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The Hard Question

Who will take care of your child if you die?

By [ARDEN DALE](#)

Naming a guardian for a young child in a will can be one of the most important things a parent does. It can also be one of the hardest—in fact, many people don't make a will because they can't face the job.

"This is where I have people cry in meetings most," says Margaret Sager, a partner at the law firm Heckscher Teillon Terrill & Sager, P.C. in West Conshohocken, Pa.

But estate-planning professionals say as hard as the question is, it's also crucial to answer it. Otherwise, it leaves the fate of an orphaned child entirely up to a stranger—a judge. Although judges formally appoint guardians in all cases, they almost always choose the person named in the will.

Still, many parents drag their feet for fear of picking the wrong person. Advisers say they often have to help clients get past emotional blocks in order to move forward with their estate plans.

The paralysis that settles in "is not rational," says Liza Weiman Hanks, a lawyer at Finch Montgomery Wright LLP in Palo Alto, Calif. and author of an estate-planning guide for families.

Ms. Hanks says she herself wasn't immune—it took her three years to change her will after realizing that the friend she had originally designated to be the guardian of her two minor children was no longer a suitable choice.

So what's the best way to get parents moving? Some advisers say they start by asking clients to consider the following:

1. It's just for now.

A guardian isn't forever, or even for a set period of time. If you decide later that the person you designated isn't the best choice after all, you can always make a switch. It isn't hard or expensive to do—the changes can be outlined in a codicil to the will.

It may help to think in terms of the next three years, advisers say. While Grandma and Grandpa may be just the ticket when the kids are four and five, they may not be the best guardians for kids heading into their teenage years.

2. Outside the box is OK.

A blood relative doesn't have to be the guardian. If your children have a close, loving relationship with family friends, take that into consideration.

Ask yourself, who in your circle would make the best, most caring surrogate parent?

3. Nobody's perfect.

Husbands and wives often disagree on who's best-suited to care for their children, so accept the probability that you may have to compromise.

In those situations, Ms. Hanks suggests that each parent go to opposite sides of the room and write down their top five choices. Then they should compare lists and try to find common ground.

Once parents have narrowed down the field of potential guardians, some advisers say they ask clients to do the following:

1. Spend time with the person.

Make sure you know how a potential guardian is likely to treat your kids in various situations. Take a trip to the beach with your brother, for example. His inability to laugh off the chocolate ice cream in the back seat of his new car may take on a whole new significance if you're considering asking him to raise your children.

Similarly, a sister's all-white apartment may not seem so inviting if you're looking at her as a potential guardian for your toddlers.

2. Review practical details.

Geography, religion, education—all of those things are important and they take on even greater significance when raising a child.

Basic details such as where a potential guardian lives should weigh heavily on your decision, experts say. An aunt may be the clear favorite, but if she lives in another state, your children could be uprooted from the comfort of their community and school right when they need it most.

3. Look at money and lifestyle.

Does the person you're thinking of have a big enough house for another child or two or three? Would taking on more kids be too much of a strain for them financially?

If so, there's a way around that. A common strategy to help provide for the guardian is to get additional life insurance. Also, many wills leave a so-called guardian gift, money earmarked to,

say, add a room to a house or buy a minivan. The minivan clause comes up quite a bit and the "magic number" mentioned in the will is often \$20,000, says Ms. Hanks.

After considering all of these factors, some parents may still put off a decision, believing they haven't yet identified a perfect candidate. Above all, advisers need to underscore that an imperfect decision is better than none at all, says Robert J. Morrill, the managing partner of Gilmore, Rees & Carlson, P.C., in Wellesley Hills, Mass.

Mr. Morrill says he once worked for a woman who wanted to be the guardian of her deceased daughter's child. The long-absent father suddenly appeared, seeking custody of the child and setting off a fight that "was not pleasant," he says.

The deciding factor, according to Mr. Morrill, ended up being a letter written by the mother before she died, spelling out her concerns about the child's father.

"I remember standing in front of the judge and handing that letter up to her and could see the impact it had," he says.

What happens when parents settle on someone who is great with the kids but can't balance a checkbook? Many wills name a guardian of the person and a guardian of the estate. The first takes custody of the child, deciding on education, religion, where to live and other day-to-day matters. The second is the money manager. Children may have assets of their own—an inheritance, for example, that could include a life-insurance policy or a retirement account. Wealthy families often name professional trustees or fiduciaries.

Things can get sticky between the two guardians if, say, one wants to send the child to a fancy summer camp that the other thinks is too expensive. For those reasons, it's good to choose people you believe are likely to see eye to eye, estate-planning professionals say.

There's one last step—talking to the chosen one. No law requires this, but it's good to get guardians to agree in advance, the experts say. People often simply put down a name, hoping it will work out when the time comes.

But remember, the person who seems like a perfect guardian to you may seem that way to others, too, so their dance card may already be full.

The truth is, the overwhelming majority of guardians named in wills never have to do the job. Most minors reach 18 years old with at least one parent alive. Remembering that may help take some of the pressure off parents struggling with this decision, advisers say.