



# **GUARDING YOUR TREASURE**

A Step-By-Step Guide to Naming a Legal Guardian for Your Child  
by Rania Combs

Guarding Your Treasure - A Step-By-Step Guide to Naming a Legal Guardian for Your Child © Rania Combs 2010

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*“ All parents should have the opportunity to choose the person who will raise their children in the event of their incapacity or death. ”*

**If you're like me, your biggest fear is not what will happen to your stuff if tragedy strikes. It's who will take care of your children.**

The good news is that most children in our country will grow up with at least one parent to watch over them. But in a small percentage of cases where children are orphaned, legally designating a guardian is the only way to ensure that your children will be cared by a person of your choice, rather than a person selected by a judge who doesn't know you, your kids, or your family dynamics.

I believe that all parents should have the opportunity to choose the person who will raise their children in the event of their incapacity or death. That's why I'm providing this free resource to help you legally document your wishes.

This ebook provides information on:

1. What will happen if you die without having selected a guardian?
2. Factors to consider when selecting a guardian?
3. Steps you need to take to name a legal guardian of your choice?

It also provides a sample Appointment of Guardian to help you as you draft your own document.

*“If a child is orphaned and no guardians have been named, the court will appoint a guardian.”*

## What Will Happen If You Die Without Naming a Legal Guardian?

As a parent, you have the right to hand-pick the person who will raise your children if the unthinkable happens. But if you don't name a legal guardian for your children, then a judge will make that selection in your place. And the person the judge selects might be the last person you would have chosen.

If a child is orphaned and no guardians have been named, the court will appoint a guardian based on the following statutory guidelines:

1. The court will appoint a grandparent. If the child has more than one living grandparent, then the court will make a decision about who would be most suitable considering the court deems to be in the best interests of the minor child.
2. If no grandparents are alive or are willing or able to care for the child, then the nearest relative will be appointed. If the child has two or more relatives that are of the same degree of relationship to the child, then the court will appoint the person it believes is best suited to serve as guardian, considering the best interests of the child.
3. If the child has no relatives, or none are willing or able to care for the child, then the court will appoint another qualified person to serve as guardian.

The statutory guidelines assume that the deceased parents would have chosen relatives to care for their children. While this is sometimes the case, the guidelines can pose a problem in many situations.

For example, perhaps your children's grandparents don't get along disagree about who would be best suited to care for the child. This may result in a legal battle over guardianship. Or perhaps there is a particular family member who you would not want raising your children under any circumstances. If you do not make your wishes known, that family member may be awarded custody of your children.

It is especially important for you to name guardians if for any reason, you would prefer a close family friend to raise your children instead of certain family members. If you don't take the legal steps necessary to make your wishes known, chances are that a family member rather than that friend will be selected.

By not designating a guardian, you forfeit the opportunity to make that choice. The decision of who will be your children's guardian is too important to leave in the hands of a stranger. You know your children and family dynamics better than anyone. You are in the best position to make the decisions that will affect their lives.

*“Selecting a guardian is an enormous and emotional decision”*

## Choosing A Guardian

Many people experience a great deal of difficulty selecting a guardian for their children. It's a huge and emotional decision. After all, the person you choose will be responsible for caring for your children in the event the unthinkable happens.

For some people, the process of selecting a guardian is easy. They have close relationships with certain family members or friends who share a similar worldview. They have absolutely no hesitation about the possibility of that person stepping in to raise their children if the need arises.

But for many others, making the choice is much more difficult. No one on their list of potential guardians seems perfect. And they struggle with deciding which person would be best suited for the role.

So how do you make this very important decision? Below is a step-by-step guide.

*“ Make a list of all the people you know who you would trust to care for your children if you were no longer able to do so. ”*

### **Step 1: Make a list of potential guardians.**

The first step when deciding who to select as a guardian for your children is to make a list of all the people you know who you would trust to care for your children if you were no longer able to do so.

While this list almost always includes family members, such as parents, siblings, cousins, aunts, and uncles, close family friends can also be excellent choices. You should consider those who:

- Know your children well
- Are involved in your children's lives
- Interact well with your children
- Your children love and trust

Once you've made your list, you're ready for the next step.

## **Step 2: Evaluate the potential guardian's suitability objectively by considering several crucial factors.**

When thinking about an appropriate guardian for your children, evaluate your prospects by considering the following factors. This approach helps you objectively determine whether they are suitable for the role and ensures that you're comparing your prospects on the same grading curve.

### ***Maturity***

It is important to consider not only the potential guardian's age, but his or her maturity level. Texas requires guardians to be at least 18 years of age. But just because a person is legally an adult does not mean that he or she is ready to take on the responsibilities of being a surrogate parent to a child.

Anyone who has raised children knows that parenting is not easy. It requires an enormous emotional and time commitment. Because of the commitment involved, a very young, single person with a carefree lifestyle may not provide your children with the stability they need or have the time to devote to raising them.

Conversely, while it is often tempting to name grandparent as your children's guardian, an adult who is too old may not have the physical stamina or the life expectancy needed to raise them to adulthood.



When deciding who should be your child's guardian, choose the person you believe will be able to devote the time and energy necessary to raising them, and will have the maturity to step into the role of a parent and comfort them as they deal with a tremendously emotional and life-changing event.

*“Choose the person you believe will be able to devote the time and energy necessary to raising them.”*

### **Character**

It probably goes without saying that the person you select as your children's guardian should not be someone with a criminal record or a history of child abuse.

In fact, a court will investigate whether a prospective guardian has any complaints against him or her, particularly concerning child abuse. The Texas statutes also disqualify a person whose conduct is “notoriously bad” or otherwise unsuitable to serve as guardian.

But just because someone is free of a criminal background doesn't mean he or she is a suitable guardian. Personal character is important because the guardian will have the enormous responsibility of being your children's surrogate parent if the unthinkable happens.

In evaluating the people you are considering as potential guardians, ask yourself the following questions:

1. Does she consistently demonstrate good judgment?
2. Does he have a responsible lifestyle?
3. Is she patient?
4. Does she demonstrate honesty, integrity and self-control?
5. Does he have any psychological or personality problems
6. Is she dependable?
7. Does he honor his commitments?
8. Does she deal well with adversity?

The person you select as your children's guardian should be someone who will be a good role model for your children. Those who make consistently poor decisions, whether personal or financial, are a risky choice. You should not automatically disqualify someone who has made a mistake. But if you notice a pattern of bad behavior, irresponsibility, volatility, or dishonesty, consider someone else.

The person you select should also be someone who is dependable and deals well with adversity. The role of guardian is a difficult one. The person you choose would be required to step in under the worst of circumstances. Therefore, he or she must have the fortitude to honor the commitment to raise your children to adulthood, regardless of the challenges he or she encounters.

This is important because children who lose their parents are likely to be psychologically fragile. If the person entrusted with their care abandons his or her responsibility, they may suffer feelings of abandonment and distress.

Everyone makes mistakes. No one is perfect. But if your children are orphaned, they will require a certain amount of stability. And those who consistently make bad decisions or who have a proclivity to shirk responsibility would not be able to offer that.

## *Similar Values*

Every day, through our words and actions, we are teaching our children about what we believe to be important. We do this not only how we parent and discipline them, but also by talking to them, exposing them to the things that are important to us, and limiting their exposure to things we believe are harmful.

For example:

- If our **faith** is a priority, we make efforts to raise them in that tradition, teaching them about our beliefs, taking them to religious services, and celebrating religious holidays.
- If we value **community service**, we expose them to volunteer activities in which we are involved and encourage them to volunteer their time for a worthy cause.
- We teach them about **financial responsibility** by how we spend our money, and what we spend it on.
- We teach them about the value of **education** by stressing its importance, reading to them, and helping them with homework.
- We teach them **violence is inappropriate** by practicing time outs, and limiting violent television programs and video games.

The list is endless.

If you were not able to raise your children, would you want their guardians to continue exposing them to these values?

If your answer is “yes, or course”, then it is important to choose a guardian whose values and parenting philosophies reflect your own. Consider whether he or she shares similar views with respect to religion, morals, education, and child rearing.

While it is unlikely that you will find someone who shares all your values, try to select a person who you believe will instill in your children the values that matter most to you.

*“Choose a guardian whose values and parenting philosophies reflect your own”*

### ***Work Schedule***

Raising children takes time – lots of it! So when selecting a guardian, it is important to consider whether they will be able to devote the time needed to be an active part of your children’s lives.

Part of that consideration involves determining whether a prospective guardian's work schedule will allow him or her to be as involved as you would like. Consider the following factors:

- While a lot people are able to work a limited number of hours a week, many have demanding jobs that require them to spend more time at their jobs than at home. Which kind of job does your prospective guardian have? If his or her job requires long and unpredictable hours, who will care for your children and provide for their needs while he or she is at work? Is that acceptable to you?
- Does your prospective guardian's job require travel? If so, how frequently? Are the trips just a few days or do they last a week or more? Who will care for your children while he or she is traveling? Is that acceptable to you?
- Does your prospective guardian have a job that is considered dangerous might expose him or her serious injury or even death? Someone in a dangerous line of work is probably not the ideal person to select as a guardian for obvious reasons.

The person you are considering may have all the characteristics you believe will make a great guardian for your children. But if a demanding work schedule or a dangerous job will prevent him or her from being an active part of your children's lives, it would be wise to consider another choice.

## ***Marital Status***

When deciding who to select as your children's guardian, it is important to consider the prospective guardian's marital status for several reasons:

1. ***Statistically, about 40 percent of first marriages and 60 percent of second marriages will end in divorce.*** Despite being armed with these sobering statistics, many parents select a couple as guardians of their children but do not specify what should happen if that couple is no longer married. If you are considering a married couple as guardians, it is important to specify your wishes in case that marriage ends in divorce.
2. ***If you choose a married individual, rather than a couple, as your children's guardian, it is important to consider whether you like that person's spouse as well.*** After all, your children will be living in the same home as the spouse. If you have significant concerns about the spouse's character, you should probably select someone else.
3. ***If the person you select is a single person, consider whether you are comfortable with the prospective guardian acting as a single parent.*** While each of us knows many single parents who are doing a fantastic job raising their children, single parents face many challenges. They have to take on the role of both mother and father. They don't have anyone with whom to share the burdens associated with caring for and providing for a family. A single person may also get married at some point, and it is important to consider whether you would trust your prospective guardian's choice in a spouse.

Regardless of whether your prospective guardian is single or married, it is important that the person you select be able to give your children stability during a challenging time in their lives.

### ***Location of Residence***

Under the best of circumstances, moving a child to a different city is difficult. There is a new environment to get used to, new schools to attend, and new friends to make. But the difficulties are compounded when tragedy strikes. All of a sudden, a child is required to deal not only with the loss of his or her parents, but also being moved out of a familiar environment and away from everyone he or she knows.

Because of that, it is important to consider where your prospective guardians live, and whether moving your children to a new city or state would be an acceptable situation.

In a perfect world, your prospective guardian would live where you do. However, the reality of our transient world means this is not typically the case. Nowadays, jobs require people to move around a lot, taking us away from the family and close friends we are most likely to choose as guardians.



So should you automatically exclude a potential guardian simply because he or she lives in a different city or state? Of course not. But it is important that you consider the “big picture” that your children would have to face in the event of your death.

Your children should have a good relationship and feel secure with whomever you choose as their guardian. If in addition to leaving everything they know, they also have to live in the home with a virtual stranger or someone they don’t like, the transition is going to be significantly more difficult.

*“ It’s important to consider the “big picture” that your children would have to face in the event of your death ”*

## ***Finances***

Raising children is expensive. According to the United States Department of Agriculture (PDF file), the estimated cost of raising a child from birth to age 17 is approximately \$196,000 at the lowest family income levels, and about twice that at the highest family income levels.

With additional children come additional costs associated with housing, food, shelter, clothing, child care, and college. And although a guardian is typically entitled to be reimbursed from the minor's estate, the assets you leave behind may be insufficient to cover all the costs involved.

You should not expect a guardian to bear the financial burdens of raising your children. But it is fair to consider his or her financial stability.

If you select a guardian who is having financial problems, the burdens of raising additional children may be overwhelming regardless of the resources you leave. Additionally, financial problems can lead to further instability and stresses to which you may not want your children exposed.

Although you should consider your prospective guardian's financial stability, it is ultimately your responsibility to provide the financial means necessary to support your children in the event the unthinkable happens.

To determine whether your assets will be sufficient, start by considering the following:

1. What are the costs of your children's living **expenses, hobbies, and future schooling**?
2. Do any of your children have **chronic medical conditions** that would require additional resources?
3. Would your prospective guardian be required to **move into a larger house** or build an addition to an existing house to accommodate your children?

If your current assets would not be sufficient to financially enable the guardian to care for your children, an obvious remedy would be to increase your life insurance policy to whatever levels you believe necessary.

The financial burdens of raising children are great. And failing to provide the financial resources necessary to care from them could breed resentment, regardless of your prospective guardian's financial position.

## ***Relationship With Your Child***

Think about your closest friends. If you're like most people, you had a lot in common with them from the moment you first met. Conversation was always easy. And regardless of how far away they live or how much time has passed since the time you last spoke or saw each other, you're always able to pick up right where you left off.

You probably don't have that connection with everyone you meet. There are some probable some perfectly wonderful people whom you have known for a long time and really like, but with whom you don't get along as well. Conversations with them seem a bit strained. You struggle to find topics to discuss with them and often run out of things to talk about within a few minutes.

We all have different personalities. Consequently, there are people with whom we get along better than others. That's why it is important to evaluate whether your prospective guardian has a good relationship with your children.

*“It's important to evaluate whether your perspective guardian has a good relationship with your children.”*

For each of your candidates for guardianship of your children, ask yourselves the following questions:

1. Are they able to communicate easily with your children?
2. Do your children trust them and enjoy spending time with them?
3. Would your children be able to confide in them and lean on them for support?
4. In short, do they click with your children?

The person you select as your children's guardian should be someone who has or will be able to develop a close emotional attachment with your children and with whom your children will feel comfortable. That is why in many cases, family members with whom your children already have a close relationship seem like the best choice.

Although you may think a prospective guardian is the perfect person to raise your child, your children's opinion of him or her also matter. If your children do not have or show the same feelings towards that person, selecting him or her may contribute to more stress and despair in the event of a tragedy.

## ***Prospective Guardian's Children***

Think about the people who you would nominate as a guardian for your children. Do they have children of their own? If so, how many?

Most couples in the United States have two children, so there is a strong possibility that the guardian you select will already be a parent. Because of that, it is important to consider several questions:

### ***1. Can the guardian you select handle more children?***

Being a parent is hard work, and perhaps the person you select has all the children for whom he or she can or wants to care. This is especially relevant if you have two or more children and could potentially double or more the size of his or her family.

That is why it is important that you discuss your decision with the person you intend to nominate and confirm that he or she will be willing to take on the added responsibility. Also, observe his or her parenting skills. If he or she constantly seems overwhelmed or lacks patience with his or her own children, then adding more kids to the mix may not be a good idea.

## **2. Do your children relate well to the guardian's children?**

If the prospective guardian is willing to take on the added responsibility, consider the age and personality of his or her children. Are they around the same age as yours? Do they get along well with yours? If your children clash with the prospective guardian's children, consider someone else.

## **3. Are the guardian's children good kids?**

Finally, consider the character of the prospective guardian's children. After all, if their parent were appointed guardian, they would probably be in close contact with your children. We all know great people whose children make bad choices, such as getting involved in crime, or alcohol, or drugs.

If you believe that the prospective guardian's children have the potential to negatively influence or harm your children in any way, it would be wise to select someone else.

*“ Is the prospective guardian willing to take on the added responsibility of raising your kids? ”*

## ***Willingness to be a guardian***

When my husband and I were first married and starting our careers, a friend caught me off guard one evening when she asked whether my husband and I would consider being named as guardians of her infant daughter.

I was surprised because both she and her husband had close knit families, and I assumed that one of their siblings would be their first choice.

Rather than eagerly expressing my willingness to be named as guardian, I explained I wanted to discuss it with my husband first. And while the chance of us having to actually serve as guardians was slim, I admitted that we were probably not ready to be parents yet.

My first reaction was probably not what she expected. After all, we were close enough friends that she actually considered me. Had she asked today, my reaction would probably be different.

But there is no doubt that my initial reaction made my friend rethink her decision – and for good reason. Because of all the factors to consider, probably the most important when selecting a guardian for your children is whether the prospective guardian is willing to serve in that capacity.



Surprisingly, many people appoint a guardian without actually discussing it with the person they have named. People typically select family members or very close friends to serve as their children's guardian, and believe that they would willingly take on the responsibility should the need arise.

But this is not always the case. Despite their love for you and your children, life circumstances may cause them to feel like the burdens associated with guardianship would be too great. But you would never know that unless you ask.

Communicating with those you are considering about their willingness to be your children's guardian serves several purposes:

- It helps you **gauge their willingness** to serve as guardian.
- It **reveals any concerns** or reservations they may have about being named as guardian.
- It **opens dialogue about other factors that could affect your decision** about whom to select as your children's guardian, such as their parenting style, religious practice, or work schedule.

Your communication with the guardian you select should not stop after your initial discussion. Be sure to revisit this topic annually.

Circumstances change. Perhaps the person you have named has unexpectedly become a parent again, or has had unexpected financial problems. While they may have been willing to serve as your children's guardian at the time you initially approached them, their changed circumstances may cause them to reconsider. But they are unlikely to bring it up unless you do.

### **Step 3: Trust your intuition**

Objectively evaluating all the potential candidates can help you narrow down your choices. But, ultimately, it is important for you to trust your instincts. You know your children better than anyone else, so you probably have a sense about who would be best suited for the role.

Therefore, if one of your candidates meets all your objective standards, but the thought of him or her being your children's guardian makes you feel uneasy there is probably a good reason for your feelings. It is important to trust instincts and select someone else.

Keep in mind that you are unique. So there is no one in the world who can provide your children exactly what you can. As a result, it is unlikely that anyone on your list will seem perfectly suited to step into your shoes.

But while the process of selecting a guardian can be challenging, the ramifications of not doing so are significant. So, after evaluating all the candidates, it is important that you take the step to designate the person who at the time seems best suited to serve as guardian.

Remember that your decision is not set in stone. You can and should reevaluate your choice annually to determine whether the person you select is still the most ideal candidate for the role. If not, it is possible to amend your will and appoint someone else who you believe is better qualified.

*“ You should evaluate your choice annually to determine whether the person you select is the ideal candidate. ”*

## **Naming Your Legal Guardian**

Many parents name guardians for their children in their wills, but it is also possible to name a legal guardian in a separate document if you do not have a will.

The Texas Probate Code provides that a parent may declare a guardian for their children in a document that is:

1. Written wholly in the handwriting of the person making the declaration; or
2. Signed in the presence of at least two credible witnesses 14 years or older who are not named as guardian or alternate guardian in the declaration.

It also provides a form you can use to legally name a guardian for your children.

When you sign your Appointment of Guardian, you and your witnesses can also sign a self-proving affidavit as well to certify that the document is your Appointment of Guardian and your witnesses saw you sign it. That way, no witnesses will have to appear in Court to testify as to its authenticity. The Appointment of Guardian form, as well as the self-proving affidavit, is included below.

Signing a valid Appointment of Guardian will ensure that your children are cared for by the person you believe is best suited to step into your shoes if the need ever arises. You know your children better than anyone. You're the best person to decide who will raise them in the case of your incapacity or death. Don't let a stranger who doesn't know you, your children, or the things that are important to you make that decision in your place.

## DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN IN THE EVENT OF MY DEATH OR INCAPACITY

I, \_\_\_\_\_, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I designate \_\_\_\_\_ to serve as guardian of the person of my (child or children), \_\_\_\_\_ as first alternate guardian of the person of my (child or children), \_\_\_\_\_ as second alternate guardian of the person of my (child or children), and \_\_\_\_\_ as third alternate guardian of the person of my (child or children).

(If applicable) I designate \_\_\_\_\_ to serve as guardian of the estate of my (child or children), \_\_\_\_\_ as first alternate guardian of the estate of my (child or children), \_\_\_\_\_ as second alternate guardian of the estate of my (child or children), and \_\_\_\_\_ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Declarant

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

## SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and \_\_\_\_\_ and \_\_\_\_\_ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

\_\_\_\_\_  
Declarant

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the above named declarant and affiants on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission expires:\_\_\_\_\_

## A Final Note

Appointing a legal guardian is crucial for parents with minor children, but it is just the first step to making sure your wishes are followed and your family is protected in the event of a tragedy. Without estate planning, you forfeit the opportunity to make many other important decisions that you are in the best position to make. These include:

1. Deciding **who will receive your assets when you die**. Without a will, your assets will be distributed according to a statutory distribution scheme, which may conflict with your wishes. For example, you may want a dear friend or charity to share in your estate, or leave a larger portion of your estate to provide for a child with special needs. That would not be possible without a will.
2. Deciding **how your assets will be distributed to you minor children** when you die. Direct bequests to your minor children of more than a nominal amount of money may require a probate court to appoint a guardian of the estate to oversee management of it. This is typically an expensive and cumbersome process that can be easily avoided by establishing a trust that would be funded when you die and managed by a trustee you choose.

3. Deciding **who will manage the assets you leave behind for your children**. If you have not named someone to manage the assets you leave behind, a judge who doesn't know anything about your financial values will make that decision in your place.
4. Deciding **when your children will have access to the assets you leave them**. If a guardianship is created, your children will have access to the assets when they become adults. Imagine what you would have done with \$10,000, \$100,000 or more when you were 18. Most likely, you would not have had the skill or foresight to manage it. With estate planning, you can make plans to delay distributions to your children, or even stagger distributions over a number of years.
5. Deciding **whether to authorize a trusted friend or family member to engage in specified business, financial or legal transactions on your behalf** if you are unable to manage your own affairs, such as if you become incapacitated.
6. Deciding **whether to authorize a trusted friend or family member to make medical decisions for you if you are incapacitated** and unable to make those decisions for yourself.



7. Deciding **whether to authorize a trusted friend or family member to receive access to protected health care information**. If a medical power of attorney does not specifically authorize transmission of your protected health information as required under HIPAA, your health care provider may err on the side of caution and refuse to share this information with your agent, who may need it to make an informed medical decision on your behalf.
8. Deciding **whether you would like your physicians to use artificial methods to extend your life** in the event you are diagnosed with a terminal or irreversible condition.

If you want control over these important issues too, you need an estate plan.

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Helping busy Texans prepare their wills, trusts and estate plans online, without the usual overhead. (<http://www.texaswillsandtrustslaw.com>)