
Appointing a Guardian: What is a guardian and why do I need to appoint one?

If you have children under the age of 18, then you need to appoint a guardian in your Will.

This is the case whether you are a single parent or if you are a couple with children.

If you are a couple, then although on the death of one of you, the other will usually continue to care for the children, if you both died, then a guardian would need to step in, to care for and make decisions for your child or children, until they reached 18.

This can be a difficult and emotional decision, but we can help with some of the essential points you need to consider.

Why do I need to appoint a Guardian?

Leaving this decision to family or friends after you've gone can mean that your wishes aren't followed. It also increases the likelihood of disputes if those left behind don't know what your wishes are.

Who do I choose? How do I decide?

This is a very personal decision and will come down to a number of things, including who you think will act in the best interests of your children, who you believe would raise them, protect them and manage their interests in the way you would wish.

In coming to your decision, you may consider the faith, financial means or simply the character of the people you choose. The guardian you appoint does not have to be a family member. Although it is common to appoint a family member, this will not be right for everyone.

You can choose any person, or more than one person, over 18 to be the guardians of your children until they themselves reach 18. You may decide to appoint a couple. If you choose to appoint more than one guardian and the people appointed do not live together then you should specify where you would prefer the children to live.

The person you choose will assume parental responsibility should the guardianship clause come into effect. This means that they will be legally responsible for, and will be able to make decisions on your children's behalf, regarding education, health and finance.

You should speak to your chosen guardian(s) to ensure that they are happy to take on this responsibility should the need arise.

What about financial implications?

Many people worry about the possible financial strain on guardians should they be called upon to take on the responsibility for additional children unexpectedly. To ease the financial implications, your guardians can be assisted by your estate.

If you have left your estate (or part of your estate) to your children, then this money will be looked after by your Trustees for the children until they reach 18 (or later if you wish). The guardians would be able to request money from the Trustees to cover any increased living costs.

Your guardians can also request funds to pay for things for the children, such as school fees, school trips, holidays and clothes. Provided that your trustees consider any request to be reasonable, they will be able to provide the money requested and/or suggest a way to advance money to your guardians whilst ensuring that the children's inheritance is protected. An example of this could be a loan to your guardians to buy a larger house.

Ensuring your wishes are followed

If you appoint a guardian, then provided the person you have named is willing to take on the responsibility, your Executors and loved ones will have to abide by your wishes and allow the person you appoint to take the children into their care.

If anyone wishes to challenge the guardian you have appointed, then they will have to do this through the Courts.

In addition to your chosen guardians, you may wish other people to be consulted about the children's upbringing. You may also have strong views about religion, education, geographical location or general upbringing.

This being the case, we can also prepare a Letter of Wishes for you to sign, to set out your particular wishes and feelings and, if you wish, ask your guardians to consider the views of your wider family when making important decisions for the children as they get older.

Although this isn't a legally binding document, a Letter of Wishes will give your guardians valuable information about how you would like your children to be brought up, should they need to act.

What happens if you don't appoint a Guardian?

If you do not appoint a guardian in your Will, then there are several things that could happen, including:

A step-parent may be appointed and take the child into their care if they took on formal parental responsibility for the children while married to one parent.

The Courts could appoint a guardian. They could do this from elsewhere in your family or wider social network (e.g. godparents or family friends).

The Courts could make an Order stating that your child should be placed into foster care or for adoption.

If you'd like more information call [01904 866139](tel:01904866139)
or email hello@rochelegal.co.uk



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