



Guardianships 101

All you need to know about protecting their future

In New Jersey, everyone who reaches the age of 18 (the legal age of majority), will be able to legally make their own decisions. Parents can no longer make decisions on behalf of their children who are 18 or older. This is true even when the child has disabilities that may make them unable to make sound decisions regarding their care or other important aspects of their life.

To deal with this issue, parents may want to establish a guardianship arrangement. A guardian is someone that can act on behalf of either a minor or an incapacitated person (also known as a “ward”). The guardian will ensure that their ward's health, welfare, and safety needs are met. He or she will also protect their ward's rights in virtually every aspect of the ward's life.

When Does Someone Need a Guardian?

A guardian is only necessary when someone cannot make decisions for themselves. Being able to take care of yourself includes managing your own affairs, such as your finances or healthcare. As a rule, if someone is not competent enough to consent to something because he or she will not fully understand it, having a guardian in place is likely a good idea.

Types of Guardianship

Your child may be able to manage some aspects of his or her life, but not everything. In those situations, a more limited type of guardianship may be appropriate. There are two types of guardianships:

1. General Guardianship.

A general guardian is necessary where the ward is unable to make any decisions on behalf of him or herself. This expansive role is sometimes referred to as “plenary” guardianship.

2. Limited Guardianship

Some guardianship arrangements are limited so that only decisions in a specific category are addressed. For example, a guardian may only be authorized to make legal decisions. Permissions are usually expressed in categories, such as in education, healthcare, financial, and residential issues.

Establishing Guardianship

You must petition the Court to establish a guardianship. As part of the process, the ward will be evaluated to determine the extent of his or her disability. Someone from the Department of the Public Advocate will also represent the individual to ensure that his or her rights are protected in the proceedings. If the representative agrees that having a guardian is a good idea, then there is no need to have a court hearing. If the representative disagrees, a hearing will be held to address the issues.

It's always a good idea to hire a New Jersey attorney who knows the process well to help you with your application. The Matus Law Group's team of professionals can walk you through the application process and represent you if a hearing is necessary. Please contact us for more information.

Top mistakes when naming a guardian for your kids

When you have children, the estate planning process becomes especially important. Not only is it necessary to ensure your wishes are carried out and your family is financially provided for if you pass, it is absolutely vital for the purpose of naming a guardian who will raise your children if you and their other parent are ever killed or unable to raise them.

The fact is, accidents happen all the time, and the potential for a life-changing event that would leave your minor children without parents to raise them and care for them is high. If such a worst-case-scenario were to occur, wouldn't you rather make the determination of who should raise your children instead of leaving it up to a court and judge who does not really know your kids or what you would have wanted?

However, the seriousness and gravity of naming a guardian can sometimes leave parents overwhelmed. Additionally, there are some who do not take the choice serious enough. Below we have outlined five common mistakes that parents need to avoid when naming a potential guardian for their children.

1. Choosing someone because you are expected to

People often assume that they need to choose obvious people as guardians—perhaps their parents or their siblings. However, these people may not always be the best choice to raise your children. Never name a guardian to appease someone or avoid hurting their feelings. Never name someone as guardian because you think you are expected to. Your children's futures are at stake, and quite simply, you need to make the BEST choice, not the expected choice.

2. Making an emotional decision

Selecting a guardian should be a logical process, removed of emotion. For example, perhaps you do not personally get along with your spouse's sibling, but logically you know that individual would be the best person to raise your kids if you were unable to. Try to remove emotion from the equation and think logically about the best interests of your children.

3. Selecting someone a court would not allow

There are certain occasions in which a court may not honor your choice of guardian, such as if the person you named has a drug or alcohol issue or a significant criminal history. Selecting someone a court would likely question or disallow will complicate the process, make things much harder on your children, and in effect result in the same situation as if you had not named a guardian at all.



4. Naming someone without resources

You may have a guardian in mind whom you know would love and care for your kids and raise them with the values you envision, but if they do not have the financial resources to care and provide for them, they probably should not be your choice. This is especially important if you have more than one child and you want to ensure that your kids stay together. Raising a child is a serious financial burden, and your guardian should be able to shoulder such a burden.

5. Naming someone who won't be around

Imagine if you named someone as a guardian for your minor children who is of a significantly advanced age or in poor health. Your kids are faced with the trauma of losing their parents and go to live with this guardian. Then, within several years, your kids are faced with the added trauma of losing that guardian. It is important to name someone as guardian whom you expect to be around for a significant amount of time. No one can predict the future, but naming an elderly parent as guardian may not be a better choice than naming a middle aged sibling if all other factors are equal

The importance of naming a legal guardian who will raise your children if you and your spouse are killed or incapacitated cannot be overstated. Nothing less than your children's future and wellbeing are at stake. Please take immediate action to begin the estate planning process, including naming a guardian.

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Red Bank Office
125 Half Mile Road
Red Bank, NJ 07701
(by appointment only)

Toms River Office
81 East Water Street, Suite 2c
Toms River, NJ 08753
(732) 281-0060

NYC Office
222 Broadway 19th Floor
New York, NY 10038
(by appointment only)

