

# Standby Guardianship Proceeding Checklist

## Person and/or Property

(see Surrogate's Court Form SG-1, rev. 4/98)

*This Checklist is provided for your convenience while completing the petition and the checklist should not be returned to the Court.*

**A separate petition and supporting papers must be submitted for each infant child of the petitioner.**

**CAREFULLY follow instructions when checking off boxes or crossing out words that are inapplicable to the facts of your case as these forms must conform to a number of different fact situations.**

**ALL QUESTIONS MUST BE ANSWERED.**

**Check All Forms To Make Sure Venue Is Correct - Appropriate County Is Listed**

PET ¶ #	DESCRIPTION	YES	NO
	Does the Court have jurisdiction over the subject infant?		
<i><b>NOTE: The infant must be domiciled in the county, have sojourned in the county immediately preceding the application for standby guardianship, or if a non-domiciliary of the state, must have property situate in the county.</b></i>			
	Is the captioned name the same as the birth certificate and ¶2 of petition?		
<b>1.</b>	<b>Is the petitioner a proper party?</b> [see SCPA §1726(3)(a)]		
	<b>Is the petitioner ...</b> a parent		
	a legal guardian of the infant		
	<b>Does the petition set forth the following:</b>		
	Name, relationship of the petitioner to the infant and date of birth		
	Mailing address, residence and telephone number of petitioner		
<b>2.</b>	<b>Is the name of the infant in ¶2 the same as that listed on the birth certificate?</b>		
	Birth Certificate from official registrar (not hospital) to be filed with petition [see NYCRR §207.15(a)]		
	<b>Does the petition set forth the following:</b>		
	Name, marital status and date of birth of infant		
	Mailing address and residence		
<b>3.</b>	<b>Are the names, mailing addresses, residences and dates of birth of the adult persons with whom the infant resides listed?</b>		
<b>4.</b>	<b>Is the name, mailing address, residence, and date of birth of the proposed standby guardian listed?</b>		

PET #	DESCRIPTION	YES	NO
<b>NOTE: Include relationship of proposed standby guardian to infant if required.</b>			
5.	<p><b>Has the name and address, of the other parent been provided?</b></p> <p>If deceased, his/her name must still be shown and death noted. (Court may require copy of death certificate)</p> <p>If the name of the father is not shown on petition or birth certificate, determine if a proceeding has been brought to establish paternity. (Court may require copy of filiation order) [see page 7 - Comments &amp; Court Notes]</p>		
<b>NOTE: If it is claimed that the identity of the father is unknown, the Court may require an affidavit showing diligent efforts to identify him.</b>			
<b>NOTE: If the natural mother was married at the time of infant's birth, there is a rebuttable presumption that her husband is the father of the infant and is a necessary party unless a filiation order has established otherwise. [see DRL §24(1)]</b>			
	<p>If the infant is married, is the infant's spouse, date of birth and address listed?</p> <p>If one parent is deceased, and there is no spouse of the infant, is the name of the grandparents (if residing within the county) listed with address?</p>		
<b>NOTE: If any of the above is an infant attach a schedule providing the name of the infant, with whom he/she resides with, whether he/she has a court-appointed guardian, if so, provide the name and address of the guardian. If the disability is other than infant, fill out and attach Schedule A.</b>			
6.	<b>Are there any other persons or agencies interested in this proceeding other than those mentioned above?</b>		
7a.	<b>Has any guardian or standby guardian ever been appointed for the infant? See SCPA §1704(3)</b>		
7b.	<p><b>Has information regarding custody of the infant been provided?</b></p> <p><b>NOTE: Include all specifics regarding any court ordered custody or surrender and attach copies of all surrenders, court orders or divorce decrees.</b></p>		
8.	<p><b>NOTE: COMPLETE THIS PARAGRAPH IF YOU ARE SEEKING THE APPOINTMENT OF A STANDBY GUARDIAN OF THE <u>PROPERTY</u>.</b></p> <p><b>Has all the infant's financial information been included in 8a, 8b, and 8c?</b></p> <p><b>NOTE: This information will be used to compare and verify the guardian's report on the first annual inventory and account.</b></p>		
9.	<b>Has the appropriate box been checked as to when the authority of the standby guardian is to become effective?</b>		
10.	<b>Has the information regarding the petitioner's illness (i.e., date and source of medical diagnosis) been sufficiently provided?</b>		

PET #	DESCRIPTION	YES	NO
11.	Has the information as to whether the infant is or is not a Native American Child been provided? [The Indian Child Welfare Act of 1978 (25 USC §1901-1963)]		
12.	Verify whether petitioner indicated knowledge that the person nominated to be Standby Guardian has ever been the subject of or another person pursuant to Title 6 of Article 6 of the Social Services Law, or has been subject of or a respondent in a child protective proceeding commenced under Article 10 of the Family Court Act, which resulted in a court order finding that the child is an abused or neglected child. [If petitioner has such knowledge, an affidavit needs to be attached explaining in detail]		
13.	<p>Check that Request for Information Guardianship form has been submitted with petition and includes all persons over the age of 18 in the household.</p> <p><i>NOTE: Some Courts may require submission of form DCJS-6, Fingerprint Card, for each proposed guardian in order to conduct a criminal record search.</i></p>		
14.	Has the appropriate box been checked as to whether or not the petitioner is able to attend any hearing scheduled by the Court?		
15.	Has any prior application been made to any Court for the relief requested herein?		
	<p>Under WHEREFORE Clause: has all relief requested been checked and completed?</p> <p>a.) Has the type of Letters been checked?</p> <p>Has all other information been deleted, if not applicable?</p> <p>Is petition dated, signed, verified, properly notarized (including proper jurat and expiration date of notary's commission)?</p> <p>Is attorney's name, address and phone number listed? (Or if self-represented, add none.)</p> <p>Has Part 130 Certification been completed?</p>		
	If <u>NOT</u> , has a separate attorney certification as to Part 130 signing requirements been included?		
If forms are computer generated, has a certification pursuant to Court Rules §207.4 been attached?			



COMMENTS AND COURT NOTES	Form Number	SCPA/EPTL§ or Rule #
<p>Proofs of Service of Citation must be filed with the Court at least two (2) working days before the return date.</p> <p>Some courts may conduct additional inquiries of Putative Father Registry. (Court submits inquiry form to Registry - NYS OCFS Form LDSS-2725,); some courts may also check if natural father has acknowledged being father in any other manner (possible sources of information may be Family Court, Department of Social Services, hospital of birth, local registrar and/or Department of Health ).</p> <p>Guardian Ad Litem will be appointed on or before the return day of process for all unknowns and persons under disability (SCPA §403).</p> <p>Documents signed by Power of Attorney (Provide certified copy of POA and comply with Section 13-2.3 EPTL and 207.48 Uniform Rules).</p> <p>Check to be certain all documents are properly acknowledged.</p>		

**THIS MATERIAL IS PROVIDED FOR INFORMATIONAL/TRAINING PURPOSES ONLY.** – It is intended for use in conjunction with review of the applicable statutes and rules of the Surrogate’s Court and the Surrogate’s Court Operations Manual.

# BACKGROUND INFORMATION

## STANDBY GUARDIANSHIPS

(pertains only to infants; does not include 17A's)

### SCPA §1726

**STANDBY GUARDIAN:** Definition - for purposes of this proceeding a person judicially appointed pursuant to SCPA §1726(3) as standby guardian of an infant whose authority becomes effective upon the happening of an event specified in the order of appointment

#### **BACKGROUND:**

In 1992 the legislature enacted SCPA §1726 to allow a parent to nominate a standby guardian who could step into office upon the incapacity or death of the parent.

In 1994 the legislature amended the statute to make it equally applicable to legal guardians, as well as parents.

A standby guardian can be appointed by means of two methods:

1. Petition and Decree, pursuant to SCPA §1726(3)
2. Designation subject to later confirmation, pursuant to SCPA §1726(4)

#### **APPOINTMENT BY PETITION & DECREE:**

All the information required for the appointment of a guardian under SCPA §1704 is required, plus the parent must show that she has either “a progressively chronic illness” or an “irreversibly fatal disease”. SCPA §1726(3)(b)(ii)

The petition **must** also specify whether the standby guardian takes office when the parent becomes incapacitated, when she dies, or when she consents to the guardian's assumption of office. SCPA §1726(3)(b)(i)

When the guardian takes office, the parent retains joint authority with the guardian. SCPA §1726(7)

#### **NOMINATION OF STANDBY GUARDIAN:**

Statute permits nomination by a written document rather than a court proceeding  
SCPA §1726(4)

This paper **must** be signed by the parent or legal guardian before two disinterested adult witnesses - SCPA §1726(4)

The appointment/designation may be filed with Surrogate's Court for safekeeping accompanied with any applicable fee and would be released only to the parent, the standby, or other persons directed by the court - SCPA §1726(8)(b)

The filing of the appointment/designation of a standby guardian in the court does not enhance its validity in any way - SCPA §1726(8)

**THE STANDBY GUARDIAN CAN BEGIN TO SERVE WHEN:**

- The attending doctor produces a determination of incapacity (definition found at SCPA §1726(1)(d))
- A determination of debilitation with the parent's consent (definition found at SCPA §1726(1)(c))

**NOTE:** these statements must be in writing, and must describe the parent's physical condition and prognosis.

- The standby guardian can petition for appointment on notice to the parent - SCPA §1726(5)

The standby guardian may act as guardian immediately upon the occurrence of one of these events, but if he/she fails to file a petition within sixty (60) days, his/her authority will cease.

- May also commence to serve if the parent consents - SCPA §1726(3)(e)(iii)

The parent has to sign the consent in the presence of two disinterested witnesses. The standby guardian has to file the written consent in the court within ninety (90) days.

**TERMINATION OR REVOCATION:**

If the parent recovers, the court may terminate the guardianship - SCPA §1726(3)(d)(iii)

A parent may revoke her designation, either by informing the standby guardian or, if the petition has been filed, by filing a written revocation in the court - SCPA §1726(4)(f); (3)(f)(g)

The court may rescind its decree appointing the standby guardian before he/she begins to serve if it finds that the appointment no longer serves the child's best interests - SCPA §1726 (3)(d)(iii)