

Guardianship Responsibilities

If you have children, the role of a Guardian is a very important one. Should you die without making a Will (or you do not appoint Guardians in your Will) your children could be placed in care until the Court appoints official Guardians to look after them. This procedure could take months and would obviously result in distress for both your children and other members of your family. In addition, to safeguard the future of your children you should request that your appointed Guardians also make a Will.

Who should act as Guardians?

It is important to consider who should be the Guardians of any children under the age of 18 years who may survive you. If parents are unmarried or have divorced/separated, the Law has certain requirements and, assuming that either parent has the power to appoint Guardian(s) on their death, it is usual for such appointments to take effect on the death of the second parent.

It is normal practice to appoint family members, particularly where very young children are involved. However, as children grow it may be felt more appropriate to appoint friends who are more likely to share your lifestyle and reside nearer than your family members.



Although not essential, it is usual that the same person(s) are appointed Guardian(s) of all the Testator's minor children. Also, the Testator should obtain consent from the proposed Guardian(s) prior to making the appointment. As the Guardian(s) are to act only after the demise of the surviving parent it is desirable that the parents appoint the same person(s) to become Guardian(s).

Should each parent appoint a different Guardian, it is worth remembering that both will legally act following the demise of the surviving parent. This decision could well impact on the future of your child(ren).

Although you can also appoint different Guardian(s) for different children, you should consider that this may mean splitting them up. It is the responsibility of Guardian(s) to ensure that adequate contact between the children is maintained and you may not wish for your children to be separated in this way.



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Who cannot appoint Guardians?

Unmarried fathers (who do not have parental responsibility) cannot name Guardians or become a Guardian should the mother die. It would be necessary to enter into a written agreement to share responsibility with the mother or apply to the Court if they wanted to ensure that they did. However, it would be possible for unmarried fathers to become a Guardian if appointed by the mother or by marriage.

How many Guardians?

When the appointment of a family member is considered, care needs to be taken to avoid appointing a 'committee' of relatives, as the welfare of the child(ren) may be overlooked and a committee can be difficult to manage. It is best to limit the maximum number of Guardians to two. It is also preferable that they share a home as partners. Thus your child(ren) will become part of a familiar and stable environment at probably the most difficult time of their lives. It is also worth considering the appointment of substitute Guardians, as this will ensure continuity if circumstances change.

The Guardian's duties

These include responsibility for the day to day upbringing of your child(ren) including holidays, birthday presents and their general welfare. The terms of the Will should be such that the Executors and subsequently Trustees, can do all that is necessary to assist in financial terms.

The implications

There will be financial, social and emotional implications taking on such a vast role and the matter should be discussed in detail between the Testator and the appointed Guardians. The role of the Guardian is a very responsible one and should not be entered into lightly.

Many parents will provide financial support for their children in the event of their death and, although it may seem insensitive to question them about this, it is a factor in making any decision. As a Guardian, you may be able to claim child benefit and receive an allowance in the event that both parents are deceased.



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Where one parent is alive and you are still called upon to act as Guardian, the situation will obviously be more complicated. There include:

- when a surviving parent is unable to perform their role because they are overseas, in the army, in prison, disabled or mentally incapacitated, or after the death of the first parent, or they just refuse responsibility.
- when a couple are separated or divorced and just one of the parent's die. The Guardian will act with the surviving parent and should disputes arise, they will have to be settled by the Court.
- when the surviving parent is still considered the statutory Guardian.

It is normal for the financial management to be separated from the day-to-day upbringing of children. Whilst the Guardians have the daily responsibility, it is more appropriate for the financial control to be handled by someone else, normally the Trustees of the Estate.

The two tasks demand different skills that may not always be found in the same person. It also allows for difficult decisions to be shared with the Trustees, Guardian(s) and later the child(ren).

Where children are underage and are to benefit from your Estate you should nominate them as Beneficiaries in your Will. Guardians should not be nominated and money will be held in Trust and will be controlled by the Trustees for the benefit of the children.

The appointment of testamentary Guardians for children allows you to decide who should be responsible for your children's welfare, maintenance and education, and how these should be funded if both your deaths occur while any child is under 18 years of age.

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