



Guardianship

Taking care of young children in your Will

Who looks after my children when I die?

As a parent of young children, one of the most important things you will want to address in your Will is who will look after them (emotionally and financially) if you die while they are still young.

You can appoint a testamentary guardian for your children under the terms of your Will so that if you die, those persons have the rights and responsibilities of a parent.

If you do not appoint a testamentary guardian by Will, then the outcome for your children is not certain. It might be that your family members will be left to decide who will take care of your children, which could end up in a Court application needing to be made if consensus cannot be reached. Further, the choice is ultimately outside of your control.

Who do I choose as a guardian?

The decision of who to appoint to look after your children is a deeply personal one and not a decision to be taken lightly. Some factors to consider are the guardian's age, their ability to care for your children until each of them turn 18, their financial position and quite simply their willingness to take on the role and raise your children as you would want them to be raised.

You can appoint multiple guardians and have them act jointly if you wish. You can also appoint someone to act as the initial guardian and nominate a back-up guardian in the event the initial guardian is unable to act.

We would recommend you discuss your decision with the potential guardian or guardians to ensure they are happy to be appointed.

What if someone challenges who I have chosen to be a guardian?

The appointment of a testamentary guardian under the terms of your Will is a binding appointment and can only be challenged through a Court process.

If the other natural parent of your child is no longer living, then the guardian has the same position as a parent and if someone disagrees with the appointment, then they must apply to Court to challenge the appointment (in a similar way that someone could apply now to challenge your parental responsibilities).

It is a little more complicated if you want another person to 'represent' you as a guardian of your child even if the other natural parent is living. The enforceability of such an appointment depends on a number of factors, including the details of any parenting orders already in place between you and the other natural parent, and it may be that the other natural parent may have the right to have your chosen guardian's appointment set aside. This situation must be considered carefully and guidelines for your intended guardians may be helpful in such a situation.

What do I need to do?

You should review your Will and ensure you appoint a guardian under the terms of your Will, if you have children under 18 or plan to start a family in the future.

You should also consider the establishment of testamentary trusts under the terms of your Will which can ensure that your spouse and children are catered for in a protected and tax effective environment if you pass away (see

our [Testamentary Trusts in Wills](#) for more information in this regard). You should also ensure that you have adequate assets to provide for your children until they can begin to provide for themselves. This may involve contacting your financial advisor to arrange life insurance to cover any shortfall.

At Estate First, we can assist in preparing Wills, including Testamentary Trust Wills, which adequately cater for your young family. We can also assist you in preparing guidelines for the guardians of your children (including detailed guidance regarding how you would like your children to be raised if you are no longer here to do so) and for the person or persons you choose to control your children's inheritance while they are young. Please contact us on 1300 132 567 or email us at info@estatefirst.com.au to discuss how we can help you with this.