

APPOINTMENT OF A STANDBY GUARDIAN IN INDIANA

Parents of minor children and guardians of incapacitated or special needs adults in Indiana may name an individual as a standby guardian to act if the parent or guardian becomes incapacitated or dies.

Prior to the passage of this law, only an individual appointed by a court could act for a minor or protected person at the time of incapacity or death of a parent or guardian. The guardianship process typically requires a petition by an interested person, notice to various individuals, and a court hearing prior to the appointment of a guardian. The process typically takes weeks. Unless the petitioner can demonstrate that immediate or irreparable harm to the minor or incapacitated / special needs adult would occur without a temporary emergency guardianship, the minor or adult could receive no legal support from any individual in the interim.

Under Indiana Code 29-3-3-7, the potential for a minor or incapacitated / special needs adult to be without assistance for a period of time after the incapacity or death of a parent or guardian can be eliminated. The parent or guardian can now complete a written declaration naming the individual designated to serve as a standby guardian for their ward(s).

The declaration becomes effective upon the death or incapacity of the parent or guardian. The declaration, however, is not a substitute for guardianship. It terminates ninety days from the death or incapacity of the parent or guardian. However, if a petition for guardianship is filed within the ninety day period, the declaration remains in effect until the court rules on the petition.

The statute was passed in 2011 and amended in 2012. It requires that the written declaration must contain certain information and follow certain formalities in order for it to be valid.

IC 29-3-3-7 Declaration of standby guardians; required information; duration of the guardianship

Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on

WINGS Indiana Adult Guardianship State Task Force

the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

- (1) an allegation of child abuse or neglect under IC 31-33;
- (2) an open child in need of services case under IC 31-34; or
- (3) an open delinquency case under IC 31-37.

(f) A standby guardian shall have all the powers granted to a guardian under this article.

As added by P.L.178-2011, SEC.4., As amended by P.L. 149-2012 SEC.9.