

How a Judge Chooses a Guardian for Your Child

As we approach the season of gratitude, it's only fitting to reflect on the blessings that surround us. Among these, the safety and well-being of our loved ones, especially our children, take center stage. In the spirit of Thanksgiving, let's explore a topic that often goes unmentioned at the family



dinner table but is crucial to the peace of mind we all cherish: designating a guardian for your minor children. As a single parent, and a lawyer who practices estate and probate law, I am well aware of the importance of telling the world who you want to raise your kids if you are unable to do so. Sadly only 3 in 10 parents with young children take the time to do so. Maybe this month, as we reflect on our blessings, we can add another thing to be thankful for.

The Gratitude of Planning Ahead

In the hustle and bustle of daily life, contemplating worst-case scenarios is not the most pleasant task. However, ensuring the protection of your children should anything happen to you is a gift of love and foresight. By designating a guardian, you take control of an important aspect of their future, providing not just for their financial well-being but also for their emotional security. If you have young children, or grandchildren, ensuring their protection is a perfect addition to the things we can be thankful for.

What Priority if Given to Potential Guardians?

While we are gathered in the warmth of our homes during this Thanksgiving season, it's essential to recognize that in the legal realm, there's a predetermined

order of priority when it comes to appointing a guardian for minors. Under Texas law, the court adheres to a specific hierarchy:

- First, if one parent is alive the parent will remain the guardian of the child. If, for some reason, that is not possible, that parent's preferences as to who the guardian is will be followed by the court.
- If both parents have passed away, the court will look to any written designation made by the last surviving parent.
- In the absence of the above, the court will consider any written designation by a deceased parent.
- If no parent has named a guardian, the court will next turn to grandparents. When more than one grandparent is available, the Judge has to pick the one the Court feels is best for the child under the circumstances.
- If there are no grandparents available, the court is required to next choose from the child's closest kin. That could be an adult sibling, or an uncle or aunt. Again when multiple options are available, the Court has to pick one.
- Finally, if there are no suitable candidates, the Court can choose a "qualified person."
- And, if it weren't complicated enough, if a child over the age of 12 wants to choose the guardian, he or she can alert the Court. The Judge must follow that choice if the Judge finds the selection is in his or her best interest.

Avoiding the Unwanted Outcome

While courts strive to act in the best interests of the child, the process can be emotionally challenging and may not align with your vision for your children's future. A court-appointed guardian may not fully understand your values, wishes,

or your children's unique needs. That's why, taking the time to designate a guardian is so vital to your child's future.

Often the Court's first choice is not who you would normally consider the best. Worse, the Court might choose someone you would never want to raise your child. Or, sadly, the Court will have to choose between several good family members who have equal priority.

Consider two well-meaning grandparents from different sides of the family who are put in the position of fighting over the grandchild. Without your direction, the unfortunate truth is that the Court will usually choose the family member with the most resources. While the Court is not making the choice based on how much money they have, having additional resources leads to advantages in representation and presenting the case. This is going to inevitably damage the relationship between the grandparents and ultimately harm your child.

Expressing Gratitude through Proactive Planning

This Thanksgiving, express your gratitude by taking a proactive step to protect your family's future. Designate a guardian through a legally binding document. By doing so, you ensure that your chosen guardian is given top priority, and your children are entrusted to someone who knows and loves them as you do.

Here are some practical things you can do:

1. Download your free copy of *Naming a Guardian for Your Child*. Currently you can get your free copy on my website. The guide will take you step-by-step through the process and allow you to make a designation for free.
2. Consult with a legal professional. At my firm, I take things much further than just choosing a guardian. I have developed a comprehensive plan to protect my children from unneeded stress or uncertainty in the event of my incapacity or death. This plan provides for first responders, and provides clear directions on who I want to take care of my kids and how I want them

raised. I make this same plan available to the families I represent. Make sure any lawyer you choose goes beyond just designating a guardian for you.

3. If you have made plans already, this would be a great time to review them. Life is dynamic, and circumstances change. Does your plan still make sense?

A Season of Thankfulness and Preparation

As we gather around the Thanksgiving table, let us extend our gratitude beyond the immediate joys of the season. By designating a guardian for your minor children, you give them the gift of security and stability. Avoid the uncertainties of court-appointed guardianship and take control of your family's future. This Thanksgiving, express your love in a tangible way, ensuring that your children are always surrounded by the warmth of a loving and familiar embrace. And, if you need help, know that I am here for you. You can always call me at (281) 425-1300 to schedule a planning session.

Wishing you and your family a season filled with gratitude, love, and the assurance of a well-planned future.

—By Marc Pinney