APPOINTING A TESTAMENTARY GUARDIAN FOR YOUR CHILD

APRIL 2, 2014 | GENERAL

INTRODUCTION

A parent or guardian (the will maker) may make a Will appointing a person as a Testamentary Guardian of their child. The Testamentary Guardian is responsible for making decisions about the long term care, welfare and development for the child and be responsible for the child’s daily care.

WHO CAN MAKE THE APPOINTMENT?

A parent or guardian of a child may make the appointment of a Testamentary Guardian provided the child is under the age of 18 years. The appointment may only be made by a will maker who is parent or current guardian of the child.

The appointment of a Testamentary Guardian takes effect on the will maker’s death. However, if a parent survives the child, the appointment only takes effect upon the death of the last surviving parent or if the Will shows the will maker intended the appointment to take effect upon the will maker’s death, the appointment takes effect on the will maker’s death.

WHAT IS THE EFFECT OF AN APPOINTMENT AS A TESTAMENTARY GUARDIAN?

The appointment as a Testamentary Guardian provides the guardian with all the powers, rights and responsibilities for making decisions about the long-term care, welfare and development of the child that are ordinarily vested in a guardian (i.e. the child’s education and religious upbringing). The Testamentary Guardian will also have the daily care authority for the child if the child has no surviving parent and no-one else has daily care authority for the child under a decision of a federal court or a court of State.

CHOOSING AN APPROPRIATE TESTAMENTARY GUARDIAN

It is important to consider a number of matters when appointing a Testamentary Guardian. Some matters to be considered include the following:

(a) The proposed Testamentary Guardian’s relationship with the child;

(b) The proposed Testamentary Guardian’s relationship with your chosen executors and
trustees of your Will;

(c) The proposed Testamentary Guardian’s location. It is important to consider whether you wish your child to continue living in Queensland. If the Testamentary Guardian is required to relocate to look after your child you may wish to consider how that might impact on the Testamentary Guardian’s income and lifestyle;

(d) The proposed Testamentary Guardian’s age and fitness to act; and

(e) Costs that might be imposed on the Testamentary Guardian.

WHAT ELSE DO I NEED TO KNOW?

A Testamentary Guardian may only be appointed through a person’s Will and if there is more than one guardian, the Testamentary Guardian must exercise their powers jointly with all guardians.

The Supreme Court has the ability to hear an application on all matters relating to a deceased estate in Queensland including matters involving the appointment and removal of a Testamentary Guardian.

MORE INFORMATION

If you would like to discuss your estate planning, please contact us to make an appointment with Wills & Estates specialist, Jarrad Mobbs.

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