

Our approach to business is built upon the uncompromising commitment to the client and his or her needs. It recognises the client's entitlement to a responsive service, attention to detail and advice that is not only creative, but reinforced by experience and sound judgement.

APPOINTING GUARDIANS FOR YOUR CHILDREN

If you have children who are under 18:

You should consider who will be responsible for any of them who are still under 18 at the date of your death. It is irresponsible not to do so!

How?

Anyone who has parental responsibility for a child may appoint one or more individuals to be that child's guardian. The appointment;

- Must be made in writing, dated and signed by the parent.
- Need not be by Will, but a clause in a Will is sufficient.
- Can be revoked in writing, provided the revocation is signed and dated by the appointer even if the original appointment was in a Will. *(Usually other changes to the Will would have to be made more formally by Codicil or by another Will).*

Effect of Appointment

■ On Married Parents

The appointment takes effect on the appointor's death, provided that there is no surviving parent with parental responsibility for the child at that time.

If on the appointor's death there is someone with parental responsibility the appointment generally takes effect only on the death of that person *(unless there was a sole residence order in favour of the appointor in force at death)*. If both parents have appointed different people as guardians, both *(or all)* appointees will share parental responsibility. In normal cases it is clearly better to avoid such a situation if possible.

■ On Unmarried Parents

An unmarried father does not have parental responsibility unless he acquires it by being present at the registration of the child's birth *(only applicable for children born after 01.12.03)*, by court order, or by formal agreement with the mother, or marries the mother.

The court retains overriding jurisdiction over the care of minor children, which could be relevant if there is an unresolved family dispute.

Practical Considerations

- Clearly it is preferable for both parents to appoint the same people.
- Who? - perhaps a couple with experience of bringing up children, members of the family or friends who are already well known to and liked by the children.
- Consult with the children, if they are old enough to find out their view.
- Consult with the proposed guardians in advance to ensure that they are willing to act.

Financial Considerations

Usually the Will sets up a trust fund to provide for the needs of the children e.g. education, holidays, etc.

You should consider whether the guardians will manage the trust fund or whether this responsibility should be given to some one else or shared.

The circumstances in each case will be different:

- The guardians could be appointed trustees, jointly with perhaps a solicitor or accountant.
- The guardians will be best placed to know the needs of the children.
- But the guardians may be regarded as the advocates of the children and the trustees as the judge of conflicting claims!
- On balance it is probably sensible to separate the functions of guardians and trustees so that there is at least somebody supervising, checking and controlling what money the guardians are drawing on behalf of the children.