



GUIDE TO GUARDIANSHIP & MINOR'S/SPENDTHRIFT TRUSTEES

What is a Guardian?

This is short for “Guardian of the Person” and “Guardian of the Estate of Minor Children”...how’s that for a mouthful? The first is responsible for the care, custody, and upbringing of a minor in case of the parents’ death or incapacity. The Guardian of the Estate—often the same person—is responsible for the financial affairs of a minor child through the “age of majority” or legal adulthood (18 in all states except AL, MS, and NE).

What is a Minor’s/Spendthrift Trust (and Trustee?)

A Minor’s Trust is a separate trust set up for the care of minor children of the decedent. A Spendthrift Trust is similar, but usually used for adult children—either to distribute funds over time, instead of in a lump sum, or when an heir has trouble managing money, an addiction, strained marriage, or other situation that would impede them from handling money well on their own. In both cases, a Trustee is a person or corporation named to disperse funds to the beneficiaries according to the parameters set forth in the trust document.

What should you do when you find out you've been named in someone's estate?

People designate a guardian and/or trustee in their estate plan as a way of planning for the absolute worst-case scenario. Here are some ways to prepare, in case the unthinkable happens and you need to step into one of these roles someday:

- For both: if you are nominated, you are not required to accept these roles. Talk it out with the decedent, understand their wishes, and ensure that if you accept, you can do the job well.
- For both: Know what the “status quo” looks like to the children/heirs. You'll want to maintain this as much as possible: from the geographic area they live in to the school they attend, the friends/community they have, family involvement, culture/religion, etc.
- For Both: Understand the parents' philosophy for parenting, finances, discipline, spirituality, etc. What traditions would they like to be maintained, and what is their hope/dream for their children? Document this, if possible.
- Guardian: Usually a close family member or friend is named guardian. But it's important for the guardian to maintain a relationship with the parents, so if something happens to them, the child/children can transition as smoothly as possible.
- Guardian: Ask about the parents' expectations about location, their home, etc. Some estate plans request that the guardian(s) relocate to the family home, etc. This isn't always feasible, but sometimes brought up as a possibility.
- For Both: Understand when trust distributions will be made. The guardian and trustee will need to work together to request and fulfill appropriate distributions.

What should you do if you need to step in as Trustee?

One important distinction is that a minor's/spendthrift trust might be different from an overarching estate trust. A minor's/spendthrift trustee role may not kick in until after the estate is settled and this longer-term, secondary trust is funded.

1. First, reach out to an attorney—the one who drafted the estate documents, if possible. They'll talk you through the document, discuss the role/responsibilities, and help shepherd the estate and custody process.
2. Determine if you still have time/capacity to accept the role—sometimes circumstances change!
3. If you're a friend or family member, recognize how your relationship with the beneficiary/ies may change. Understand what is in the trust, what you're being asked to manage, and any conflicts of interest that may arise.
4. Ensure that the trust-funding assets are secure and that the trust is funded properly; this happens in conjunction with the bank or trust company holding the fund itself.
5. Work with the Guardian to learn the typical rhythms of the child/children's life and how finances will work.
6. Distribute trust funds according to the parameters set up in the trust document.

What should you do if you need to step in as Guardian?

- 1.If parents have passed away, Child Protective Services will step in quickly to find immediate/temporary care and ensure that immediate needs are met.
- 2.Then, reach out to an attorney–the one who drafted the estate documents, if possible. They'll talk you through the estate document, discuss the role/responsibilities, and help shepherd the estate and custody process.
- 3.Determine if you still have time/capacity to accept the role–sometimes circumstances change!
- 4.There's a court process to determine/affirm long-term guardianship/placement. You'll work with the estate attorney, or a family attorney, to solidify plans.
- 5.Work with the Trustee to make a plan for financial distributions that will maintain a consistent lifestyle and care for the child(ren).