WEST VIRGINIA CODE: §44A-5-5

§44A-5-5. Written designation of a standby guardian by a parent; commencement of authority; approval required.

(a) A parent may execute a written designation of a standby guardian at anytime. The written designation shall be signed by the parent, witnessed by two adults. Another adult may sign the written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of the parent. The designated standby guardian or alternate may not sign on behalf of the parent. The signed designation shall be delivered to the standby guardian and any alternate named as soon as practicable. The written designation shall state:

(1) The name, address and birth date of the child affected;

(2) The triggering event; and

(3) The name and address of the person designated as standby guardian or alternate.

(b) Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the specified triggering event and receipt by him or her of: (i) A determination of incompetence; (ii) a certificate of death of the parent; or (iii) a determination of debilitation and the qualified parent's written consent to such commencement signed by the parent or another on his behalf and at his direction as provided in subsection (a) of this section for the designation.

(c) A standby guardian under a designation shall have the authority of a guardian of the person and a guardian of the property of the child, unless otherwise specified in the designation.

(d) A designated standby guardian or alternate shall file a petition for approval with the circuit court as soon as practicable after the occurrence of the triggering event but in no event later than thirty days after the date of the commencement of his or her authority. The authority of the standby guardian shall cease upon his or her failure to so file, but shall recommence upon such filing. The petition shall be accompanied by a copy of the designation and a: (i) Determination of incompetence; (ii) determination of debilitation and consent; or (iii) a certificate of death.

(e) The notice provisions of subsection (c), section three of this article shall apply to a petition filed pursuant to this section. The circuit court shall enter in an order approving the designated guardian upon finding that:

(1) The person was duly designated as standby guardian pursuant to the section and the designation has not been revoked;

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(2) A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardian's authority; or the parent has died;

(3) The best interests of the child will be served by approval of the standby guardian; and

(4) If the petition is by an alternate, that the designated standby guardian is unwilling or unable to serve.

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