

# Jackson death sparks estate planning



So Michael Jackson's untimely death has you checking to see if your estate is in order. You've made a will. You've chosen a guardian for your kids.

Will that be enough to guarantee that there won't be trouble down the road?

Most of the time, estate attorneys say, things will work out the way you planned.

But if your family situation is complicated by divorce, non-traditional child-care arrangements or a lot of money is involved, it might not be so simple.

When there's any kind of dispute over custody, state law in Florida and elsewhere leaves the door open for other people to challenge your choice of a guardian for your children.

"With families these days the way they are, more than half the marriages end in divorces and all kinds of splintered families and all kinds of alternative lifestyles create situations where disputes can and do arise," said attorney Hung Nguyen, a partner at Wellbaum Guernsey in Coral Gables. He specializes in guardianship issues, probate and trust law. "Some of them are pretty nasty, too."

Here's the most important thing parents need to know: The court will look at your wishes expressed in your will or other documents as

to who should get the children, but the judge may not always follow them.

Let's say you are divorced and you nominate your brother or your mother to be the guardian in your will. The court could overrule your wishes and decide to send the kids to your ex-spouse, because he or she is a "natural guardian" as a surviving parent. "The law has a preference for those who are the closest relatives," said Rohan Kelley, a Fort Lauderdale estate attorney.

Or, if you are happily married to someone who has raised the child for many years but your spouse is not his or her biological parent, the child could be sent to [the] natural parent. "Even the mother of a child born out of wedlock is the mother," said Ellen S. Morris of Elder Law Associates in Boca Raton.

"The statute is clear," said Barry Nelson of Nelson & Nelson in North Miami Beach. He is board certified in wills, trusts and estates. "You get to say who your preference is but ultimately the guardian is designated by the court."

In Florida, the overall principal that the court will follow is "what is in the best interest of the child," Nguyen said. The person named guardian has to be fit, proper and qualified to care for the child, preference is given to blood relatives or relatives by marriage and the court must consider the wishes expressed by the parents. The wishes of the children involved can be considered if they are age 14 or older, Nguyen said.

Case law, Nguyen said, tends to show that courts respect the intentions of the parents, but they are not bound by them.

Any person, relative or not, can petition the court about the child's welfare and safety, and express concern about the chosen guardian. Just think about the Anna Nicole Smith case, where the issue was, who was the real father.

So what can you, as a parent do, to strengthen your estate plan and to do the best to make sure your wishes are followed?

**Make a will**, if you haven't. Name a guardian. Make sure that person is willing to take on that job.

Not having a will, leaves the decision completely up to state law and the courts.

**Consider filling** out a "preneed" guardian declaration, especially if you don't want the child to go to a relative. Courts will give consideration to that and to whatever statement the parents include. "It takes so little effort to designate a preneed guardian, there's no reason not to do it," said Kelley.

**Evaluate the pros** and cons of setting up a trust for the money that would support the children. Your appointed trustee will hold the purse strings. That would give your chosen person control over what happens to the children financially, even if your guardian is not named by the court.

**If you expect a dispute**, collect documentation supporting your choice for a guardian. Get their credentials that indicate they are a fit guardian. Morris says go to teachers or counselors and get statements as to why this person would look after the child properly.

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