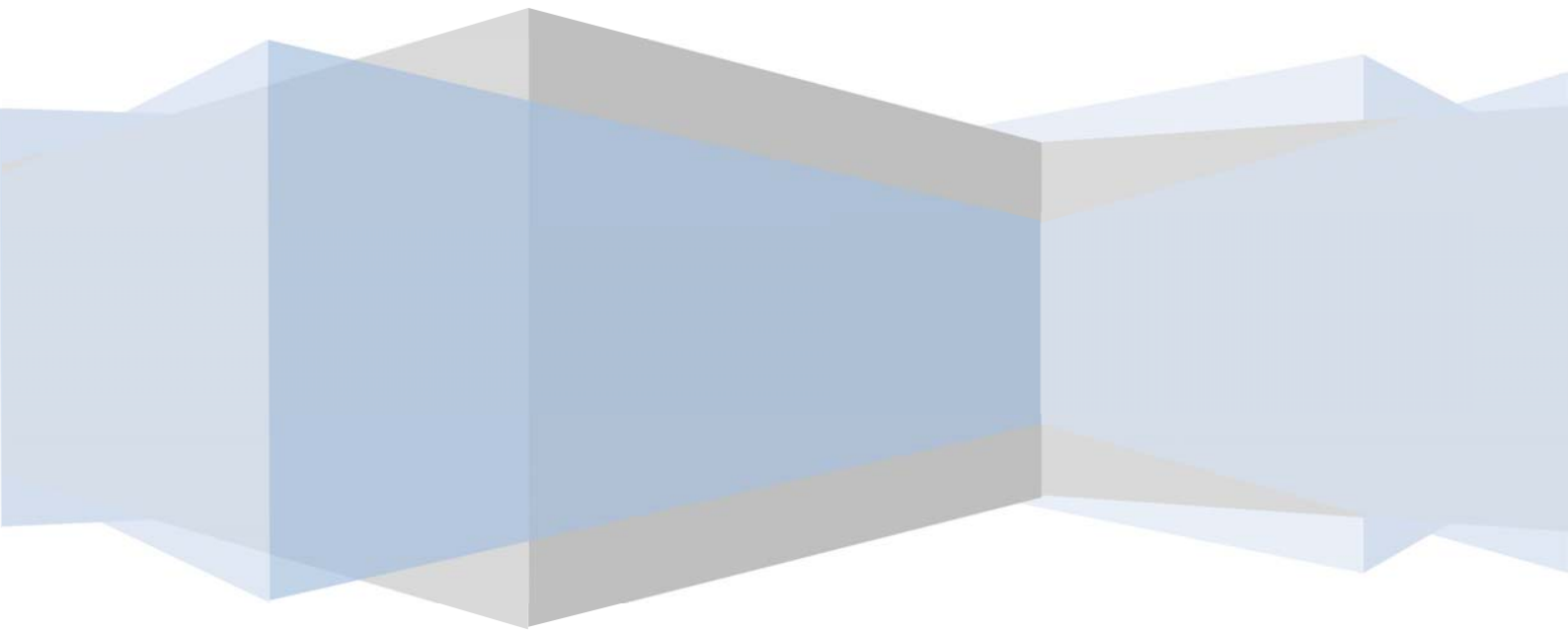


Download a Will

Guardians

The role of the Guardian and who you may appoint



Guardians

Why appoint Guardians?

Guardians are a vitally important appointment in your Will if you have children who are under the age of 18 years old. If you die having not made a Will, or having made a Will but without nominating persons to act as **Guardians**, your minor children will most probably be placed in care until the Court appoints official Guardians to take over the care of them. Even if you had a close relative who had always maintained that if anything happened to you they would always look after your children, your children would still most certainly be taken into care. To make matters even worse for your newly orphaned minor children, it could take a long time for the Courts to decide on who to appoint as their official Guardians.

Who to should you choose to Act?

Many people consider appointing their parents to act as Guardians, but again, in many cases whilst it represents an easy solution to get the Wills prepared, in many cases when thoroughly thought through, this is not a very practical or ideal solution. After all, when you are a Grandparent, whilst it's nice to see and look after their Grandchildren, sometimes it's nice to be able to hand them back!

Normally, your Will would stipulate that a Guardian is only appointed on death of their second natural parent.

Since your Guardians primary duty will be to bring up your children as their own, you need to ensure that the Guardian you nominate would be in a position to be able to fulfill that role. You would need to discuss their appointment with any potential Guardian and gain from them confirmation of their willingness to Act. Practicalities like the size of a Guardians home, their age and where they live should also be considered. Matters like how much would it cost to bring up your children and where would the money come from should also be discussed. Perhaps an appropriate life assurance plan written into Trust could provide a possible solution?

Another important consideration would be, would you really want your children to be uprooted from their friends to live with your sister who lives in New Zealand? Would you want them to be separated from each other if you had more than one minor child?

Alternative Guardians

We automatically include in our Wills the power for your appointed Guardian to appoint a replacement Guardian or two other Guardians to act after their death to ensure that provisions are made should they die whilst carrying out their role.

Guardians Role & Responsibilities

Guardians after your death take on full parental responsibilities for your children. This includes all aspects of their upbringing and well being, including all aspects of their healthcare, education and religion and so on. Guardians effectively take over your role as parent to your children, so it is absolutely essential that the Guardians you nominate have as similar views, values and outlook on life as yourself, so it is essential that your Guardians are chosen with great care.

Executors as Guardians?

Executors may also be appointed to Act as Guardians if appropriate in your Wills should you wish. It is only natural that you would want your children to be beneficiaries in your Will, but normally you would stipulate an age for the children to physically inherit. Between such times as you die and your children reach the age to inherit as specified in your Will, your Executors will hold capital under what is known as a "Testamentary Trust". During that time, your Executors would take on the mantle of acting as Trustees, and as such, capital can be advanced by the Trustees to pass to the Guardians in order to assist with your children's maintenance and education. You should note however, that in such cases, a potential conflict of interest could arise with the Trustees advancing capital from the Trust to the Guardians when they are one and the same.

Parental Responsibility

In the past, when parents were not married to each other the maternal mother was the only parent deemed to hold parental responsibility, and what that meant was that for children born prior to December 1st 2003, only the child's mother had the authority under the law to nominate a Guardian. The ramification of this being that an unmarried father could only acquire parental responsibility, and therefore the power to appoint a Guardian by agreement with the mother or by Order from the Court.

Post December 1st 2003 the law has changed and for children born from then forth, the father of a child who is not married to the mother is now automatically accorded equal parental responsibility over their children with the authority to nominate Guardians.

Under the Law, parents or adoptive parents of legitimate children each carry parental responsibility for their children. As such, they may both may appoint guardians for the child or children in their Wills.