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6 Reasons Why Parents Need Estate Planning

By Michelle Chapin

As a follow up to why young married couples need estate planning, parents with young children similarly need estate planning, albeit for different reasons.

• **Name a Guardian.** Naming a guardian for your minor child is usually the most important reason a parent should create a will. Whom do you trust to raise your child? Generally, if a parent is living, the surviving parent is the legal guardian. In those cases where no parent survives or where the surviving parent is unfit to serve, naming a guardian indicates your intent to the court, and more importantly, to your loved ones. After such a devastating loss, the last thing you want is your family or friends fighting over who should care for your children. In Maryland, the guardian does not need to be approved by, or qualify in, any court.

• **Authorize Medical Treatment for your Child.** Would you ever leave your kids for a week knowing that a doctor could refuse to see them if they fell ill? Probably not intentionally, but a lot of parents are doing just this. If you go on vacation for a week and leave your kids with your parents, are you certain that a hospital or doctor’s office will see your child in the absence of having any written document from you authorizing them to do so? In this age of identity theft, privacy laws and malpractice lawsuits, a physician could refuse to treat your child if he or she does not have direct authorization from you. We can help you create a power of attorney to consent to medical care and treatment for a minor.

• **Life Insurance.** Do you have enough life insurance to replace your income so that you will be able to pay for your child’s expenses, at least until he or she finishes college? What if your child has special needs that will require additional care? Life insurance can be the inexpensive answer to these questions, which leads us to the next item a parent of a minor should consider.

• **Avoid Intestacy Laws which Distribute Assets to a Child at age 18.** What if you die owning a million dollar life insurance policy? Would you want your child receiving those funds at age 18? Probably not. If you are married and die intestate (*i.e.* without a will), the intestacy laws in Maryland, D.C. and Virginia may lead to just that result. In Maryland, your surviving spouse receives one-half of your estate, and your surviving minor children receive the other half. In D.C., the surviving spouse receives either two-thirds or one-half of your estate, depending upon whether your spouse is the parent of all of your children, and your surviving descendants receive the balance. In Virginia, if you have a child with someone other than your current spouse, your children receive two-thirds of your estate if you die intestate. These intestacy laws do not reflect how most people would want their estate distributed.

• **Avoid a Court-Imposed Guardianship.** If a parent does not name a guardian, the court will appoint someone. The guardian of the person of the minor ensures the health and well-being of the minor, and the guardian of the estate of the minor ensures the financial well-being of the minor’s assets. Court appointed guardianships impose restrictions on how the guardian may invest the minor’s assets and how much money a guardian can distribute to or on behalf of a minor before court approval is required. The court also oversees annual accounts which can be expensive and reduce the amounts available for the child.

• **Protect Assets in Trust.** Without creating a trust for your child, he or she will receive the proceeds of life insurance, access to retirement accounts as well as the assets of your estate upon reaching age 18. Since most 18 year olds are not financially savvy, you should consider setting up a trust for the benefit of your child, either through a will or trust. He or she can receive funds from the trust after your death (even during the age of minority) via your designated trustee who can make distributions to or on behalf of the child, and the child can receive outright distributions at whatever age or ages you deem appropriate. The trust can be structured to protect the trust assets from creditors of your child, including the child’s spouse, and the child can receive money for medical expenses, tuition, living expenses, to get married, *etc.* Accordingly, the trustee can help protect the money to ensure it lasts for your intended purposes.

Parents of a minor child have a lot on their mind, and their child’s safety and well-being are at the top of the list. This blog only covers some ideas parents should consider. We can review them and any other relevant issues together. A properly prepared estate plan is one of the best gifts any parent can give to their minor children.

