

## **FUTURE CARE OPTIONS: STANDBY ADOPTION**

### **1) What is standby adoption?**

Standby adoption is a legal arrangement approved by a judge. It allows you to ask the court to appointment a person or persons as standby adoptive parent(s) of your child, and that person “stands by” until needed. The standby adoptive parent doesn’t take custody of your child until the adoption becomes final, only when a) you decide that you want the adoption to be final or b) you die. In the meantime, you retain all of your rights as a parent, and keep custody of your child. You must have been determined by a physician to be terminally ill in order to ask the court to appoint a standby adoptive parent for your child.

### **2) How do I arrange a standby adoption?**

Making someone a standby adoptive parent of your child requires a court hearing. At a standby adoption hearing, you will explain to the judge why you want this particular person to take care of your child in the future. The person that you want as standby adoptive parent must appear in court. If that person is married, the spouse must also join in the adoption and appear in court. Your child must also appear.

Either before you go to court or at the court hearing you must sign a written consent for the standby adoption to take place. That consent lets the court know that you want your child to be adopted in the future, when you request it or if something happens to you. The consent is called a Final and Irrevocable Consent to Standby Adoption (more about this later).

If you are too sick to go to court, you can sign a Final and Irrevocable Consent to Standby Adoption in the presence of an agency authorized to take these consents. Because the consent is witnessed by someone who is legally authorized to do so, the consent form will legally inform the judge of your wishes, so you do not have to appear in court yourself. However, the person that you want as standby adoptive parent and your child must appear before the judge.

### **3) Who can be a standby adoptive parent?**

According to Illinois law, a standby adoptive parent must:

- Be at least 18 years old;
- Be a resident of Illinois for at least 6 continuous months immediately before starting the standby adoption process. NOTE: This requirement does *not* apply in cases in which a relative will be the standby adoptive parent.

Other requirements: If the standby adoptive parents is or has been married:

- If currently married, the standby adoptive parent's spouse must also adopt the child.
- If separated but not divorced, the standby adoptive parent must have been separated for 12 months or longer.

**4) Will someone have to investigate the standby adoptive parent's home? What about a criminal background check?**

The requirements vary. If the standby adoptive parent is not related to the child, then an investigation must be done that includes a criminal background check and fingerprinting. The Sheriff's office charges a fee for the background check and fingerprinting. A home study must also be done. In Cook County, the court normally appoints the Cook County Department of Supportive Services to conduct the home study. A sliding scale fee is charged based on the standby adoptive parent's income. If the child was previously adopted through DCFS, and the standby adoption is approved by DCFS, then DCFS will make arrangements and pay for the home study. DCFS will also want a CANTS and LEEDs check done.

If the standby adoptive parent is related to the child, then fingerprinting and a criminal background check are not required. In Cook County, the court routinely appoints the Guardian ad litem as investigator. If the child was previously adopted through DCFS, and the standby adoption is approved by DCFS, then DCFS will make arrangements for and pay for the investigatory report.

**5) Does the child's other parent have to be notified of a standby adoption hearing?**

Yes. Illinois law requires that both parents be given notice of the court hearing. Both parents also have a right to appear at that hearing.

**6) What if the other parent doesn't agree with my standby adoption arrangement?**

The other parent has the right to contest your arrangement. For example, let's say you are the mother of Christina, and you want to name your mother as standby adoptive parent. But let's say that Christina's father thinks that he should take care of Christina instead. He has a right to tell the judge he wants to take custody of Christina after you die. It is then the judge's duty to decide which plan is in the best interest of the child.

**7) What if the other parent does agree with my standby adoption arrangement?**

If the other parent agrees with your arrangement, he or she can also sign a Final and Irrevocable Consent to Standby Adoption. This consent will be filed with the

court and will become part of the adoption record.

### **8) How much does a standby adoption cost?**

For standby adoption, the following costs apply:

- Filing fee: \$65.00
- Sheriff's summons to the child: \$23.00.
- Fingerprinting (required when a non-relative is the standby adoptive parent): \$15.00 per couple; \$10 for a single standby adoptive parent.
- Background check by Illinois State Police (required when a non-relative is the standby adoptive parent): \$36.00
- Home study: For non-relative standby adoptive parents, fee based on sliding scale charged by Cook County Supportive Services. For standby adoptive parents who are related, the Guardian ad litem fee (see below) includes the fee for the home study. If DCFS is involved, DCFS pays for the home study.
- Guardian ad litem fee: \$100.00
- Publication (if needed): \$150.00
- New birth certificate: \$15.00
- Certified copies of final judgment order: 1<sup>st</sup> one if free, \$9.00 for each additional copy.

However, if you meet certain financial eligibility guidelines, you will not have to pay the fee for filing the petition, and the Guardian ad litem will charge a reduced fee. You may also not have to pay for publication. If the child was originally adopted through DCFS, DCFS will pay for required legal fees and court costs.

In all cases, the sheriff's summons fee, new birth certificate fee, and fee for more than one certified copy of the final judgment order must be paid. These fees are not reduced or waived.

### **9) Can I change this standby adoption arrangement in the future?**

You cannot withdraw your consent for standby adoption. The consent is final and cannot be revoked. That is why it is very important to be absolutely sure that this is the arrangement that will be in your child's best interests.

### **10) By signing the consent for standby adoption, am I "giving my child up for adoption?"**

No. Your consent for standby adoption applies only to the person or person(s) that you designate to adopt. It will work to help the only the standby adoptive parent, and no one else, adopt your child.

### **11) What if the standby adoptive parent decides later that he or she doesn't**

## **want to adopt my child?**

If the standby adoptive parent(s) decide not to adopt and do not file a request to finalize the adoption after you pass away, then the adoption will not be finalized. However, your consent is given only for that specific person or persons to adopt. At that point, a new plan would need to be made for your child, hopefully with the assistance of other members of your family.

### **12) So after doing all of this, what is the real advantage of standby adoption? Why not just let my child be adopted after I pass away?**

Standby adoption has three main advantages over a regular adoption.

- First, the standby adoption court order will permit you to keep custody of your children for as long as you desire, but also have the assurance that the adoption will be finalized after you pass away.
- Second, you will be able to present your own evidence to the court about your preference for your child. If you relied only on a will or other document to be presented after your death, the court could decide that the child should live with someone else other than the person you choose.
- You, your child, and the standby adoptive parent will have a legal document that assures that the adoption will be finalized as you wished. In this way, your plan is in place and is legally recognized. Hopefully, this will give you some peace of mind about your child's future.

For more information contact:  
Linda S. Coon  
Attorney at Law  
53 W. Jackson Blvd., Ste. 304  
Chicago, IL 60604