FAMILY COURT OF THE STATE OF DELAWARE

STANDBY GUARDIANSHIP

What is Standby Guardianship?

Standby Guardianship is a means of establishing guardianship quickly to enable a parent or guardian suffering from a progressive chronic condition or terminal illness to make plans for the permanent future care or the interim care of a child without terminating parental or legal rights.

Who Can Petition to Appoint a Standby Guardian?

Any parent, custodian or guardian of a minor child may petition for a Standby Guardianship Order. The Petitioner is the person currently caring for the child and is seeking the appointment of a standby guardian.

What are the Grounds for Standby Guardianship?

Where the *parent* is the person suffering from a progressive chronic condition or terminal illness

The Court must find that the appointment of the standby guardian is in the child's best interests and:

- the child would be dependent, neglected, or abused in the care of the other parent; **or**
- the other parent of the child is deceased; **or**
- the other parent's parental rights have been terminated; **or**
- the other parent consents to the appointment of the standby guardian.

Where the *legal guardian or custodian* is the person suffering from a pro-gressive chronic condition or terminal illness.

The Court must find that the appointment of the standby guardian is in the child's best interest and:

- the child remains dependent, neglected, or abused in the parents' care; **or**
- the parent of the child is deceased; **or**
- the parent's parental rights have been terminated; **or**
- the parent consents to the appointment of the standby guardian.

The Court must also find, prior to appointing a standby guardian that there is a significant risk that the parent or guardian will die, become incapacitated, or become debilitated as a result of a chronic condition or terminal illness within 2 years of the filing of the petition as certified by an attending physician.

What are the Responsibilities of a Standby Guardian?

Assuming the Court places no limitations in the Order, the Standby Guardian will be responsible for providing for the child both physically and emotionally. The Guardian must provide a healthy and safe living environment, an education and all the necessary and appropriate medical treatment, including but not limited to medical, dental and psychological care. Furthermore, the Guardian will be responsible for making the following decisions:

- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;
- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.

What are the Responsibilities of the Child's Parent after Standby Guardianship is Granted?

Because a parent's parental rights are not terminated when a non-parent is given guardianship, the Court will determine the following:

- How much, if any, contact the parent(s) should have with the child after the Guardianship is granted; **AND**
- How much, if any, information about the child the Guardian should share with the parent(s); **AND**
- A visitation schedule, if appropriate, so that the parent(s) may spend time with the child.

What is included in a Standby Guardianship Order?

Included in a Standby Guardianship Order is a Custody Order. Therefore, a Standby Guardian has the same legal authority to care for the child as a parent would. However, the Court also has the right to limit any of the powers and duties granted to a Standby Guardian.

How Does Standby Guardianship Affect Inheritance?

In addition, the child will continue to have the right to inherit from his/her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Guardian wishes to have the child inherit from him/her, the Guardian must state that desire in a will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court.

Will the parents continue to be responsible for financial support of the child?

The parent may have to continue to provide financial support to the child. In other words, the parent (s) may be required to pay child support to the guardian. Child support is handled in a separate proceeding. If the Court grants you guardianship, you must file a separate Petition for Child Support in order for the Court to consider your

request for child support. You may contact the Division of Child Support Enforcement for more information.

How can I file my petition and related paperwork?

Petitions and papers may be filed at or mailed to the Family Court in each county. Family Court also now accepts petitions and papers by email. To file your petition by email, you must send the petition and all required forms to: FC_Guardianship@delaware.gov

- Please see the below list for the forms that must be filed with your petition. Family Court will serve the other parties your petition.

You may also use FC_Guardianship@delaware.gov to file with the Court answers, motions, and any other required papers. Although you can file these documents with the Court by email, you must still serve copies of these documents on the other parties personally or by mail.

****Before filing by email, please review the Civil Filing by Email FAQ:**
https://courts.delaware.gov/family/faqs

Required Forms

- Petition Standby Guardianship (Form 126S)
- Custody Separate Statement (Form 346)
- Information Sheet (Form 240)

Situational Forms (Please review all forms and scenarios)

- Affidavit of Unknown Address (Form 241)
  This form should be filed if you do not know where the Respondent(s) live
- Affidavit of Non-Military Service (Form 405)
  This form should be filed if you know that the Respondent is NOT in the military

- service of the United States of America and ONLY if the Respondent has not filed an answer or otherwise entered an appearance with the Court by the day of your hearing
- Affidavit of Consent of a Child's Parent to Appointment of Standby Guardian (form 265)
    - This form should be filed if one or both of the child's parents agree that you should be appointed as standby guardian
    - Each parent must complete their own Affidavit of Consent
- Waiver of Rights under the Servicemembers' Civil Relief Act (Form 420)
    - File this form only if the Respondent is in the military
    - If the Respondent does not file an Answer or Affidavit of Appearance, you must have the Respondent(s) sign the form
    - If you are unable to reach the Respondent to obtain any of these documents, you must file a Motion to Appoint and Attorney (see Motion Packet)

Family Court Contact Information

New Castle County	**Kent County**	**Sussex County**
500 NORTH KING STREET	445 SOUTH GOVERNORS AVENUE	100 EAST MARKET STREET
WILMINGTON, DE 19801	DOVER, DE 19904	GEORGETOWN, DE 19947
(302) 255-0300	(302) 672-1000	(302) 855-7400

For more information, visit the Family Court webpage or scan the QR code.