

NYS Standby Guardianship for Future Care and Custody

If you are advising a parent or guardian of minor children, you may want to help your client make a plan to ensure the future care and custody of their children by appointing a **Standby Guardian** under the Surrogate’s Court Procedure Act Section 1726.¹

What is Standby Guardianship

Standby guardianship allows parents and guardians to designate a standby guardian who will only assume guardianship if a “triggering event” occurs.

Parents or guardians of minor children can designate a standby guardian in the following cases:

- If the client suffers from a progressively chronic illness.
- If the client has been diagnosed with an irreversibly fatal illness.
- If the client is at risk of an immigration action such as arrest, detention or deportation that would separate the client from their child/children.

A standby guardian will step in if a triggering event occurs, such as incapacity, administrative separation, or death. Designating a standby guardian does not terminate a parent’s parental rights. Standby guardianship only goes into effect if a triggering event occurs. The parent or guardian can revoke a standby guardianship designation at any time.

How to designate a standby guardianship

VOLS has a standby guardianship template attorneys can use to help their clients name a standby guardian. The form is signed by the parent and two witnesses who witness the parent sign the form. If a triggering event occurs, the standby guardian can step in to act as guardian of the minor child/children.

After the triggering event, the standby guardian must go to court to petition for guardianship because only the court can appoint a permanent guardian. The standby guardian should petition either the Family Court or Surrogate’s Court for appointment as guardian within 60 days. The designation is proof of parental consent.

¹ Standby Guardianship, SCPA § 1726, <https://www.nysenate.gov/legislation/laws/SCP/1726>.