
Choosing Guardians For your Minor Children



A Guide for North Carolina Parents



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How to Choose a Permanent Guardian For Your Child

The permanent guardian of your child will be the person (or couple) responsible for raising your child until he or she reaches age 18. Though often, just like a parent's influence continues into adulthood, hopefully the guardian will continue to play a role in your child's life even after he or she turns 18. Here are a few tips to help you make the difficult choice of who would be the best guardian for your kids:

1. ***Brainstorm your options.*** Start by writing names on paper. Don't try to evaluate who would be the best. Just list out every friend or family member that you might potentially allow to raise your child.
 - a. Ask yourself, "Who would be better than having my child raised in the foster care system?"
 - b. At first, you might only think of immediate family members, but don't limit yourself. Consider others such as cousins, friends, grandparents, aunts and uncles, neighbors or business partners. Brainstorm and list on a piece of paper anyone who might be a potential guardian.
 - c. Don't eliminate potential guardians based on their lack of financial resources. It's your job as a parent to plan ahead and make sure there is enough money to raise your child (through your will or estate plan and sufficient life insurance or savings). You will provide the resources for the guardian.
 - d. Write down at least 3-5 options. Don't worry about ranking them in order, just write a list.
 - e. Set your brainstorm list aside.
2. ***Think about your priorities.*** Now start a second list. As a parent, what values are most important to you? Be completely honest. Don't worry about what others might expect to be your priority. What is top priority for *you*? See our "Child Raising Priorities Checklist" for help. From your list, pick your top 5 most important values and rank them in order of importance.
3. ***Compare your lists.*** Take your list of potential guardians and compare it to the top 5 child raising priorities that you have identified. Eliminate any potential guardians who don't possess your top 1 or 2 values. Does anyone on the list possess all 5 values?

4. Rank your options. Who are your top choices to name as permanent guardian?

- a. Pick your top permanent guardian choice as well as several back up options.
- b. Do any of your listed options include a couple? If so, there are a few additional issues to consider:
 - i. If you have listed a couple, you will need to consider whether or not you wish both spouses to serve as co-guardians. If you do include the spouse, will you only include them if they are married to the same person when the guardianship is needed? For instance, if you name your brother and sister-in-law, would you be comfortable having your sister-in-law be guardian if she was divorced from your brother or your brother had passed away?
 - ii. For each guardian you name, you should list, after the name, how they will serve:
 1. Serving alone
 2. Serving jointly or the survivor (if co-guardians)
 3. Serving so long as they are married and living together (if co-guardians)

Child Raising Priorities Checklist

When it comes to raising your child, what values are important to you? If you were no longer here, what characteristics are of top priority in your child's new guardian?

Make a list of these priorities. Be totally honest with yourself. Don't list things just because others would expect you to list them. List the things that are truly of top priority to YOU.

Need some examples to get you started? Here's a list of some possibilities. Which of these are important to you? Which are not? Which ones are most important to you? Are there other things not listed that are very important to you when it comes to raising your children?

- Experience as parents
- Existing relationship with your child
- Age of existing children in their home
- Geography (where your child would live)
- Having faith in God or a certain religious preference
- Sufficient free time to raise children
- Maturity level
- Patience
- Age
- Wisdom in giving advice
- Appropriately involved in child's life
- Parenting philosophy
- Education level
- Physical health
- Moral and social values
- Cleanliness
- Honesty and integrity
- Community involvement, citizenship
- Modeling good friendships
- Do they value hard work and professional competence?
- Marital status
- How materialistic they are
- Generous, willing to give of their money and resources
- Unselfish with their time and willing to help and serve others
- Political party or affiliation
- Spending and saving habits
- Musical ability or opportunities
- Encouragement of athletics

Tips and Frequently Asked Questions

- 1. *What if you and your spouse can't agree on who to name as guardians?*** Ideally, spouses would agree, but don't let this stop you from naming guardians. Each parent can do a separate guardianship form. And you can do it even if your spouse chooses not to do it right now. Get some help to find common ground with your spouse. In some cases, working with an attorney experienced in estate planning for parents with minor children can help resolve the conflict between the parents. In many cases, parents come to a resolution after looking at other estate planning issues. For instance, if one side of the family will be guardians, then perhaps the other side of the family can help manage the money as a trustee.
- 2. *If my child's other parent and I are not together, how does that impact guardianship?*** Ideally, you should talk to your child's other parent about the importance of naming guardians, and if possible, attempt to come to an agreement about who should raise your child if something happens to both of you. But what if you don't feel your child's other parent is fit to raise your child? The fact is, the child's other parent will usually have first opportunity to be the child's guardian if you are gone. Typically, the courts will only deprive a parent of his or her parental rights in extreme situations. However, if you have concerns about that other parent's ability to do that, then consider writing a detailed letter explaining why you feel that the other parent is unfit to raise your child. At least your concerns will be raised to the judge who will make the final decision of selecting a guardian for your child. Bottom line, name who you want to have as guardian for your child, even if it's not the other parent.
- 3. *Should the guardian be the same person as the trustee who will handle my child's money after I'm gone?*** There are two schools of thought here. Neither is right or wrong. On one hand, the guardian is handling day-to-day issues and, if they also manage the money, then they can easily access it when needed. Other families think it is good to have a balance of power and prefer to have someone who is not handling day-to-day matters managing the money. If a guardian is also a trustee, there are a couple of risks. First, would they spend more money than they should? Second, would they spend less than they should (instead they spend their own money to raise your child rather than using the funds you provided). It could be that the person you feel is best suited to love and nurture your child is not as financially responsible as you would desire. If that's the case, then it might make sense to separate the child-raising responsibility from the money-managing responsibility by naming a different person as trustee. In some instances, we might use a middle ground by appointing a co-trustee to manage the finances with the guardians.

4. *What happens if I name someone who is unable to be guardian when the time comes?* If you name an older parent or relative, they may be in ill health or too old to be a good guardian for your child. If so, they can decline to serve at that time. The judge will make the final decision of whether to approve the person you have named. In most cases, the judge will accept your choice. However, the judge does not have to accept your choice if there are good reasons not to. So, if you have named someone who is no longer fit to serve when the time comes (because of lifestyle, health reasons, family crisis, etc.), then the judge can look to the back-up guardians that you have named.

Questions? Contact Us

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