

**MAKE SURE SOMEONE CAN CARE FOR
YOUR CHILD/CHILDREN IN CASE OF CHRONIC ILLNESS,
COVID-19 OR ADVERSE IMMIGRATION ACTION**

Updated October 2020

The DC Standby Guardianship Act now allows people to designate a standby guardian (usually a relative or trusted friend) to care for their child/children if they die or are incapacitated due to a chronic illness or COVID-19, or are subject to adverse immigration action such as deportation or detention.

The designation can be revoked at any time.

The process is simple:

1. Complete the attached Standby Guardian Designation form. In it, you must identify your child/children and the person you want to care for them if you are unable to do so. You also can designate an alternate guardian in case something happens to the guardian you choose.
2. Sign the form in the presence of two adult witnesses. **During the COVID-19 public health emergency, you can do this using electronic means like Facetime, Skype, or Zoom so long as the witnesses can observe you signing the Designation form.**
3. Have the witnesses sign the form. Usually this will be done in person. **During the public health emergency, a witness can either: (a) sign electronically through an app like DocuSign; (b) print and sign the form and then send the form to you; or (c) send you a text message or email stating when and how they witnessed your signature, that they intend for their printed name to serve as their signature on the Designation form, and that they intend for the text message or email to become part of the record.**
4. Have the standby guardian, and alternate standby guardian if you choose one, sign the form. They do not have to sign at the same time you do.
5. Make sure the standby guardian, and alternate standby guardian if you chose one, have copies of the signed and witnessed Designation form and know where to find your child's/children's birth certificate(s) because it is required if they later need to go to court to petition for guardianship of your child/children.

For questions or if you need help completing the Designation form, call the **DC KinCare Alliance Standby Guardianship Helpline at 202-505-5803.**

These materials are for information only. They do not provide legal advice. If you have questions about whether a standby guardianship is right for you or your family, or how to prepare a standby guardianship designation, you should seek legal advice.

INFORMATION ABOUT STANDBY GUARDIANSHIP (Updated October 2020)

What is a standby guardianship?

Under District of Columbia law, a custodial parent (which for this purpose means a custodial parent or other person who has physical custody and legal rights to the child ordered by a court) can authorize a third party (a person other than a parent) to take care of and make decisions for the child if the parent becomes incapable of doing so due to death, illness, or an adverse immigration action such as detention or deportation (a “triggering event”). The standby guardianship becomes effective as soon as the triggering event occurs and will last for 90 days without court involvement. To continue the standby guardianship, however, the person designated as standby guardian must file a petition with the court on or before the 90th day requesting the court enter an order approving the designation of the standby guardian. ***The powers and responsibilities granted to a standby guardian are broad. Both the custodial parent and the standby guardian can seek legal advice regarding standby guardianship at any time.***

Do both parents have to sign the standby guardian designation?

No, only the custodial parent must sign the standby guardian designation. If there are two custodial parents, either one can sign. ***Before signing a designation, it is a good idea for the custodial parent to talk with the other parent or person with legal rights to the child to make sure they agree regarding who should be the standby guardian for the child. Although not required, the other parent or person with legal rights to the child may sign a consent to the standby guardian designation if there is agreement.***

Does the standby guardian designation have to be notarized?

No, notarization is not required but two witnesses, 18 years of age or older, must sign the form stating that they witnessed the custodial parent’s signature. Also, the persons designated as the standby guardian and alternate standby guardian (if any) must sign the form, showing their consent to the designation, but need not be at the same time as the designator or witnesses.

Once the standby guardian designation has been signed, who can file the petition for standby guardianship in court and when should it be filed?

A custodial parent can file a petition for standby guardianship in court at any time before the triggering event occurs, but custody only transfers once the triggering event occurs. The designated standby guardian can file a petition for standby guardianship after the custodial parent becomes incapable of caring for the child due to a triggering event. It is recommended that a standby guardian file a petition with the court as soon as possible after the custodial parent becomes unable to care for the child because the standby guardianship expires 90 days after the triggering event unless the petition is filed. ***If the reason a custodial parent has designated a***

standby guardian is fear of adverse immigration action, he or she may want to speak with an immigration attorney before filing the petition in court.

When a petition for standby guardianship is filed in court, what documents are needed?

The following documents are required: (1) a copy of the standby guardian designation; (2) proof of the triggering event that resulted in the custodial parent no longer being able to care for the child (not required for designator parent petition); (3) the child's birth certificate(s); (3) proof that notice of the petition is being given to other parent or parties with legal rights to the child; and (4) either a consent to the standby guardianship signed by the other parent or a statement explaining why that parent is not or should not be responsible for the child. Proof of the triggering event could include a designator parent's death certificate, a written statement from the designator parent or a doctor stating that the parent cannot care for the child, or documents, photographs and/or written statements made under oath from witnesses to the triggering event. *It is important to make sure that the standby guardian has access to the child's birth certificates so that s/he can file the petition.*

Who must be notified that a petition for standby guardianship has been filed in court?

Anyone who has legal rights to the child (the other custodial parent, a non-custodial parent, or a legal guardian/custodian) must be notified when the petition for standby guardianship is filed with the court. Such other persons would have a right to contest the standby guardianship at a hearing.

How should a standby guardian use the standby guardian designation after the custodial parent can no longer take care of their child?

The standby guardian should provide a copy of the signed standby guardian designation when they seek to enroll a child in school, obtain medical care for the child, or obtain any other service or benefit for the child. It may also help to bring proof that the custodial parent can no longer care for the child. The best proof of the standby guardianship will be the court order when/if the court grants the petition for standby guardianship. In fact, a court custody order is required for a third party to obtain a child's original birth certificate, to apply for a passport for a child, or to obtain certain public benefits. That is another reason why it is best to file the petition as soon as possible after the custodial parent is no longer able to take care of their child.

Can a custodial parent revoke or withdraw a standby guardian designation or seek to modify a court order granting the petition for standby guardianship?

Yes, a custodial parent can revoke a standby guardian designation any time after signing it. If the court has already issued an order granting the petition for standby guardianship, however, the custodial parent would need to file a notice of revocation with the court and provide a copy of the revocation to the standby guardian. *A custodial parent does not give up his or her parental rights by designating a standby guardian nor does a court order granting custody to a standby guardian terminate parental rights.*

DESIGNATION OF STANDBY GUARDIAN

THIS DESIGNATION FORM MAY BE COMPLETED BY A CUSTODIAL PARENT OR A NONPARENT WHO HAS BEEN GRANTED LEGAL AND PHYSICAL CUSTODY OR GUARDIANSHIP OF A CHILD BY A COURT

I, _____, want to designate a standby guardian who will care for my
PRINT YOUR NAME
child(ren) if I become unable to take care of them.

1. I state the following about myself:

- a. My name is _____.
- b. My address is _____.
- c. My date of birth is _____.
- d. My telephone number is _____.
- e. My relationship to the child(ren) is [CHECK ONE]

☐ I am their custodial parent (biological or adoptive).

☐ I am not their parent but I have physical custody of the child(ren) and have been awarded legal custody or guardianship by a court. (Please attach a copy of the court order to this Designation.)

2. I hereby designate this person to be the Standby Guardian of the child(ren) listed in this Designation:

- a. The Standby Guardian's name is _____.
- b. The Standby Guardian's address is _____.
- c. The Standby Guardian's telephone number is _____.

3. If the person I designated is unable to accept for any reason, I hereby designate this person to be the Alternate Standby Guardian of the child(ren) listed in this Designation:

- a. The Alternate Standby Guardian's name is _____.
- b. The Alternate Standby Guardian's address is _____.
- c. The Alternate Standby Guardian's telephone number is _____.

4. I state the following about my child(ren):

[NOTE: If the children have different parents or you want to designate a different standby guardian for different child(ren), you need to complete a separate designation form for each child/designee].

Child's Name	Current Address	Date of Birth	Gender

5. I state the following with regard to any parent(s) of the child(ren) and any other person(s) who have legal rights to the child(ren):

a. Name of Parent or Other Person: _____.

i. Relationship to the child(ren) is: [CHECK ONE]

☐ A shared custodial parent or noncustodial parent.

☐ A nonparent who has been granted legal custody or guardianship by a court.

ii. He or she: [CHECK ONE]

☐ Lives at _____.

☐ Has no known address.

☐ Has had his/her parental rights terminated by a court.

☐ Is deceased.

☐ Is unknown.

b. Name of Parent or Other Person (if any): _____.

i. Relationship to the child(ren) is: [CHECK ONE]

- ☐ A shared custodial parent or noncustodial parent.
- ☐ A nonparent who has been granted legal custody or guardianship by a court.

ii. He or she: [CHECK ONE]

- ☐ Lives at _____.
- ☐ Has no known address.
- ☐ Has had his/her parental rights terminated by a court.
- ☐ Is deceased.
- ☐ Is unknown.

6. The Standby Guardian's authority will take effect if any one of these "triggering events" happens:

- a. I have been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, I may not recover and I:
 - i. Become debilitated, and provide written acknowledgement of debilitation and consent to commencement of the standby guardianship;
 - ii. Become incapacitated as determined by an attending clinician; or
 - iii. Die; or
- b. I have been diagnosed, in writing, by a licensed clinician to suffer from COVID-19 and I:
 - i. Become debilitated, and provide written acknowledgement of debilitation and consent to commencement of the standby guardianship;
 - ii. Become incapacitated as determined by an attending clinician; or
 - iii. Die; or
- c. I have been subject to one or more of the following identified adverse immigration action(s):

INITIAL THE LINE IN FRONT OF ONE OR MORE ADVERSE IMMIGRATION ACTIONS YOU WANT TO BE A TRIGGERING EVENT. IF YOU DO NOT WISH ONE OF THESE ACTIONS TO BE A TRIGGERING EVENT, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT AN ACTION YOU DO NOT WANT TO BE A TRIGGERING EVENT. INITIAL THE LAST LINE IF YOU WANT ALL TO APPLY.

_____ arrest or apprehension by a local, state or federal law enforcement officer for an alleged violation of federal immigration law;

_____ arrest, detention, or custody by the Department of Homeland Security or a federal, state, or local agency authorized or acting on behalf of the Department of Homeland Security;

_____ departure from the United States under an order of removal, deportation, exclusion, voluntary departure, or expedited removal, or a stipulation of voluntary departure;

_____ the denial, revocation, or delay of the issuance of a visa or transportation letter by the Department of State;

_____ the denial, revocation, or delay of the issuance of a parole document or reentry permit by the Department of Homeland Security;

_____ the denial of admission or entry into the United States by the Department of Homeland Security or other local or state officer acting on behalf of the Department of Homeland Security;

_____ all of the above adverse immigration actions.

7. If any one of these “triggering events” happens, my designated Standby Guardian shall have authority to act and shall assume the rights, powers, duties and obligations existing under law between a legal custodian and a child.

8. I understand that I retain full parental/custodial rights even after the beginning of the Standby Guardian’s authority, and that I may revoke the standby guardianship at any time.

9. I understand that my Standby Guardian’s authority will end 90 days following the occurrence of any one of these “triggering events” unless by that date my Standby Guardian files a Petition for Appointment of Standby Guardian with the DC Family Court. (A Petition form is attached to this Designation.)

10. I understand that when my designated Standby Guardian files the Petition for Appointment of Standby Guardian with the Court, this Designation must be filed with it.

SIGN YOUR NAME

DATE

PRINT YOUR NAME

Signature of First Witness

THIS DESIGNATION IS NOT VALID UNTIL IT IS SIGNED BY THE DESIGNATOR, OR ANOTHER ADULT IF THE LEGAL CUSTODIAN IS UNABLE TO SIGN. IT MUST BE SIGNED IN THE PRESENCE OF TWO WITNESSES WHO ARE 18 YEARS OLD OR OLDER *AND* WHO ARE NOT THE STANDBY GUARDIAN OR THE ALTERNATE STANDBY GUARDIAN. THE WITNESSES' SIGNATURES ARE TO SHOW THAT THEY SAW THE LEGAL CUSTODIAN SIGN THIS DOCUMENT (OR SAW ANOTHER ADULT SIGN IF THE LEGAL CUSTODIAN CANNOT SIGN). D.C. CODE §16-4803(D) (2002)

I declare that the designator

- ☐ signed this document in my presence, or
- ☐ was physically unable to sign and asked another adult to sign this document, and the other adult signed the document in my presence.

I further declare that I am at least 18 years of age and that I am not the person designated as Standby Guardian or Alternate Standby Guardian of the minor child(ren) listed in this document.

Witness:

SIGN YOUR NAME

DATE

PRINT YOUR NAME AND ADDRESS

Signature of Second Witness

THIS DESIGNATION IS NOT VALID UNTIL IT IS SIGNED BY THE DESIGNATOR, OR ANOTHER ADULT IF THE LEGAL CUSTODIAN IS UNABLE TO SIGN. IT MUST BE SIGNED IN THE PRESENCE OF TWO WITNESSES WHO ARE 18 YEARS OLD OR OLDER *AND* WHO ARE NOT THE STANDBY GUARDIAN OR THE ALTERNATE STANDBY GUARDIAN. THE WITNESSES' SIGNATURES ARE TO SHOW THAT THEY SAW THE LEGAL CUSTODIAN SIGN THIS DOCUMENT (OR SAW ANOTHER ADULT SIGN IF THE LEGAL CUSTODIAN CANNOT SIGN). D.C. CODE §16-4803(D) (2002)

I declare that the designator

- ☐ signed this document in my presence, or
- ☐ was physically unable to sign and asked another adult to sign this document, and the other adult signed the document in my presence.

I further declare that I am at least 18 years of age and that I am not the person designated as Standby Guardian or Alternate Standby Guardian of the minor child(ren) listed in this document.

Witness:

SIGN YOUR NAME

DATE

PRINT YOUR NAME AND ADDRESS

Acceptance of Standby Guardian Designation

Standby Guardian: I accept the designation as Standby Guardian of the child(ren) listed in this document.

SIGN YOUR NAME

DATE

PRINT YOUR NAME AND ADDRESS

Acceptance of Alternate Standby Guardian Designation

Alternate Standby Guardian: I accept the designation as Alternate Standby Guardian of the children listed in this document.

SIGN YOUR NAME

DATE

PRINT YOUR NAME AND ADDRESS