

## How can I appoint a guardian for my children?

### Estate Planning Information Sheet

If you have young children, you have probably thought about who you would like to take care of them if you die before they turn 18.

You can use your Will to nominate a person you choose to be your children's guardian.

#### Why should I appoint a guardian?

Appointing a guardian in your Will may help avoid disputes between your family members by making your intentions clear. However, it is not binding.

The Family Court has an overriding discretion to appoint a different guardian or remove a guardian of your child where it considers this to be in your child's best interests. However, if you have put in place a set of guidelines for your children's guardians (see below), where you have set out your reasons for the appointment of a particular guardian, this may reduce the risk of the Family Court upsetting your intentions about who the guardian should be.

What are the powers and responsibilities of a guardian?

A guardian is responsible for the daily and long term care and welfare of your child and for making important lifestyle decisions on their behalf. The guardian must ensure that the child is adequately housed, clothed and educated. The guardianship of minor children is an important task and the choice of a guardian or guardians should be thought through carefully.

Before you deal with this issue in your Will, you should discuss the proposed appointment with your intended guardian or guardians.

You should carefully consider whether they:

- Are prepared to accept the responsibility;
- Are of a similar age to you and share similar values;

- Understand your views on how you wish your children to be raised.

It is strongly recommended that you put in place a set of guidelines for your children's guardians which outline any specific factors you wish your guardians to consider in raising your children. We can assist you with the preparation of these guidelines if you are interested.

You may also wish to nominate a substitute guardian in your Will in the event that your first choice is unwilling or unable to act.


A guardian does not have any responsibility or power regarding the assets of your estate or trust funds established for your children under your Will – the trustee you nominate in your Will has this responsibility. While this separation of duties may act as an effective 'check and balance', it is important that the trustee and guardian are able to communicate easily and work together in the best interests of your children.

#### How does a guardian access funds for my child's welfare?

There is generally a standard clause in your Will that gives the trustee the power to advance income and capital for the maintenance, support, education and benefit of your children. Once a child has reached a certain age, the trustee may decide to pay funds directly to the child. Until this time, the trustee will usually make payments to the child's guardian, or directly to the provider of the goods or services.

You may consider it appropriate to make provision beyond that outlined above. Other financial assistance that can be provided to your child's guardian includes:

- A lump sum gift of money to extend their home or buy a car to help more comfortably accommodate your children;

- 
- The power to reside with your children in your home rent free ;
  - 
  - One-off or regular payments to them personally for their efforts.

### **Are there any legal implications of being a guardian?**

There may be. For example, under superannuation law, if a member of a superannuation fund dies, the member's superannuation death benefits are usually payable to his or her 'dependants'. If the member is a guardian of a child, that child may fall into the category of a 'dependant' if the child relies on the guardian for financial support.

In addition, Queensland legislation provides that certain people are eligible to make a claim on an estate and a child who is financially dependent on a guardian may satisfy the requirements to be a claimant on the guardian's estate.

Provision of adequate support for the child from the estate of the child's deceased parent may prevent the guardian's estate being placed in this awkward position.

It is important for the guardian to obtain advice on these issues when conducting their own estate planning.

***Disclaimer: This information sheet is for general information only and should not be relied on as, or substituted for, professional legal advice.***