

ⁱDECLARATION OF STANDBY GUARDIANSHIP OF MINOR CHILDⁱⁱ

I _____ of _____ Countyⁱⁱⁱ, Virginia make the following Declaration of Guardian for my child(ren)^{iv}. I revoke all earlier declarations of guardianship for my children, whether by will, codicil or written declaration, but do not otherwise revoke or modify any will or codicil. I have ____ [number of] children^v and I am the parent and natural guardians of the following child(ren):

1). _____
Name Age Date of Birth

Address

2). _____
Name Age Date of Birth

Address

3). _____
Name Age Date of Birth

Address

In the event of my death or incapacity^{vi}, if I am the last surviving parent of any minor child, I appoint^{vii} _____
(Name and Address) to act as guardian [or co-guardians]^{viii} of the person and estate^{ix} of each such child(ren) stated above upon my inability to so act. If the above listed person(s) fails, ceases or is unwilling to serve, I appoint _____

_____ (Name and Address) to act as the guardian of the minor children in the place of _____.

I request that no bond or other security be required of any named guardian of any child of mine^x.

Upon my disability, the designated guardian shall have the following authority:

- a) residential custody of the minor child(ren);
- b) to approve medical treatment of any kind or type or to disapprove the same within the bounds of the law;
- c) to designate schooling for the minor children, and access to any and all of their educational records;
- d) to generally act in loco parentis, et.al.^{xi}

In the event that I am the custodian of any property for the minor children under the Uniform Transfer to Minors Act, or the Uniform Gifts to Minors Act or similar statute, I designate the guardian or successor guardian to act as custodian for all such custodial property.

In the event that formal legal proceedings are commenced to establish a guardian for the child, it is my desire that the guardians mentioned herein have priority in appointment. The failure to list an individual as a guardian or successor guardian is intentional.

Signed on this ____ day of _____, 20__.

(Witness Signature)^{xii}

[Name of Parent], Declarant

(Witness Signature)

SELF-PROVING AFFIDAVIT^{xiii}

COMMONWEALTH OF VIRGINIA }
 }
COUNTY OF _____ }

BEFORE ME, the undersigned authority, on this day personally appeared _____, Declarant, and _____ and _____ as witnesses, and all being duly sworn, the Declarant said that the above instrument is his Declaration of Standby Guardianship for Minor Child and that he/she made and executed it for the purposes expressed in it. The witnesses declared to me that they are each 14 years of age or older, that they saw the Declarant sign the Declaration, that they signed the Declaration as witnesses, and that the Declarant appeared to them to be of sound mind.

(Affiant Signature)

Declarant

(Affiant Signature)

^{xiv}I certify that _____ has appeared before me on this day of _____ (Date). I am a notary public in the County of _____ in the State of _____.

My commission expires on _____

Notary Public

ⁱ This document does not create an attorney-client relationship. An engagement agreement must be signed by both the attorney and the client to establish an attorney-client relationship with the Law Office of Christopher Guest. This is merely a document for your information that provides a basis for taking steps to guide the process of protecting your minor children. Every family is different and more complex situations might require the need for an attorney. If you have any concerns contact an attorney.

ⁱⁱ A court will appoint a guardian for your children based upon the best interest of the children. The parents' wishes will be presumed to be in the best interest of the children, but contrary evidence can be presented, and if the Court finds a significant problem with the appointment of the persons you name in the Declaration, the Court will name a different guardian. This is an added layer of protection for your children. The Court will NOT simply second guess your choice, however.

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- ⁱⁱⁱ A declaration of guardian is filled out by only one parent. Each parent should have a separate one. Typically, if one parent dies then the children will be placed in the care of the surviving parent, regardless of what a declaration of guardian says. If there is a particular reason a surviving parent should not have care and custody of the children, you should speak to an attorney rather than merely filling out this form.
- ^{iv} Most parents name one guardian for all their children, but you can name different guardians for each child. You may want to do this if you have a large number of children, or if you have children with special needs. It is entirely up to you and depends upon your particular circumstances. If you do want to name separate guardians for different children, do separate declarations.
- ^v If you have separate declarations for each child, as discussed in *note ii*, you should name all children here and then state which child this declaration applies to, and also state that a separate declaration exists for the other children.
- ^{vi} Virginia Law states that a triggering event must be stated by the Parent. It can be as simple as having a death certificate or a finding of incompetence by a court or some or some other standard you deem necessary to give the guardian rights to step in.
- ^{vii} This declaration is only effective for minor children. If you are the court ordered guardian for your adult child, there is a different procedure for you to suggest a successor guardian.
- ^{viii} If you name a married couple as the guardian of your children, they are referred to as “co-guardians.” If you are naming a married couple, then simply change the word “guardian” to “co-guardian” in this document and delete the use of “guardian”
- ^{ix} The guardian of the person is responsible for the physical care of the child, even if the child does not actually live with the guardian (for example, a child who lives in a residential treatment center). The guardian of the estate is responsible for the child’s money, typically the inheritance left upon the death of the parent. The same person may act as both guardian of the person and the estate, or you can name separate persons for each. There are a number of reasons you may want to name different people, and the decision whether to name one or separate guardians depends totally upon your circumstances. If you do want to name separate guardians of the estate and person, simply make two entries in this declaration, noting which named person(s) is for the person and which one is for the estate.
- ^x Bond would normally be required to protect the estate of the children from fraud or mismanagement. Bond will be waived, however, if you expressly state so.
- ^{xi} You can expand or limit the duties you wish to provide for the guardian. While most courts have a general formula for guardians of the estate and person but if you decide to have separate guardians it would be advisable that you list which duties the guardians have.
- ^{xii} You will need two disinterested witnesses to your signature. Disinterested means that they should not be named as guardians or contingent guardians, and should not be family members that would otherwise naturally be considered for guardianship in the absence of your declaration.
- ^{xiii} You and your witnesses must sign this document in the presence of a notary public.