

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

For many people, making a Will is a way to provide for their children after they are gone. When you have a young family, having a Will in place can give you peace of mind that your loved ones will be taken care of if anything should happen to you. This is not the only way that a Will can safeguard your children, however. Less well-known, but just as important, is the ability to appoint a Guardian through your Will.

If you have children, and they are under the age of 18, then it is essential that you appoint a Guardian in your Will. This is just as critical for couples as it is for single parents.

In this help guide, we explain the importance of appointing a Guardian and identify some of the major points you need to consider when making this sometimes difficult and emotional decision.

Why do I need to appoint a Guardian?

First and foremost, using your Will to appoint a Guardian is the ideal way to make your intentions clear. It indicates who you want to take over parental responsibility of your children in the event of your death. In other words, it provides certainty.

Without this certainty, disputes between your loved ones can easily arise – as each tries to guess your wishes. Arguments over Guardianship can rip families apart and are likely to come at an already distressing time in the aftermath of your death.

Additionally, you may have very definite intentions as to whom you would like to act as Guardian for your children, but unless this is recorded in your Will, there is no guarantee that these wishes will be followed.

By law, young children need a Guardian to take responsibility of them until they reach the age of 18.

What about couples?

If you are in a couple, there is the temptation to think you do not need to appoint a Guardian. After all, on the death of one of you, the other will usually continue to care for the children. As unpleasant as it may be, however, it's important to consider what would happen if both of you were to die at the same time, or in a narrow period of time. A Guardian would need to step in, look after, and make decisions for your children.

Who do I choose? How do I decide?

This is a very personal decision and a very important one. The person you choose will assume parental responsibility should the Guardianship clause in your Will come into effect. This means that they will be legally responsible for your children and will be able to make decisions on their behalf, regarding education, health, and financial matters.

There are several things you might consider when making your decision. These include:

- 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?
- The potential Guardian's character or other details about their background such as their:
 - Age
 - General health
 - Faith
 - Financial means
 - Lifestyle (i.e. whether they can provide a stable, safe home for your children)

Whoever you decide upon, you should speak to your chosen Guardian(s) to ensure that they are happy to take on this responsibility if the need should arise.

What about the financial implications?

Many people worry about the financial strain which may be placed upon a Guardian. If they take on responsibility for your children unexpectedly it can represent a significant and unforeseen financial burden. To ease this, you can assist the Guardian through your estate.

If you have left your estate (or part of your estate) to your children, then this money will be held on trust for your children by their Trustees until they reach the age of 18 (or later if you wish). The Guardian you have appointed will be able to request money from the Trustees to cover any increased living costs.

The Guardian may also request funds to cover costs incurred for your children's benefit such as:

- School fees
- Costs for school trips
- Holidays
- Clothing

As long as your Trustees consider the request to be reasonable, they will be able to provide money to meet the expense. They may also suggest ways in which money can be advanced to the Guardian that ensure your children's inheritance is protected. For example, they could make a loan to the Guardian to buy a larger house, an investment which should preserve the underlying capital.

Will my wishes be followed?

As mentioned above, appointing a Guardian in your Will means that your wishes regarding responsibility for your children are made clear. Provided the Guardian you have named is willing to take on the role, this appointment must be respected by your loved ones and Executors (the people responsible for dealing with your estate). They must allow the Guardian to take the children into their care.

If anyone wishes to challenge your choice of Guardian, they will have to do this through the courts.

Writing a Letter of Wishes

You may want to give the Guardian more detail about your wishes for your children's upbringing. For example, you may want to name other people to be consulted about how your children are looked after or brought up. Additionally, you might have strong views about religion, education, geographical location, or the kind of childhood you wish your children to have.

You can set out this kind of information in a Letter of Wishes, which can be prepared and signed at the same time as your Will.

Although a Letter of Wishes is not a legally binding document, it will give the Guardian valuable information about your wishes and feelings regarding your children's upbringing – if the Guardian needs to act.

What happens if I don't appoint a Guardian?

If you do not appoint a Guardian in your Will, there are several things which could happen, these include:

- A stepparent could take your children into their care, if they took on formal parental responsibility for the children while they were married to one parent.
- The courts could appoint a Guardian for you. They can appoint someone in your family or from your wider social network (e.g. godparents or family friends).
- The courts could also make an Order placing your children into foster care, or placing them up for adoption, if these steps are in the best interests of the children.

How Roche Legal can help?

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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