

LEGAL FACT SHEET

Standby Guardianship

Standby Guardians are persons who can step in to become the guardians of children when parents, *guardians*, *legal custodians*, and *caretakers*, who cannot locate the parents, become debilitated, incapacitated, or die.

The Standby Guardianship statute, Surrogate's Court Procedure Act Section 1726, has two very different ways to name a successor guardian:

Option One: If the principal (parent, guardian, legal custodian, or other authorized informal caregiver) is chronically ill or dying, they can go to court with the person chosen to be the standby guardian and ask the court to appoint that person as the standby guardian. Upon incapacity or death, the standby guardian becomes an active guardian, but he/she must go to court within ninety days for confirmation of the appointment.

When the principal goes to court to have the court appoint the standby guardian, they are taking steps to make sure that the person chosen as standby guardian will be appointed by the court to act as the child's guardian when they die or are no longer able to take care for a child, but they do not give up their current right to make decisions for the child.

Option Two: The principal can designate a standby guardian by writing and signing a document in front of two witnesses who are at least 18 years old that states:

- the principal's name;
- the name, address, and telephone number of the proposed standby guardian;
- whether the authority of the standby guardian will be to make decisions for the daily needs of the child, the child's finances and property, or both; and
- whether the authority or the power of the standby guardian should begin when the principal becomes debilitated, incapacitated, or dies.

When a principal designates a standby guardian in writing, they are recommending a person to be the child's guardian. If the court agrees, the court will appoint or name that person as the child's guardian. When a principal makes such a designation, he/she does not give up their current exclusive right to make decisions for the child. Upon debilitation, incapacity, or death, the standby guardian must go to court within sixty days and petition for appointment. The suggested standby guardian form is below:

Forms and Instructions:

- [Standby Guardianship Form \(Fillable Form\)](#)
- [Standby Guardianship Form \(Instructions\)](#)

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