



Appointing Guardians for your Children or Adult Dependents

A 'guardian' is someone you have named in your Will as the person you would like to be responsible for your children if they are orphaned before reaching the age of 18.

Although it is not something any parent wants to consider, the death of a mother or father places huge stress on children. Not just the initial shock of bereavement but also the accompanying upheaval and monumental changes to their lives. Whilst it is not possible to protect children entirely from the loss, it is possible to take steps to ensure that the devastation caused by the death of a parent is not made worse by legal complications and uncertainty.

If when you pass away the other parent of your children survives, the surviving parent will normally continue to have full responsibility for the children. However, if neither parent survives (as in some road accidents) then the guardians you have appointed will take on the responsibility for your children.

If you fail to appoint guardians in your Will and your children are orphaned before they reach 18 the courts will appoint guardians instead and this could be a person neither related nor known to the child. They won't necessarily choose the people that you would have preferred to take care of your children and there is no guarantee that you would have been happy with the court's decision. Until such a time as the Court appoints a guardian, the child may be taken into care.

By appointing guardians you can ensure that your children are looked after by the people that you have chosen as the best people for the job. An appointment of legal guardians for your children needs to be made in writing, and signed and dated. It is worth noting that Godparents have no legal standing. The best way to appoint a guardian is under the terms of a Will, before doing this you will need to approach the people you would like to appoint as guardians to find out whether they are willing and able to take on this responsibility.

You may also wish to appoint alternative guardians, who will take their place if your intended guardians pass away. A guardian can be anyone aged eighteen or over whom you trust. This could be a family member or a close friend. Your child may have an existing close relationship with another adult, which could make the choice a little easier.



Choosing a guardian is not a decision that most parents take lightly, and it can be very challenging to think about who would like to have raise your children if something should happen to you.

The roles and responsibilities of guardians are quite similar to that of a parent and include the following:

- Day-to-day care of the surviving children.
- Making decisions about the children's upbringing, education, health and welfare.
- Usually a Guardian will also be one of the Trustees for the property held in trust for the child/children.

Every parent will have their own beliefs and priorities regarding the care of a child and it is these considerations which are at the heart of choosing a guardian.

When considering who to appoint as legal guardian for your children, you will need to consider the following:

- How do you feel about their values and parenting skills?
- Do they share those values which are important to you- perhaps in relation to religion or education?
- Will their lifestyle be able to accommodate your child? If not, are they prepared to make changes?
- Are they able to offer a stable family environment?
- Are they fit enough to cope with the demands of a child over a number of years, particularly a young child?
- What is the quality of their present relationship with my child/children?
- What is the quality of their present relationship with other members of your child's family?
- Are they willing and able to be handle the responsibility of caring for my child/children on a long-term basis?
- Do they live locally? Will your child have to move schools?
- Is it best to put down on paper your thoughts regarding your children's upbringing in a 'Letter of Wishes' to kept with your Will?

You may appoint just one guardian; however, care should be taken when appointing more than one guardian to avoid a dispute as to which guardian your child should live with. Most people when writing their Will choose to appoint two, typically a couple. Your instructions should always be set out.



Many people also choose to appoint the guardians as trustees to handle any inheritance you leave to your children, particularly if you wish to apply certain conditions on when they can access money for themselves. If this is the case, it is also advisable also to appoint another trustee who is not related to the guardians, e.g. a solicitor or accountant. Doing so will help to provide objectivity and guard against conflicts of interest. It will also provide the guardians with some support in handling the financial and legal aspects of a trust.

You may only appoint guardians for children in your Will if you currently have 'parental responsibility' for the children. Parental responsibility can be a little confusing; the following flowchart may help determine whether parental responsibility applies to your situation (England and Wales only; the situation is different in Scotland and Northern Ireland).

In some circumstances it may become necessary to change your appointed guardians, for example:

- One of your intended guardians dies
- Your intended guardians have separated or divorced
- Your intended guardians have left the country or had some other major life change
- Your intended guardians are no longer able or willing to take on the responsibility

You can change your appointed guardians in one of two ways:

- By writing a codicil
- By appointing in your Will alternative guardians who would take on the responsibility for your children if your intended guardians die before you do.
- Have you obtained a parental responsibility order from the court?

Let us know if you think we can help. You can contact us on **01509 610472**, or at www.chestertonhouse.co.uk.

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