**KNOW YOUR LEGAL RIGHTS**

**Why parents need a will to establish legal guardianship**

By Attys. Ralph E. Johnson & Josiah R. Stein

Few will argue that the most important time to have a will is when you are parents of young children. After all, when you are in your golden years, your will is more concentrated on your personal possessions and the wealth you want to distribute to your loved ones.

When you’re young, though, it’s all about something more important - the welfare of your kids.

As parents, you get to nominate who will be your children’s guardian in your will in the event that you and the other parent pass away simultaneously. Your will should include who they will live with, who will be in charge of any financial assets they may inherit, and most importantly, who will raise them to adulthood.

Naming a guardian in your will is a simple, yet effective, way of ensuring that your children are appropriately cared for in the event of tragedy. Doing so will ensure that the appointment of a trusted family member or close friend as your children’s guardian will occur as smoothly as possible.

While it is unlikely that a guardian will ever need to be appointed, this may be one of the most important decisions you will ever make. Without this in your will, you won’t have a say in what happens to your children.

**Nominating a Guardian**

If the children’s other parent survives you, the custody and care of the children generally remains with the surviving parent. When both parents pass away, children under the age of 18 need a legal guardian. The courts consider the best interests of children when deciding on the appointment of a legal guardian.

A court will consider whether parents nominated a person to act as the children’s guardian in their will. Most often, the court will honor this nomination, unless the appointment of this guardian is not in the children’s best interests. The Court will appoint an attorney advocate for your children’s best interests.

Parents can and do pass away at the same time, leaving their children orphans. This can happen very easily in a car accident. Although you may not want to think of this remote possibility, proper estate planning and identifying guardians for your children can provide you with some peace of mind.

**When Does A Guardianship Become Legal?**

A guardianship only becomes legal with a court appointment through court hearing, and the process can feel like walking through a maze. Be as careful as possible when you select a guardian. It’s important to note that a nominated guardian has no legal obligation to accept an appointment, so be sure to evaluate your choice carefully – and reevaluate your choice yearly or every other year, as circumstances may change.

While these decisions are personal, some things you may wish to consider when nominating a guardian in your will are: 1) Does the nominated guardian share your belief system in religion, education, and politics? 2) Is the nominated guardian capable of raising your children until they reach adulthood? 3) Where does the nominated guardian live?

Guardianship is subject to integration with the rest of your estate planning transfer of property. For example, your will may include a trust and trustee to hold and invest inherited funds for the kids. It would be common for the guardian and the trustee to be the same, but it does not have to be.

See an estate planning attorney when your children are very young. It is hard to imagine something more important than ensuring that your children are cared for if you cannot do so.

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