent's physician determines that the parent is incapacitated and unable to care for the child, and later determines that the parent has recovered, the standby guardian will once again go back to "standby" status, with the parent having full legal authority over the child.

Once the Court has approved someone as standby guardian, there is no limit to the number of times that a standby guardian can go in and out of "standby" status. This is particularly helpful to parents who may have an illness that requires them to go into and out of the hospital.

Why have a standby guardian?

With a standby guardianship, the parent gives another person the legal authority to act for their child.

The easiest way to understand why a standby guardian is so important is to think about what would happen to your child without a standby guardian in place.

If a parent is unable to care for their child due to illness, or death, and no standby guardian is in place, someone will step forward to take care of the child. The problem is that it may be the Department of Social Services (DSS) or someone that the parent does not want to act as guardian for their child.

A standby guardian is an important legal tool in planning for your child's future care. You get to decide (with court approval) who should be the standby guardian for your child. It makes sense to start this standby guardianship process while you are healthy, rather than waiting until a crisis arises.

Who can serve as a standby guardian?

Any adult can serve as a standby guardian, once the Court has approved them.

What is the difference between naming a guardian in a will and naming a standby guardian?

A will addresses issues after your death. Naming a guardian in a will means that the proposed guardian has no legal authority until after your death, and after receiving Court approval. A standby guardian not only has legal authority to act as guardian of your child after your death, but also before your death. If you consent in writing or your physician determines that you are medically too ill to care for your child. With a standby guardianship, you are protecting your child both during your life and after your death: With a will you are only protecting your child after your death.

Getting Started

There are several steps you need to take:

1. Carefully think about whom you would like to name as the standby guardian



- of your child. Talk to that person to be sure that they are willing to act as standby guardian.
2. Several different Court forms need to be filled out, signed and filed with the Probate Court.
3. You will have to "give notice" to interested parties about your proposed standby guardianship petition. Interested parties include the other parent of the child. and may also include adult brothers or sisters of your child, grandparents, etc.
4. A hearing will then be held in Probate Court. Generally, you and your child and the proposed standby guardian all must attend the hearing. The Judge will usually tell you after the hearing if they are going to approve your request for a standby guardian.

Once my Standby Guardianship is approved by the Court, what happens next?

Nothing. Remember that getting the standby guardian approved by the Court is only the first step. The standby guardian at this point has no legal authority over your child. The standby guardian is still on "standby", until either;

1. The parent agrees in writing that the standby guardian can exercise their guardianship duties over the child: OR
2. The parent's physician determines that the parent is incapacitated and currently unable to care for their child: OR
3. The parent dies.

What does my standby guardian need to do to begin to act as legal guardian for my child?

In order for a standby guardian to legally begin to act as the guardian of your child, the standby guardian must always have two documents:

1. The court approved stand by guardianship document (decree): and
2. Either your written consent to act as guardian. or your physician's written statement that you are medically unable to care for your child. or your death certificate.

For the protection of your child, a school or a doctor will want to make sure that the standby guardian really is legally permitted to make decisions affecting your child. It makes sense for a school or a doctor to want to see the documents that prove that the standby guardian has the legal authority to act on your child's behalf.

If an emergency arises and I have not yet gone through the standby guardianship process, is there anything else I can do?

Yes, but only in limited circumstances. There is a procedure called an Emergency Guardianship Proxy that may help you This really is an emergency procedure, and it is best to proceed with a standby guardianship, rather than waiting until an emergency arises.



This emergency guardianship proxy is available without court approval, is effective for no longer than 60 days, and must be in writing. To name someone as the emergency guardianship proxy for your child, you must either have the written consent of the other parent or you must show that the other parent is not available to care for the child. If the other parent is available, and will not give written consent, you cannot use the emergency guardianship proxy.

SUMMARY

A standby guardianship can be a valuable tool for parents who are concerned about the future care of their children. This process may be simpler with the assistance of an attorney. If you or someone you know is interested in setting up a standby guardianship, the HIV/AIDS Law Consortium of Western Massachusetts or your local legal services program may be able to find an attorney to help you with this process. Call our office for help in beginning this process.

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