

Choosing a Guardian for Your Minor Children

If, heaven forbid, something should happen to you and the other legal parent of your minor child, and you do not have a Guardian named for your minor child, then the Massachusetts Family & Probate Court will appoint a Guardian for your minor child pursuant to MGL Ch. 190B § 5-204. Even if your relatives go to court to obtain guardianship, relatives may argue over whom is “best” and the Court will still need to decide.

Accordingly, it is imperative that you have a named Guardian for your child if you do not want the court to appoint whomever they think is the best person to be in control of your child and your child’s welfare.

What Is a Guardian and What Does a Guardian Do?

A **Guardian** is someone who has the legal authority and duty to care for a minor child should the child’s actual parents die or become incapacitated or otherwise unable to take care of the minor child. In other words, a Guardian has the authority to care for, provide a stable home to, and to make everyday decisions on behalf of a child.

A **Conservator** manages and protects the money or assets held by a minor, either when the parents are alive or after their death, and can direct funds for the minor’s health, support and education.

A Guardian and Conservator can be the same person but does not need to be. For example, you may have a family member who is great dealing with finances but you wouldn’t want that person to raise your child.

Things to consider when choosing a Guardian for your minor child:

No one will ever be the “perfect” substitute for you as your child’s parent. Ever. Focus on finding the best person based on what matters to you most when it comes to raising your child. The following are some things to consider when choosing a Guardian for your minor child:

1 – Immediate Family

Brothers, sisters, parents, nieces, nephews, and cousins are all possible choices for a guardian. Other choices include close family friends, friends from your place of worship, or other adults with whom you and your child have a close relationship. Any person chosen must, however, be of legal age. Often times the starting place should be a list of family members and ruling out who you don’t want to be the Guardian.

2 – Shared Values

Pick someone who has similar values as you do for how you want your children raised. By values we mean parenting style, education, religion, goals, and social values.

3 – Personality Factors

Think about the personality traits of the person you are choosing. Are they loving? Good role models? If your children are used to a lot of affection, are they affectionate? If the person is on the younger side, are they mature enough?

4 – Character

The person you choose should be of good character, someone that a Court would easily approve of. For example, do not choose someone with a criminal record or drug or alcohol problems.

5 – Practical Considerations

Take into consideration the age and health of the person you are choosing. For example, if you are choosing your parents, are they in good health and would they be able to handle raising another generation of children?

How close do they live to the children's other relatives and will they keep your children in contact with the rest of your family if this is your wish?

Does the person have other children and do/will your children get along with them or would there always be conflict?

6 – Finances

If the person you are choosing does not have the financial resources to care for your child, consider purchasing a life insurance policy and naming your child as beneficiary (usually "in trust for" the minor child). Providing assets to the Guardian will lessen the financial burden for the Guardian.

Similarly, don't worry about the size of the Guardian's current home. You can always instruct the Conservator (or trustee of your estate) to provide funds to purchase a bigger home.

7 – Talk with the person you would like to name as Guardian

No one likes to be blind-sided with major life changes. Ask your proposed choice if they are amenable to being named Guardian in the event something happens to you. Explain why you have chosen them, what your wishes are for your child, what you have set up by way of assets to help care for your child, and who the Conservator managing your child's finances will likely be. If your chosen person is not up to being named Guardian, it is better to find out now while *you* still have a say in the matter.