



CHOOSING A GUARDIAN FOR YOUR CHILDREN

Choosing a guardian for your children should you become incapacitated or die while they are still minors is an important aspect of your estate plan. In most cases, your children's other parent would be entitled to custody on your death or disability. However, their other parent may already be dead or unable to raise them.

You should name a guardian for your children even if you expect their other parent to be able to care for them. There is always a possibility that you will both die or become disabled at the same time.

Although a court is not obligated to appoint the person you choose as a guardian, the court will likely agree with your choice in the absence of evidence that he or she is unsuitable. If you don't name a guardian, the court will appoint one who may not be the person you would have preferred.

TYPES OF GUARDIANS

There are two types of guardians. One is guardian of the estate, and the other is guardian of the person. A guardian of the estate is in charge of the funds or assets that are in the child's name, either during the parents' lifetime or following their death. A guardian of the person assumes the role of parent for the child in the event the child's real parents die or become incapacitated. You may choose the same person or different persons for these two roles.

QUALITIES TO LOOK FOR IN A GUARDIAN

When choosing a guardian, be mindful of the two types and select individuals who possess the skills and qualities that are best suited for each role.

SHARED VALUES

In making a selection of a guardian, make sure that you choose someone with whom you have shared values, religious beliefs, goals and parenting styles. This advice applies even if the person you choose is only making financial decisions on behalf of your child.

EMOTIONAL SUPPORT AND COMFORT

Consider whether your choice loves or is at least fond of your children and capable of nurturing them. Try to choose someone your children know and feel comfortable with. The trauma of losing both parents can be diminished if the child's guardian is a person with whom the child is already comfortable. You may want to discuss your choice with an older child as many courts will consider the preferences of teenagers in appointing a guardian. It is also possible to name different guardians for different children. Although most parents probably want their children raised in the same home, family dynamics, the children's ages, and sexes may make different guardians preferable.

FINANCIAL RESOURCES

Unless you have provided substantial financial assets, your choice of guardian should also be financially capable of raising your children.

AGE AND HEALTH

Select someone who is sufficiently young to fulfill the duties until your child becomes an adult. That person should be in good health so as to have the stamina for raising children. Although physical disabilities do not prevent someone from being a good parent, it would be prudent to think about health considerations that may shorten an individual's life expectancy or capacity to be a parent. While you may be inclined to select your own parents as guardians, they are more likely to predecease you than persons in your own age group or younger.

LOCATION

If possible, select a guardian who lives nearby or who is willing to relocate to where the children live. Additional trauma will be avoided if a child does not have to enroll in a new school or form friendships in an unfamiliar area.

CHARACTER

Be careful not to choose someone that a court would not approve as a guardian, such as a person who has abused drugs or alcohol, or who has a criminal record.

SELECTION OF ALTERNATE GUARDIANS

You are wise to think about choosing an alternate guardian, and under what circumstances, if any, the alternate guardian would be favored over the initial guardian you named. The alternate guardian would be appointed in the event of the death or incapacity of the first guardian. However, you may also wish to name alternate guardians if you have named a married couple as the first guardians and they divorce. In such a scenario, it may not be feasible for them to be co-guardians.

SPEAK WITH THE PERSON YOU HAVE CHOSEN AS GUARDIAN

Before finalizing your decision, talk with the person you've chosen to make sure he or she is willing to accept the appointment. Ask the person if he or she has an interest in looking after your children, and express your wishes as to how you would like your children to be raised as well as the duties that the role entails.

That person may have legitimate reasons for being unable or unwilling to assume the responsibilities of guardian. It is better to discover in advance that the person cannot honor your request while you have the time to choose someone else. Be sure to inform your candidate that you will not take offense if he or she cannot or does not want to take on this responsibility.

CREATE A WRITTEN RECORD OF YOUR SELECTION

Upon finalizing your decision, consult your lawyer who will draft the requisite documents to ensure that your selections are legally binding. In addition to a will, your lawyer will likely prepare a Designation of Guardian document to designate a guardian in the event you become incapacitated. A will does not suffice in this case because it becomes effective only after your death.

To avoid confusion, your lawyer should make certain that your will designates the surviving spouse or co-parent (if there is one) as guardian. Any other guardians are alternates who assume the role only following the death of both parents.

NAMING A SOMEONE OTHER THAN YOUR CHILD'S OTHER PARENT

Normally, your child's other parent will have custody of your child if you die or become incapacitated even if you and the other parent are divorced or never married. If you genuinely believe the other parent is unfit, you can name someone else in your will and explain why in a letter. Include with the letter any evidence you have of the parent's unfitness (e.g., police reports, criminal records) and leave it for the person you choose as guardian to present to the court should your child's other parent challenge your choice.