

## You're Gone...Who Gets the Kids

### 12 Questions to Make Sure it's Who You Want

By Tom Lofton, Attorney



While it's difficult enough to think about not being there to raise your children, imagine a court choosing their guardian with no input from you. Imagine your relatives arguing in court over who gets your children—or having them *agree* but not on the people you would have chosen. Most of these are “unimaginable” situations...but they happen every day and far too often. They don't have to...if you know what to do in advance.

The key is to be **PROACTIVE** and nominate a guardian while it's still up to you. When you are proactive, you can lower your children's risk of ending up somewhere you wouldn't have chosen. And it's easier than you think. You can put some plans in place quickly and sleep better at night and have No. More. Tears. over where your kids end up for the remainder of their formative years.

I've created a Worksheet here to help guide you through the decision making process. While it isn't completely analytical or exact, it will help guide you to the right person and give you some solid reasons for your choice. It is

intended to be a guide, not the absolute answer. When you finish answering each of these questions, you will have a very good idea of who you might want as the guardian of your children.

**Let's get started**...here are 12 questions (and tips) to help you make your best choices and have more peace of mind...

**Question (Tip) 1: Think beyond the obvious choices.** *Make a list* of all the people who you would trust to take care of your children. Don't limit your list to only close family members...think broadly. While siblings and parents can be excellent choices, also consider extended family members who are old enough to raise your children...such as cousins, aunts, uncles, nieces, nephews, even second cousins once removed.

**Question (Tip) 2: Friends can make excellent guardians.** *Make a list* beyond family. Consider close friends, nearby families and others with whom your family is close. Take a look at the families of your children's friends, those you may know from your place of worship, even teachers or child care providers with whom you and your children have a special relationship.

**Question (Tip) 3: Don't stress about finances or the size of someone's house.** *Don't be too anxious to eliminate* anyone from consideration because you don't think they have the financial wherewithal to take care of your children. You can take care of the finances with what you leave. (That's what adequate life insurance is about.) Get creative...you can even instruct your trustee to provide funds for

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your chosen guardian to build an addition to their home or move to a larger home to accommodate your children. You are in control and nothing is out of bounds while you are determining your children's future.

### **Question (Tip). 4: Focus on love.**

*"All we need is Love"* is not just a song...it should be at the heart of your decision. *Place a star* next to each couple or person on your list who you feel would truly love your children if they were appointed their guardian. If they have children of their own, will your children be second fiddles? Ask yourself if the couple sufficiently loves your kids in a way where they will make your children feel loved no matter what. This should be paramount in your decision- above finances, location, or any other factor you might use to evaluate an awesome guardian for your children.

### **Question (Tip) 5: Consider values and philosophies.**

Values are a terrific qualifier for who would be an incredible guardian. *Place another star* next to those you feel have similar (or even stronger) values. Ask yourself which people on your list most closely share your values and philosophies with respect to your...

- religious beliefs
- moral values
- child-rearing philosophy
- educational values
- social values

### **Question (Tip) 6: Personality counts.**

Everyone has quirks and nuances in their personality...but some people just have amazing personalities.

*Put another star* next to those on your list that you feel have a personality you would consider to be amazing. Consider whether each of your candidates has the personality traits that would work for your children. Some of the most important ones to consider would be...

- Are they loving?
- Are they good role models?
- Do they have the patience to take on parenting your children?
- How affectionate are they? (If your family is particularly affectionate, a guardian who is loving but not physically affectionate might not be optimal.)
- If they're fairly young, how mature are they?

### **Question (Tip) 7: Consider practical factors.**

There are certain factors that I would encourage you ask for those that are making your "short list" of potential guardians. *Create a list of questions* to help qualify those that are "pre-qualified" in your mind as strong candidates. Here are some questions to ask about the short list of potential guardians to help get you started...

- How would raising children fit into their lifestyle?
- If they're older, do they have the necessary health and stamina? Do they really want to be parents of a young child at their stages in life?
- Do they have children?
- How would your children get along with theirs? Are there potential problems if your children were to live with theirs? How easily could the problems be

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dealt with? (For instance, do you want to place a child who struggles in school with a high-achieving child of the same age for whom everything comes easily?)

- How close do they live to other important people in your children's lives?
- If a couple divorced, or one person died, would you be comfortable with either of them acting as the sole guardian? If not, you need to specify what you *would* want to happen.

**Question (Tip 8): Look for a good – but not a *perfect* – choice.** Most likely, no one on your list will seem perfect – that is, just like you. But if you truly consider what matters to you *most*, you will probably be able to make some reasonable choices. In the end, *trust your instincts*. We call this the gut instinct vote...*put another star* next to those on the list that you have a really positive “gut feel” would be awesome parents.

If one couple or person meets all of your criteria, but doesn't feel right, don't give them a star because you probably won't end up choosing them. By the same token, if someone feels much more right than any of the others on your list, there's a good reason for it. It's essential that both you and your spouse agree. If you cannot make a decision, or if you and your spouse cannot agree, a good counseling-based estate planning attorney can help you through the process.

**Question (Tip) 9: Select a *temporary* as well as a *permanent* guardian.** Temporary guardians may be appointed if both parents become

temporarily unable to care for their children – for example, as the result of a car accident. Depending on your choice for permanent guardians, you may want to designate different people to act as temporary or emergency guardians. Now that you have your list of people, place a “T” or a “P” next to those you feel would be good “Temporary” and “Permanent” guardians. You can put both a “T” and a “P” next to the same name(s).

If your choice for a permanent guardian lives a considerable distance away, maybe it makes more sense to choose someone closer by to serve as a temporary guardian. If you're temporarily disabled, you'll want your children nearby. And you won't want their lives unnecessarily disrupted by moving them to a new town and school. If you have no relatives or close friends nearby, consider families of your children's friends as possible temporary options.

**Question (Tip) 10: Consider a Guardianship Panel.** Because it's difficult to predict what your children's needs might be as they grow older, consider appointing a “Guardianship Panel” to decide who would be the best guardian when and if it becomes necessary. Choose trusted relatives and friends to make up the panel. *Write the word “Panel” next to those on your list you would consider to be good potential members of this panel.*

This allows for maximum flexibility. Now you know the most appropriate choice can be made at the time a guardian is actually needed. The Panel can consult with your children and assess their needs and desires to make the most appropriate choice based on the current situation.

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This option can be very helpful when there isn't an obvious choice jumping off the list of people you have down or you just can't make a decision.

**Question (Tip) 11: Write down your reasons.** If you've chosen friends over relatives, or a more distant relative over a closer one, be sure to explain your decision in writing. This is the part that takes a bit more time than just writing down words or giving people stars. Take your short list of people and now *write out the answer to this question, "Why do I (we) feel this would be an awesome guardian."* Be both analytical and emotional at the same time.

Now, in the unlikely event your choice is challenged by people who feel *they* should have been chosen, a court should readily uphold your decision knowing you've made your choice for good, solid reasons. And even if it isn't challenged, this will be very helpful for the future guardians (and your children) to fully understand why they were chosen. Of all the questions and tips, this is the one I encourage my clients to spend the most time on and do it over a period of time, not quickly. Let it soak in and reevaluate and discuss your answers over several meetings with each other.

**Question (Tip) 12: Talk with everyone involved.** If your children are old enough, talk with them to get *their* input as well. Just as you wrote out your answers in detail to Question #11, *ask your kids who they would like to live with if something happened to you and why.* The "why" part of this question is the most important answer you can get from your children. Part two to this question is to ask the same question of the people you'd like to choose, to ensure they're willing to

be chosen and would feel comfortable acting as guardians.

You're DONE! Go through the list with all your notes, stars, and descriptions and after you read through this a few times you will have a good idea of who you want for both a Temporary and Permanent Guardian for your little ones. Now you have both an analytical and an emotional basis for choosing who you chose to be a guardian.

Once you've made your choice, there are steps you can take to make sure the potential guardians you've chosen will have the guidance and support they need. Here are a few ideas to help you get started in actually putting this into reality.

- Create a set of guidelines to convey information about your children, your parenting values and your hopes and dreams for your children. (See or ask for our "Guidelines for Guardians" handout.)
- Set up a trust that will hold the assets you pass to your children, and instruct the trustee to provide necessary financial assistance to the guardians. You can also create specific instructions about special things you'd like the trust funds used for (for example, annual trips for your children to visit close friends and relatives, a particular summer camp, putting in a swimming pool at the guardians' house).
- Designate "mentors" consisting of special people in your children's lives to help guide them in ways for which the "mentor" is particularly well-suited. For



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instance, the person you choose for trustee may also be a good “financial” mentor for your children. Or you may want to designate a “spiritual” mentor, particularly if the guardians you choose have religious philosophies that differ from yours. You can also name in your estate planning documents people who you simply want to have ongoing involvement in your children’s lives. This can be a good way to include both sides of the family.

I hope this has been helpful, will enhance your peace of mind and lower the risk of your children being “orphaned” (left to someone you personally wouldn’t have chosen). If you do this well in advance of something happening to you, your kids and those around them will have No. More. Tears. other than not having you around. They will be in good hands to grow up and become remarkable adults.

If you have any further questions about these 12 Questions and Tips, feel free to go to either [TomLofton.com](http://TomLofton.com) or [EGatOH.com](http://EGatOH.com) and “Ask a Question” on the site. I will get back to you as soon as possible with answers, insights or guidance on what to do next...all without a fee of course. And if this was helpful to you, please share it with your friends and relatives that might have a need to learn more about guardianships of minor children who lose their parents to disability or death. The more we can help each other and be proactive the more we can all be at peace with this incredible important issue.

### Estate Group at Oseran Hahn



Thomas D. Lofton, Attorney

The Estate Group at Oseran Hahn, P.S.

1430 Skyline Tower  
10900 N.E. Fourth Street  
Bellevue, WA 98004

(425) 455-3900

Estate Group at Oseran Hahn  
[www.EGatOH.com](http://www.EGatOH.com)

Tom Lofton Blog  
[www.TomLofton.com](http://www.TomLofton.com)

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