

## Planning for Children

Many parents put off estate planning because they do not think they have substantial assets to protect. This outlook is common among young adults who think they have plenty of time to accumulate wealth and plan for it at a later date. However, in failing to create a proper estate plan, many parents cannot adequately protect their children. All parents, with or without a great deal of assets should have an estate plan in place to set forth their wishes for their children which includes, among other things, nomination of a guardian in the event that they have an untimely passing while the child is still a minor.

In your estate plan, you can appoint a guardian (also known as a conservator) for your children upon your passing. If there is no plan in place, the court will appoint a guardian to raise your children based on what it deems to be in the best interest of your children. Unfortunately, the court appointed guardian may not be your first choice and in some cases, he or she may actually be your last choice. From just a few brief hearings, it is often impossible for the courts to determine who is best suited to care for your children in your absence.

In some cases, where no clear-cut guardian is named, children may be sent to Child Protective Services to remain with a foster family until the court decides on a suitable guardian to take on the responsibility. For many parents, this scenario is reason enough to create an estate plan to protect their children.

Nominating a guardian can be a very difficult decision and one that should not be made without serious consideration. The individual selected should provide stability for your children in the difficult transition and ultimately continue care in a fashion with which you are comfortable. You should consider the following traits and circumstances when determining who is best suited to raise your children:

- **Age:** You will want to make sure they are old enough to provide proper care (at least 18 years of age in most states) but young enough to remain in good health until your children reach adulthood.
- **Commitment:** Ensure that the guardian does in fact want to take on this responsibility.
- **Temperaments:** Carefully consider what kind of person will mesh well with your children. If you have young or energetic children, you may want to make sure the guardian exhibits patience.
- **Religious and moral beliefs:** Do they share the same values as you and your spouse? Would they instill these in your children?
- **Nature of existing relationship with children:** You will want to make sure that this person has a good bond with your children and that there is a mutual comfort level.
- **Location:** If you prefer that your children not move out of their current home and/or school district, you will want to make sure that the appointed guardian resides close to you and intends to stay there until your child reaches the age of majority.
- **Does proposed guardian have other children?** If so, does the guardian have enough time and resources to devote to his/her own children in addition to yours?
- **Finances:** Can the candidate financially provide for your child if there are not enough funds available from your estate?

In the event that the guardian you have selected in your estate plan is unable to raise your children upon your passing, you should have two alternates who also meet the aforementioned criteria. This will ensure that your children are left in the hands of trusted relatives or friends and not in the court system.

If you have multiple children and would like to appoint different guardians to raise them separately, you may also outline multiple guardian appointments in your estate plan, however, this situation is generally not regarded as ideal for close siblings.

All appointed guardians must ultimately be approved by the court at the time of the parents' passing. If a biological parent is still living, they will usually be named the guardian of the children unless evidence is presented that this individual is unfit to provide care to the children in question.

## **Trusts for Minors**

In general, if an individual dies without an estate plan, his or her assets are distributed according to a formula determined by the state. In most instances, these laws pass wealth to both the surviving spouse and children. A properly crafted estate plan gives you control over this distribution allowing you to provide for specific people you designate and at the right time. It is recommended that all parents of minor children create a trust that is designed to safeguard the inheritance for their children. Such a trust gives you the ability to outline how much money your children will receive, the age at which they will receive the inheritance and to an extent how they are to spend this money. This allows you to designate funds for their college educations and give them their inheritance at a certain age, ensuring that they don't waste their inheritance on fancy cars as soon as they turn eighteen years old. The trust can also protect against potential creditors or even divorce.

Trust funds can also be used to provide support to your children until they reach the age at which they may receive their inheritance. In your estate plan, you must also name a trustee who can ensure this money is handled properly. It is important to note that the trustee may be different from the guardian selected in your estate plan. This is recommended if the guardian is good with children but not with money.

Trusts are important in that they ensure you still retain control over your wealth after your death in effect giving you greater control of your children's futures. Trusts allow you to set aside funds for a surviving spouse ensuring that your children will be provided for even if your partner is not wise with money or remarries. Furthermore, a trust allows you to outline how the trustee is to budget funds for each child. If you have one child who has a special need or requires additional training to develop a talent, your trust may outline these appropriations. This is particularly important if you have a child with physical or mental disabilities who may require significant care beyond his or her 18th birthday.

Children are often the greatest assets that parents have and an integral part of the estate planning process. Your children's well-being is only ensured with proper planning and while most parents hate to think about leaving their children before they are adults, it is essential that this possibility be considered and an effective plan formulated. If you have not yet created a plan that adequately provides for your children, we encourage you to contact our knowledgeable estate planning attorneys today.

## **Disclaimer**

*Please note that the above information is not intended to serve as legal advice. Further, contacting us and sending information to us via our website does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established with our law firm. Should you desire to discuss your case with one of our attorneys, please contact us.*