

The Weekly Scenario: Guardians and Trustees

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By Steven E. Shane

Sometimes the people who are the most nurturing are not necessarily the best at handling money. Although the person you name as guardian of a minor child can also serve as Trustee of a trust established for the child, it may not be the best solution.

The dual role of guardian and Trustee presents the potential for a conflict of interest.

For example, you name your sister as guardian of your children and name her as Trustee of trusts established for their benefit. Would it be reasonable for her to use the \$100,000 from the trust to add an addition on her home? Perhaps it would be reasonable. But what if she uses \$600,000 to buy a significantly larger home when her current home is worth \$300,000?

These types of scenarios are avoidable when there is one person named to raise the children and another to manage the finances. The guardian then simply makes requests from the Trustee when funds are needed.

But since the Trustee has discretion in these matters, it doesn't hurt to give clear guidance to the Trustee so that your children will be cared for in the way you want them to be. Some things to consider:

1. Can the guardian expand the size of their current residence in order to house your children?
2. Should the guardian be given a home improvement budget or car budget?
3. Can trust funds be used to pay for private school?
4. Can the trust funds be used to take her kids and your kids on vacations?

Still, for many people, the persons they choose to put in charge of their children (and their finances) are honest and trustworthy and they are comfortable in putting them in charge of both the kids and the money. It really comes down to the people you choose.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or 301.575.0313.