

ISSUE #7  
April 2007



## MATSUMURA LAW FIRM

Wills, Trusts, Probate  
And Estate Planning

**“You will always be in a position to do a better job than the courts in nominating guardians for your minor children”**

Michele Matsumura,  
Attorney, LL.M. (tax)

5820 Stoneridge Mall  
Road, Suite 100  
Pleasanton, CA 94588

Tel | 925.218.8984  
Fax | 925.218.2372

Satellite Office:  
4115 Blackhawk Plaza Circle  
Suite 100  
Danville, California

### **Nominating Guardians for Your Children: Do Not Let The Court Decide Who Will Care For Your Children**

If you have young children, you may have considered who you might wish to care for them in the unlikely event that you were unable to do so yourself. Selecting these caretakers, called guardians, is an examination process—an evaluation of yourself, your values and beliefs, your hopes for your children, and most importantly, your family dynamics. Of course, the “perfect” guardian is the person who would raise your child *exactly* the way you would if

you were able. Unfortunately, a “perfect” guardian may not exist—and since we do not want to compromise our children’s care, choosing a guardian can become complicated. Hopefully, this newsletter can offer some advice and encouragement in this regard.

**What Is A Guardian?** A guardian is a person appointed by the court to take care of your children until they reach the age of majority, i.e., 18 years. You nominate a primary guardian and at least one or two alternate guardians in your Will. The nomination in your Will assists the judge in formally appointing your guardian via court order. Normally, a judge will follow your nominations, unless significant reasons exist not to (such as a criminal conviction, etc.). **If you do not nominate a guardian in your Will, the judge will have to appoint a guardian without**

**your help.** Therefore, if you have minor children, it is critical that you have a Will and nominate guardians for your children yourself. You will always do a better job than the courts at making such a complicated decision.

**Guardians Are In Charge of Care, Not Money.** The guardians you nominate in your Will are to be responsible for the education and daily care of your minor children. The guardian will use the money that you leave to your children to support and care for them. However, the guardian will not be the person responsible for the management and control of your children’s finances. (The trustee of your family trust will care for your children’s money.) The caretaking function is separate from the financial role because sometimes, the person who can best care for your children may not be the best person to manage assets. Nevertheless, it oftentimes makes sense to have one person perform both roles.

**Considerations in Choosing Your Guardian.** Many times, parents have a clear plan about how their assets will be distributed upon their death, but they have no idea whom to nominate as guardian. The decision about guardianship may be complicated by emotional issues, such as religion, lifestyle habits and school districts. To simplify the process, you may want to use a process of elimination—i.e., start off by making a

(continued on reverse)

## MATSUMURA LAW FIRM

Wills, Trusts, Probate  
And Estate Planning



Michele Matsumura,  
Attorney, LL.M. (tax)

5820 Stoneridge Mall  
Road, Suite 100  
Pleasanton, CA 94588

Tel | 925.218.8984  
Fax | 925.218.2372

### Nominating Guardians for Your Children (continued)

list of individuals whom you do **not** want to serve as guardian. Once that is done, you can get a better picture of the choices you have left.

Sometimes, it makes more sense to name friends, rather than family, as guardians. This decision may cause hurt feelings among relatives. To diffuse problems, you can elaborate your decision-

**Talk To Your Guardians Before Nominating Them.** Because guardianship is a life-changing event, before you nominate your guardians in your Will, you should discuss your decision with them. You should make sure that they are willing and able to accept the responsibility. If you are having difficulty in selecting a guardian, a frank discussion with your potential guardians could make your decision less complicated.

#### Some Questions to Consider When Choosing a Guardian:

- How is the guardian with his or her own children?
- Will your child fit well into the guardian's family?
- Does the guardian have children close to your child's age?
- With whom is your child most comfortable?
- What kind of values with the guardian instill in your child?
- Is your guardian emotionally strong and stable?
- What religion is your guardian?
- How old is your guardian?
- Where do you want your child to be raised?



making process in a separate letter so that your family will understand why you have made your selection. In this case, you may wish to keep your choice of guardian confidential from your family, though you will want to discuss your choice with your nominated guardian.

(next column above)

**Selecting A Guardian In Divorce Situations.** Divorce can complicate the selection of a guardian. You can choose to nominate a child's step-parent, rather than the child's natural parent, as guardian in your Will. However, unless a natural parent can be proven to be unfit in some fashion or has otherwise abandoned his or her parental rights, the natural parent will get custody of the child. A better solution, though not always practical, would be for divorced parents to agree upon guardians in both of their Wills. In this way, both parents can choose what is best for a child.

**Conclusion.** Rather than trying to select a "perfect" guardian, you should look for a balance of emotional, intellectual and financial qualities in your guardian. ✪

#### About Me

I graduated cum laude from the University of the Pacific in Stockton, California with a Bachelor's in Science (B.S.) degree in Business Administration. I received my law degree (J.D.) from King Hall School of Law at U.C. Davis, and was admitted to the California State Bar in 1993. I completed my Masters in Taxation (LL.M.) at Golden Gate University in San Francisco in 1998.

I have practiced exclusively in the area of estate planning, probate and trust administration for approximately nine years.

In my non-work hours, I support the University of California Athletics, the San Francisco Giants, the Sacramento Kings, and play tennis! *GO BEARS!!!*

**Next Issue:**  
What Is A Durable Power of Attorney for Finances?