

Guardian Instructions Questionnaire

Introduction: The idea for the instructions arose from my many years of dealing, in the legal system, with children who lost a parent, as well as from my own (personal) experience. Having lost a parent suddenly at a young age, I felt I was in a unique position to express my thoughts and ideas on this subject. What do we want to know about them? Any child who has lost a parent will crave and cherish mementos, photos, letters, videos and other images of their lost parent, and will continue to have a relationship with that parent for the duration of their lives. A psychiatrist might say that the child “imagines the relationship,” but many people believe, I think correctly, that a child-parent relationship does not stop simply because the parent is deceased. These instructions will complete the “legal wishes” component of your child-rearing legacy. They will be provided to whomever you choose.

A probate guardianship is a court proceeding in which a guardian is appointed by the probate court to protect the person or estate of a minor. See [Prob C §1510](#). Historically, guardianships were established for the protection of orphans, and guardianship of the minor's person (care, custody, and control) was combined with guardianship of the minor's estate. This scenario still occurs.

Generally, we want the minor’s estate to be handled by our Trustee, pursuant to the instructions of our Trust. Hence, a “guardianship over the estate” is probably not going to be required. This will avoid accountings and court supervision, if that is not desired. Guardianships of the person are usually established after the death of a parent by relatives or other caring adults to provide stability and needed care for minors. Petitions for guardianship of the person are commonly accompanied by a petition for temporary guardianship, alleging an immediate need for intervention to protect the child either from ongoing neglect or from being suddenly removed from the place where the child has been residing for some time and from the persons with whom the child has emotionally bonded.

Guardianships of the estate commonly are sought when a minor inherits significant assets of their own or when proceeds from litigation are expected and merely placing the assets in a blocked bank account until the child's 18th birthday is undesirable.

The relationship between a guardian and the minor is a fiduciary relationship governed by the law of trusts. In a probate guardianship of the person, the probate court appoints a person or persons to have custody of a minor. A probate guardian of the person is responsible for:

- Determining where the minor lives;
- Making sure that the minor is properly fed, clothed, and sheltered;
- Supervising the minor's conduct;
- Making sure that the minor is enrolled in school; and
- Making sure that the minor has proper medical care.

The written nomination which you will make elsewhere in our plan design must be given "due weight." [Fam C §3043](#). Fairly often, petitions for guardianship are filed by members of each parent's family, partly from fear that the child will be lost to that side of the family if the other side of the family gets custody. We often recommend that this be addressed by including provisions in the instructions providing vacations and visits to the family members of both parents, and including family members of both parents among the trustees and trust protectors.

Your name: _____

Child's name: _____

1. To whom do you want to communicate these instructions? (list) _____

Comment: The guardian instructions are not required to be prepared or filed with the court or any specific party. These instructions are designed to provide you, your guardian(s) and, if they can read, your children with a statement of your concern for your minor children and how you would like them to be raised, in your absence or otherwise. The guardians will have a “roadmap” for your desires and can exercise judgment with your children based upon your values, and your hopes, fears, dreams and aspirations for your loved ones.

While there has been no case decided on compliance with a decedent’s written instructions outside a will or trust, the trustees are required to exercise their discretion in making distributions to or for the benefit of the children. In exercising their discretion, they have an obligation to do so in a “reasonable” manner under the Probate Code. Following the written instructions of the deceased parent will likely have evidentiary value in determining the reasonableness of the trustee’s discretion.

2. Would you like grief counseling to be required, regardless of the child’s age? _____

Comment: Do not assume that the Court will order, or the family will do, the obvious. In real life, the Probate Court will send out the probate investigator to prepare a report on the child, the proposed guardian, and the child’s school, day-care and medical care. They will likely interview the child’s doctors and teachers (see, e.g., Prob. Code Section 1513). The investigator is not authorized to make recommendations, but can identify “needs” of the child and discuss the needs of the guardian to meet those needs. Only the Court (a Judge) can order grief counseling. Thus, by placing a grief-counseling requirement condition in this document, you are maximizing the chances that child will receive it. As a general matter, no matter how stable and loving the child’s situation, it is recommended that grief counseling be required.

3. Do you have specific instructions regarding discipline? (for example, do you want to have a prohibition that the child never be physically punished or struck?) _____

4. Do you have specific instructions or prohibitions on video games, television, DVDs, or computer use? (e.g., “not allow until age __,” “keep to a minimum,” or “use as a reward for good behavior”). _____

5. What is your schooling preference for your child?

- Public
- Public school plus tutoring
- Private schools
- Specific private school(s) (please identify grade school: _____, junior high school: _____, high school: _____, undergraduate: _____, graduate or prof.: _____)
- Public school if acceptable choice exists, otherwise private school

6. Should the school have a specific religious tradition? (identify: _____)
7. Should the child be required to learn a second language? (identify: _____)

Guardian and child to decide

8. Should the child receive music instruction? Particular instrument?: _____
- Guardian and child to decide

9. Should the child be enrolled in specific extracurricular clubs? Identify: _____

10. Should the child have a tutor? _____ Specific institution? _____
- Guardian to decide

11. Should the child be encouraged or required to study in a specific country (e.g., of origin, or where relatives live)? Which one: _____

Shall the trust pay for the guardian to travel to the above country with the child?

12. Should the child be encouraged to engage in sports? Any specific inclusions or exclusions (e.g., martial arts, football, boxing)?

Specifically include: _____

Specifically exclude: _____

13. Vacations. Should the guardian take the child on regular vacations?

What frequency is appropriate for your child: _____

Destination (e.g., specific grandparent, sibling, country, etc.): _____

14. Age under which child should not be left alone: _____ (most say an age from 8 to 11)

15. Age under which child may be left alone for long period of time, but not overnight (most say an age from 11 to 18): _____

16. Age under which child may be left alone overnight (most say an age from 16 to 18):

17. Should the guardian provide a specific allowance for the child? _____

What amount are you giving the child now? _____

18. Should the guardian discourage, and refuse to consent to, body piercings and tattoos?

Ear piercings at what age? _____

19. Must the guardian meet the minimum ages set forth in movie ratings before allowing a child to see a particular movie? _____

20. What sexual-activity policy should be employed? (leave blank if you defer to guardian's judgment):

_____ Abstinence

_____ Sexual education at a proper age

_____ No dating until a certain age. Identify age: _____

_____ Contraceptive education should be provided at age _____

_____ Consent to contraceptives prescribed by a licensed physician at age _____

21. Do you want to include a specific instruction that the child be discouraged from alcohol use prior to age 21? _____ (Yes or no).

22. Abortion (leave blank if you defer to the guardian's judgment)

_____ I instruct my guardian not to consent to my child having an abortion

23. Driving and cellphones

Age at which my child may have their own cellphone: _____

Age at which my child may legally drive: _____

Age at which my child may own their own car: _____

24. Shall the guardian consent to the child's wedding while a minor? _____ (yes or no)

25. Shall the guardian encourage the child to become involved in community service?

_____ (Yes or no)

Specific organizations (e.g, 4H, Boys or Girls' Club, scouts, etc.): _____

May they receive compensation for their service? _____

Specific areas of service: _____

26. Working outside the home

- The child should be permitted to work outside the home while a minor
Youngest age the child may work for compensation: _____
 - The child should be encouraged to work summers.
 - The child should have a minimum GPA to work. Minimum GPA: _____
- The children are allowed to work:
- During the school week after school
 - On weekends
 - None of the above

27. Are any specific types or lines of work to be encouraged? _____ (Identify: _____)

28. Are any specific types or lines of work to be discouraged? _____ (Identify: _____)

29. Should the child be told the amount of assets in their trust prior to their turning 18?

30. Are there other areas where the children should receive specific training? _____ (e.g., media relations, personal finance, protocol, manners, etc.).

Please fax this form, when completed, to our office at 415-896-5068. We will prepare a separate "Guardian Instructions" document for inclusion in your estate planning portfolio.