



Hon. Zoila Cassanova, Esq
Surrogate Judge
Passaic County Surrogate's Court
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MEMORANDUM

TO: Passaic County Residents

FROM: Hon. Zoila Cassanova, Surrogate Judge

DATE: April 7, 2025

RE: Legal Process for Standby Guardianship of Minors (NJSA 3B:12 et seq)

What Is a Standby Guardian?

New Jersey law allows parents or legal guardians to designate a standby guardian—someone who will step in to care for a minor child only if a specific event occurs, such as the parent's death, incapacity, serious illness, or administrative separation (e.g., immigration detention or deportation).

This law gives parents peace of mind and ensures continuity of care in the event of an emergency or unexpected crisis.

How to Appoint a Standby Guardian through the Surrogate's Court:

1. Make an appoint to file a Petition with the Passaic County Surrogate's Court.
2. Submit the Required Documentation such as the child's birth certificate, identification of the proposed standby guardian, and if necessary, provide medical/legal records related to the triggering condition.
3. Court Review & Order – The Court will review and issue an order appointing the standby guardian.
4. Triggering Event – The guardian's role becomes active only after the triggering event occurs and is reported to the Court.

If you are interested in filing or learning more about this process, please call my office at (973) 881-4760 or visit us at 71 Hamilton Street, Paterson, NJ.

Sincerely,

Hon. Zoila Cassanova
Surrogate Judge
Passaic County Surrogate's Court



Hon. Zoila Cassanova, Esq.
Jueza Testamentaria/Surrogate Judge
Corte Testamentaria del Condado de Passaic
71 Hamilton Street, Paterson, NJ 07505
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MEMORANDO

PARA: Residentes del Condado de Passaic

DE: Hon. Zoila Cassanova, Jueza de la corte testamentaria/Surrogate Court

FECHA: 7 de abril 2025

ASUNTO: Proceso Legal de Tutela en Espera para Menores de Edad (NJSA 3B:12 et seq)

Qué es un "Tutor en Espera"?

La ley de estado de New Jersey permite a los padres o tutores legales designar a un "Tutor en Espera", es una persona que asumirá el cuidado de un Menor únicamente si ocurre un evento específico, como el fallecimiento de un padre, la incapacidad, una enfermedad grave de los padres o una separación administrativa (por ejemplo, detención o deportación por asuntos de inmigración).

Esta ley, da tranquilidad a los padres y garantiza la continuidad del cuidado en caso de una emergencia o surja una crisis no esperada.

¿Cómo nombrar a un "Tutor en Espera", a través del Corte Testamentaria?

1. Haga una cita para presentar una petición ante la del Corte Testamentaria del Condado de Passaic.
2. Presentar la Documentación requerida:
 - Certificado de Acta de Nacimiento del menor.
 - Identificación del "Tutor en Espera" y del aplicante.
 - Comprobante de documentos que se relacionen con la solicitud de emergencia de "Tutor en Espera". (indicado anteriormente)
3. Revisión y Orden del tribunal: El tribunal revisará una emisión de una orden que designe al "Tutor en Espera".
4. Evento Desencadenante: La tutela, "Tutor en Espera", solo se activa después de que ocurra el evento específico y se notifique al tribunal.

Si desea presentar una solicitud o necesita más información, comuníquese con mi oficina al (973) 881-4760 o visítenos en 71 Hamilton Street, Paterson, NJ.

Atentamente,

Hon. Zoila Cassanova
Jueza Testamentaria/Surrogate Judge
Corte Testamentaria del Condado de Passaic

New Jersey Statutes Annotated

Title 3b. Administration of Estates--Decedents and Others (Refs & Annos)

Chapter 12. Minors and Incapacitated Persons (Refs & Annos)

Article 7. Standby Guardianship Act (Refs & Annos)

N.J.S.A. 3B:12-69

3B:12-69. Definitions

Currentness

As used in [P.L.1995, c. 76 \(C.3B:12-67 et seq.\)](#):

“Activating event” means an event stated in the petition or decree that empowers the standby guardian to assume the duties of the office. Activating events include, but are not limited to: the appointment of a standby guardian by a court of competent jurisdiction; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is incapacitated; the parent's, custodian's, or guardian's attending physician concludes that the parent, custodian, or guardian is debilitated; the parent, custodian, or guardian is subject to immigration administrative action; the parent, custodian, or guardian is subject to criminal proceedings; the parent, custodian, or guardian is in military service; or the death of the parent, custodian, or guardian in circumstances in which no testamentary guardianship or other more permanent care arrangement has been made for the minor child or minor ward; provided, however, that in no case shall a power of attorney triggered by the death of a parent, guardian, or custodian extend beyond the year that the power of attorney is in effect.

“Appointed standby guardian” means a person appointed pursuant to section 6 of [P.L.1995, c. 76 \(C.3B:12-72\)](#) to assume the duties of guardian over the person and, when applicable, the property of a minor child or minor ward upon an activating event.

“Attending physician” means the physician who has primary responsibility for the treatment and care for the petitioning parent, custodian, or guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this act. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to [P.L.1995, c. 76 \(C.3B:12-67 et seq.\)](#).

“Criminal proceeding” means any incarceration on criminal charges, including pending charges, or a criminal sentence that separates a parent, custodian, or guardian from a minor child or minor ward.

“Custodian” means a person, other than a parent, who has been granted legal and physical custody of a minor child by a court of competent jurisdiction.

“Debilitated” means the parent, custodian, or guardian has a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for the parent's, custodian's, or guardian's minor child or minor ward.

“Guardian” means a person who has qualified as a guardian of the person of a minor pursuant to court appointment, including, but not limited to, a kinship legal guardian, but does not mean a person who is serving only as a guardian ad litem.

“Immigration administrative action” means any immigration proceeding, enforcement action, detention, removal, or deportation that separates a parent, custodian, or guardian from a minor child or ward.

“Incapacitated” means the parent, custodian, or guardian is impaired by reason of mental illness, intellectual disability, physical illness or disability, substance use disorder, or other cause, except minority, to the extent that the person lacks sufficient capacity to manage the affairs of and provide care for the parent's, custodian's, or guardian's minor child or minor ward.

“Military service” means duty by any person in the active military service of the United States or the active military service of the State, including in the National Guard or State Guard, that separates a parent, custodian, or guardian from a minor child or minor ward.

“Minor child” means a child under the age of 18 years but excludes a child residing in a placement funded or approved by the Division of Child Protection and Permanency in the Department of Children and Families pursuant to either a voluntary placement agreement or court order.

“Minor ward” means a minor for whom a guardian is appointed.

Credits

L.1995, c. 76, § 3, eff. April 11, 1995. Amended by L.2006, c. 47, § 30, eff. July 1, 2006; L.2012, c. 16, § 12, eff. June 29, 2012; L.2021, c. 192, § 3, eff. Nov. 3, 2021; L.2023, c. 177, § 16, eff. Nov. 20, 2023.

N. J. S. A. 3B:12-69, NJ ST 3B:12-69

Current with laws through L.2025, c. 20 and J.R. No. 1.

<p>Petition of _____ FOR Appointment of Standby Guardian</p>	<p>SURROGATE COURT COUNTY OF PASSAIC</p> <p>DOCKET NO.</p> <p>PETITION FOR APPOINTMENT OF STANDBY GUARDIAN</p>
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Plaintiff, *[Name of Plaintiff]*, residing at *[street address of plaintiff]* in the *[town, city, etc.]* of *[name of town]* County of *[name of county]* and State of New Jersey, says:

1. I am the parent **(or legal custodian)** of the following children: *[names and ages or other identifying information such as birth dates]*.

2. My health is not good. *[Set forth medical condition and prognosis]* There is a significant risk that I will die, become incapacitated, or become debilitated as a result of a progressive chronic condition or a fatal illness.

3. I designated a standby guardian for my children by signing the designation attached hereto as exhibit A.

4. My appointed standby guardian is *[name, home address and telephone number of standby guardian]* as the designated standby guardian of the children just named.

5. The other parent of my children is _____]. *[Set forth details, such as death, lack of contact etc. relating to issues of notice and guardianship. If the petition alleges that after diligent search, the parent or legal custodian cannot be found, the parent or legal custodian shall be served by notice delivered pursuant to New Jersey court rules. No notice is necessary to a parent who is deceased or whose parental rights have been previously terminated by court order or consent]*.

6. The triggering events for the designated standby guardian's authority to take effect are if and when any of the following event or events occur:

- a) my attending physician concludes that I am mentally incapacitated, and thus unable to care for my children; or
- b) my attending physician concludes that I am physically debilitated, and thus unable to care for my children, and I consent in writing before two witnesses to the designated standby guardian's authority taking effect; or
- c) upon my death.

7. In accordance with my designation, In the event that I am incapacitated or debilitated, and a designated standby guardianship is activated pursuant to this statement, I declare that it is my intention to retain full parental rights to the extent consistent with my condition and, further, that I retain the authority to revoke the designated standby guardianship consistent with my rights herein at any time.

8. I also provided that in the event that the person designated above is unable or unwilling to act as guardian to the children, I have named *[name, address and telephone number of alternate designated standby guardian]*, as alternate designated standby guardian of my children.

9. The above-named standby guardians have the following qualifications to act, along with my complete confidence: *[set forth qualifications]*.

10. Since I understand that this designation will expire six months from the date of the aforementioned designation, and that the authority of the designated standby guardian, if any, will cease, I now petition the court for a court appointed standby guardian pursuant to [N.J.S.A. 3B:12-72](#).

11. The appointment as requested is in the best interest of my minor children.

NAME AND SIGNATURE OF PETITIONER

DETERMINATION OF INCAPACITY/DEBILITATION

I, _____, am a physician licensed in the State of . My license number is _____. Pursuant to the New Jersey Standby Guardianship Act, N.J.S.A. 3B:12-67 et seq., I state that: (Please initial the provision that applies)

_____ 1. I have responsibility for the care and treatment of the following patient and am familiar with his/her medical condition.

_____ 2. I have determined, based on a reasonable degree of medical certainty that the above-mentioned patient suffers from a progressive chronic condition or fatal illness.

_____ 3. He/she is currently:

Incapacitated, in that he/she is unable to understand the nature and consequences of decisions concerning the care of his/her minor child(ren) as a result of a substantial mental or organic impairment.

Debilited, in that he/she is unable to care for his/her minor child(ren) as a result of substantial, physically debilitating illness, disease, or injury.

_____ 4. It is my professional opinion that the incapacity or debilitation is caused by the progressive or chronic condition or fatal illness: The extent and probable duration of the incapacity/debilitation is .

_____ 5. Upon information and belief, the above-mentioned patient wishes to name a Standby Guardian of his/her minor child(ren). Upon request, I will provide a copy of this Determination of Incapacity/Debilitation to the Standby Guardian.

I acknowledge receipt of the foregoing Determination of Incapacity/Debilitation.

Physician's Name: _____ Telephone _____

(Please Print)

Physician's Signature _____ Date: _____