

# Who to Name As Guardians When No One Feels Right

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## **Reasons Most Parents Have Not Planned for the Care of their Kids**

The statistics are staggering: most parents do not have wills or other documents naming guardians for their children if something happens to the parents. Fewer than 50-75% of parents have named guardians for their minor children.

Why? One reason is likely lack of knowledge – some parents might understand that a will is the traditional place to name guardians for children (and the thought of planning for death doesn't thrill them), but haven't considered that a will only applies at death. With medical advances that keep people alive longer, it is more likely that an accident or illness will result in an individual's incapacity, not death. A stand-alone guardian nomination included in the planning we do for our clients is an additional document that addresses this modern reality by naming guardians for children whenever the parents are "unavailable," whether by short-term, long-term or indefinite incapacity, or by death.

Another common reason parents do not do designate guardians for their children is that they might think "Well, I just assumed my kids would be with my mother," or "Wouldn't my kids automatically go to my brother?" Assuming that a certain family member would take over automatically might work if there are no other blood relatives of either parent, or both parents' extended families never disagree. If that is not the case, however, you don't want to take a chance on leaving your children in the middle of a dispute (litigation) about whom can best care for them.

The biggest reason parents do not do designate guardians for their children is that "no one feels right" to take their place. They start going through the obvious options and think, "this person isn't perfect because A, that person isn't perfect because B," and so on. Or, in discussing the trade-offs, the spouses disagree on who to name.

## **A New Paradigm for How to Decide Who to Name**

First, think of people – there is no rule that guardians must be relatives – that are capable of fulfilling the role. For a guardian, start with people that have the health, stamina, and patience necessary to care for your children. An older grandparent who is slightly physically impaired (e.g., uses a cane) could work for one mild-mannered 15 year old, but probably not for rambunctious two year old twins. If your child is very involved in his school, sports, community activities, and/or religious organization and moving to where your sister (in-law) and family live would be an additional trauma for him, the family of his best friend might be a better choice if their child-rearing values are similar to yours.

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Second, think about what you value most for your children – Family? Location? Religious observance? Lifestyle? Then, evaluate which people on the list best embody what you value most for your children. If you are truly stuck, think of the worst person who could be named by a court to take care of your children. Thinking about who you don't want, and why, can help you articulate what you do want.

Lastly, realize no one is going to be able to “take your place”. In fact, the kind of planning we do keeps you in your place by providing instructions and guidance about what you want for your kids to the guardians, to the trustees managing how your money is spent on your kids' behalf, and directly to your kids. By planning, you will be able to provide guidance to a less than ideal individual – a much better situation than having no plan and possibly family arguments or even foster care.

## **If You Have Picked, Are The People Still Right?**

If you are part of the minority who has done their planning but it's been some time since your documents were put in place, are the people still right? Or have situations changed caused by marriage, separation, divorce, births, deaths, change in location, level of trust, type of relationship, etc.? If so, does it affect their ability to serve in the role for which you have named them?

## **Let Us Help You**

Lawyers are also Counselors; our job is to give counsel to our clients on the choices the client has based on the law and the client's circumstances. If you are having a hard time deciding who to name as guardian for your children, or any of your other fiduciaries (trustee, health care power of attorney), we can counsel you. Moreover, as a third party we can help spouses bridge their differences about who is the right person to be named guardian of their children. If you'd like to learn more about naming guardians and estate planning, call our office today to schedule a time for us to sit down and talk.

## **About Matthew Crider, J.D.**

Matthew Crider formed [Crider Law PC](http://www.criderlaw.net) in 1999 so he could help individuals and business owners by providing creative solutions and be their trusted advisor and legal counselor. He serves his clients by listening closely to their goals, dreams and concerns and working with them to develop superior and comprehensive estate and asset protection plans. His estate planning practice focuses on preserving and growing wealth by providing comprehensive, highly personalized estate planning counsel to couples, families, individuals and businesses.

