



Chadwick Lawrence

Yorkshire's Legal People

Appointing Guardians

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Many believe that custody of a child automatically passes to their closest relative when they pass away. This however is not the case as anyone can make an application to Court to obtain guardianship of a child as this is ultimately a decision for the Courts if there are no surviving parents. It is therefore vital to appoint a guardian for your children and the most common way of doing this is by Will as an informal agreement between relatives or a friend will not suffice. The appointment of a guardian must be made in writing, dated, signed and witnessed and therefore, the most appropriate instrument to appoint a guardian is in your Will. This allows you to choose someone you trust to take care of your children as the Court may alternatively appoint someone who you would not wish to have custody of your child.

Who can appoint a guardian?

Any parent with parental responsibility can appoint a guardian. Mothers automatically have parental responsibility for a child. A father automatically acquires parental responsibility if he is named on the birth certificate or if the father is married to or subsequently marries the mother.

Who can I appoint?

You can select any person you wish to become the guardian for your child, provided that they are over 18. You can choose more than one person, for example a couple. You can also make alternative provisions in your Will should that selected guardian have passed away before you. Putting in place a Will to appoint guardians will give you peace of mind that your wishes are in place. Remember that your guardians will only step in only if both parents have passed away and there is no other person with parental responsibility.

How can I avoid difficulties in appointing guardians?

It is possible to place a condition upon when someone should be appointed as a guardian. This may be preferable if you would wish to appoint a parent but would not want them to act if they had ill health or had reached a certain age at the time of your death. If that person cannot act for any reason, any substitute appointment will take effect.

Although the appointment of a guardian must take place formally in writing, you can leave a separate letter of wishes to be placed with your Will to advise your guardians of your more specific wishes. As these letters are not legally binding, their use allows you to express your wishes whilst also providing flexibility for your guardians without making your Will too complicated to administer. Your wishes may include expressing where your children are educated, or confirming which hobbies you would like your child to participate in.

How can I ensure that my guardians can afford to care for my children?

To compensate your appointed guardians, you can leave a monetary legacy by Will to them to ensure that they have enough financial provision to take care of your children. You can also make this gift conditional on them acting, so that they will not receive the gift if they disclaim their appointment and do not act.

How do I revoke my appointment of a guardian?

If your circumstances change and you do not wish to appoint that person anymore, you can revoke the selection formally in writing or by destroying the instrument that appoints that guardian. The latter however, if done by Will, would also mean that you would need to draw up a new Will so if you wish to change who you have appointed as a guardian, it is vital to seek specialist advice.



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The appointment of a guardian will leave you with peace of mind that your children will be cared for by the people that you select when you pass away. This will also provide security for your child's future. Contact our experienced team on 0800 015 0340 to put in place a Will to ensure that all eventualities concerning your children have been covered.



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