

# WEST VIRGINIA CODE: §44a-5-3

## **§44A-5-3. Petition for approval of standby guardian; fees.**

(a) Upon petition of a parent, functional parent or any person acting on parent's behalf, the circuit court of the county in which a child resides may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specific triggering event. If requested in the petition, the court may also approve an alternate standby guardian identified by the petitioner, to act in the event the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.

(b) The petition shall include:

(1) The name and address of the petitioner and his or her relationship to the child, the name and address of the child's qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known to the petitioner or can reasonably be ascertained;

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

(3) The nature of the proposed triggering event and, if written consent is chosen as the proposed triggering event, any factors or circumstances that must be present before the qualified parent's written consent is effective;

(4) Whether a determination of incompetence or debilitation has been made and, if so, when and by whom;

(5) Whether there is a significant risk that the qualified parent will die imminently or become physically or mentally incapable of caring for the child or die as a result of a progressive chronic condition or illness; however, a petitioner shall not be required to submit medical documentation of a parent's medical status with the petition;

(6) The name and address of the person proposed as standby guardian and any alternate standby guardian, and if the parent is competent, that the qualified parent approves of the persons proposed;

(7) Whether the petitioner requests that the person proposed as standby guardian be given authority as a guardian of the person or guardian of the property of the minor, or both;

(8) A statement of any known reasons why the child's other parent is not assuming or should not assume the responsibilities of a standby guardian;

(9) Whether there is any prior judicial history or pending litigation regarding custody of the child; and

(10) The name and address of the attending physician.

(c) Upon filing of a petition, notice of the filing must be promptly given to each parent of the child whose identity and whereabouts are known to the petitioner, the child, if he or she is fourteen or more years of age, the proposed standby guardian and alternate, if any.

(1) The notice must be accompanied by a copy of the petition and shall be mailed by certified mail return receipt requested, by the petitioner.

(2) The notice should include a statement that no change in custody or other legal rights is effected by the appointment of a standby guardian and that it is not necessary for the recipient of the notice to appear. The notice should also state that any parent may request a hearing on the petition provided that such request is made within ten days from the date the notice was sent.

(d) A hearing must be held prior to any order approving the standby guardianship if there is another known parent who requests a hearing within ten days of the date that notice of filing was sent or if there is other litigation pending regarding the custody of the child.

(e) Prior to any hearing on the petition, the circuit court may appoint a discreet and competent attorney at law as guardian ad litem to represent the child pursuant to section ten, article four, chapter fifty-six of this code. If the petition for standby guardianship is filed by anyone other than a parent of the child, the circuit court shall appoint a guardian ad litem. The qualified parent shall not be required to appear at the hearing if he or she is medically unable to appear, except upon motion for good cause shown.