

# Guardianship: Planning for the Best Interests of Your Children

The coronavirus (COVID-19) pandemic has made many parents even more anxious about their children's welfare than usual. Children may be less likely to develop severe cases of the disease, but you need to consider who would care for them if you and your spouse succumbed to the virus. Or perhaps you may someday have to petition a court for guardianship of a child whose parents have become ill or died. In either event, you must adhere to the legal principles under state and local law.

## Best Person For the Job

Parents designate a guardian for their children in a legally valid will. This means that the guardian will raise your children if you should die unexpectedly or become incapacitated. Choose the best person for the job and designate an alternate if that person can't fulfill the duties. Frequently, parents will name a married couple who are relatives or close friends. If you take this approach, ensure that both spouses have legal authority to act on your children's behalf.

Also make sure the person you've selected has the necessary time and resources for this immense responsibility. And think about the living arrangements and geographic area where your children would reside if the guardian assumes legal responsibilities. Do you really want to uproot and send them to live somewhere far from their familiar surroundings? Don't ignore these factors, or the myriad others that impact your decision.

You aren't legally required to justify your decision, but it can't hurt (and can help) to prepare a letter of explanation for the benefit of any judge presiding over a guardianship matter for your family. In such situations, judges apply a standard based on the "best interests" of the children. So you should explain why the guardian you've named is the optimal choice. Focus on aspects such as your children's preferences, who can best meet their needs, and the moral and ethical character of the potential guardian.

## Rules For Seeking Guardianship

What if you're seeking guardianship of a child — for example, the child of a relative who has become seriously ill? The rules can vary widely depending on the jurisdiction, so be sure to consult legal counsel. We can help guide the process, which likely will involve requesting the right of guardianship. If possible, you'll want to obtain a letter of consent from the child's parents and file it with the court.

Next steps typically involve interviews with all the relevant parties, including those who have a vested interest in the proceedings. Court officials will probably conduct home visits to inspect your premises and run a criminal background check on you. Then the court will consider all the facts and circumstances and make its decision. Most states require guardians to sign an oath before they can assume responsibilities.

Occasionally, parents will object to a legally appointed guardian. Without the parents' consent, guardianship is usually granted only in cases where a child has been abandoned or the judge decides that the child's parents are unfit guardians. Other relatives, such as grandparents, have certain legal rights and must be notified about guardianship hearings. Although you won't generally need formal consent from all parties, any objections they raise could adversely affect your case.

## **All Applicable Laws**

Most parents think about arranging for a guardian as soon as they welcome a new child into their family. If you've put it off, don't wait any longer before meeting with us. We can also help if you're hoping to gain guardianship of a child. Courts take matters involving children seriously and you need to make sure you follow all applicable laws to the letter.

**The Law Office of Eugene Gorrin, LLC**  
**17 Watchung Avenue, Suite 204**  
**Chatham, NJ 07928**  
**973.701.9300**  
[egorrin@gorrinlaw.com](mailto:egorrin@gorrinlaw.com)  
[www.gorrinlaw.com](http://www.gorrinlaw.com)