

STANDBY GUARDIANSHIP

1) What is a standby guardianship?

A standby guardianship is a legal arrangement approved by a judge that provides for future care for your child, but only if it is needed. It allows you to appoint someone legal guardian of your child, but that person "stands by" until needed. In other words, the standby guardian does not take custody of your children immediately, but only at some point in the future when you are no longer able to take care of your children yourself.

One of three things needs to happen before a standby guardian would step in: 1) you tell the standby guardian you are unable to make and carry out day to day child care decisions; 2) your attending physician states that you are no longer able to make and carry out day to day child care decisions; or 3) upon your death. Then the standby guardian would have the authority of a guardian for 60 days, during which he or she could decide whether to ask the court to become the child's permanent guardian. If the standby guardian decides to become the guardian, then the court will appoint the standby as permanent guardian unless it can be shown that it is no longer in the child's best interests to do so.

2) How do I arrange a standby guardianship?

Making someone standby guardian of your children requires a court hearing. At a standby guardianship hearing, you will explain to the judge why you want this particular person to take care of your children in the future. The person that you want as standby guardian must appear in court. If the judge agrees with your plan, the court will appoint that person as standby guardian.

If you are too sick to go to court, you can sign something called an **appearance and consent form**. This is just a court form that says you agree with the standby guardianship arrangement. This form tells the judge your wishes, so you don't have to appear in court yourself. It must be notarized. However, **the person you want as standby guardian has to appear before the judge.**

3) Who can be a standby guardian?

According to Illinois law, a standby guardian must be:

- at least 18 years old;
- a resident of the United States;
- of "sound mind", meaning that they have no mental disorders and have good judgment;
- able to manage their own affairs, both physically and mentally; and
- have never been convicted of a felony. However, the court may, on a case by case basis, decide that a convicted felon may be a standby guardian.

The court must also find that the standby guardian is capable of acting as a guardian, and that the standby guardianship is in the child's best interests. A standby guardian cannot be appointed if DCFS is already the child's guardian. However, if the child has a private guardian, that person may appoint a standby guardian for the child.

You can appoint a family member, a friend, or any person that you trust to take care of your children. Of course, the judge will have to approve the person you've selected to be the standby guardian.

4) Does the child's other parent have to be notified of a standby guardianship hearing?

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

5) What if the other parent doesn't agree with my standby arrangement?

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

If you decided to go to court without notifying Rhonda's father, he could probably get the judge to decide your standby guardianship arrangement is not legal. All he would have to do is show the judge that he was not given proper notice.

6) Does anyone else besides the child's other parent have to be notified about a standby guardianship hearing?

Yes. Depending on the circumstances, you may also have to notify:

- any brothers or sisters of the child who are 18 and older
- in Cook County, anyone who has taken care of the child for an extended period of time
- the child if s/he is 14 years old or older.

7) How much does a standby guardianship cost?

For a standby guardianship hearing, the court charges a filing fee. In Cook County, the fee is \$51 per child. If you meet certain financial eligibility guidelines, you will not have to pay those fees.

If you are unable to notify your child's other parent about the hearing because you don't have his or her address, you may have to publish a notice about the hearing in a newspaper. In Cook County, publication is in a legal newspaper called the *Chicago Daily Law Bulletin*. This will cost you \$165. As you can see, it's worth your time to try to find that parent's address.

8) Can I change this standby guardianship arrangement in the future?

Yes. For example, if the person you've appointed as standby guardian moves out of the state, you might want to appoint someone else instead. This would require another court hearing, but you certainly have the right to change the arrangement. Of course, it will be necessary to show the judge that the new plan is in your child's best interest.

For further information contact:

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