

Protecting Children Through Proper Estate Planning

By Barbara W. Reynolds

For many people, their biggest concern in estate planning other than taking care of a spouse or significant other, is how to provide for their minor children and children with special needs. Simple strategies can greatly increase chances that these loved ones will be well cared for if anything happens.

Planning for Minor Children

For someone who has children under 18, it is important to make plans for how their care will be paid for and who will care for them if parents are not available.

The first step is to decide who would be a guardian for the children if neither parent is alive or available to make decisions. This is a person who the probate court appoints to make decisions for the child on everything from where they will live to what health care they will receive. Guardians are often family members – brothers or sisters or parents who would be able to provide a good home for a child. A guardian can be designated through a Last Will and Testament, and it is often a good idea to name alternates so that the probate court knows who you would want to have watch your children.

The second step is to plan for assets to help the guardian take care of that child. There are expenses that a guardian will need to be able to pay ranging from food and clothes to braces and college bills. Assets can include a home with equity, investments, or proceeds from a life insurance policy. Term life insurance is often a good way to make sure that there will be funds available to take care of your children.

The third step is to make sure that the assets are held and managed for the child. This is commonly achieved by creating a Trust for the benefit of the child through a Will and directing that assets be placed in the trust upon both parents' deaths. A Trust can specify how the money is to be spent – for health, education and support of the child, for example. The Trust can also indicate that the money would be controlled by a Trustee until the child reaches an age where he or she could use the money responsibly – perhaps 25, 30 or even 60!

The final step is to decide who should be Trustee of the Trust. It is important to pick someone who is able to manage the money and make decisions on how to spend it for the child. The Trustee can also be the Guardian, although it may make sense to separate the roles to ensure that the funds are spent on the child.

Planning for Children with Special Needs

A child who has a physical or mental disability may need special planning to make sure that he will be well provided for once his parents are no longer able to care for him.

A child who is not able to work, or who can only work part-time, may benefit from an inheritance that is held to be spent when he or she really needs it. Sometimes making sure that such a child has a place to live with a family member nearby can make a world of difference in the child's well-being.

If a child is determined to be disabled, he or she may qualify for special governmental programs providing housing, food and medical care. These programs can be essential to a child's physical and mental health.

IF a child does receive benefits, however, it can be important to make sure that any money that child would inherit is placed in a Special Needs Trust which will provide for discretionary distributions of money for the child while still allowing the child to receive benefits and preventing the state from claiming the inheritance. Without a proper Trust, that child may face the state collecting half of the inheritance and being removed from benefits programs until the other half of the money is spent.

Every child is different – whether he or she has special needs or not. A good estate plan will address the parents' concerns for their children while providing a structure for what will happen if a time comes when the children need guardianship and protection.

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