



Family Ties Project

LIFE PLANNING FOR FAMILIES AFFECTED BY HIV/AIDS

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Guardianship is available @
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Questions and Answers about the Standby Guardianship Act of 2002

Standby Guardianship provides a way for parents and caregivers who have a chronic or terminal illness to arrange a stable, nurturing guardianship for their children that will take effect if the parent or caregiver cannot care for them. The Standby Guardianship Act of 2002, D.C. Act 14-330, was enacted in June 2002, to help parents and caregivers to voluntarily plan for the future care of their children. These *Questions and Answers* provide a brief overview of the key elements of this recently enacted law.

What is a Standby Guardian?

- ✘ A standby guardian is a person named by the "Designator" or custodial parent to assume legal custody of a child when that parent is no longer able to care for the child as a result of a triggering event (debilitation, incapacity or death). [§16-4802(12) and §16-4804(a)]

How is a Standby Guardian designated?

- ✘ The process is similar to writing a will. The parent nominates a suitable guardian in a document (referred to as a "designation") that is witnessed by two people. [§16-4803(d)] The designation does not have to be filed in court to be legally effective as a first step toward standby guardianship.
- ✘ The standby guardianship designation will become active when the parent signs a statement of debilitation; or an attending clinician indicates incapacity; or the parent dies. [§16-4806(c)]
- ✘ The parent may revoke the designation. [§16-4810]

What are the next steps after designation?

- ✘ To complete the standby guardianship process, the legal custodian or the standby guardian petitions the Court for guardianship. The petition that is filed either includes or attaches the witnessed designation and states that the parent has an incapacitating or debilitating illness that may cause the parent to be unable to care for the children. [§16-4805(c); §16-4805(b)(4)]
- ✘ If filed before the triggering event, only the parent-designator may file. [§16-4805(a)(1)] If the triggering event has occurred, the standby guardian has 90 days within which to file the papers to initiate court process. [§16-4805(d)]

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Must the the non-custodial parent's consent be obtained?

- ✘ Notice of the standby guardian action must be given to the non-custodial parent within 10 days of filing the petition. Reasonable efforts consistent with procedures in D.C. Family Code 13-336 must be made to find the parent. [§16-4808]
- ✘ The non-custodial parent has 20 days after receipt of notice to request a child custody hearing. [§16-4806(i)(1) [§16-4809] Rights of the parent are not cut off by guardianship. [§16-4804(c); §16-4807(d)]

What is the court process for Standby Guardianship?

- ✘ There is a rebuttable presumption that the designated person is capable of serving as standby guardian. [§16-4806(f)] and that the guardianship is in the child's best interests when the designator is the sole surviving parent or the rights of the non-custodial parent have been terminated or relinquished. [§16-4806(e)]
- ✘ While a judge may always hold a hearing, if review of the documents show that all conditions of the law are fulfilled, no hearing is required. [§16-4806(h)]

What authority and responsibility does a Standby Guardian have?

- ✘ The designated standby guardian's tasks begin when the "triggering event" occurs (debilitation, incapacity or death). [§16-4804(a)]
- ✘ If the court has approved the standby guardianship at the time of the triggering event, the guardian's authority begins immediately. [§16-4807(a)] If the designation and petition have not been submitted for court review at the time of the triggering event, the standby guardian has temporary authority for 90 days, during which documents must be filed to initiate court process. [§16-4807(b)]
- ✘ To the extent that the parent's health permits, authority over the child shall be shared by the parent and guardian. [§16-4804(a), (d)]