

**FAMILY CARE PLAN ISSUES**  
**CHECK LIST**

<b><u>Status</u></b>	<b><u>Children</u></b>	<b><u>Special Circumstances</u></b>	<b><u>Legal effectiveness</u></b>	
			<b><u>Temporary Custody</u></b>	<b><u>Death</u></b>
1. Married	All children born of marriage or adopted	Dual military	Both family care plans should designate the same temporary custodian in the event both deployed; POA in-state OK If out-of-state, consent Form preferred	Should designate same guardian of person (children) in event of dual casualty, preferably naming guardian <u>in-state</u>
2. Married	Children of prior relationship	Stepparent designation	If family care plan designates stepparent rather than biological non-custodial parent must establish consent Consent form: minimum Order of court or parenting agreement preferred POA: <u>Never</u> effective to transfer custody.	No way to legally name permanent guardianship in a stepparent absent agreement of biological parent or Probate guardianship order. Family Court Order or POA becomes legally ineffective at death of custodial parent Will should contain language with testamentary intent

Legal effectiveness

<u>Status</u>	<u>Children</u>	<u>Special Circumstances</u>	<u>Temporary Custody</u>	<u>Death</u>
3. Divorced/ Separated Not remarried Custodial parent	Children born of marriage	3 <sup>rd</sup> party or grandparent designate away from non-custodial biological parent	If family care plan designates anyone other than non-custodial biological parent must establish consent or Court order. Minimum: consent form Preferred: decree sets forth placement in event of deployment or post-judgment consent order or parenting agreement POA: Never effective Even if child is placed with non-custodial parent agreement Note: Should indicate <u>temporary</u> nature of placement, particularly when return to divorce decree contemplated	Same as above
4. Divorced/ Separated Not remarried non-custodial parent/joint custodian	Children born of marriage	Relationship between access and child support as well as ability to delegate access rights to a third party.	Can't delegate rights of access to a 3 <sup>rd</sup> party, while deployed absent agreement requires consent form. Same consent should address any modification of child support based upon change of parenting schedule	N/A However, may want to reference third-party trustee of child's finances in event of casualty; otherwise could go to a former spouse.

Legal effectiveness

<u>Status</u>	<u>Children</u>	<u>Special Circumstances</u>	<u>Temporary Custody</u>	<u>Death</u>
5. Unmarried custodial parent prior custody or support order; non custodial Parent visitation rights		Must test legal legal effectiveness of a temporary custodian for each child, subject to each separate order	If paternity and/or custody have been established in a prior order designating military member "sole custodian" still must obtain consent or court order that specifies designation of 3 <sup>rd</sup> party temporary custodian Minimum: proofs of consent Preferred: Consent Order modifying prior order. Note: There is no right to Receipt of transfer child support payment to 3 <sup>rd</sup> party designee absent consent as set forth above.	No way to legally designate guardianship away from biological parent absent an agreement or order. Will should contain language with testamentary intent and specify court case number.. if applicable.
6. Unmarried custodial parent no prior custody or support order; in tact relationship	Child of relationship	Preserving rights of custody in returning service member and temporary nature of custodial designation	Can be done by POA to biological parent Preferred: Consent Order or agreement with acknowledgement of paternity and/or temporary nature of custody placement documented	Regardless of whether guardian is to be biological parent or 3 <sup>rd</sup> party, must be specifically designated in testamentary instrument to avoid the necessity of litigation in Probate part to establish parent-child relationship or name a temporary guardian.
7. Unmarried custodial parent no prior custody or support order no relationship with biological parent	Child of relationship		Unless there is no acknowledged father, preferred mechanism is consent form or proof that form with designated family care plan was sent and actual notice given to biological parent. Consent Order, while effective could give rise to paternity and support issues which may or may not be client's desire.	Same as above