

## Guardianship Guidelines – guarding your most precious asset

If you are a parent (especially a parent with young children), then no doubt your major concern in planning your affairs is to ensure your family and especially your children will be provided for. Preparing a current Will and getting your financial affairs in order will help you to provide financially for your family, however there is much more to your children's life than financial well being. Have you ever considered what will happen if you as a parent are not around to make the important decisions about your children's welfare, upbringing, lifestyle and the opportunities you would like made available to them?

If you have children under 18 years of age, then you should make sure your Will contains a clause nominating guardians of your children in the event of your passing and there being no surviving natural parent or legal guardian. This is one of the most important decisions you will make in planning your affairs. It is a decision that is not an easy one because it involves you thinking about your own mortality and not being around to watch your children grow up. Nevertheless, it is a decision which must be made.

### Who should I choose to be guardian of my children?

The decision of who will take over the parenting role on your behalf should tragedy strike is a difficult one. Many people select their parents as guardians but do not think of the practical implications of doing so. For example, you will need to consider if your parents are physically well enough and capable of taking on the job and whether they have the energy and patience to raise a young family. It may be a job they are not able to cope with and as a result, your children may not enjoy the lifestyle or opportunities you hope will be made available to them during their lives.

In selecting a guardian for your children, you will need to consider if the person shares the same values, morals, lifestyle and religious beliefs as you. It will be very difficult to nominate someone with all of the same ideas as you but it will be important to find somebody as close as possible to allow you peace of mind that your children will be raised the way you would expect.

If the person you are considering has a family and children of their own, then you will need to consider if the family is capable of taking on the responsibility of raising your children and how your family and the guardian's family will integrate if the needs arises. If your guardian has children, then there are associated issues you will need to consider such as whether your children will attend the same school as your guardian's children. For example, if you want your children to attend a private school and your guardian's children attend a public school, then you will need to consider whether that difference will create friction between the children and how that is best dealt with.

Choosing a guardian is not a decision you (and your spouse or partner) should make alone. It is an enormous responsibility for a relative or friend to take over guardianship of your children. You should discuss your preference with the proposed guardian before nominating them in your Will. If you have teenage children, then you should also discuss the decision with them.

### Preparing guidelines for your guardian

Once your preferred guardian has agreed to act in your absence and you have named that person as the guardian of your children in your Will, then we strongly recommend you prepare a set of Guardianship Guidelines for your nominated guardian.

The Guardianship Guideline is a personal note to your guardians about how you would like your children to be raised in the event both (or either) parent dies or for some reason cannot perform the role of parent and guardian. It ensures those who have the responsibility for the care and nurturing of your children in your absence will know what you want for your children. It gives you the opportunity to have some input into how your children are raised and it will also give your guardian peace of mind he or she is raising your children the way you intended.

Preparation of Guardianship Guidelines will prompt you to consider important issues regarding the upbringing of your children. Issues which will be of vital importance if either or both parents die or for some reason cannot perform the role of parent or guardian. Some of the issues you will consider in preparing a set of Guardianship Guidelines are:

- What school would you like your children to attend?
- Where would you like your children to live? This can include considerations such as whether you wish for them to live in the family home until they turn 18 or whether you have a preference for them to stay in the particular State/Territory where you currently live, or even in Australia.

- Relatives and friends with whom you would like your children to maintain contact.
- Details of any medical illnesses and where your children's medical records are kept.
- Your preferences for the religious upbringing of your children.
- How, if at all, you would like your children to be disciplined.
- Whether you want your children to have the opportunity to travel and attend school trips overseas.
- Any family traditions which your guardians should know about and which you would like continued.

These are all issues your guardian will appreciate knowing your views on in the event they are given the responsibility of raising your children.

## In what circumstances are Guardianship Guidelines useful?

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Guardianship Guidelines are useful in many different circumstances, including the following:

- If both parents (or the sole parent) die or becomes incapacitated such that they are unable to care for the children.

The benefit of preparing a set of Guardianship Guidelines is obvious. It will provide the guardian with a carefully prepared record and won't leave them guessing as to what the parent or parents' wishes for their children might have been.

- If one parent dies and the surviving parent or guardian is left to raise the children.

Preparing a set of Guardianship Guidelines now will prompt both parents to sit down together and discuss important issues relating to the upbringing of their children. The Guardianship Guidelines will serve as a written record of the discussions so that if one parent dies, then the surviving parent will not feel alone in making important decisions about the children and their future.

- In the event of divorce or separation, having a set of Guardianship Guidelines can avoid involving children in unnecessary arguments and conflict.

If the parents have recorded their wishes regarding the future care, welfare and lifestyle of their children and signed off on those issues, then it significantly reduces avenues for potential conflict or at the very least provides evidence of intention in helping to resolve any future conflict.

Whatever your situation, if you have children, then preparing a set of Guardianship Guidelines will encourage you to sit down and focus on your children's future and your aspirations for them. Even if the Guardianship Guidelines are never used (which we hope they aren't), it is still an important exercise for all parents to undertake.

## What should I do now?

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At McMahon Clarke Legal we have developed a Guardianship Guidelines booklet which prompts you to think about all the important issues that may affect your children in the future. If you would like a copy of this booklet or would like to discuss guardianship and the Guardianship Guidelines further, then please contact Sean McMahon or Jane McMahon.

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We work with you to develop an estate plan that takes into account your personal circumstances.**

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