

CHOOSING A GUARDIAN IN YOUR

It is one of the most important decisions a parent can make but choosing to appoint a guardian for their children is a decision which most parents seem to overlook.

Most of us try to avoid thinking about what happens when we die, which means making a Will isn't always top of the list of priorities, particularly for parents.

When making a Will you should appoint a guardian (or guardians) for your children as well as setting out how your financial assets should be dealt with.

Why should you appoint a guardian in your Will (or in a separate legal guardian document)?

Choosing who should care for your children in the event you pass away might be difficult and emotional; however, it is a very important consideration and not one that should be left to chance.

A guardian is the person (or persons) who you choose and trust to bring up your children should anything happen to you. If you do not appoint a guardian the court may appoint someone for you, and this might not necessarily be the person you would prefer to take care of your children. This means key decisions in your children's lives could be made by someone you do not know or trust to make those decisions.

Guardians acquire the ability (known as parental responsibility) to make important decisions in all aspects of your children's lives.

What is parental responsibility and who has it?

Parental responsibility is a legal definition which refers to the legal rights, duties, powers, responsibilities and authority a parent (or guardian) has for a child and the child's property. A person who has parental responsibility for a child has the right to make decisions about their care and upbringing such as deciding where they live, choosing their education, religion and consenting to medical treatment. Important decisions in a child's life must be agreed with anyone else who has parental responsibility.

Who has parental responsibility automatically?

- All birth mothers
- Fathers married to the mother at the time the child was born
- Fathers who are not married to the mother but are registered on the child's birth certificate (if registered on or after 1 December 2003).
- Civil partners and partners of mothers registered as the child's legal parent on the birth certificate.

Things to bear in mind:

- **The appointment of a guardian can only be made by a person with parental responsibility (or by the Court).** Therefore, it is highly desirable that you should consider who should look after your children should the worst happen.
- **Guardians can only be appointed to look after children who are under 18** – the appointment automatically comes to an end once a child becomes a legal adult at age 18.
- **If one parent dies, the surviving parent will look after the child.** There are exceptions (particularly if the surviving parent is a father without parental responsibility) but this applies even if parents are unmarried or get divorced.
- **The appointment of a guardian will usually only take effect on the death of the last person with parental responsibility.** As a result, we suggest it is important to try and agree who the guardians are going to be and incorporate this into both parents' Wills. This is particularly important where parents are unmarried or divorced.
- **Check that intended guardians will accept the role.** It is far better for guardians to know in advance that they may have the joy (and responsibility) of looking after your children, than to have the shock of finding out from a solicitor who is dealing with your Will and decide it is not for them. Just because you have appointed someone as guardian in your Will does not mean they have to take on that role. Appointing someone to look after your children in the event of your death is sensible but the person appointed does not have to take on the responsibility.

Who can you choose?

Choosing a Guardian should not be a rushed decision and we at GL Law appreciate that this could be a very difficult decision for you to make.

It is worth noting that there is a risk of conflict between a child beneficiary and the trustees who manage their funds. That relationship can be challenging at times, more so if the child lives with the trustees. It can add additional emotional pressure on the trustees with whom they are living with and at the very least, a professional independent trustee should be appointed, but it may be better for the children not to be living with any of the trustees.

There are several questions that you may wish to discuss with anyone with parental responsibility: -

- Whom do your children feel comfortable with already?
- How old are they (as the guardian will be responsible for your child/children until they reach the age of 18)?
- Would the person have enough time and energy to devote to your children?
- Are they emotionally, physically, financially and mentally capable to look after your children?
- What are their religious beliefs?
- Do they have the same values and parenting style like you?
- Do they live close to you? If not, would your child adapt to changing schools, friends and being further away from other relatives?

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- Does the person you're considering have any other children? If so, would your children fit in well in the family unit?

What about the extra financial burden on the guardians?

When making your Will you are deciding who will benefit from your estate on your death. Money left to a child will be held in trust for them until they reach the age of 18, or older if specified in the Will. Until then, the trustees can usually use the income and capital in the trust for the child's benefit. This can include paying guardians a monthly sum to cover their additional expenses.

Is appointing a guardian binding?

It is important to understand that appointing a guardian in your Will does not mean that the decision is binding.

Your Will

Whilst it may seem very unlikely that young children find themselves without both parents, nevertheless it can happen. By making a Will and appointing a guardian, you have peace of mind that your children will be financially secure and looked after by someone you trust.

Children matters

If you are a father who does not already have Parental Responsibility – we can advise in relation to how to acquire Parental Responsibility.

If you are in a same sex relationship and do not have Parental Responsibility for your partner's children – we can advise you on how to acquire Parental Responsibility.

If you have been appointed as a guardian in a Will it is important to note that this decision is not binding. There is the chance that someone could object to your decision and bring the matter to court. It is therefore a good idea for the guardian to obtain a live with order after being appointed – this would provide clarity and stability for your child.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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