

Caring For Your Child When You're No Longer Here

By Christina Ianzito
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Ginger Jacobs, 38, is tirelessly devoted to her 17-month-old daughter, Geneva, and the last thing she and her husband, Jeff, want to contemplate is her growing up without them.

"It brings tears to my eyes just thinking about it," she admits, though she's forcing herself to do so, in part, she says, because "I've got a friend whose parents passed away when she was really young, and she's a fanatic about this stuff."

The Jacobses bought the software program Quicken WillMaker, which includes a section on choosing a guardian for a child in case of parental death. They wrestled with the merits of various family members before settling on Ginger's brother.

An untimely double death at this age is unlikely -- there's a reason why life insurance is so cheap when you're in your thirties and forties -- but experts say the "what if?" factor should motivate couples to consider the unthinkable: What will happen to your children if you both get hit by a bus (or train, plane, car, terrorist attack)? Mary Randolph, senior vice president at the legal publisher Nolo, says that even though you'll probably live long enough to see your children's children, you should settle on a guardian "for peace of mind. It's like putting them in a car seat."

Though a judge would make the final decision, based on his or her interpretation of your child's best interest, the courts would rarely overturn parents' written wishes. If there are no written wishes, then your child could face months of uncertainty while, for example, two of your well-meaning family members battle each other for custody. And worse, neither of the contenders may be the person you would have chosen.

Steven Jacobson, a Bethesda attorney who specializes in estate planning, says it's absolutely understandable that "people get very upset talking about this issue," but "you're better off coming up with a poor choice than no choice." He adds that he's had a situation in which a couple couldn't agree on a guardian and, in their separate wills, "the husband and wife chose different people. I told them, 'It's not good, but it's better than not having something done.' "

That's what Jacobs figured: Just get something in writing. She considered her sister, but she lives in New Mexico, far from other family. She decided to designate her brother and sister-in-law as Geneva's guardians not only because they live in Frederick, near other East Coast-based relatives, but also because they already have two young children and "we both like the way they're raising their kids. They seem to have the same values and we feel like they'd raise her as their own."

Some couples may have an obvious choice of guardian in mind, but they're cowed by the expense of hiring a lawyer to handle the paperwork, which can cost as much as \$700 for a simple contract to hundreds of thousands to manage a multimillion-dollar estate. Many experts concede that it's perfectly legitimate to designate a guardian in a homemade will using software such as Quicken's or a book ("Nolo's Simple Will Book" is \$36.99) if you've got a straightforward financial situation -- though some attorneys, such as Edward S. Schlesinger, a 40-year veteran of estate planning in New York City, are dismissive of do-it-yourself estate planning. "I don't sell forms, I give advice," he says, adding, "I don't do brain surgery with my own knives."

It may not be brain surgery, but there are some complicated factors to consider, says Les Kotzer, a wills attorney based in Toronto and author with Barry Fish of the book "The Family Fight: Planning to Avoid It." Kotzer says his psychologically oriented practice could be described as "emotional law" and is "dedicated to avoiding families fighting after a parent dies."

The first step, he notes, is to know that you need to designate not only a "guardian of the person," for your child, but also a "guardian of the property," to handle your finances. He suggests appointing two separate people for the jobs. With a separate financial guardian, "you can have a check and balance." (Jacobson, though, disagrees that this separation of powers is always necessary. "If you're going to trust someone with the enormous responsibility of raising your children," he asks, "is it not an insult to not let them manage the money, too?") Kotzer also suggests doing a subtle mini-interview with people you're considering, even if you're not ready to discuss their willingness to serve as guardians yet. "Sometimes we can be very superficial with our siblings as we get older," he says, but it's a good idea to ask, " 'How's your marriage, Bob? What do you see yourself doing in five years?' Get to know them as a parent," and think seriously about what kind of everyday life the child would have with this person.

In another discussion, when you decide Bob's the man for the job, ask for his permission to designate him guardian. "You'd better discuss it now," Kotzer warns, "because they don't have to accept what's in the will."

If your children are old enough, try to determine their preferences. Ask: "What do you think of your uncle? Do you like your cousins? Do you like the fact that they go to church every week?" And so on.

Kotzer and others advise against appointing a couple as co-guardians, since they might divorce after your death and a custody battle could ensue. Pick one person as the primary caretaker. And if you appoint your own parents, you also should list a backup person.

Finally, once you have your will signed, including the signatures of at least two witnesses -- a requirement in the District -- tell family members where the original is.

Kathleen Laroski and her husband, Joseph, both 33 and living in the District, have yet to formally choose a guardian for their 16-month-old son, Joseph.

"We're not really wanting to think about it," Laroski says. "It seems kind of unreal."

She concedes, however, that the Sept. 11, 2001, attacks drove home the possibility of devastating loss. She's from New Jersey, which was hit hard by the attacks. Her two older sisters have both asked her to be guardian of their children -- six altogether. "It's a little scary, she admits, "but I was just so flattered to be asked."

For her part, she says she'd consider appointing her sister Susan, who has four kids of her own, as her baby's guardian, in part because Susan shares the Laroskis' Catholic faith.

Jacobson, the Bethesda attorney, emphasizes that wills can be changed. If you want to change your choice of guardian later, he says, "it's the easiest thing in the world." In theory, that is.

"My wife and I need to revise some things in our wills," he says. "I've got to talk to her about it, but she gets upset."