

Making a Declaration of Guardian for Minor Children in Texas

Provided by Law Office of Pamela Parker, (512) 804-9934

What happens to your children if something happens to you? Who will take care of them?

If both of a child's parents die, the State, through a judge, will decide who takes care of them until they are grown.

The judge wants to know what the parents think is best for their child.

A **Declaration of Guardian** is a formal way for parents to tell a court who they want to take care of their children if they, the parent, are unable to do so. Typically, this becomes an issue at the death of the second parent, but a guardian may also need to be appointed if the last surviving parent becomes severely disabled and is not able to continue to care for their child.

Is it part of the parent's will?

Many form wills and online will programs include a declaration of guardian in the parents' wills. But it is much better for parents to make their declaration a free-standing document, separate from the will. A will may not be found or submitted to a court for several weeks or even months after the death of the parent, but a child will need to have at least a temporary guardian appointed almost immediately.

Having the declaration separate from the will means that the person who is named can keep a copy and submit it to the court immediately for appointment.

A separate Declaration also means it is accessible in cases of disability, where the will would never even be looked at.

A court will appoint a guardian for your children based upon the best interest of the children. The parents' wishes will be presumed to be in the best interest of the children, but contrary evidence can be presented, and if the Court finds a significant problem with the appointment of the persons you name in the Declaration, the Court will name a different guardian. This is an added layer of protection for your children. The Court will NOT simply second guess your choice, however.

Each parent should make a separate declaration.

Typically, if one parent dies, the children will remain in the care of the surviving parent, or placed in the care of a non-custodial divorced parent, regardless of what a declaration of guardian says. If there is a particular reason you think your child's other parent should not have care and custody of the children if you die, you should speak to an attorney to find out your options before filling out this form.

Should the children stay together?

Although most parents name one guardian for all their children, you can absolutely name different guardians for each child. You may want to do this if you have a large number of children, or if you have children with special needs. It is entirely up to you and depends upon your particular circumstances. If you do want to name separate guardians for different children, do separate declarations for each.

If you have separate declarations for each child, you should name all children on the form where it asks about your children, and then state which child this declaration applies to, and also state that a separate declaration exists for the other children.

Should you name a couple or individual?

You can name a married couple as guardian, or an individual person, married or single. If you name a married couple as the guardian of your children, they are referred to as “co-guardians.” If you are naming a single individual, then simply change the word “co-guardian” to “guardian” in this document.

If you name a married couple as co-guardians, it’s important to consider what you want to happen if one of the couple can no longer serve – either because of death or divorce. If you name your sister and her husband as co-guardians, but would not want to name your sister’s husband sole guardian if your sister dies, for example, then you should change the wording in the declaration to reflect that if one of the co-guardians can no longer serve, then the other should not continue but that the contingent guardian should take over.

Bond (a form of insurance) would normally be required to protect the estate of the children from fraud or mismanagement. Bond will be waived, however, if you expressly state so.

Should you have one person take care of the child and another person handle the money?

The “guardian of the person” is responsible for the physical care of the child, even if the child does not actually live with the guardian (for example, a child who lives in a residential treatment center).

The “guardian of the estate” is responsible for the child’s money, typically the inheritance left upon the death of the parent.

The same person may act as both guardian of the person and of the estate, or you can name separate persons for each. There are a number of reasons you might want to name different people, and the decision whether to name one or separate guardians depends totally upon your circumstances. If you do want to name separate guardians of the estate and person, simply make two entries in this declaration, noting which named person(s) is for the person vs the estate.

How to Complete the Form?

Fill in all the blanks, making alterations if necessary. As discussed in the sections above, you may need to alter the blanks if you:

- Are doing separate declarations for each of your children
- Are naming separate persons for guardian of the person and guardian of the estate
- Have special instructions regarding married couples named as guardians

You will need two disinterested witnesses to your signature. Disinterested means that they are not named as guardians or contingent guardians, and should not be family members that would otherwise naturally be considered for guardianship in the absence of your declaration.

You and your witnesses must sign the document in the presence of a notary public.

This declaration is only effective for minor children. If you are the court ordered guardian for your adult child, there is a different method for you to suggest successor guardians.

If you have further questions, consult a lawyer. If you are ready, print and complete the following document, including the notarization affidavit (two pages, total).

Keep a copy with your important personal papers, and also give a copy to the person(s) you named as guardian.

DECLARATION OF GUARDIAN FOR MY CHILDREN

I am _____, of _____ County, Texas.
This is my Declaration of Guardian for my Children. I revoke all earlier declarations of guardian for my children, whether by will, codicil or written declaration, but do not otherwise revoke or modify any will or codicil.

I have _____ [number of] children:

[List names]_____

Every reference in this instrument to a "child" or "children" of mine is to them.

In the event of my death or incapacity, if I am the last surviving parent of any minor child, I appoint _____ and _____ as co-guardians of the person and estate of each such child. If either of them fails or ceases to serve, the other shall serve as sole guardian. If both of them fail or cease to serve, I appoint _____ and _____ as co-guardians of the person and estate of each such child. If either of them fails or ceases to serve, the other shall serve as sole guardian. I request that no bond or other security be required of any named guardian of any child of mine.

Signed on this ____ day of _____, 20____.

(Witness Signature)ⁱ

[Name of Parent], Declarant

(Witness Signature)

SELF-PROVING AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF _____ }

BEFORE ME, the undersigned authority, on this day personally appeared _____, Declarant, and _____ and _____ as witnesses, and all being duly sworn, the Declarant said that the above instrument is his Declaration of Guardian for his/her Children and that he/she made and executed it for the purposes expressed in it. The witnesses declared to me that they are each 14 years of age or older, that they saw the Declarant sign the Declaration, that they signed the Declaration as witnesses, and that the Declarant appeared to them to be of sound mind.

(Affiant Signature)

Declarant

(Affiant Signature)

SUBSCRIBED AND SWORN TO BEFORE ME by _____,
Declarant, and the above named witnesses, on this ____ day of December, 20____.

Notary Public, State of Texas

ⁱ You will need two disinterested witnesses to your signature. Disinterested means that they should not be named as guardians or contingent guardians, and should not be family members that would otherwise naturally be considered for guardianship in the absence of your declaration.