

# Guardians for our Children

August 2019

*To the well-organised mind,  
Death is but the next great adventure.*

J.K. Rowling





Parents who have planned well for their children can peacefully venture forward if death comes a knocking earlier than expected.

### Aspects to plan for



Who will step in your parental boots in the event of an untimely death?



Where will the money to care for your children come from?



What if your choice of caregiver acts like Cinderella's stepmother?

These are real questions for any parent with underaged children to consider.

Also, children under the age of 21 need a legal guardian.

The welfare of a child is the legal and moral responsibility of parents. Even when a parent no longer has legal custody, he/she remains duty-bound to maintain or contribute towards the maintenance of his/her children; *section 68 Women's Charter*.



### An Untimely Death

The law does not allow a child to go neglected if parents suddenly pass away. Even where the other parent lives, depending on the circumstances, the Courts can appoint a guardian to act jointly with the surviving parent; *sections 6(1) and (2) Guardianship of Infants Act*.

But this process requires an application to be made to the Court before it can be triggered. And it takes time and money.

Not wanting to leave critical matters to chance, parents knowing now that they can choose guardians during their lifetime, will surely exercise that choice.

### Godparents are not guardians

Godparents may have a moral and religious role, at best. They do not carry a legal obligation to care for and raise your children. Even when they do want to act on behalf of their godchildren, their authority is not a legal one and thus not recognised. For example, they cannot operate a bank account set up for the benefit of your children.

Only a guardian is both obligated under the law and has legal authority.

While it may be convenient to choose the godparents as guardians,





step back a little and think about whether you would like instead to weave a network of checks and balances of the individuals who are to care for your children; ie. a godparent can keep an eye on the guardian and vice-versa.

A little more is said about this network below.

## The document for the appointment

The law offers two ways for a guardian to be appointed by parents;

- ▶ Via a document called a *deed* or
- ▶ Using a parent's *will*.

### A Will "doubling-up"

A simple and versatile tool, a will is a convenient document to use.

It addresses, after all, the distribution of your assets upon your demise. While identifying who should inherit "what" (assets) and "when" (the age at which your beneficiaries are to obtain control and ownership), you can set out "who" is empowered, as guardian, to utilise these assets to care for your children.

A single document says it all.

However, a will's validity must be proved in Court (ie. a Grant of Probate must be issued by the Court) before its contents are effective. Before that, there is a tricky window where a guardian's legal authority is not yet recognised thus tying his hands in acting on behalf of your children.

Careful planning can overcome these obstacles.

## Who should it be?

Personal preferences may pop up immediately in your mind when thinking about "who" the guardian/s can be.

Put those thoughts on hold.

Consider using an objective approach as a first step.

What are the qualities you would like a guardian to have. Assign weights to each quality, the most important ones carrying a higher weightage.

Some candidates will stand out.

Among the qualities listed should be the guardian's age, physical proximity to where your children will be living, the guardian's values which should be aligned with yours as far as possible, the guardian's familiarity with children and vice-versa, the ability of the guardian to





raise your children,... and perhaps most significantly, an existing happy relationship between the guardian and your children.

Here are some further thoughts:



Where you are in the comfortable position of having a few choice candidates, consider appointing more than one guardian. That way, no one individual is overwhelmed with the commitment and responsibility. This too offers some degree of checks and balances between the guardians, just in case.



Build in substitute guardians as well, just in case the first choices don't work out.



Seek the consent of all guardians.



Play up to the strengths of each guardian by assigning roles you know the individual will be good at.



Identify the roles and responsibilities that are particularly important and assign the guardians to undertake them jointly - collectively (rather than severally - individually).

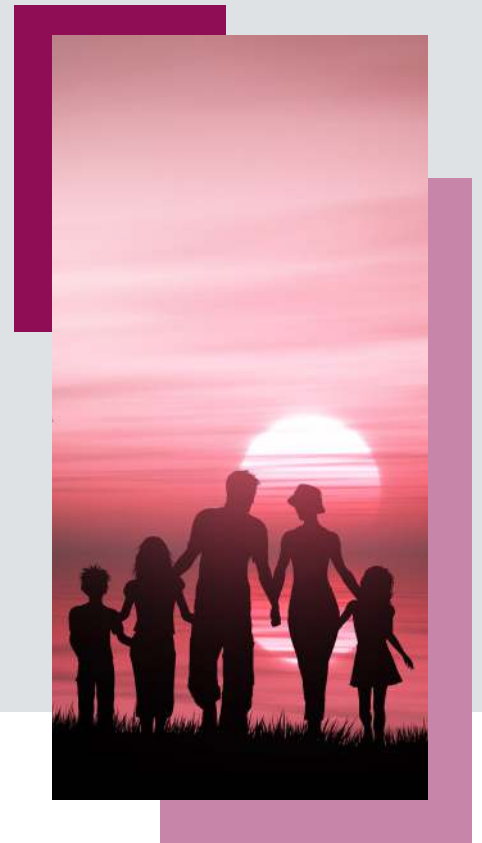
In the time that follows, encourage a healthy, happy and loving relationship to develop between your children and their guardians. Make it a point as well to keep in touch with each guardian to make sure that they remain committed to the responsibility and continue to be your top choices.

The story of how you would like your children to be looked after and raised, is yours to create. Drafting it in clear and comprehensive terms is a task you should work on with your lawyers.

### Flexibility over time

As you watch your children grow, it is natural for your initial views to change and evolve.

If having your will redone is not something you want, you may think about having codicils to your will. A codicil can change or add to the







contents of your will.

Alternatively, where you do not want to tinker around with the contents of your will, and fundamental changes are not what you are looking to make in the first place, you could consider using a Letter of Wishes to contain your instructions. Though not enforceable, it guides your guardians, trustees, the Courts or any other party called upon to consider your wishes.

The document that serves your purpose best is a conversation you should have with your lawyer.

### How much money should one set aside?

The law offers some guidance.

Here are two pieces of legislation to consider:

- ▶ The Women's Charter requires a parent is to sufficiently provide accommodation, clothing, food and education as may be reasonable having regard to the parent's means and station in life; *section 68*.
- ▶ If a parent has not sufficiently provided for an infant son or daughter, upon death, there is legislation which allows an application to be made to the Court to make "reasonable" provision for that child's maintenance; *Inheritance (Family Provision) Act*.

The factors that may be considered include the child's past, present or future capital or income, the child's conduct in relation to that parent or generally, the reasons for the distributions under the will being made as they were or the reasons for refraining from making certain distributions.



### Where will the money come from?

Ideally the assets set aside to care for your children in the years ahead should be an income generating ones.

Responsibility for the oversight of the assets, their care and maintenance, investment and re-investment need to be thought through.

The simplest solution would be to place all assets and funds directly in the guardians' hands and having them do the best for your children. But this places much trust and responsibility on them.

Prudently, one should think along the lines of more robust and flexible solutions that offer protection over time and address the changing circumstances and needs of your children. This is when the placement of assets under the care of organisations or trustworthy individuals and the creation of structures with built-in checks, balances and legal responsibilities become useful tools worthy of consideration.





Here are some thoughts:

- ▶ Choose corporations, rather than individuals, to fulfil roles. They do not have a life span.
- ▶ Divide roles and responsibilities between more, rather than less, entities.
- ▶ For example, the institution with whom the funds are to be invested and the advisor of how the funds should be used, should be different. There is objectivity and impartiality in making investment proposals.
- ▶ The entity who finally decides which investment/s to make should again be different.
- ▶ The guardian, who you have carefully selected to care for your children and identify their needs, should also again be different.

A trust pulling it together is a good tool to think about.

The type of trust and its contents would of course vary with your circumstances.

- ▶ Should it be created now during your life time?
- ▶ Should you transfer monies into the trust now?
- ▶ How long does probate take to free up your monies before the guardians can use it for your children?
- ▶ What about a will trust; ie. one created in your will?
- ▶ At what age should each child have distributions made directly to him/her?
- ▶ When is it a good time/age to wind up the trust and distribute all its assets to your children?

These are conversations that parents should have with their lawyers.

*This is a story for you to create and tell*





## About Amita

Founding member of and Consultant at RHTLaw Taylor Wessing LLP, Amita has more than 2½ decades of experience as a practicing lawyer. She started off in the areas of Property, Banking and Finance and continues to provide valuable counsel in these areas. To support the push by the Singapore government towards building a Private Wealth industry, Amita subsequently carved out and developed the Private Client practice. Her journey to build an ecosystem connecting her professional life of law, her passion for art and returning back to society is a continuous one.

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