

GUARDIAN :

The person nominated by a will to care for infant children if both parents die. While a nomination of a guardian under a will is given significant weight, the appointment can be reviewed by the Family Court, on application from a concerned interested party.

If the testator has infant children (under the age of 18), then they can appoint a guardian for those children in their will. Ordinarily, a child's surviving parent will automatically be the child's guardian (even if the child was living only with the testator). However, it is important that the testator provides for circumstances in which both the child's parents die together.

The appointment of a guardian in a will is only a declaration of the testator's intention. The Family Court retains the ultimate power to appoint an alternative guardian if it believes it is in the best interests of the child.

Generally, a guardian has all rights and powers in respect to the welfare and upbringing of a child, such as the child's parent would have had. These include the right to have the daily care and control of the child, and the right and responsibility to make decisions concerning the child's welfare.

WHO WOULD BE THE GUARDIAN OF A CHILD IF NO APPOINTMENT IS MADE UNDER THE WILL?

In instances where no guardian has been appointed under the will, and there is no surviving parent, the Court can make an order appointing a guardian.

The Court will take into consideration the needs and circumstances of the child.

CAN GUARDIANS BE VALIDLY APPOINTED WHERE THE PARENTS HAVE SEPARATED?

Where the Family Court has awarded custody to one parent and that parent subsequently dies, the surviving parent does not have an automatic right to custody of the child, although the Family Court will generally prefer to see this outcome.

The surviving parent can make an application for guardianship and custody, as can any person who has the care and control of the child at the time.

If the deceased custodial parent has appointed a guardian under their will, that guardian will have the right of custody over the surviving parent, subject to the exercise of the Court's power to appoint an alternate guardian.

GUARDIANSHIP (Where children are under 18) :

Guardian - Full name and address :

Backup Guardian - Full name and address :

This summary is based on the law as at 1 October 2015.

This summary covers legal issues in a general way. It is intended for information purposes only and should not be regarded as legal advice. Aspire Planning does not assume a duty of care in connection with this document and further advice should be obtained before taking action on any issue mentioned.