



*Pathfinders in Elder Law*



*“Parents of minor children and currently acting guardians can now name a standby guardian to step-in at their incapacity or death.”*

### ***New Law Allows Parents and Guardians to Designate Standby Guardian***

-Jeffery D. Stinson, CELA

Effective July 1, 2011, parents of minor children and guardians of adults with special needs may name an individual as standby guardian to step-in if the parent or guardian becomes incapacitated or dies.

Prior to the passage of this law, only an individual appointed by a court could act for a minor or protected person at the incapacity or death of a parent or guardian. The guardianship process typically requires a petition by an interested person, notice to various individuals, and a court hearing prior to appointment of a guardian.

Consequently, this process can take weeks. Unless the petitioner can demonstrate that immediate or irreparable harm to the minor or adult with special needs would occur without a temporary emergency guardianship, the minor or adult with special needs would receive no support from any individual in the interim.

With the passage of Indiana Code 29-3-3-7, the potential for a minor or adult with special needs to be without assistance for a period of time after the incapacity or death of a parent or guardian is eliminated. The

parent or guardian completes a written declaration naming the individual designated to serve as standby guardian.

The declaration becomes effective upon the death or incapacity of the parent or guardian. The declaration, however, is not a substitute for guardianship. It terminates ninety days from the death or incapacity of the parent or guardian. However, if a petition for guardianship is filed within the ninety day period, the declaration remains in effect until the court rules on the petition.

The written declaration must contain certain information and follow certain formalities in order for it to be valid. Parents of minor children and guardians of adult individuals should consider contacting legal counsel to get their “Standby Guardian Declaration” in place today. ▲

*\*Certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation.*

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