

How to Choose a Guardian

One of the most difficult choices any parent faces is determining who would serve as your minor child's guardian if you both were to die prematurely. Yet, this decision makes a tremendous difference in your child's life. It will be well worth the time and angst it will take to follow these steps.

*The real Measure of your wealth is
how much you'd be worth if you lost
all your money. – Anon*

Make a list of everyone you know who might possibly be a good guardian. Although your list can contain dozens of names make sure you identified at least 3 or 4 people or couples before moving on to the next step. It is also important to note who you *would not* name. Your Will or Trust can include your statement that under no circumstances should these people be made the guardians of your precious children.

Think beyond siblings. Aunts & uncles, cousins, grandparents, and long-time friends can be excellent guardians; in fact, anyone that shares your ideas regarding child-rearing, religious beliefs and moral values may well be the ideal candidate. Don't necessarily disregard potential guardians because they may lack the financial wherewithal to raise your child unless they are completely fiscally irresponsible. You can continue to ensure your children's material well-being at your death with sufficient life insurance funded to a well-drafted Trust for their benefit.

Now systematically compare your potential guardian against qualities and traits that are important to you. How do they rate? Consider: maturity; patience; stamina; age; child-rearing philosophy; current relationship with your children; integrity; religion; social and moral values; marital or family status and willingness to serve. Obviously, the perfect choice would score highly on every measure. In an imperfect world, however, you will likely have more success in choosing those few characteristics that are most important to you. Consider, too, which factors can be influenced by you and which cannot. For example, individual integrity is a characteristic your candidate either has or does not have; you can do nothing to change that. On the other hand, if it is important to you that your child be reared by an at-home mother and your prospective candidate is willing but financially unable to stay home, you could make that possible through a well-structured and funded estate plan.

Match People to Priorities

Use your ratings to narrow your list to a handful. What if your list is completely different from that of your spouse? While it is possible for each of you to name different guardians, that seldom satisfies either of you. Obviously, you should first check to make sure your ratings of each candidate concur. ("You never told me that Jack was involved in that unpleasant situation in college"!.) Verify unanimity in how you each have prioritized each character trait. Could the problem be over the choice of your family versus his? It is important to keep both families involved. One way to do that is to name members of one family as guardians to care for the children, while members of the other family serve as trustees, the managers of the children's assets. If there is a likelihood of conflict between these family members, be sure to share this with your attorney so that your guardianship language can be drafted to encourage the guardian keeps the lines of communication open.

As any experienced estate planning attorney will advise you, even after the choice is finally agree upon, there are other decisions to be made. For example, you have selected a couple to serve jointly as your child's guardian. What do you want to happen if the couple divorces or, because of death or incapacity, only one can serve? Certainly this drives home the value of maintaining your estate plan! However, if one of these events were to occur shortly before your death, your plan should express your desires regarding these "what ifs". In the case of a divorce, would you want one or the other to serve? In the case of death or disability, would it be better to move on to the next name on the list?

Step Four: Positive can flow from Negative

Once the choice has been agreed upon, it is absurdly easy to implement the appointment of a guardian, simply state your choice and all accompanying variables you have identified in your estate plan. We almost always recommend a trust-based estate plan to clients with minor children. In Virginia, as in most states, there are unintended consequences when minor children are named as a beneficiary via a Will or worse, in a no estate plan situation. Now that sounds like a "set-up" for the firm's motto: "Your Dreams, Our Knowledge...Creating an Estate Plan That Works!"