

# NEW YORK BREAST CANCER LEGAL RESOURCE GUIDE



## Designation of Standby Guardian

**LEGAL WELLNESS INSTITUTE  
at THE FAMILY CENTER**



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*A breast cancer diagnosis can create many questions, concerns, and so much uncertainty. When you have children, planning for their future may be one of these concerns. You may be worried about how your children will be cared for if your health declines significantly or if you pass away. There are several legal tools that can help you plan for these events, including the **Designation of Standby Guardian**.*

## ***What is a Designation of Standby Guardian?***

A Designation of Standby Guardian is a legal document in which you, as a parent (or guardian, legal custodian, or other primary caretaker) of a minor child can name the person you would like to care for and make decisions for that child\*\* in the event that you no longer can. This person is called the child's "Standby Guardian." Designations of Standby Guardian are authorized under the New York Surrogate's Court Procedure Act (Section 1726).

A Designation of Standby Guardian is a tool to plan for the future. Your rights as parent or caretaker over the child do not change when you sign a Designation of Standby Guardian. The standby guardian's authority can only begin once one of the triggering events listed in the Designation (discussed below) occurs. And, unless further action is taken by the standby guardian, the authority is only temporary.

A standby guardian can also be appointed by a court rather than through a Designation. This is a more complicated process. You should consult with an attorney if you have questions about this.

*\*\*This guide uses the term "child" but a Designation of Standby Guardian can also cover multiple children.*

Under New York law, you can designate someone to act as standby guardian of a child's person and/or standby guardian of a child's property. A **guardian of the person** basically has the same authority over a child as a parent: they can make decisions about where the child lives, medical care, school enrollment, what activities the child participates in, etc.

A **guardian of the property** is an adult who is legally empowered to collect any money or property that a child is entitled to, and to manage it on the child's behalf (usually with ongoing oversight from the Surrogate's Court in New York). Most children do not need a guardian of the property. But if a child comes into money or property that is not otherwise managed (including through inheritance), they may need a guardian of the property.

**If you think your child would need a guardian of the property, you should consult with an attorney.**

## ***When Can the Standby Guardian's Authority Begin?***

The law specifies that a standby guardian's authority over your child can only begin when one of four things happens:

- Your doctor certifies in writing that you are mentally incapacitated and therefore unable to care for the child. (Authority begins when the standby guardian receives a copy of the doctor's determination); OR
- Your doctor certifies in writing that you are physically debilitated and therefore unable to care for your child and you consent in writing to the standby guardian's authority beginning. (Authority begins when the standby guardian receives a copy of the doctor's determination and the signed consent); OR
- If you pass away. (Authority begins when the standby guardian receives a copy of the death certificate or other document indicating death); OR
- A Designation of Standby Guardian can also be a tool for immigrant parents/caretakers to plan for the possibility of immigration detention, arrest, or deportation. The New York law states that the Standby Guardian's authority can be triggered in the event that one of those things occurs or is soon to occur.

If one of the above events happens, the temporary authority given under the Designation of Standby Guardianship begins.

**IMPORTANT: A standby guardian's authority pursuant to a Designation of Standby Guardian is temporary.** This authority will end after 60 days, unless the standby guardian files a petition in court to be appointed as the child's legal guardian within those 60 days. The designation is meant to allow a parent/primary caretaker to choose the right person to act as standby guardian and to ensure that person has authority to make decisions for a child during a time of transition, before a petition could be filed in court. **A court will need to approve the guardianship to make it permanent.**

However, if you need someone else to care for your child for a time-limited or temporary basis (for example, if you are temporarily hospitalized, or need to travel without your child), there is another type of designation under New York law that may be more appropriate for this situation, called a **Designation of Person in Parental Relation**.

## ***What Can the Standby Guardian Do?***

The standby guardian may act as the child's legal guardian and has authority to make decisions for the child (such as decisions relating to school or medical care) for 60 days after the start of their authority. The standby guardian's authority will end after these 60 days, unless by that time they have filed a petition in court.

Even once the standby guardian's authority starts, if the parent or primary caretaker for the child is still alive, they do not lose their rights or authority with respect to the child; the standby guardian and the parent/caretaker will have "concurrent" authority.

## ***Who Should I Name as Standby Guardian for my Child?***

Deciding who to name as your standby guardian is a significant decision for yourself and your child. If it is possible, you should discuss this with important people in your child's life and with your child themselves (if they are old enough).

A Designation of Standby Guardian can name a primary standby guardian and, optionally, an **alternate standby guardian**. The alternate serves as a back-up in case the standby guardian is unwilling or unable to care for the child if/when the time comes.

You can designate two people to serve as standby guardian together (e.g., a married couple), called "co-standby guardians". When designating co-standby guardians, the two people must get along well with each other. It is generally a good idea to name two people who live together, otherwise, naming co-guardians can create confusion.

The person you name as standby guardian does not have to live in New York State. However, a designation of standby guardian as described here is a product of New York law and it might not have effect in other states.

Here are some other things to think about when choosing a standby guardian for your child:

- **Only an adult (over age 18) can act as standby guardian.**
- **Choose someone you trust.** As you know, caring for a child is not easy. You should be confident that the person you name will act in your child's best interest, take care of the many responsibilities that relate to caring for a child, and give your child the love, care, and support they need.
- **The standby guardian should be someone who has a good relationship with your child, and with whom your child is comfortable.** Remember that if the standby guardianship goes into effect, it will likely be an incredibly difficult time for your child, so it is important that they are with someone they know, love, and trust.
- **You should know the person's criminal history. You should not name someone who has been convicted of a felony, a serious violent crime, or a crime involving children.**

Under New York law, a person who has been convicted of a felony cannot be appointed by a court as a legal guardian. Courts also consider non-felony crimes in determining if the person is an appropriate guardian. If anyone else in the person's home has a history of serious crimes or crimes involving children, discuss this with an attorney, as New York courts check criminal histories of other adults in a proposed guardian's home.

*If you feel strongly that the best person to care for your child (in the event that you cannot) is someone who has been convicted of a felony, consult with an attorney right away. There may be steps that can be taken to allow this to happen.*

- **Ask if the person has any history of child abuse/neglect or domestic violence.** New York courts check official registries to see if a person petitioning for guardianship (or any other adult in their home) has been investigated for child abuse or neglect and will consider this when deciding if the person should be appointed guardian. The court may also consider whether a person petitioning to be a guardian has ever had an Order of Protection issued against them.



## ***What if my Child has Another Parent?***

If your child has another parent listed on their birth certificate, and you would like your child to be with that other parent if something happened to you, you likely do not need to complete a Designation of Standby Guardian. If your child does not live with that other parent, it's a good idea to speak to your family and other people who may be interested in the care of that child, to make sure they know your wishes and your plan for the child.

**IMPORTANT:** Even a properly completed Designation of Standby Guardian does not necessarily override the rights of the child's other parent. **If your child has another parent but you do not want your child to live with this other parent, consult with an attorney about your family's circumstances.**

If a standby guardian petitions for appointment as permanent legal guardian, courts usually require that the child's parent(s) be served with the petition and an official notice of the court date. The other parent can consent (agree) to the standby guardian's appointment as guardian. But **if the other parent disagrees, they can contest the case in court.** The law presumes that children should be cared for by

their parent(s), so if a parent contests, the standby guardian must prove that there are "extraordinary circumstances" for the court to consider granting guardianship to someone other than the parent.

## ***How Do I Complete a Designation of Standby Guardian?***

A Designation of Standby Guardian is a relatively simple document. Most of the wording comes straight from the law. You can find forms online based on New York law, but **if you can get help from an attorney to complete your Designation, you should.** You must sign the completed Designation in front of two adult witnesses, who must also sign. Witnesses cannot be named as standby or alternate standby guardian in the Designation.

## ***What if I Change my Mind?***

You can revoke a Designation of Standby Guardian or name a different standby guardian at any time by notifying the current standby guardian(s) and/or by completing and signing a new Designation naming different standby guardian(s). If possible, consult with an attorney to ensure that revocation was done properly and to avoid future confusion.

## ***What if my Child is an Adult but Still Needs a Guardian?***

Most people do not need a guardian after age 18. But adults who cannot manage their own affairs due to a serious mental, cognitive, or psychiatric disability may need a guardian. Designations of Standby Guardian can only be used to name standby guardians for minor children, but New York laws may allow for court appointment of a standby guardian for some disabled adults. Talk to an attorney if you think this may be necessary.

**If you are a breast cancer patient or survivor in NYC and have questions about standby guardians or would like to complete a Designation of Standby Guardian, you can contact the Legal Wellness Institute at 718.789.3841 x 150 or [LWI@thefamilycenter.org](mailto:LWI@thefamilycenter.org).**

