



A GUIDE TO CHOOSING A GUARDIAN FOR YOUR CHILDREN

Who Will Care for Your Children If You Can't?

Having children is one thing that motivates many people to create an estate plan. While it isn't an easy thing to think about, most parents want a say in how their young children would be raised if disaster struck. That desire to do what's best for your kids, even after you're gone, is enough to overcome any hesitancy about the estate planning process.

CHOOSING A GUARDIAN FOR YOUR CHILDREN



JANET L. BREWER

I've focused exclusively on California estate planning and probate law since 1991. And, for better or worse, I've just about seen it all.

Janet

About this guide

I've focused exclusively on California estate, gift-planning, and probate law since 1991. Planning for the care of your children in the event of your early death is probably the most emotionally charged step of the estate planning process.

Your last will and testament should name the person or people who will take care of your children in your absence. If there is no will, the consequences to your kids can be severe.

A custody battle among family members or close friends can land your children in foster care while the courts work through the dispute. You might be surprised and disappointed by the outcome of this dispute. All this can be avoided by nominating a guardian in writing.

The good news

I know the necessary ingredients to create a solid guardianship plan for your children. I will approach this step of your estate planning with a clear mind and logical perspective, helping you ask and answer all the right questions to create a plan that lets you rest easy.

In the next few pages, I'll outline the major considerations when making a guardianship plan for your children, which will help you get started picking the right people to care for your kids' interests if the time comes when you can't.

A young girl with dark hair tied in a ponytail with a pink bow, wearing a bright green hoodie, is reaching out with both hands towards a large, iridescent bubble. She is looking at the bubble with a focused expression. In the background, there are several other bubbles floating in the air, and a lush green forest is visible, slightly out of focus.

How to choose **THE RIGHT GUARDIAN**

If you had a good upbringing, it's natural to think of your parents first when naming a guardian. While they might be your first choice to watch your kids for a night or weekend, they may not be the best choice to raise your kids for the long-haul.

Caring for small children takes a lot of energy. Grandparents may not have the physical or emotional stamina to do the job right. Piggyback rides, games of catch, rounds and rounds of hide-and-seek, and many other childhood experiences are a lot to ask of an older guardian. You have to consider how long your children will need someone to turn to. Can grandparents provide support through teenage years and into adulthood? What about marriage and starting families of their own?

In many cases, the best choice is a brother, sister, or close friend with parenting experience. In these cases, you should consider the person's values and life circumstances.

The takeaway: Caring for small children takes a lot of energy. In many cases, the best choice is a brother, sister, or close friend with parenting experience.

Who is best equipped to teach your children the life lessons that are important to you? Who can give them the support, love, and lifestyle they need to thrive?

These factors are more important than keeping your kids in the same school or hometown. That said, it's important to think of exactly what your children's lives will look like with the person you select.

When picking a guardian, it is a good idea to list more than one possibility. A successor and alternate successor guardian will help reduce the chances that the courts will have to make this decision for you. Your first choice may not be in a place to take over as guardian of your children, so always name at least one backup choice.

THE FINANCIAL SIDE OF TAKING CARE OF CHILDREN

A guardian is responsible for taking care of your children's upbringing. Your top choice for this role may not have the skill to handle the financial part of handling the inheritance you leave your kids.

Overseeing an inheritance for the benefit of minor children can be complicated. Many parents choose to name a fiduciary who handles this work separately from the role of the guardian.

If you are considering a separate guardian and fiduciary, it's important to choose two parties who will be able to collaborate for the good of your children.

Fiduciary Responsibility

The role of a fiduciary is dictated by law. A fiduciary must make decisions based on the needs of the beneficiary, rather than the fiduciary's own needs. If the estate includes things like a family home, life insurance benefits, pension benefits or other assets, the work needed to manage all that for the benefit of your children over many years is substantial.

The length of the fiduciary relationship should also be considered. Many parents shy away from putting the entire lump sum of an inheritance into the hands of an 18-year-old. That amount of money, given all at once, can spell disaster for someone so young. You can provide instructions on how this problem should be handled for your kids.

Inheritance trusts give you, through the fiduciary, power to control how the inheritance is distributed. Should it be granted in stages based on age? Should it be tied to signs of maturity and development, like finishing school? You should consider what you think is best for your kids and make sure your estate plan spells that out clearly.



The takeaway: Should a separate person look after your children's money?



Estate Planning and the Family Home

In some cases, the choice of a guardian will influence the plan regarding the family home. Some guardians would welcome the offer of moving into your family home to provide your kids with that additional stability. Others would not be willing to uproot their own lives to relocate.

Your plan should consider whether the home will be sold to fund the trust for your children, or if it should be kept and maintained to give to them when they reach maturity. If the family home is to be kept until the children are grown, then the estate plan must set aside funds for the home's upkeep – for example, mortgage, property taxes, insurance, major repairs, and maintenance.

MAKE YOUR WISHES CLEAR

The instructions you leave for the guardian and fiduciary can play a large role in how your children are taken care of going forward. It is important to leave behind clear, detailed documents laying out your thoughts and preferences. The last will and testament, as well as the inheritance trust instructions should be supplemented by information they can use to make their decisions.

Tell your preferred guardian what your children's likes and dislikes are. Tell them about favorite stuffed animals or bedtime routines. Tell them about your children's friends and relationships with family. Creating these instructions, and keeping them up to date, can help a guardian protect and support your children.

The takeaway: Think long and hard about how to deal with the family home.

You hope for the best, and I'll plan for the worst

Estate planning is a powerful tool for protecting yourself and the people you hold most dear. It's fair to hope and expect that you will be there for your kids, to raise them, love them, and provide for them as they grow into adulthood.

If tragedy strikes, however, you want to make sure you've done everything you can to help them through a terrible time. Choose a guardian and fiduciary. Provide them with the information they need to watch over your children in the best way possible.

GETTING STARTED

I invite you to write down your questions about a guardianship plan and visit my office at 4 Main Street Suite 20, in Los Altos.

In most cases, a \$75 fee is charged for the initial consultation. Call us at (650) 325-8276 to talk with our intake specialist about whether our law office is a good fit for your needs.



ABOUT JANET BREWER



Focused on estate planning, gift planning and probate law since 1991

Janet Brewer has practiced California estate, gift planning, and probate law exclusively since 1991. She is a California certified estate planning and probate specialist – one of fewer than 200 practicing in Santa Clara County and fewer than 2,000 practicing in California (out of almost 200,000 lawyers statewide).

Advanced tax strategies for high net worth estates

Ms. Brewer specializes in preparing wills and revocable living trusts, administering estates and trusts, probating estates, forming family limited partnerships and limited liability companies, and establishing a wide variety of tax-sensitive trusts – including children's trusts, charitable trusts, and irrevocable life insurance trusts. She also prepares estate tax returns for decedents whose estates have more than \$5,000,000 of assets.

CREDENTIALS

Certified Specialist in Estate Planning and Probate Law

California State Bar Board of
Legal Specialization

LLM – Tax

Masters of Laws in Taxation,
Golden Gate University

MBA

MBA, Golden Gate University

JD

JD, University of Denver Law

California State Bar

Member, State Bar of California

Colorado Bar

Member, Colorado Bar Association

ABOUT JANET BREWER



Experience

Janet has served as an Instructor in the CFP (certified financial planner) program at UC – Santa Cruz and has taught estate planning for the UCSC Certified Financial Planner certificate program.

In September 2009, the California State Bar Board of Governors selected her to serve a 3-year term as a member of the Executive Committee of the Solo and Small Firms Section of the State Bar. She was also elected to serve as a member of the Board of Trustees from 2014 - 2017.

Janet is also a member of STEP (the Society of Trust and Estate Practitioners), an invitation-only group of estate planning professionals who have special expertise in the area of international estate planning. She frequently prepares estate plans for foreign nationals who own property or live in the United States and for US citizens who own property abroad.

Prior to founding her estate-planning practice, Janet worked as a corporate attorney for a number of firms, including Corvus Systems, Hewlett-Packard, Hills Bros. Coffee, and Telebit Corporation.

She received her law degree from the University of Denver Law School and was admitted to the California Bar. She earned her MBA degree from Golden Gate University and received her Masters of Laws degree in Taxation (LLM - Tax) at GGU Law School in the summer of 2010.

HONORS & AWARDS

Avvo Rating: 10.0/10 - Superb

California State Bar Executive Committee, Solo and Small Firm Section

Society of Trust and Estate Practitioners

Northern California SuperLawyers since 2007

Founding Member, Wealth Counsel

Getting started

I invite you to write down your questions about a guardianship plan and visit my office at 4 Main Street Suite 20, in Los Altos.

Protect your assets and your loved ones by examining your options now. Call (650) 325-8276 or [get started at our website.](#)



CONTACT US

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