

Testamentary Guardians

Have you considered who will look after your children under 18 upon your death?

A point of concern for parents making a will for the first time, or reviewing their will, is the appointment of a Testamentary Guardian for their children under 18.

A well-considered appointment of Testamentary Guardians can help avoid the distress of family disputes over children, should one or both parents die.

WHAT IS A TESTAMENTARY GUARDIAN?

A Guardian is a person you appoint in your Will to provide care for your children under 18.

They are responsible for both long term decisions – including the schooling, health, welfare and development of your children, and short-term decisions regarding daily care.

HOW IS A TESTAMENTARY GUARDIAN APPOINTED?

A Guardian can be appointed through your Will or by a current guardian or the Family Court.

The appointment will take effect:

- If there is no other parent surviving, upon your death;
- If the other parent is alive, upon your death *if* the appointment stipulates that it was intended for a guardian to be appointed even though there is another parent alive;
- All other cases, upon the death of the last surviving parent.

WHAT TO CONSIDER WHEN APPOINTING A TESTAMENTARY GUARDIAN?

When deciding on whom to appoint as Guardian, parents should consider:

- a. The relationship between the proposed Guardian and your children;
- b. The relationship between the proposed Guardian and the proposed Executors and Trustees of your Will;
- c. The location of the proposed Guardian and whether they or your children may need to relocate or upgrade their home.
- d. The Guardian's age and fitness to act
- e. The impact the appointment might have on the Guardian's income, finances and lifestyle;
- f. How the Will might be worded to provide assistance to the Guardian in caring for your children.

WHAT IF THERE IS A DISPUTE?

Parents should be aware that the Courts may intervene to remove children or appoint a different Guardian where the Court considers alternative arrangements to be in the child's best interests.

If you wish to review or appoint Guardian for your child, contact Sue Hobbs of our office.

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