



Appointing a Guardian

A guardian of a child is someone who looks after a child if their parent or carer dies. The guardian will have the legal right to take care of the child as well as the right to make important decisions in their life. Guardianship is governed by the Children Act 1989. Under section 5(3) of the Children Act, a parent who has parental responsibility can appoint another individual to be the child's guardian in the event of his or her death. This is legally binding unless revoked by the court.

What is parental responsibility?

Parental responsibility is a legal term referring to a set of rights a carer can have for a child. This includes the right to make important decisions for the child including:

- choosing and providing for the child's education
- determining the religion of the child
- consenting to the child's medical treatment
- naming the child and consenting to any change of the child's name
- accompanying the child outside the UK and agreeing to the child's emigration
- Appointing a guardian for the child

All mothers automatically have parental responsibility, and therefore have legal rights to make the above decisions. This is not the case for all fathers. A father can acquire parental responsibility in any of the following situations:

- The parents were married when the child was born or later married
- The father is on the birth certificate, and the child was born after 1st December 2003
- The father has been appointed a guardian by the court after the mother's death
- The court has granted a parental responsibility order, a residence order or special guardianship order

- The father has entered into a parental responsibility agreement with the child's mother

Why should I appoint a guardian?

Appointing a guardian in your Will enables someone you trust to take care of your children if something should happen to you. It also confers important rights on that person to make key decisions in your child's life. If both parents have parental responsibility, the guardianship will not take effect until the death of the surviving parent.

If you do not appoint a guardian in your Will, the court may appoint someone for you. This may not be the person you would prefer to look after your child on your death.

Who should I appoint as a guardian?

You can appoint more than one guardian and it should be a person or people you trust to care for your child. If your partner has also made a Will, it is wise to both appoint the same guardians as otherwise this can lead to conflict between the two guardians on the death of the surviving parent.

Although it is not necessary, it is possible to appoint your executors in your Will as guardians, which means they can also look after any inheritance money for your children until they reach 18, or the age you specify in your Will. However, we usually advise against this as it can lead to financial conflicts of interest.

What if I don't have parental responsibility?

If you are a father of a child but are not married to the mother, and you are not on the birth certificate, it is likely you will not have parental responsibility. In which case you will be unable to name a guardian in your Will. If you are concerned that you may not have parental responsibility or would like more information on making a parental responsibility agreement, please contact **Alison Bradley** on **0117 9292811**.

If you require advice generally about cohabitation law, please contact **Lucia Mills** on **0117 929 2811**

If you are a parent with parental responsibility, but the other parent has been granted a residence order, there could be further complications. If this is the case please contact a member of our Family team who would be happy to provide you with further information.

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