

7 Factors to Consider When Choosing a Guardian for Minors

Amundsen Davis Estate Planning Alert

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One of the most difficult decisions to make when it comes to estate planning is choosing who will serve as guardian of minor children. In my experience, this is often the sticking point for most couples. My recommendation is to make a choice about who will serve as guardian, and then reconsider this every year. It is very easy to make a short codicil to a will updating the guardians. Also, it is better to have something in place than nothing.

Some things to consider in choosing a guardian are:

- *Age of the child or children:* Infants and toddlers require substantial time and attention, and many people would find it difficult to accept such responsibility. Older children present a different set of issues, and they also may have established friendships and school identities that could make location of their guardian a factor.
- *Geography:* If a child is well established in the community, with friends and successes in school, it would be best to avoid disrupting that following the trauma of losing a parent. On the other hand, a child who is not happy, perhaps because of bullying or other issues, might welcome a clean slate.
- *Religion:* Children need spiritual guidance, so finding a guardian of the same beliefs as the parents is often an important consideration. In the absence of that, a “spiritual guardian” might be appointed to supervise church attendance and religious instruction.
- *Grandparents:* Age and health permitting, grandparents may be a very good choice as guardians. Grandparents may be retired, and have plenty of time to dedicate to the job. They may already be familiar enough to be a ready source of emotional support for the child. Grandparents may be able to relocate if they are not bound by employment requirements. On the other hand, courts may raise questions if the grandparent is very old, even if one is presently in good health.
- *Adult children:* A child who has reached adulthood may be a reasonable choice for guardianship over younger siblings, provided he or she is mature enough and able to command the respect of the younger ones. Family members are often favored by the courts for this role. On the other hand, there are opportunity costs imposed on the guardian being thrust into a position of

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such responsibility, which may interfere with getting established in a career or completing one's education.

- *Married couples as co-guardians:* Co-guardianships are expressly anticipated in some state statutes, but there are some important concerns about this approach. There is the chance that the couple will be divorced when the time comes to name a guardian, and a decision will need to be made about which person will serve as the guardian. There is the chance that the couple will divorce after becoming guardians, creating additional custody issues. Still, if the couple being considered for guardianship have children of their own, it is reasonable to name both as guardians so that the wards have the same status as the natural children. If you feel strongly that your child should be with one partner in a married couple, it is fine to name just that person. Remember, these are your documents and your attorney's job is to best set forth your wishes.
- *Willingness to serve:* The prospective guardian should be asked about willingness and ability to serve in that role. The nominee should be given time to consult with his or her family before making a decision to accept the responsibility. You should be encouraged to keep the nominee active in the child's life, through visits, phone calls, and the like.

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