



NYS Kinship Navigator

STANDBY GUARDIANSHIP LAW BROADENED

Published in NYSB Elder Attorney, Winter 2000 and Printed With Permission of the New York State Bar.

New York State has changed Surrogate's Court Procedure Act § 1726, its standby guardianship statute, to allow additional categories of persons caring for minors to designate future guardians for their charges. Previously, New York Law permitted only parents or guardians who had a progressively chronic illness or irreversibly fatal illness to apply to a court for the nomination of a "standby guardian." A similar provision permitted such parents and guardians to name a standby guardian in a one page writing similar to a will. Standby guardians nominated by a court can act upon incapacity or death of the principal. Standby guardians named via a writing can act upon the debilitation, incapacity, or death of the principal. Both are required to apply to court for a permanent appointment (nominees within ninety days, designees within sixty days) of the occurrence of the event that activated the guardianship, or their temporary power to act as guardian ceases. When such an application is made, the judge must find that the permanent appointment of the standby guardian is in the best interest of the child.

Effective sixty days after its signing on September 20th, 2000, New York added legal custodians and the "primary caretakers" of minors to those persons who can name a standby guardian, either by application to a court or by a witnessed writing. Primary caretakers must show that the actual parent, guardian, or legal custodian of the minor cannot be located with "due diligence." Although the addition of these categories was intended to assist "families and children living with HIV/AIDS . . . ," the standby guardian law is not limited to persons with illnesses caused by HIV/AIDS. Thus, this amendment to the standby guardianship statute insures that all parents, guardians, legal custodians, and many primary caretakers of minor children can choose the person who

will continue to care for the child when they are no longer able to do so and the appointment of a guardian becomes necessary.

Distributed by the Kincare Support Project at the Government Law Center of Albany Law School. Current as of October 10, 2006. The project is administered jointly by the Government Law Center and AARP NY and is funded by the New York Life Foundation and the AARP Foundation.

A Program of Catholic Family Center

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