

GUARDIANSHIP OF CHILDREN IN WILLS

Appointing a guardian in your Will

A guardian will have legal responsibility for your minor children or children with special needs in the case of your death. A guardian has the same responsibilities for your children's care as you do. This includes making decisions about your children's health and wellbeing, schooling and maintenance.

The appointment of a guardian under your Will is not binding, and may be overturned by the Family Court. However, it does ensure that your wishes are clear and may assist in determining what will be in the best interests of your child.

Choosing a guardian

Appointing a suitable guardian for your children is an important decision for Will makers. There are many things to consider when choosing a guardian or guardians, including, amongst other things, whether the potential guardian:

1. has a good relationship with them;
2. shares your values and religious beliefs;
3. is a legal adult (a minor cannot be a legal guardian for another minor);
4. has a suitable living situation for raising children;
5. has children of their own, or plans to have children; and
6. is of an age which will prohibit them from being able to act at the time of your death etc.

Before you appoint a guardian for your children under your Will, you should discuss the matter with them. Being appointed a guardian carries with it some legal obligations, so your guardian may want to seek advice before being appointed.

Should you die without a Will or fail to nominate a guardian, the Family Court will decide who takes care of your minor children.

Appointing more than one guardian

You may choose to appoint multiple guardians, however you may wish to consider the practicalities of the appointment. This is particularly the case if, for example, the guardians you have appointed do not live together or do not get along well.

You may also consider appointing substitute guardians in case your original guardian is unable or unwilling to care for your children at the time of your death.