



TESTAMENTARY GUARDIAN



Estate Planning
that connects
your head and
your heart.

Deciding who will raise your child or children if you were to die is one of the toughest decisions you will face as a parent.

A Testamentary Guardian is a person who is responsible for taking care of your child or children's daily and long term needs if there is no surviving parent and there are no other court orders stating who the child should live with.

As a general rule if an individual parent dies and there are no guardianship or court orders in place, children will automatically become the responsibility of their surviving parent. However in the case both parents die each parent needs to nominate in their Will an alternate guardian for their minor children.

How to choose the right guardian

When choosing a guardian think about the qualities that matter most to you in the raising of your children and choose guardians with similar values.

Along with factors like their parenting style, family structure and religious beliefs, it's important to consider;

- if the person is willing and physically able to look after your children
- what kind of existing relationship they have with you and your children
- where they live and if it would require your children relocating at such a difficult time
- if they financially and emotionally stable enough to look after your children

Choose the person that's right for right now

Nobody wants to think they might die next month or next year, so most planning reflects what you want to happen years in advance.

Who will look after my children if I don't nominate a Testamentary Guardian?

Don't assume your sister, mother or best friend will automatically get custody of your children.

If you don't nominate a Testamentary Guardian the Family Court will decide who should become the legal guardian based on the perceived best interests of your child.

This may not necessarily be the person you would choose.

Can my child's other parent name a different guardian in their Will?

You and your partner / co-parent should name the SAME person as Testamentary Guardian to avoid any conflicts.

It's standard practice to only name one member of a couple as guardian to avoid further complications if that couple separate or divorce.

Nothing says "I love you" like looking after your kids future (if you can't be there).



I was so scared to face the idea of my children living without me that I avoided doing a will. I feel so much relief and power in knowing they'll be looked after by the people I know will do the best job if I can't be there.

The guardianship arrangements you nominate for your very young children will be very different as they reach their teens, which means choosing the right person for right now, not 10, 15 or 20 years into the future.

Regularly updating your estate plan as your circumstances change will ensure your children are going to be cared for by the very best person for the stage they're at in their life.

Writing a Letter Of Wishes

Once you've made your decision you should take the time to document your wishes for raising your child.

This can take the form of a Letter of Wishes that provides information about your child and your parenting choices (disclaimer: a Letter of Wishes is not a prescriptive set of Standard Operating Procedures - choosing a Testamentary Guardian means choosing a person you trust to make decisions on your behalf, not simply follow your rule book).

Education
Travel
Values
Spirituality
Vaccination or health care
Contact with specific friends or relatives
Family history
Medical history
A list of friends or close contacts
Activities your child likes or dislikes

Include this along with a copy of your Will (or better yet discuss your thoughts over dinner with your chosen guardian) and take the time to read your Letter of Wishes every few years and update it with any new information.

ESTATE *YOUR* LAWYER

yourestatelawyer.com.au

DISCLAIMER

This publication contains comments of a general nature only and is intended to provide information. It is not intended to be relied upon as, nor is it substitute for specific professional advice. No responsibility can be accepted by Your Estate Lawyer or the authors for loss occasioned to any person doing anything as a result of any material in this publication.