
Planning for Your Children When you have a Serious Illness

A Guide to Standby Guardianship in North Carolina

What is Standby Guardianship?

Standby guardianship is a legal procedure available in North Carolina that allows parents with serious chronic or terminal illnesses to decide who will take care of their children when they are no longer able.

Who needs it?

Any parent with a serious chronic or terminal illness who wants someone other than the child's other parent to care for their child can apply for a standby guardianship.

What does a standby guardian do?

Once a standby guardian is appointed and has been given legal authority, the standby guardian can do any of the things that you, as a parent, can do, like enroll your child in school, take her to the doctor, or pay her medical bills. While you are still able, you can do these things, too. You and the standby guardian are both responsible for your child.

Who should I choose to be a standby guardian?

The standby guardian should be someone that you and your child know and have a good relationship with. He/she should be financially able to take care of your child's basic needs, like food, clothing, shelter, and medical care. The person you appoint as standby guardian has to want to be a guardian for your child. For example, you may appoint

your mother, cousin, or other close relative or friend as a standby guardian for your child.

When does the guardian start to care for my child?

The law allows you to decide when the standby guardian will begin to care for your child. The guardianship can begin when you are no longer able to care for your child because of illness or death. Or, it can begin when you state in writing that you want it to begin.

Do I lose my rights to my child?

NO! When you appoint a standby guardian, you keep all the legal parental rights and responsibilities that you had before. The only difference is the standby guardian has the same rights and responsibilities, just like a two-parent family.

How do I get a standby guardian appointed?

You begin the process by filing a paper at the county courthouse that asks for the appointment. It is best to have a lawyer help with the process. The Duke Legal Project provides free legal services to some parents. If you don't want to go through the court process, you can sign a form that states who you would want as the guardian. Then the guardian can apply later to be appointed.

When does the standby guardianship end?

The standby guardian is no longer responsible for your child when your child turns 18, or when you state in writing that you want it to end; or, the court can decide to end the guardianship.

What if the standby guardian cannot or does not want to take care of my child?

If the person you appoint as standby guardian is unable or unwilling to serve, he/she will not have to serve. That's why it's important to have an alternate (back-up) standby guardian if possible. If you know someone else who is fit to care for your child and who wants to care for your child, you should appoint an alternate standby guardian. The alternate will automatically replace the first standby guardian if he/she is unable to serve.

What happens after I file for a standby guardianship?

First, the other parent of the child must be notified. A hearing with the Clerk of Court is scheduled. At that hearing, the Clerk of Court can appoint the standby guardian and an alternate.

Can my child's other parent stop the standby guardianship?

The other parent has several options. He or she can: (a) agree to let you appoint a standby guardian, (b) show up at the hearing and state reasons why the guardian should not be appointed, (c) file for custody, or (d) do nothing.

What if I don't want to notify the other parent?

You are required to notify the other parent if you know how to get in touch with him/her. This is true even if the other parent is not involved in your child's life. The court can decide to dismiss your case if it finds that you had a way of getting in contact with the other parent and did not. Even if you only know an old work number or perhaps a relative's address, you must tell us if you have a way of getting in contact with the other parent or your case could be dismissed.

What happens if the other parent files for custody?

The other parent must claim custody at or before the standby guardianship hearing takes place. If the other parent does claim a right to custody, the court will put your case on hold and give the other parent 30 days to file for custody of your child. If a claim of custody is filed, the court will set a date for a custody hearing to decide which parent should have legal custody.

Is the other parent likely to get custody?

First of all, the other parent must want custody. If he/she really does not want to have custody of your child, he/she probably will not file for custody of your child. Second, the other parent must be fit to take care of your child. If you know the other parent has not been a good parent, has not paid child support and has not kept in contact with the child, the court may not award custody to him/her. If there is proof that the other parent has abused or neglected the child, it may be very difficult for that parent to get custody.

Should I apply for a standby guardianship if I know the other parent will file for custody?

This is your decision. You can go ahead with the standby guardianship and wait to see if the other parent will fight it. Even if the other parent does fight, he/she still has to win a custody hearing in order to get legal custody of your child. Another option may be to try to terminate the other parent's rights. This is an important topic to discuss with your legal representative.

What happens at the standby guardianship hearing?

At the hearing, the court must decide if you have a serious chronic or terminal illness, if the standby guardianship is in the best interests of your child, and if the standby guardian is "fit," or financially, physically and mentally able to care for your child. The guardian should be able to provide a positive and nurturing environment for your child. The court will decide whether or not to appoint the standby guardian.

Do I have to disclose what my illness is?

No, you simply must state that you have a "progressively chronic or irreversibly fatal illness." You are not required to identify the illness.

What if I change my mind after the hearing?

If you change your mind at any time in this process, you have the right to take back all the powers that you gave the standby guardian. If we are representing you, you should notify us and we will explain that process. You can then appoint an alternate standby guardian if you choose.

For more information:

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A program of Duke Law School
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