

Article - Estates and Trusts

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§13-904.

(a) (1) A parent may designate a standby guardian by means of a written designation:

(i) Signed in the presence of two witnesses, at least 18 years old, neither of whom is the standby guardian; and

(ii) Signed by the standby guardian.

(2) (i) If a parent is physically unable to sign a written designation, another person may sign the designation on the parent's behalf and at the parent's direction.

(ii) 1. A designation under this paragraph shall be signed in the presence of the parent and two witnesses at least 18 years of age, neither of whom may be the standby guardian.

2. The standby guardian also shall sign a designation under this paragraph.

(b) (1) A designation of a standby guardian shall identify the parent, the minor, and the person designated to be the standby guardian, state the duties of the standby guardian, and indicate that the parent intends for the standby guardian to become the minor's guardian in the event the parent:

(i) Becomes incapacitated;

(ii) Becomes debilitated and consents to the beginning of the standby guardian's authority; or

(iii) Is subject to an adverse immigration action and consents to the beginning of the standby guardian's authority.

(2) A parent may designate an alternate standby guardian in the same writing and by the same manner as the designation of a standby guardian.

(3) A designation may, but need not, be in the following form:

guardian by a parent may, but need not be, in the following form:

Designation of Standby Guardian

I (name of parent) hereby designate (name, home address, and telephone number of standby guardian) as standby guardian of the person and property of my child(ren) (name of child(ren)).

(You may, if you wish, provide that the standby guardian's authority shall extend only to the person, or only to the property, of your child, by crossing out "person" or "property", whichever is inapplicable, above.)

The standby guardian's authority shall take effect if and when:

(1) My doctor concludes I am mentally incapacitated, and thus unable to care for my child(ren);

(2) My doctor concludes that I am physically debilitated, and thus unable to care for my child(ren) and I consent in writing, before two witnesses, to the standby guardian's authority taking effect; or

(3) I am subject to an adverse immigration action, and I am thus unable to care for my child(ren) and I consent in writing, before two witnesses, to the standby guardian's authority taking effect.

If the person I designate above is unable or unwilling to act as guardian for my child(ren), I hereby designate (name, home address, and telephone number of alternate standby guardian), as standby guardian of my child(ren).

I also understand that my standby guardian's authority will cease 180 days after beginning unless by that date my standby guardian petitions the court for appointment as guardian.

I understand that I retain full parental rights even after the beginning of the standby guardian's authority, and may revoke the standby guardianship at any time.

Parent's Signature: _____

Address: _____

Date: _____

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign and asked another to sign this document, who did so in my presence. I further declare that I am at least 18 years old and am not the person designated as standby guardian.

Witness's Signature: _____

Address: _____

Date: _____

Witness's Signature: _____

Address: _____

Date: _____

Standby Guardian's Signature: _____

Address: _____

Date: _____

(4) A consent by another person with parental rights to a designation of a standby

Consent to Designation of Standby Guardian

I (name of person with parental rights) agree with the designation by (name of parent) of (name, home address, and telephone number of standby guardian) as standby guardian of the person and property of my child(ren) (name of child(ren)).

I agree also to the terms stated above and understand that I retain full parental rights even after the beginning of the standby guardian’s authority, and may revoke my consent to the standby guardianship at any time.

Signature of Person with Parental Rights: _____

Address: _____

Date: _____

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign and asked another to sign this document, who did so in my presence. I further declare that I am at least 18 years old and am not the person designated as standby guardian.

Witness’s Signature: _____

Address: _____

Date: _____

Witness’s Signature: _____

Address: _____

Date: _____

Standby Guardian’s Signature: _____

Address: _____

Date: _____

(c) The authority of the standby guardian under a designation shall begin on:

(1) The standby guardian’s receipt of a copy of a determination of incapacity under § 13–906 of this subtitle;

(2) The standby guardian’s receipt of:

(i) A copy of a determination of debilitation under § 13–906 of this subtitle;

(ii) A copy of the parent’s written consent to the beginning of the standby guardianship, signed by the parent in the presence of two witnesses at least 18 years of age, neither of whom is the standby guardian, and signed by the standby guardian; and

(iii) A copy of the birth certificate for each child for whom the standby guardian is designated; or

(3) The standby guardian’s receipt of:

(i) Evidence of an adverse immigration action against the parent; and

(ii) A copy of the parent's written consent to the beginning of the standby guardianship, signed by the parent in the presence of two witnesses at least 18 years of age, neither of whom is the standby guardian, and signed by the standby guardian.

(d) (1) If a parent is physically unable to sign a written consent to the beginning of the standby guardianship, another person may sign the written consent to the beginning of the standby guardianship on the parent's behalf and at the parent's direction.

(2) A consent under this subsection to the beginning of the standby guardianship shall be signed in the presence of the parent and two witnesses at least 18 years of age, neither of whom may be the standby guardian.

(3) The standby guardian also shall sign a consent to the beginning of the standby guardianship under this subsection.

(e) (1) A standby guardian shall file a petition for judicial appointment within 180 days of the date of the beginning of the standby guardianship under this section.

(2) If the standby guardian fails to file the petition within the time specified in this subsection, the standby guardian's authority shall terminate 180 days from the date of the beginning of the standby guardianship.

(3) The standby guardian's authority shall begin again on the filing of the petition.

(f) (1) A standby guardian shall file a petition for appointment as guardian after receipt of:

(i) A copy of a determination of incapacity made under § 13-906 of this subtitle;

(ii) Copies of:

1. A determination of debilitation made under § 13-906 of this subtitle; and

2. The parent's written consent to the beginning of the standby guardianship under this section; or

(iii) 1. Evidence of an adverse immigration action against the parent; and

2. Copies of the parent's written consent to the beginning of the standby guardianship under this section.

(2) Subject to the provisions of paragraphs (3) and (4) of this subsection, the petition shall be accompanied by:

(i) The written designation of the standby guardian signed, or consented to, by each person having parental rights over the child;

(ii) 1. A copy of:

A. The determination of incapacity of the parent; or

B. The determination of debilitation and the parental consent to the beginning of the standby guardianship; or

2. Evidence of an adverse immigration action against the parent, the parental consent to the beginning of the guardianship, and a copy of the birth certificate or other evidence of parentage for each child for whom the standby guardian is designated; and

(iii) If the petition is filed by a person designated as alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian, and the basis for the statement.

(3) (i) If a person who has parental rights cannot be located after reasonable efforts have been made to locate the person, the standby guardian may file a petition under this section without the consent of the person to the designation of the standby guardian.

(ii) If a petition involves an adverse immigration action against a parent and a person who has parental rights resides outside the United States, the standby guardian may file a petition under this section without the consent of the person who has parental rights to the designation of the standby guardian.

(4) If the standby guardian submits documentation, satisfactory to the court, of the reasonable efforts to locate the person who has parental rights, the court may appoint a standby guardian under this section.

(g) The court shall appoint a person to be a standby guardian under this section if the court finds that:

(1) The person was duly designated as standby guardian;

(2) (i) A determination of incapacity, or a determination of debilitation and parental consent to the beginning of the standby guardianship, has been made under this section; or

(ii) There is evidence of an adverse immigration action and parental consent to the beginning of the standby guardianship has been given under this section;

(3) The interests of the minor will be promoted by the appointment of a standby guardian of the person or property of the minor; and

(4) If the petition is by a person designated as alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian.

(h) A parent may revoke a standby guardianship created under this section:

(1) Before the filing of a petition, by notifying the standby guardian verbally or in writing or by any other act that is evidence of a specific intent to revoke the standby guardianship; and

(2) If a petition has been filed by:

(i) Executing a written revocation;

(ii) Filing the revocation with the court in which the petition was filed; and

(iii) Promptly notifying the standby guardian of the revocation.

(i) A person who is judicially appointed as a standby guardian under this section may at any time before the beginning of the person's authority renounce the appointment by:

(1) Executing a written renunciation;

- (2) Filing the renunciation with the court that issued the decree; and
- (3) Promptly notifying in writing the parent of the revocation.

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