

Guardianship – taking care of young children

by **Kylie Costigan**

Who looks after my children when I die?

As a parent of young children, one of the most important things you will want to address in your Will is who will look after them (emotionally and financially) if you die while they are still young.

You can appoint a testamentary guardian for your children under the terms of your Will so that if you die, those persons have the rights and responsibilities of a parent.

If you do not appoint a testamentary guardian by Will, then your family members will be left to decide who will take care of your children, which could end up in a Court application needing to be made if consensus cannot be reached. Further, the choice is outside of your control.



Who do I choose as a guardian?

The decision of who to appoint to look after your children is a deeply personal one and not a decision to be taken lightly. Some factors to consider are the guardian's age, their ability to care for your children until each child turns 18, their financial position, their willingness to raise your children as you would want them to be raised and quite simply their willingness to take on the role.

We would recommend you discuss your decision with the potential guardian or guardians to ensure they are happy to be appointed.

What if someone challenges who I have chosen to be a guardian?

The appointment of a testamentary guardian under the terms of your Will is a binding appointment and can only be challenged through a Court process.

If the other natural parent of your child is no longer living, then the guardian has the same position as a parent and if someone disagrees with the appointment, then they must apply to the Family Court to challenge the appointment (in a similar way that someone could apply now to challenge your parental responsibilities).

If you have chosen a guardian to 'represent' you while the other natural parent of your child is still alive, then that parent may apply to the Supreme Court to remove the guardian you have chosen.

What do I need to do?

You should review your Will and ensure you appoint a guardian under the terms of your Will if you have children under 18 or plan to start a family in the future.

You should also consider the establishment of **testamentary trusts** under the terms of your Will and ensure you have adequate assets to provide for your children until they can begin to provide for themselves. This may involve contacting your financial advisor to arrange life insurance to cover any shortfall.

At Estate First, we can assist in preparing Wills which properly cater for your young family. We can also assist you in preparing guidelines for the guardians of your children and for the person or persons you chose to control your children's inheritance while they are young.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us info@estatefirst.com.au



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