



What happens to my kids if I am sick or die?

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- ❖ Read this *only* if you live in Washington State.
 - ❖ You can find all the fact sheets we link to here at [WashingtonLawHelp.org](https://www.washingtonlawhelp.org).
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Should I read this?

If you are a single parent, you may worry who will care for your kids if something happens to you. This explains your options.

You should also talk to a lawyer.

What is “testamentary guardianship”?

If you are the children’s only living parent, your Last Will and Testament can name a testamentary guardian for the children.

After your death, a judge will finalize the guardianship. The guardian will have legal responsibilities such as writing a report every few years for the judge.

I named a testamentary guardian in my will a while ago. Things have changed. Can I name someone else?

Yes. You can change a testamentary guardian any time before your death by changing your Will.

What if the children’s other parent is still alive?

It depends. The person named your Will to be guardian can probate your will, and then file for guardianship, using your probated Will as proof of your wishes for your children.

Your proposed guardian will have to let the other parent know about the guardianship proceeding. The other parent will have a chance to come to court to show that guardianship would not be in the children’s best interest.

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- ❖ We assume here that the other parent still has parental rights to the children. A parent whose parental rights have been terminated, for example through an adoption, does not need to get notice of a guardianship.
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What if no one can find the other parent?

If you die and the other parent is unknown, or no one can find them, a court will most likely approve the guardian your Will names.

You should put in your Will, if true, that you chose the guardian “because she has a relationship with the minor children. The children’s other biological parent has never known the children.”

If someone finds or contacts the other parent and the parent appears before the court, then the court will have to decide if guardianship is in the children’s best interest.

What if the other parent is abusive?

If the other parent is abusive or unfit to care for the child, do everything you can to get proof. **Do not make false or offensive statements** in your will, other court documents, or public records. The court or other parent could use those statements against you or your estate.

Make sure you make a legally valid Will. It must be properly written and have witnesses. In Washington, your will can be hand-written if it meets all legal requirements. Get legal advice about how to draft a will. See contact info below.

- 1. Your Will should name a testamentary guardian.** It should state you want your children to live with the guardian even if the other parent is alive. It should describe the relationship or contact between your children and named guardian.
- 2. Your Will should state that you want your kids raised in a home free of crime, violence, drug abuse, and so on.** Do not name the other parent, speak badly of them, or accuse them of abuse. A Will is a public document. The court might consider such statements untrue or offensive. This might cause the court to give the other parent legal rights against you or your estate.

3. After your death, **your proposed testamentary guardian must be ready to tell the court about the other parent's abuse.** They must keep any proof against the other parent of violence, court orders, or other evidence, like your written statements.
4. **Your Will should state that you waive (give up) any attorney-client privilege** if needed to help the named guardian get custody. A lawyer you worked with, such as during a divorce, might have confidential information about your abusive relationship. That information could help prove the other parent unfit to have the children.
5. Your Will must say **your personal representative** (person who carries out your Will) **can use your money for legal fees** to fight for custody, because it is in your children's best interest.

Can my children have a guardian when I am still alive?

Maybe. However, it would be easier and cost less if you authorized someone to make health care and/or financial decisions for your children in a Power of Attorney document if you are very ill and need this kind of help. (See below.)

Can someone adopt my child?

Maybe. You can give up your parental rights through the adoption process. The other parent gets notice of the adoption. They can challenge (try to stop) it.

A court can terminate someone's parental rights if that parent, for example:

- has abandoned the children
- is a danger to the children

The court might deny the adoption. In Washington, courts rarely let a parent end their own parental rights, unless a third party is adopting the children.

What is power of attorney?

You can temporarily give someone your powers regarding care, custody, and/or property of your children when you will not be available or able to provide care for any child under the age of 18 for whom you are legally responsible.

You can give someone POA for as little as one day to as long as 24 months. Read [Power of Attorney for Parents](#) to learn more.

❖ Signing a power of attorney does not end your parental rights.

I have a long-term illness. What can happen to my children?

The illness might use up all your money. You might not be able to care for the children.

If you can, you should make guardianship, POA, and/or adoption arrangements while healthy. If you have not done so, and your children were in foster care when you die, the court can still appoint a testamentary guardianship.

A testamentary guardian, named in your Will, should be ready to give a court evidence and testimony that living with the testamentary guardian is in the children's best interests.

This can include evidence and testimony about testamentary guardian's relationship with the children.

❖ Children who are old enough can tell the court who they want to live with.

What is the Indian Child Welfare Act (ICWA)?

This federal law governs state court cases about custody of an "Indian child."

An "Indian child" is all of these:

- unmarried
- under age 18
- a member of an Indian tribe **or** eligible to be a member
- the biological child of a tribe member

If a child is an Indian child, any guardianship or adoption is subject to this law. Read [Indian Child Welfare Act](#) to learn more.

Get Legal Help

- **Apply online** with [CLEAR*Online -nwjustice.org/apply-online](https://nwjustice.org/apply-online)
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 2-1-1 (or toll-free 1-877-211-9274) weekdays 8:00 am - 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm or apply online at nwjustice.org/apply-online.
- **Facing Eviction?** Call 1-855-657-8387.
- **Facing Foreclosure?** Call 1-800-606-4819.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR*Sr at 1-888-387-7111.
- **Deaf, hard of hearing or speech impaired callers** can call any of these numbers using the relay service of your choice.

CLEAR and 2-1-1 will provide interpreters.

Northwest Justice Project gratefully acknowledges the work of Legal Voice, whose original face sheet we largely adapted here.

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