

Choosing Your Child's Guardian

A STEP-BY-STEP WORKSHEET

Choosing a person or family to care for your children is difficult. In fact, for many families, it's the hardest part of planning their estate. It's not easy to think of anyone else, no matter how loving, raising your child. Yet, you can make a tremendous difference in your child's life by planning ahead. And you have nothing to lose except a few moments thinking about what you value most in life, and in childrearing.

Anyone with a child under the age of 18 must consider who would raise that child if they were unable to. Of course, we all imagine the worst case scenario – our own premature deaths – when we consider this. But there is a less tragic, and common, situation in which naming a guardian is crucial: incapacity. If you and your spouse were unable to care for your children for a time, who would watch over them while you recovered your abilities?

The younger your child, the more crucial this choice is, because very young children cannot form or express their own preferences about caregivers. Yet young children are not the only ones who benefit from careful parental attention to guardianship. Children close to 18 years old will be legal adults soon, but, as you well know, a parent's job does not end when the

child reaches 18. By naming and talking about your choice of guardian, you can encourage a lifelong bond with a caring family.

The nomination of guardians is a straightforward aspect of any family's estate plan. It can be as basic or detailed as you want. You can simply name the guardian who would act if both you and your spouse were unable to. Or you can provide detailed guidance about your children and the sort of experiences and family environment you would like for them. Your state court, then, can give strong weight to your expressed wishes. If you have "chosen" guardians, but have not legally named them in binding documents, your choices may not be honored should a family member or friend petition the court, or if the person you have informally chosen is not available.

So how do you actually choose the right person or couple? You may have too many loving family members to count. How do you choose between them? Or you may be from small families and wonder if you can find anyone suitable. Either way, you can make a good choice by following four straight forward steps.

LET'S BEGIN.

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STEP 1:

MAKE A LIST.

Make the longest list you can stand of everyone you know who might possibly be a good guardian.

When considering whether someone should be on the list, ask yourself, “Would they provide a better home for my children than the foster care system?” If the answer is yes, put them down. If the answer is no, note that too, for you may wish to express that under no circumstances should these people be made the guardians of your precious children. Your list could contain dozens of names but should have at least 3 or 4 people or couples before you call it a day.

Think beyond your sisters and brothers. Parents have chosen as guardians, cousins, aunts & uncles, grandparents, child care providers, business partners, and friends. Consider long-time friends and those you’ve gotten to know at parenting groups. They may share similar philosophies about child-rearing. Do not eliminate people from your list for financial reasons. A well-counseled estate plan will ensure that there are enough financial resources available to your children’s guardians. And, you will have the opportunity to have “trustees” to care for your financial assets through your trust.

FIRST NAME(S)	LAST NAME	RELATIONSHIP

2

STEP 2:

DECIDE WHAT MATTERS MOST.

Choose a few factors that are most important to you. Some options to consider are below.

Obviously, the perfect choice would score highly on every measure. But because we are all imperfect, you will likely have more success in choosing the few characteristics that are most important to you. Consider, as you make your choice, that some factors can be influenced by you and others cannot. Integrity is something you cannot change. But if having an at-home parent is important to you, your prospective guardian might be willing to come home to raise your child if you make it possible through a well-structured and funded plan. **Rank the ones that matter most to you.**

MATURITY	PATIENCE	STAMINA
AGE	PARENTING PHILOSOPHY OR STYLE	PRESENCE OF CHILDREN IN THE HOME ALREADY
INTEREST IN AND RELATIONSHIP WITH YOUR CHILD(REN)	INTEGRITY	EDUCATIONAL BACKGROUND OR PHILOSOPHY
STABILITY	ABILITY TO MEET THE PHYSICAL DEMANDS OF CHILDCARE	PRESENCE OF ENOUGH "FREE" TIME TO RAISE CHILDREN
CULTURAL HERITAGE	RELIGION OR SPIRITUALITY	DISCIPLINARY STYLE
POTENTIAL CONFLICTS OF INTEREST	WILLINGNESS TO SERVE	SOCIAL AND MORAL HABITS AND VALUES
WILLINGNESS TO ADOPT YOUR CHILD	MARITAL OR FAMILY STATUS	LOCATION/GEOGRAPHY

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STEP 3:

RANK YOUR LIST ACCORDING TO YOUR PRIORITIES.

Use the factors you chose in step two to narrow your list of candidates to a handful. Congratulations! You can relax knowing you have many good choices to choose from. Listen to your body and feelings as you consider each person or couple as guardian. You'll have to use your gut to rank order this short-list into the people you would want first, second, and so on. If you select an attorney experienced in helping parents of minor children, be prepared to answer the following question whenever you have named a couple: if the couple divorces or, because of death or incapacity, only one can serve, would you like either one to be guardian? Or would you prefer to move to the next name on the list?

	FIRST NAME(S)	LAST NAME	RELATIONSHIP
1			
2			
3			
4			

For many families, it's as easy as it looks. For others, however, these three steps are fraught with conflict. One common source of difficulty is disagreement between spouses. Consensus is important. While you can each name different guardians, most parents are happier when they reach agreement. Explore the disagreements to see what information about values and people you should both understand. Use all your strongest communications skills and empathy to understand each other's position before you try to find a solution that you can both feel good about.

Regardless of which spouse's family or friends appear more frequently on your final list, it's 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, and members of the other family as trustees, to manage the assets for the children. If there is a likelihood of conflict between these family members, be sure to share this with your attorney so that your guardianship can be customized to encourage them to keep the lines of communication open.

4**STEP 4:****MAKE IT POSITIVE.**

For some parents, getting past this decision quickly is the best way to achieve peace of mind and happiness. For others, choosing a guardian can be the start of a more intensive relationship-building process. An attorney who understands where you and your spouse fall on that spectrum can counsel you appropriately.

For those who want to use the estate planning process as a life-enhancing inquiry, consider the following:

- Guardians, once they know how strongly you feel about their loving and good characters, may choose to become more involved with your children (as “godparents” do in some religions).
- The focus on what you want for your children, whether you are there to provide it or not can clarify your own parenting priorities, in addition to enabling you to create a highly customized estate plan that will convey your values.
- This last idea is not for the faint of heart: you can use planning for your children to consider the impermanent nature of relationships. What do you want to achieve with your children while they’re still at home with you? What legacy do you want to leave for them when you say goodbye?

Although we have shared some methods, choosing and nominating a guardian can be an intensive, life-changing process, you should know that it can also be the easiest “legal” issue you’ll ever face. The nomination of guardianship itself can be a very brief document or just a paragraph in a will or a trust. So use this article as a resource as you make these tough decisions... but only take what works for you. Nominating guardians need not be a life event. However you complete the process, you will find a new level of peace of mind.