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ESTATE PLANNING FOR PARENTS WITH YOUNG CHILDREN

Being parents with young (minor) children can be both incredibly rewarding and stressful. One of the last things many parents want to think about is making a will or creating an "estate plan." However, bad things happen in life and being prepared for these situations is a very thoughtful and act for one's children and loved ones. The good news is that if you correctly create an estate plan the first time, you will probably not need to revisit the issue for quite a while.

We have compiled the questions we are most often asked by parents with young children. Our answers are intentionally direct and simple in order to start you thinking about your needs and asking your own questions. Naturally, there are many other issues and planning options that may or should be considered depending on your specific concerns, goals and facts. We recommend you call us to discuss the best way to plan for your family.

WHAT IS AN ESTATE PLAN?:

An "estate plan" is a generic term used to mean any document that serves to carry out your goals and plans during you life due to injury or illness, or on death. The goal of many estate planning documents is arrange for the orderly transfer of your real and personal property with minimal difficulty and expense after your death. Some common estate planning documents that you may have heard of are a "last will and testament," "revocable living trust," "health care directive," and a power of attorney. For example, in the event of your incapacity (for instance, if you are in a coma) someone will need to make financial and health care decisions for you. A Power of Attorney and Health Care Directive does this by appointing an agent to carry out your wishes according to your guidelines. Your estate planning documents do not need to be complex or go into in-depth planning. For most people just getting the basics down on paper will cover the bulk of life events and is certainly better than having nothing at all.

DO I NEED AN ESTATE PLAN?:

Yes, everyone over the age of 18 needs a last will and testament and related documents. Consider what would happen if a 19 year-old is in a car accident and falls into a coma. Someone would need to make medical and financial decisions for that person. It is better to name someone now instead of going through the emotional toil and financial expense of having the court appoint someone, and who would then also be subject to on-going court supervision.

DO I NEED A WILL OR REVOCABLE LIVING TRUST?:

Most young married couples will likely only need a "last will and testament" and will likely not need to go through the additional expense of creating and maintaining a "revocable living trust." A revocable living trust is an estate planning tool where an entity (the trust) holds title to all of your assets for your use and benefit. A revocable living trust is often used to avoid probate. As an exception, if you own assets outside of Alaska – then a revocable trust might be appropriate. We can help you decide what is best for you given your goals.

WHO SHOULD BE THE "PERSONAL REPRESENTATIVE"?:

A Personal Representative (also known as an "executor") is the person you appoint in your last will and testament who is tasked with administering the disposal of your estate when you die. The personal representative steps into your shoes and acts for you after you are gone, for example distributing your assets and paying your debts. You will want to name a primary and then a secondary Personal Representative. Most people name their spouse as the primary, and then a trusted family member as the secondary.

WHO SHOULD BE THE GUARDIAN OF OUR CHILDREN?:

A guardian is the person you name who will be responsible for the physical well-being and day-to-day care of your child until that child legally becomes an adult at 18. Appointing guardians has a lot of implications and should not be taken lightly. You should consider naming someone who you trust to raise your children in the same manner that you would – someone who will consider making the same life choices that you would regarding upbringing, education, hobbies, morals, etc. You should name both a primary and a secondary guardian. For example, if you name your friends "Joe and Nancy," do you really mean *both*, or just one? What if they get a divorce or one dies, do you want the other in charge of your children? Also, you may not want to name your parents unless you feel they are young enough to handle your children through their teenage years.

IF MY SPOUSE AND I BOTH DIE, WHO SHOULD GET OUR ASSETS?:

Normally, on the death of the first spouse, all of the remaining assets will pass to the surviving spouse outright. However, if both parents are deceased (a common occurrence with car accidents), then the assets should pass into trust for the benefit of your children; this trust must be created under your estate planning documents and is only activated after both parents pass away. This is called a *"testamentary discretionary trust"*. This type of trust is very important to protect the benefit and use of the assets until a child is older. If you do not place your assets into a trust after you die, then your children will get your assets when they turn 18 – something parents may not consider a good solution no matter how wise and mature a child might be at 18. There are numerous types of trusts that should be considered and which is best for you and your family will depend on your specific needs.

WHO SHOULD BE THE TRUSTEE OF THE TRUST FOR THE CHILDREN?:

The Trustee should be someone you trust to deal with your money for the benefit of your children. It should be someone that: (i) understands investments, (ii) can make good decisions regarding distributions, (iii) will likely have an ongoing relationship with your children, and, (iv) has the same values for using the funds for your children that you do, e.g. education, summer work, a car, travel, hobbies (hockey camp), etc. Sometimes a trust will provide for two trustees – one in charge of investments, and one in charge of making distributions. You may or may not want the trustee and guardian to be the same person.

WE HAVE A "SPECIAL NEEDS" CHILD – WHAT ADDITIONAL PLANNING SHOULD WE CONSIDER?:

Depending on the type of federal and state benefits the child is eligible for, you should absolutely consider funding a testamentary "supplemental needs trust" on your death that can provide for the supplemental care of your child during his or her life. These are very unique types of trusts designed to protect the child from losing any governmental benefits.

HOW SHOULD WE DEAL WITH CHILDREN FROM ANOTHER RELATIONSHIP?:

This depends on your goals and current situation, including how integrated the children are in your family. Children from another relationship can be included in your estate plan as you desire. In some situations, one spouse does not want the other to worry or feel morally obligated to provide financial care and support for the children from a prior relationship. In that case, we have recommend that a separate life insurance policy is obtained that is payable to a separate testamentary trust for the benefit of the other children. The trustee of that trust could be your current spouse, the parent of the other children, or another family member who has a relationship with those children.

WHO SHOULD BE THE BENEFICIARY OF MY LIFE INSURANCE?:

Usually, the first and primary beneficiary is your current spouse and parent of your children. The secondary or alternative beneficiary should be the discretionary testamentary trust created under your estate plan for the benefit of your children. However, there are many other alternatives and issues to consider.

WHO SHOULD BE THE BENEFICIARY OF MY QUALIFIED RETIREMENT PLANS?:

Normally, the first and primary beneficiary is your current spouse. This will allow the surviving spouse a couple of distribution options that can provide income tax planning benefits.

The secondary beneficiary will depend on your goals. It is recommended that the secondary, or alternative beneficiary should be a discretionary testamentary "non-see through" trust created under your estate plan for the benefit of your children. Paying the qualified retirement benefits to a trust will result in income taxes being paid on your death. However, many feel it is better to place the net after-tax funds in trust for the trustee to control than to pay the funds outright to young children. In the alternative, one should consider a qualified "conduit trust" or a "see-through

accumulation trust" to hold those retirement benefits. This is more advanced planning that your estate planner can discuss with you.

DO I NEED A GENERAL DURABLE POWER OF ATTORNEY?:

Yes, everyone needs a general durable power of attorney. A general durable power of attorney allows you to name someone who will handle your assets and financial affairs if you cannot – for example, if you are in a coma. A general durable power of attorney is an easier, faster and less expensive alternative to obtaining a court-appointed conservator to supervise your financial affairs.

DO I NEED A HEALTH CARE POWER OF ATTORNEY?:

Yes, everyone needs a health care power of attorney (a/k/a: a living will, advanced health care directive, etc.). A health care power of attorney allows you to name someone who will make medical care decisions for you if you cannot. A health care power of attorney is an easier, faster and less expensive alternative to obtaining a court appointed guardian to deal with your health care issues.

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