



Guardianship of young children in wills



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“A very professional
and efficient service
provided in a very
kind and considerate
manner”

Client comment

What is a guardian?

A guardian is a person that you appoint in your will to look after your children if you die before they reach the age of 18.

An appointed guardian is given parental responsibility in the event of your death and has the same rights and responsibilities as a parent when it comes to a child's health, welfare and education etc. An appointed guardian must always act in the child's best interests.

Who can be a guardian?

You can appoint anyone you wish to be a guardian for your child, as long as they are 18 or over. This could be a family member, a close friend or anyone else you feel is appropriate to look after your child in the event of your untimely death.

You can appoint more than one guardian, and sometimes it is useful to do so in the event that your chosen guardian is unable or unwilling to act.

What happens if I do not appoint a guardian?

If you do not appoint a guardian to look after your child and no other surviving parent with parental responsibility exists, then the court will decide who to appoint as guardian for your child.

This may very well not be someone your child knows or is close to and could lead to disputes amongst your family.

Guardianship clauses in a will

It is common for guardians to be appointed under the terms of a will to make provision for the care and protection of your child if the worst should happen. For married couples with mirror wills, the guardianship clause only comes into effect on the death of the second parent.

It is sensible for at least one of the guardians appointed in a will to also be an executor/trustee of the will if you are leaving some or all of your estate to your child. This is because your guardians will know the day to day requirements of your child, and as trustees they will be able to apply money/assets held in trust for the benefit of your child as they see fit, for example, for his or her education.

Divorced/separated parents

Usually, the surviving parent will have parental responsibility for the child. For unmarried partners, if a child was born after 1 December 2003, a father will automatically have parental responsibility if his name is registered on the birth certificate.

If the deceased parent appoints a guardian in his or her will, then this appointment will not take effect until the surviving parent dies. This can be quite worrying if the surviving parent has little involvement in your child's life or if your child is close to your chosen guardian and you would rather that he or she stays with them.

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Divorced/separated parents: Guardians and living with orders

Any guardians appointed will have standing to apply to the court for a living with order (previously known as a residence order) for your child after your death. A living with order is a court order stating with whom a child is to live.

It is always a good idea to leave a letter of wishes with your will explaining why you feel that your child should live with his or her guardian instead of the person who has parental responsibility to assist with any future living with application by your guardian.

For more information, please contact Brachers' private client team.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.