COMMUNITY LEGAL ADVOCATES OF NY
Advocating for All Communities

Important Information on Naming a Standby Guardianship for Your Children

The following only discusses general issues relating to naming a Standby Guardian for a child. It does not constitute legal advice. Each situation is different and requires a specific legal analysis. Contact Community Legal Advocates at (516) 210-6763 for assistance.

In New York, if you are the parent or legal guardian of a minor child (under the age of 18) and you are worried that you may not be able to care for your child in the future, you can name someone as the child's Standby Guardian. A Standby Guardian is someone you name who can take over caring for your child if you are unable to do so for one of the reasons described below.

These are some important questions and answers about when and how to name a Standby Guardian.

What is a Standby Guardian?

In New York, a Standby Guardian is someone who has temporary authority to care for someone else's minor child. The Standby Guardian will eventually need to go to Court (usually the Family Court in the county in which the child lives) and formally ask to be appointed the child's permanent guardian. Ultimately, a Court will decide what is in the best interest of the child. But naming a Standby Guardian is an important way to ensure that someone can provide immediate care for young children.

When Should Someone Name a Standby Guardian?

There are several situations in which a parent or legal guardian may want to name a Standby Guardian for their young children. In New York, a Standby Guardian can be named if a parent is facing a possible "Administrative Separation."

> ***Administrative Separation*** means the parent or legal guardian:
>
> - Has been arrested, detained, incarcerated, removed or deported; or
> - Received an official government notice regarding immigration enforcement which indicates that there will be an interruption in the parent's ability to care for their children.

Administrative Separation is a new category that was added to NY's Standby Guardianship law in July 2018. It was added specifically to allow immigrant parents at risk of being detained or deported to plan for the care of the children. Standby Guardians can also be named in other circumstances, specifically:

> ***Incapacity or Debilitation*** of the parent or legal guardian as determined by their doctor:
>
> - Incapacity means the parent or legal guardian has a mental impairment that results in their parent's inability to understand the nature and consequences of decisions regarding the care of their children;
> - Debilitation means the parent or legal guardian is unable to care for their children due to a fatal illness, or a physically debilitating condition.

If you are a parent facing one of these situations, you should consider naming a Standby Guardian.

How does a Parent Choose a Standby Guardian?

The person named as Standby Guardian should be someone the parent or legal guardian trusts to take care of their children. The parent should talk to the person and make sure they are willing to take care of the children if necessary.

The person named as Standby Guardian should be a U.S. Lawful Permanent Resident (green card holder) or U.S. Citizen.

How does a Parent Name a Standby Guardian?

A parent or legal guardian can complete a Designation of Standby Guardian form. The form must be signed in front of 2 witnesses who are both at least 18 years of age. The witnesses cannot be the person being named as Standby Guardian. The Standby Guardian also signs the form.

If both parents are available, they should each sign a Designation of Standby Guardianship form, naming the same person as Standby Guardian. If only one parent is available, or if the parent completing the form does not want the other parent to be involved in the care of the children, that must be explained on the form.

The same form can be used for more than one child.

The form allows the parent to name a primary Standby Guardian and an alternate Standby Guardian.

If a parent doesn't have the form and it's an emergency, they should write out their wishes as clearly as possible and give the writing to the person they are naming as Standby Guardian. The writing should be witnessed by 2 people if possible.

What Does the Standby Guardian Have to Do to Get Custody?

The person named as Standby Guardian has 60 days after the occurrence of the triggering event to go to Court (usually the Family Court in the county in which the child lives) to file a petition for custody of the child. For instance, the Standby Guardian would have 60 days after the parent is deported to go to Family Court.

The Standby Guardian will have to file a petition with the Family Court explaining why the child's parents are not available and explaining why the Standby Guardian is now the best person to care for the child. The Standby Guardian will need to provide proof of the written consent of the parent or legal guardian, such as the signed Designation of Standby Guardian form. The Standby Guardian will also need to show that the triggering event has happened. For instance, they will need to provide a document that shows that the parent or legal guardian has been detained or deported. There are other requirements that the Court will describe to the Standby Guardian.

Other people may have the opportunity to tell the Court what they think is in the best interest of the child. Ultimately, the Court will decide what it thinks is best for the child. But the signed Designation of Standby Guardian form is strong evidence of what the parent thinks is best.

If you are interested in learning more about Standby Guardians, or other immigration issues, contact CLA at (516) 210-6763.