PARENTS WITH MINOR CHILDREN

WHY ESTATE PLANNING IS SO IMPORTANT

In Many Cases, Estate Planning is Even More Beneficial to People Who Have Relatively Small Estates, Particularly if They are the Parents of a Minor Child

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People frequently make the mistake of assuming that a sizeable estate is needed to create the necessity for an estate plan. Nothing could be further from the truth. In reality, estate planning is even more beneficial to people who have relatively small estates, particularly if they are the parents of a minor child. If you have a child, your child is undoubtedly your most important asset when you think about it. A comprehensive estate plan can ensure that your child is provided for and protected should anything happen to you.

What Can Happen Without an Estate Plan in Place?

Often, the best way to illustrate the need for something is to explain what happens in its absence. If you are the parent of a minor child and you have yet to create an estate plan, asking yourself the following questions will illustrate the need for a plan.

1. **Who will be your child's guardian should one be needed?** If your child's other parent is willing and able to become guardian the law will likely turn to him or her. If, however, the child's other parent cannot, or will not, take over the care of your child, a court will have to appoint a guardian. If you failed to leave behind an estate plan, the court has no input from you to assist the court in making this important decision.
2. **Who will control your assets if you become incapacitated?** Your child likely depends on you financially. If you suddenly become incapacitated in a tragic accident, who will control your assets? While they may not be substantial, you undoubtedly want your child to benefit from those assets you do have; however, without an incapacity plan in place you don't know who will control those assets. Again, a court will be forced to decide who is granted authority over your estate without any input from you.
3. **Who will control your child's inheritance if you die?** A minor child cannot inherit directly. Absent directions in your estate plan to the contrary, the court will likely appoint the same person who was appointed as your child's guardian to control your child's inheritance.

This could mean that an ex-spouse, or someone else you don't want, will control the assets.

Choosing a Guardian

The first, and most important, goal your estate plan can achieve is to make it clear who you wish to be the guardian of your minor child should a guardian be needed. When you create your Last Will and Testament, one of the things you can incorporate into the Will is the nomination of a guardian along with a successor guardian. Because of the importance of this position, some things you should consider before making a nomination include:

- Where does the individual live? If he or she doesn't already live close, is moving an option so your children are not suddenly uprooted from their neighborhood and school?
- Does the proposed guardian have an existing relationship with your child?
- Does the individual share your basic parenting philosophy and have your basic belief system?
- What plans does your proposed guardian have for the future? If moving, traveling, or a career will interfere with being the guardian for your children you need to take this into account.
- Does the person have the financial ability to care for your child? If not, have you made adequate plans in your estate plan to provide the funds necessary?

Is your proposed guardian willing to serve in the position? Never assume that anyone – even close family members – is willing to take on your child

full-time. Always sit down and discuss the matter before nominating someone to the position.

Planning for Incapacity

Incapacity is not an issue that only concerns the elderly. Incapacity can strike at any age in the form of a catastrophic accident or terminal illness. If you suddenly become incapacitated, someone needs to care for your children. To do so, they may also need access to your assets. The nomination of a guardian you made in your Will cannot help because your Will only applies in the event of your death, not if you become incapacitated. There are, however, ways to plan for incapacity in your estate plan. A "springing" power of attorney, for example, can give someone the legal authority over many aspects of caring for your children if, and only if, an event causes the POA to "spring" into action. In this case your incapacity would be the triggering event. You can also plan ahead and decide who will have control over your estate assets in the event of your

incapacity. A separate POA can provide a short-term solution or a revocable trust can be set up to provide an immediate shift of control to a successor trustee should you become incapacitated.

Your Child's Inheritance – When and How Should It Be Disbursed?

Even if you are not leaving a sizeable inheritance to your child you still want to guard what you are leaving right? Assume that you have a $250,000 life insurance policy that names your child as the beneficiary. Since your child cannot inherit directly due to age, someone will need to manage those funds until your child reaches the age of majority, usually age 18. If you want to know with certainty who will control those funds you need to set up a trust. The proceeds will then be directed into the trust and the individual you appoint as trustee will manage the funds and make distributions according to the terms of the trust that you created. Not only does this ensure that someone you choose will manage the funds but it also allows you to decide how the funds are used. Furthermore, it can prevent a lump sum disbursement when your child reaches the age of 18. Unless inheritance funds are held in a trust, a

beneficiary has the legal right to those funds when he or she reaches the age of majority. Handing an 18 year old a large sum of money is often not the best idea, which is why a trust is so attractive. Your trust terms can hold off distributing the principal until your child has matured a bit more and/or can provide for staggered distributions, such as ages 30, 35, and 40, instead of one lump sum.

Both the need for, and the benefits of, an estate plan for parents of minor children should be clear by now. If you are the parent of a minor child and have yet to create your estate plan, now is the time to contact an experienced estate planning attorney and get started.

Montana State University, Estate Planning for Families with Minor Children or Children with Special Needs
National Federation of the Blind, What Parents of Children with Disabilities Should Know
Martindale.com, Estate Planning with Minor Children

About the Author

Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

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