

Dr. Nancy: Hello. This is Dr. Nancy Live on Wednesday. Today, we have with us Katie Charleston from Katie Charleston Law. She's going to talk to us about seven things you need to know about establishing guardianship with your children, and I'm echoing on this so I'm not going to talk too much. I'm going to let her take it away, and if you find that this information is valuable, share it on your page and spread the word. Welcome, Katie. Thank you for coming.

Katie: Thank you for having me. This is such an important topic, and I'm happy to spread the word and inform those who are interested more about the topic. One thing that's important to us all is our children and making sure that they're safe and protected, so like you said, what I'm going to be discussing today is the seven must-dos when naming guardians for your children.

Katie: When I talk about naming guardians for your children, what I am suggesting is that you name people that actually take physical custody of your children when you are unable to care for them. It could be because you're passed on it. It could be because you're incapacitated, but someone that's there to take care of them in the event that you cannot, so we'll just start with the first of those must-dos, and that would be to make sure that when you're naming a couple as guardians of your child that you're comfortable with both parties of that couple caring for your children individually.

Katie: You must think beyond the present and into the future, so if that couple were to separate or divorce in the future, would you feel comfortable with one person raising your child? Similarly, if one of the individuals was to predecease the others, would you feel comfortable with that single person raising your child? So, something very important to think about. Many don't go that far, so it's just an extra step.

Katie: The second one would be to name more than one guardian. We often think of our parents, or our best friend, or sister and stop there. The problem with that is the people that we usually trust most to care for our children like we would care for our children are people that we generally do most of our daily activities with, so we go on trips together. We spend the holidays together.

Katie: What we want to take into account here is that if something were to happen to you on one of those occasions, it could potentially happen to them, so a car accident during a trip could affect you and your sister that you are going to name as a guardian, so you want to name more than one. My personal recommendation is that you name at least three people so that you have two backups in the event that the first or second doesn't work out.

Katie: A third must-do when taking into account naming of guardian ... not consider financial resources. We often think about who could financially support our children. You may have a best friend who already has five children and you're afraid that the financial hardship would take her over the edge, so you don't name her. That's not the first and the most important thing to consider. The most important thing to consider would be that who you're naming is actually raising your children the way you would want them to be raised.

Katie: It's really up to you to leave enough financial resources for that individual to take care of your child, and you can do this through things like retirement savings, life insurance, and other assets that you acquire throughout your lifetime. Dr. Cooper, if you have any questions or want to interrupt me at any time, please do. Otherwise, I'll keep proceeding through.

Dr. Nancy: You're doing great.

Katie: Okay. Great. The fourth consideration that you should take into account is creating a living trust. A revocable living trust would do your family a lot of favors. First of all, it would keep all of your assets out of the court system. There's this thing called probate, which many of us have had experience with or may have just heard about, and what it is, is it's a court who actually will direct an executor to distribute your assets either through the state default rules or through will, if you have a will in place, but the problem with probate is three-fold really.

Katie: First, it's completely public, and what probate court does is it allows people to know who's going to get a lot of assets, and so if your child is about to inherit a lot of money, that leaves your child open to predators. Another problem with probate court is it's a long process depending on what state you are in, and I'm licensed in four states, so I've seen various amounts of time, but probate could last anywhere from 9 to 15 months, and that's if there's no one contesting the way things are being distributed.

Katie: The third problem with probate is it's costly. It's estimated that 5% of your total estate goes towards the fees associated with probate court, and that doesn't take into account things like attorney's fees in the case of a contest. Avoiding probate can be done, and it can be done through a living trust, so that's something for families to consider.

Katie: Number five is to consider those individuals you would not want to raise your children. We all have people in our life where we think, "Ugh, I wouldn't have done that. I wouldn't have engaged in that type of parenting technique or I wouldn't want my child exposed to that." Well, these people, although we're not naming them as guardians for our children, they can be included in what's called a confidential exclusion, and that's where we list people out that we don't want our kids to go to so that in the event a judge, a complete stranger has to make that decision, they know that you've put in writing that for whatever reason, you don't want your children raised by these people, so that would be number five.

Katie: The sixth must-do is to name short-term guardians for your children. Now, so far, I've been talking about naming long-term guardians, but short-term guardians are essential too. They're essential for things like your everyday date night. Okay. Maybe not every day, but some of us go on date night every once in a while, and in the event you do and something happens, and it doesn't have to be death when we're talking about this.

Katie: It doesn't have to be death. It just have to be a temporary unavailability. You want to make sure that there's no lapse in the caring of your child, and you can do that by naming short-term guardians. I like to call them first responders, and those are people

that are available within 15, 30 minutes to pick up your children if for some reason, you cannot, so that's necessary. What I recommend in my estate plans I do for families with children is that they get what I call a Kids Protection Plan, and it would include both the long-term and short-term guardians as well as some instructions to caregivers.

Katie: The seventh thing on my list of must-dos would to be name your guardians in separate documents from either your will or your power of attorney. It's very common, in fact, traditional, for law firms and individuals to name guardians within the will itself or within a power of attorney. The problem with this is your decisions about your guardians may change over time, and if you aren't constantly updating your power of attorney or your will, then these choices could become outdated and not up to date when the time comes for your children actually to be appointed a guardian.

Katie: Those are the seven must-dos. This is something we do on a regular basis for our families that come in. In fact, we hold events throughout the year at different places around the community where we not only educate the community, answer their questions about the process, but also, help them through it. For example, we have guardianship nomination workshops that we hold where we actually walk you through and counsel you through choosing, and naming guardians, and things you can think about.

Katie: In some respects, we become counselors because oftentimes, your spouses don't agree initially, so we can work through that, but it's a very essential thing if in the long run, you're thinking, "Oh, I'm not ready for a complete estate plan," which in my opinion, everyone is, but if you're not, at least naming guardians for your children provides them some protection moving forward.

Dr. Nancy: Is the Kids Protection Program, what you're talking about if you're not ready to do a will or estate plan, especially for the short time or for short-term, your first responders, is the Kids Protection Plan, is that where you can name those people?

Katie: Exactly. Yes. That's something you can do with the Kids Protection, the Kids Protection Plan. There's also ... It's on my website, which is katiecharlestonlaw.com. I think it popped up a little while ago. On my homepage, I have a link that takes you to a site where you can go through the process of naming permanent guardians for your children, and it really ... It walks you through the process, and depending on what state you are ... In Indiana, for example, you would need take those documents and get them witnessed by two individuals, so it's not just complete online. You actually have to get them witnessed and signed, but there are ways to do that in the interim until you're ready to do that estate plan.

Dr. Nancy: What if something happened and the only first responder documentation you have is at a school like who can pick up their kid and things like that? Do they ever use that?

Katie: Not typically. I mean, if your kids are at school and you have that document in place, the kids will ... I'm sorry. The school will release your kids to the person that you have named, but for long-term, it becomes irrelevant. If that person is ... Say you named your

neighbor, for example, as a person authorized to pick up your child. In the event something happens to you, that neighbor ultimately is going to have to encounter either relatives of that child or the police, depending on what the nature of the situation is.

Katie: What would ultimately happen if there was no actual guardianship papers in place is the kids could be taken into Child Protective Services until a judge sorts it out, so that's one of the major reasons to get this paperwork in place so that there's no possibility that your kids actually end up in the system, and there's no way that a stranger, a judge would be making [inaudible 00:11:05] who takes care of your children.

Dr. Nancy: Wow, I never even thought of all that stuff, so this is wonderful information.

Katie: Okay.

Dr. Nancy: Does anybody have any questions for Katie? We have a few viewers online. Let's see here. We're going to write your list down and comments about the things that you had mentioned here, your seven bullet points. If anybody have any questions, go ahead and shoot them out while we have an attorney here. Okay, and you're located in Carmel from what I understand, and then what other kinds of law do you practice?

Katie: I do both business and estate planning, so I also help businesses grow and protect their businesses not through just estate planning, but through other measures such as business branding, copyright, trademarks, patents. That sort of thing, and I work on a roadmap of selling their business so that when they're ready to sell, I can actually guide them through that as well.

Dr. Nancy: Okay, so we have a question on living trusts. Can you tell us more about them?

Katie: Sure, so a living trust is basically an agreement between you and yourself, so it's a contract where you're saying, "I'm taking my personal assets, and I'm putting them in a trust for the benefit of myself while I'm alive and for the benefit of whoever my beneficiary is when I pass." For instance, I would want my husband and my children to benefit from the assets when I'm gone.

Katie: The benefit of the living trust is that all of your assets get passed privately because you have this agreement in place, so nothing has to be submitted to the probate court, so you would have a trustee during your lifetime would be yourself, so you'd be able to move assets in and out of the revocable living trust while you're alive, and then at your death, it becomes irrevocable. Meaning, it can't be revoked, and you've named someone to carry on that trustee position, and they will make sure that your wishes are carried out for however you want your assets distributed when you're gone.

Dr. Nancy: Would that mean a professional, or is it a family member or something like that?

Katie: It could be anyone that you choose. A lot of times, individuals will name family members, but there are also actually corporate trustees you could name, so if you didn't have someone you trusted or you just didn't have family around, you could name, for

example, a lot of bank service trustees, and so they would be tasked with following your wishes as you lay them out in your trust.

Dr. Nancy: Interesting.

Katie: Yeah.

Dr. Nancy: Let's see. We have another one. They asked how writing out that your child and assets should go to someone specific on paper that wouldn't work in court if we just wrote it down?

Katie: Technically, that wouldn't work because anyone could do that, right? Anyone could just write a little bit ... a note down, and maybe it's not even you, and then that could be submitted to the court. The importance of the acknowledgements are you have two independent witnesses who are saying that they actually saw you, you were capable of knowing what you were doing, and you signed this document in front of them, so they could testify in front of a judge that this was valid if for any reason, it was disputed.

Dr. Nancy: Great. Great question, Katie. Does anybody else have any questions before we let Katie go today? I got some really good questions. I really like that. Oh, here we go. One. Can you pick two different people to be guardians and a person to be responsible for their financials, so separate guardians?

Katie: I highly recommend that the individuals taking care of your children are not the individuals taking care of your money. It's good to have checks and balances in that respect.

Dr. Nancy: We have a follow-up question about writing it on paper. She said that even with her signatures, that wouldn't hold up?

Katie: If you signed it ... I believe the question is even if you signed it, would it be invalid? It would be valid if it was witnessed. I hope that answers your question. You want to have two people, independent people, so people that you haven't named in the paperwork observe you signing it and witness it. Meaning, they signed it themselves, and that creates another level of validity for the court if it becomes a dispute.

Dr. Nancy: Yeah. Thank you, Katie. She is thanking you.

Katie: All right.

Dr. Nancy: Where does the paperwork go after you write it out and have witnesses sign?

Katie: Awesome question. It is very important that you make this paperwork available to your caregivers, and this is one of the reasons I suggest having it separate from your will. You don't want everyone to know everything within your will or your trust, but you do want your caregivers to know that you have named these guardians, so it's important to keep

them in a place where your caregivers have access to them. In the event something happens to you, they can reach for the papers and be able to call the correct people to come in and take care of your children.

Dr. Nancy: Wonderful. Okay. I don't think we have any more questions. Thank you, Katie. This was wonderful. Really important information.

Katie: Okay. Welcome.

Dr. Nancy: Thank you everybody for asking questions. I really appreciate the engagement, and if you know anybody that could use this information, please share this video with them. I think it's really good information to have. Thank you again for joining us, Katie.

Katie: Thank you.

Dr. Nancy: Do you have anything else you'd like to leave us with?

Katie: Just that I have ongoing events. If you want a little bit more information, you can check out the Events page on my website. It will let you know where I'm going to be at in the community. In addition to local events, I regularly do webinars too, so if you can't get out locally, there's that option as well.

Dr. Nancy: Great. Well, thank you again for coming. I appreciate it.

Katie: You're welcome.

Dr. Nancy: Everybody have a great dry day.

Katie: You too.