

PROTECTING YOUR MOST PRECIOUS BELONGINGS

The Importance of Estate Planning for Parents

By Casey Winebarger, Esq.

As a parent, protecting your children is no doubt one of your greatest concerns. You make sure they eat a healthy diet, take them to the doctor when they are sick, and clean their wounds when they are injured. You will do whatever it takes to prevent them from harm. But what if something happened to you? Do you have a plan in place to protect your children in that event? Regardless of how young or healthy you are, you need an estate plan to ensure your children are cared for, as you would want them to be, in the event you cannot care for them yourself.

An estate plan is essentially an instruction manual for what happens at your death. It can consist of a last will and testament, a revocable or irrevocable trust, or a combination of these. One of its main purposes is to name who you want to receive your property and how much you want each those people to have. State law dictates the beneficiaries of your property if you die without an estate plan. In North Carolina, your children and your surviving spouse are your beneficiaries. If you are a single parent or both you and your spouse die, your children will receive your property outright in equal shares. Step-children that you have not formally adopted will not inherit from you if you die without an estate plan.

Parents typically want their children to be the beneficiaries of their property, so the state law distribution might conform to the wishes of many. But what if you desire to leave money earmarked for your daughter's college education? What if your son is a spendthrift and you want to protect his inheritance from potential creditors? What if you have a disabled child for whom the receipt of a large inheritance could jeopardize eligibility for benefits? In these instances, and in any instance where you want to alter the state's predetermined estate plan, you will need to draft your own.

In addition to making sure you provide for your children the way you see fit, an estate plan allows you to name someone you trust, called a custodian or trustee, to handle your children's inheritance while they are minors. Without an estate plan, a court will appoint someone to this role. This individual may or may not be the person you would have chosen for the job.

Perhaps more importantly for parents, an estate plan allows you to name someone you trust to be the guardian of your children if both you and your spouse pass away. Although a court is ultimately responsible for appointing the legal guardian, naming a specific person in your last will and testament to serve as guardian for your children weighs heavily with the court. In fact, courts will almost always honor this designation unless it is clearly in the best interests of your child to appoint someone else. As with the custodian of your child's inheritance, if you do not name a person to fill this role, the court will appoint someone without any input from you.

When developing an estate plan, you should carefully consider the goals and aspirations you have for your children's futures and how you can best provide for their financial needs as

they grow up. In deciding on a custodian or trustee to manage their property, choose a responsible person who you trust to manage and spend the money as you would yourself. Likewise, in determining a guardian for your children, consider people who have similar values and belief systems as you. You should also consider the person's age and physical ability to raise your children. And you should always name one or two successors in the event the primary person chosen is unable to accept the responsibility.

It is never too early or too late for estate planning. An estate planning attorney can help by listening to your wishes and goals, working with you to develop the plan, and drafting the documents to put the plan into action. It is a good idea to review and revise your plan each time you have a significant life change, such as a marriage, divorce, birth of a new child, or death of a close family member. In any event, you should review your plan every three to five years to make sure it still conforms to your wishes. It is essential to engage the services of an attorney to ensure your estate plan is drafted and executed in compliance with the law. With an estate plan in place, you can be confident that your children will be protected and cared for, regardless of what the future may bring.

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