

ESTATE PLANNING NEWS



Naming a Guardian:

Who Would Raise your Kids Almost as Well as You Would?

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Deciding who will raise your children if you die is a tough task. Some parents procrastinate, while others find themselves deadlocked, unable to agree with their partners over a suitable candidate. The guardianship issue is often so difficult that many parents never make a Will and instead abandon their estate planning efforts.

This is a terrible mistake. Consider the possible outcomes if no guardian is named:

- Someone you dislike may end up with your children.
- Guardianship could become a tug-of-war with more than one applicant fighting it out in court.
- If no one steps forward, your children may be dumped on a reluctant family member or wind up in foster care.

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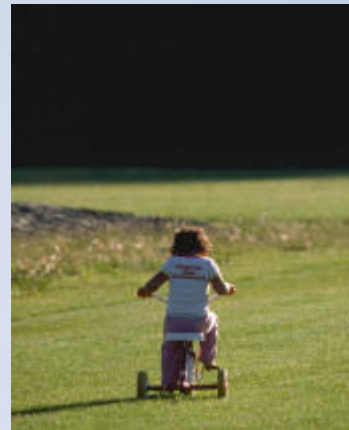


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Announcements

The Contra Costa County Bar Association's Barrister's Section invited Nicole to speak at next month's Bridging the Gap seminar. Bridging the Gap is an annual event that introduces new attorneys to the legal profession. Nicole will share her experience as a solo attorney with attendees who are interested in hanging their own shingle.



Tip of the Month

Refusal to Take Elective Share is a Transfer

A recent case from New Jersey gives married Californians reason to revisit their Medi-Cal plans.

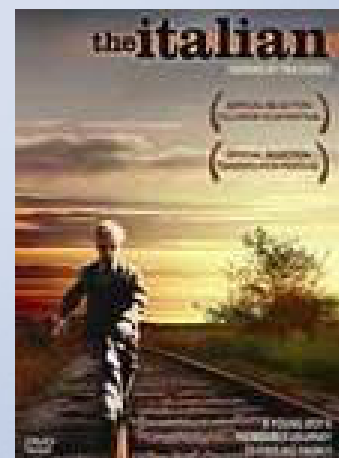
In *I.G. v. Dep't of Human Services*, a husband owned the family home in his name alone. His Will left the proceeds from the home sale to a discretionary trust for his wife, who was residing in a nursing home. The wife's agent declined to exercise the wife's forced share rights to 1/3 of her husband's estate. The State then terminated her Medicaid eligibility, and the Court agreed that her refusal to exercise the elective share was a transfer of the property she would have received.



Entertainment

The Italian (2007)

Six-year-old Vanya is about to be handed every Russian orphan's dream: A loving Italian family wants to adopt him and take him away from the rundown orphanage he calls home. But Vanya can't let go of his yearning for his birth mother. Determined to find her, he sets off on an adventure that leads him into a mysterious and sometimes perilous world. This moving drama received several international awards.



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One thing they never tell you about child raising is that for the rest of your life, at the drop of a hat, you are expected to know your child's name and how old he or she is.

-- ERMA BOMBECK
U.S. humorist & author

Naming a Guardian

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Criteria for a Guardian

To avoid these fates, it often helps to put together a list of criteria before evaluating the candidates. This approach imposes a degree of logic on a task that naturally tends to be driven by emotion.

Here are some criteria you may consider:

- 1) Who shares your values and parenting philosophy? The most important issues tend to be discipline style and educational values.
- 2) Who will provide a nurturing and loving environment?
- 3) What value do you place on certain religious beliefs and practices?
- 4) If you have more than one child, how important is it that they stay together?
- 5) Who currently has a good relationship with your children?
- 6) How many children does your proposed guardian already have?
- 7) What is the age and health of the proposed guardian?
- 8) Where will they live? Will it be necessary to uproot your children from their friends and other family members?
- 9) How important is the financial health of your proposed guardian? Will your child be a financial strain and burden? Will you create an awkward situation if your child is richer?

- 10) Is the proposed guardian willing to take on this huge responsibility?

Tips for Choosing a Guardian

1) Think outside the box

Many parents name their siblings, but you may consider friends, neighbors, or even the child's grandparents, if they're relatively young. Some parents even name the oldest child to look after the others, although this could be too much responsibility for some children.

2) Separate the functions

Some people are great at raising the kids but lousy with money -- or vice versa. Fortunately, you don't have to find one person who can do both. Naming one person to raise the kids ("guardian of the person") and another person to handle the money ("guardian of the estate") is often all it takes to end an impasse. In fact, many parents prefer to split these duties to ensure there will be checks and balances over how the money is spent.

3) Choose one, but have a backup

Parents often name one member of a couple as sole guardian. This may be a solution when one partner dislikes a potential guardian's spouse. *(cont. on p. 4)*

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Naming a Guardian

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If both members of a couple are desirable candidates, they can be named as co-guardians. This may be beneficial when the proposed guardian's partner is the primary breadwinner and source of the family's health insurance plan. Whenever co-guardians are named, it is important to provide for the possibility of divorce. You may prefer one co-guardian, or the duty may pass to another person or couple.

4) Consider your ex

Here's an unnerving fact for many single parents: If your ex wants the kids, there's little you can do to prevent that from happening unless your ex has serious problems such as documented mental illness, chronic drug or alcohol abuse, or physical or sexual abuse of the child.

If you've remarried but your new spouse hasn't adopted the children, it may still be an uphill battle to prevent the child's natural parent from taking over.

You should still name a guardian, though, in case your ex can't or won't serve as guardian. In addition, if you really think your ex is unsuitable, you can include a letter with your Will to explain your feelings to the judge.

5) Consider giving in to your partner

If you've gotten this far and still can't agree with your partner, consider giving in to your partner's wishes. Unless you believe the proposed guardian won't love your child, it's better to name someone – even a second choice – than no one at all.

6) Plan to revisit the issue

You can -- and should -- revisit your choice of guardian. Perhaps you named someone who could take care of your children today, knowing you could update your Will in a few years. Births, deaths, illnesses, marriages and divorces may also change your feelings.

Handling Other Dilemmas

1) Your family won't like your choices

Solution: Leave a written explanation. The judge will give strong weight to your nomination.

2) Your kids won't like your choices

Solution: Talk it over with them. Also, if they are over age 14 when a guardian is appointed, their wishes will be considered.

3) Children from previous marriages

Solution: Focus on the needs of each child. You may end up naming different guardians for different children.

4) Your first choice lives far away

Solution: Consider nominating someone local as temporary guardian until the permanent guardian can take over.

Conclusion

Naming a guardian is tough, but it is something that responsible parents must do to protect their children. As you tell your children, give it your best effort.

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