



Protecting Your Most Important “Assets” Why Parents of Young Children Need a Will

By Ashley B. Han, Esq.

When asked what their greatest accomplishment is, or what they are most proud of, parents of young children will often answer, “my children.” Friends of mine often say that, if their house was on fire, they would run past their spouse and make sure their kids got out of the burning house unharmed! Parents often agree without hesitation that their children are what give their lives the most meaning.

When we meet with parents of young children who are interested in doing estate planning, one of the first subjects we talk about is who will raise their children in the unlikely event that they both die while their children are minors. In Pennsylvania, anyone under the age of 18 needs a legal guardian. The best way to ensure that the people you want will be the ones raising your children is to name them in your Will.

At the outset, it is important to understand that a surviving parent has the presumptive right under the law to raise their children (be their guardian). This holds true even if parents are divorced and the custodial parent has died. The only way that a parent does not have a right to raise their children is if they have voluntarily given up parental rights, lost their parental rights, or have died. So, when parents are naming guardians, they are naming a person who would step in and care for their children if both parents have died. We generally advise first naming the person who you would most want raising your children and then naming a successor (or backup) guardian if your first choice is unable to serve.

So, what happens if both parents die without a Will? Who decides who gets the kids? If parents do not name guardians, and minor children are left without either parent, the choice is left to a judge who likely does not know the children or the families involved. Failure to name a guardian in a Will can lead to major disruption in children’s lives. It can also cause discord between the mother’s family and the father’s family, if they both think the Court should name them as guardians. Do you prefer that a judge choose the guardian of your children, or do you want to make that choice? The safest way, by far, is to include your choice of guardian in your Will. Just leaving a note, or simply telling someone who you want to be guardian, does not guarantee that your choice will be the one appointed by the Court. The note is not a legal document (and could be lost), and a conversation that allegedly happened while you are alive is not legally binding.

The decision of who to name as a guardian is deeply personal and often stops couples in their tracks from finalizing their Wills. It is unpleasant to think about your being gone, and it may be hard to imagine anyone else caring for them quite as much as you do. Yet naming a guardian is the most important reason for

parents of young children to make a Will, and it is an opportunity for parents to ensure a seamless transition in care at a very difficult time.

We recommend that our clients think through many factors when choosing guardians. The potential guardians should have a close and loving relationship with the children involved. They should have the time and energy to devote to parenting. We advise clients to think about people with similar values to theirs when choosing guardians. It is sometimes preferable for children to stay in close proximity to the community in which they are being raised. We’ll discuss these and other key issues when we meet with you.

We recommend that you speak with the individuals you name as guardians. Potential guardians may be interested in knowing what financial resources will be available to care for the children. We have many clients who have written letters to the guardians, so that guardians have “instructions” regarding how the parents wish their children to be raised.

We understand that the decision about who should be named guardian feels daunting and overwhelming. Let’s agree that there may be no “perfect” fit. An experienced estate planning attorney will carefully walk you through these decisions and customize your instructions as needed. At HighPoint Law Offices, we regularly work with parents of young children and can help you think through this decision so that you can “do the right thing” for your children in the event that the unimaginable occurs.



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