Choosing a Guardian and Conservator for Minor Children

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For parents of minor children, there is perhaps no more important legal decision than deciding who will care for your children if both parents were to die or become incapacitated. When choosing your guardian and conservator, you are unlikely to find someone who would be perfect. After all, there is no one who is just like you, and you are planning for a situation that is by no means ideal. Your task in choosing a guardian and conservator is making the best of that situation for your children.

In making your selections, there is an important distinction to consider: you can (and often should) differentiate between naming someone who will care for your children and naming someone who will be responsible for your children’s assets. In Michigan, the person you designate to care for your children is called a guardian, and the person you designate to manage your children’s assets is called a conservator (distinguished from the role of trustee, which is the person who or entity that manages the assets you leave to your children in a trust; often the role of conservator is limited or nonexistent if a trust is in place). The roles of guardian and conservator generally end when a child turns age 18.

Why You Might Want to Name Separate Guardians and Conservators

- Your children benefit from well-qualified individuals, as well as checks and balances. In many cases, there may be a nurturing and loving guardian who may not be the best decision maker when it comes to money. In others,
there may be a brilliant financial adviser among those you trust, but the individual may be too busy to provide a great level of care for your children. Naming one or the other for both duties, despite lacking the ability to perform well in both areas, is counterproductive for your children. Similarly, failing to name a loving caregiver because of inadequate financial management skills or failing to name a brilliant money manager because of lack of quality time to give your children deprives your children from the unique qualities each has to offer. Naming the first as guardian and the latter as conservator gives your children the best of both worlds and allows each individual to focus on his or her respective duties. Segregation of these duties also offers checks and balances between the two roles.

- You can ensure your children will continue to be involved in both sides of the family. Additionally, parents may be concerned that their children might not see one side of their family much in the event of both parents' deaths. They can alleviate this concern by naming a guardian from one side of the family and a conservator from the other side, thereby facilitating continued communication and involvement in the children’s lives from both sides of the family.

Considerations for Selecting Your Guardians and Conservators

- Basic characteristics. For a guardian, you should generally look for someone who shares your values, goals and parenting style; someone with good character; someone who is financially stable; and someone with relatively good health and a life expectancy that is longer than the time it will take your children to become adults. A conservator, in addition, should be responsible with managing money.

- Lifestyle and capacity. Couples often come up against the dilemma that those who really love children often already have children of their own and may seem to have their hands full, whereas those who do not have children may seem more able even though many who do not have children have deliberately chosen not to do so. Consider to what extent the lifestyle of your intended nominees would change if they became the guardian of your children. Likely, those who already have children or those who do not but planned to do so one day would be able to better adapt.

- Considerations for choosing your own parents. Subject to life expectancy and health, many would choose their own parents to become guardian and conservator. But in so doing, carefully think about what that would mean for them. For example, would you want your parents to have to start over in raising children again when they may have just retired? Others name those close in age to themselves, such as siblings, cousins or close friends. If your child has a godparent, he or she is often someone from one of these categories.

- Maximizing stability and taking your children’s wishes into account. Are your children old enough to express an opinion? Would they have to leave friends and change school districts – and are they at such an age that doing so would be especially difficult? Are they especially bonded to any family pets,
and is the guardian also able and willing to become the new guardian of the pets?

- **Have a backup plan.** It is a good idea to name multiple nominees in succession because even though someone may say yes now, they may not be able to fulfill that role if and when it becomes necessary.

- **Be specific.** If you want your children to be raised by your best friend who is married, be sure to specify what happens in the event of your friend's death or incapacity, i.e., will the friend and spouse be named jointly (in which case your children would stay with the friend's spouse), or will you name only your friend (in which case your children would be raised by the next nominee in your succession)?

- **Discuss with your intended nominees.** In all cases, be sure to have a discussion with your intended nominees before naming them. This will give you a chance to address any concerns or apprehensions that your chosen persons may have. It will also provide you with peace of mind in knowing that there will not be any surprises later.

- **Tell your attorney about others you do not want named.** While couples can often struggle to reach an agreement on who should serve in these roles, there is often at least one individual that the couple agrees they do not want to serve under any circumstances. Be sure to let your attorney know if there is any such person. Your attorney can help to ensure your wishes are honored in a way that does not offend someone who may never have known your feelings otherwise.

- **Decide what is right for your children.** You may want to keep this discussion private among your nominees and their successors. Family members can often make assumptions about who a guardian or conservator should be, and this is further complicated when two families are involved. Unless your intended nominee opposes your plan, the decision belongs to you as parents. If your decision is well reasoned and feels right, do not allow yourself to be influenced by the opinions of others.

- **Revisit over time.** The foregoing gives several examples of why revisiting this decision is important. As your children and intended nominees age, and everyone's lives change, an update may be in order.

### Action Steps

Once you have chosen a guardian and conservator, or if you have questions about the process, contact your estate planning attorney to discuss your plans. This discussion should also include other common estate planning questions relating to how any inheritance for your children should be managed, including when and under what circumstances they will receive the assets.

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