

## LEGAL NEWS

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### ANOTHER REASON YOU NEED A WILL

by Nancy Chillag & Gary Brainin, Attorneys

You may have heard someone (possibly a lawyer) tell you that you ought to have a will. Usually people mention the financial advantages of having a will; for example, controlling how your assets pass on your death and simplifying the process for the people you leave behind.

These are all good reasons for estate planning. However, there is another, equally important issue that doesn't get talked about as often: taking care of children. Though it is never pleasant to contemplate, if you have minor children you need to consider what will happen to them if you die. Who will take care of them?

Under California Law, a minor whose parents have died must have a guardian. California law recognizes two types of guardians for a minor. The Guardian of the Person is the adult who takes care of and raises the child. The Guardian of the Estate is the adult who takes care of the money or other assets that belong to the child. These can be the same person, but often different people are better suited for these different tasks and having two people provides a "built-in" checks and balances.

In most cases, it is better to leave property in trust for your children, rather than giving it to them directly. This is because a trust gives you greater flexibility and control than giving property directly to the children and naming a guardian of the estate. Usually, when we refer to a guardian, we're talking about a

guardian of the person. However, it is a good idea to name a guardian of the estate anyway, in case one is unexpectedly needed.

If you die without a will, someone will have to petition the court to become the guardian of your child or children. More than one person may petition, and it is possible that an unpleasant custody battle will result. This can also be an added strain on the children during an already difficult time.

If, however, you leave a will instructing who is to be the guardian for your children, usually the court will confirm your designation. More importantly, if you have discussed this issue with the person you name and with other members of your family, it is much less likely that problems will arise.

Choosing a guardian for your children is possibly the most difficult part of estate planning. Once you do decide, you should discuss your decision with the person you are thinking of nominating. You may wish to name alternate guardians, in case your first choice is unable to be guardian for some reason.

It is often said that everyone should have a will, and there are many good reasons that this is true. Even if you are not ready for a full-blown estate plan, a simple will which names guardians for your children can make a huge difference.

Visits the Law Office of Nancy Chillag on the web at [www.chillag.com](http://www.chillag.com). Ms. Chillag is an associate member of NTMA.