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# **Community Legal Information Association of Prince Edward Island, Inc.**

## **Naming A Guardian for Your Child**

There are two ways to name a guardian for your child:

- through a will, if you are 18 or over (if you are under 18 and in the Armed Forces or married, you can also use a will to name a guardian)
- through a different legal document if you are under 18

A will is a document that takes effect when you die. It tells how you want your property distributed at that time. A parent can choose to name a guardian for his or her child in a will.

If both of the child's parents are known and one parent dies, the other parent automatically gets custody of the child. This may be challenged by anyone with an interest in parenting the child. If both parents agree in writing that a guardian will be chosen by one parent, and this has been done before the death of that parent, custody goes to the guardian rather than the surviving parent. If the deceased parent appointed a guardian without the other parent's written agreement, and the surviving parent wants custody, a court will have to decide who has custody. If a guardian has been named, the court will know the wishes of the deceased parent. The judge will make a decision in the best interests of the child and will take the parent's wishes into consideration.

If only one parent of the child is known and that parent dies without naming a guardian, anyone may apply to the court for custody of the child. Even if the child has a stepparent, custody does not automatically go to the step-parent. He or she must apply to the court for custody of the child. A judge will decide who gets custody. This is usually done with the help of a professional assessment. The judge's decision must be in the best interests of the child.

If you are naming a guardian for your child in your will, you should do this through a lawyer. Your will is less likely to be contested if it is carefully and properly written for your particular situation.

If you are unmarried and under 18, you can name a guardian in a signed, written legal document. It is best to do this through a lawyer, to make sure your document is properly done. This will make your wishes known to the judge who is deciding about custody arrangements for your child.

Naming a guardian in a will, or a different legal document, indicates whom you would choose as a substitute parent for your child. An appointment made in a will or another

document does not become effective until a judge confirms it. It is essential to make sure that the person is willing to be a guardian before you name them. If the person decides not to take on the responsibility, the judge will not order them to do so.

For legal advice, you can call the Lawyer Referral Service at 902-892-0853 or 1-800-240-9798. You can have a brief consultation with a lawyer for a modest fee.

This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer.

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CLIA provides Islanders with understandable and useful information about the law and the justice system in PEI.

For more information, you can telephone CLIA at 902-892-0853 or 1-800-240-9798, visit our website at [www.cliapei.ca](http://www.cliapei.ca) or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca). You can also find us at: [www.facebook.com/CLIAPEI](https://www.facebook.com/CLIAPEI), [www.twitter.com/CLIAPEI](https://www.twitter.com/CLIAPEI) and [www.youtube.com/CLIAPEI](https://www.youtube.com/CLIAPEI).

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