

Seven Considerations for Selecting a Guardian Under a Will

The last thing any parent wants to think about (yet the first thing for which a parent should plan) is “Who will raise my child if I cannot?”

For this reason alone, every parent of a minor child should sign a Will appointing a guardian. Under Maryland law, a guardian named in a Will does not need court approval. The guardian will be tasked with the future care for the emotional and physical well-being of one’s child or children. There are a number of factors parents should consider before naming a guardian, specifically:

- *Whom should I name?* Frequently, clients have trouble deciding whom to name, and some even delay the estate planning process because they cannot agree on this one aspect. Naming someone is always preferable to doing nothing because failing to name a guardian means you have implicitly allowed the court to decide who should raise your child. If several family members or others step forward, the process can cause discord among family relations. Naming someone lets your family, friends, and the court know whom you intended to raise your child, will hopefully avoid any disputes, and will allow those who are willing to become a guardian, but are not named as such, to understand and respect your wishes.

Many clients want to name one or both of their parents as guardian(s), but will the grandparent(s) have the stamina and energy to provide care until the child reaches the age of 18? The answers will differ in each case, and the person best suited to care for your child now may not be the person best suited to care for your child in 10 years. You should name the best guardian currently, and then revisit this decision periodically, to ensure you still feel the guardian selected is the right person, or to modify your decision.

- *What happens if I have several children and a guardian cannot care for all of them?* A guardian is not required to serve, and if the guardian is willing to care for fewer than all of your children, the guardian may do so. Therefore, if you would like the guardian to serve only if he or she will keep your children together, you should expressly state this intention in your Will.
- *What if the named guardian lives in another state?* When parents unexpectedly pass away, the lives of both the guardian and children will forever change. Sometimes, the guardian will move to the state in which the parents resided, but often the guardian simply cannot since the move would require the guardian to quit his or her job and uproot the guardian’s own family. If keeping your children in the same state is important to you because you want to minimize the changes a child undergoes after your death, consider naming only local guardians or providing a statement to the out-of-state guardian that you wish the guardian to relocate to the state in which you resided (in which case, it is important to name an alternate if the first named guardian is unable or unwilling to move).

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