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ESTATE PLANNING BASICS FOR FAMILIES WITH YOUNG CHILDREN



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Wood Legal Group, LLP provides quality, personalized estate planning for our clients. Whether you need an attorney for Estate Planning, Trust Administration, Probate Litigation or a Certified Financial Planning Professional, our team of qualified individuals and referral partners, are here to help you and your loved ones.

To help you protect your family's financial future, we offer 50% off of a 30-minute strategy session, following attendance at a seminar, to discuss your estate plan and financial strategy, visit our website at www.woodlegallgroup.com, or call us today at (626) 898-9195 to schedule an appointment.

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When you hold your newborn child for the first time, you instinctively protect them from harm, handling their fragile frame as if it were made of the thinnest porcelain. On the trip home from the hospital, after inspecting the seatbelt nine or 10 times, you drive well below the speed limit. During the first few weeks you spend more sleepless nights than they do—wondering about their future and worrying about their safety. When you imagine their first day of school, college graduation, and wedding day, you picture yourself right beside them, beaming with pride. But what if tragedy strikes and you are taken from your children before they reach these milestones?



It's nearly incomprehensible for a parent to consider, but part of loving and protecting your family is providing for the possibility of events unfolding differently than you've envisioned. The question of what will happen to your children without you or your partner will be answered one way or another. The amount of control you have over how that question is answered is entirely up to you. Without sufficient planning, your family's future will be decided by the judicial system. Setting up an estate plan makes sense for any individual, no matter their financial or personal situation, but for families with young children, drafting an estate plan is absolutely essential.

WHAT IF I DON'T HAVE AN ESTATE PLAN?

If you pass away without an estate plan, you die *intestate*, which means that your estate will be distributed by predetermined state guidelines, and the courts get to decide who is awarded custody of your children and who controls the inheritance you've left for them.

CUSTODY OF YOUR CHILDREN

Without even a basic Will, you won't have any say about who assumes custody of your children. A judge who has no knowledge of your wishes will appoint a guardian for them in family court. Initially, the judge will appoint a temporary guardian, with a full hearing being held possibly months later to award final custody and guardianship to the person the court deems to be the most capable.

Potentially, your family and friends could end up battling over custody arrangements, causing emotional rifts among your loved ones for years to come. Or, worse yet, your children could temporarily or permanently be placed in foster care.

If you had nominated a guardian in a Will or the Pour-Over Will of your Living Trust, the judge would have taken into consideration the person you named and most likely awarded custody to that individual, unless that person were deemed unfit to care for and support your children.

CHOOSING A GUARDIAN

Guardians of minor children are "nominated" in the Will by the last parent to die. Guardians are typically "nominated" rather than appointed because the courts will give preference to the nomination but are not bound by it. If a court determines that the best interest of the child would be better served by another choice, they need not heed your suggestion. However, while the nomination of a guardian is not a guarantee, it does allow you to give the court guidance, which it will use to make its determination. If all other things are equal, the court will heed your advice.

Nominating a guardian for your children is the most important - and, in many cases, the most challenging - part of the estate planning process. Here are some factors that you should consider when choosing a guardian:

AGE

You need to consider both the age of your children and the age of the potential guardian. If your kids are young, you need to select someone who will be emotionally and physically able to care for them in the long-term. While a grandparent may have the best emotional connection, they may not be able to make the kind of commitment necessary to raise your children to adulthood. On the other hand, it's also possible to choose a guardian that's too young to handle such a large responsibility. Therefore, it's important to consider both the age and emotional maturity of your guardian candidates.

PARENTING STYLE, RELIGION, AND VALUES

Every parent has differing opinions on discipline, education, and even curfew. Therefore, it's vital that you take these things into consideration when choosing a guardian. Ask yourself what's most important to you in terms of values and religion, and then assess whether the guardian you have in mind shares those views. If you're unsure, ask them. You might be surprised by their answers.

STAGE OF LIFE

Think about the stages of life your potential guardians are in. Are they married or single? Are they likely to get married or divorced? Do they have their own children, and if so, are yours likely to fit in? If they are single now, is a future spouse going to be supportive of their guardianship? What about their career? Are they married to their job, or close to retirement? All of these factors will have a tremendous impact on your children's lives, so take your time and choose carefully.

LOCATION

Sometimes we underestimate the effect of a location on our everyday lives. But, where a child grows up has an enormous influence on the person they become later in life. Things like neighborhoods, school systems, and nearby relatives seem like obvious variables when thinking about the location of a potential guardian. But what about less obvious factors like climate? Moving from a warm climate to a cold one, or vice-versa, can be a big adjustment for a child. It is also important to weigh the likelihood of frequent changes in location. Will the guardian have recurrent moves or job changes? In some cases, this is impossible to predict, but nevertheless helpful to consider.

RELATIONSHIP

It's not necessary for your chosen guardian to be a blood relative, but it's best if they are at least familiar to your children. If you have never seen this person interact with your kids, how will you know what kind of parental role this person would play with your kids? It would be much easier for both the guardian and your children to grieve and adjust if they already had a good relationship with each other. Obviously, in rare cases, it is necessary to choose a person who is distant from your family. This option should be exercised only as a last resort. It's important to note that even if your children are particularly close to one aunt, uncle, or friend, remember that this person would potentially fill the role of parent, not best friend. So be sure to keep all of the other considerations in mind as well.

WILLINGNESS

Speak to all of your guardian candidates before you make a decision. After all, having to assume a guardianship is a life-changing responsibility, and not to be undertaken lightly. Although, in reality, it's unlikely that your chosen guardian will need to fulfill that role, it's important to secure their consent before naming them.

FINANCIAL POSITION AND RESPONSIBILITY

An important part of the estate planning process is making sure that your loved ones are provided for financially. Ask yourself whether your chosen guardian is financially stable enough to raise a family. Do they have problems hanging on to money? What are their spending habits? If you have doubts about their abilities to manage finances, but you're convinced that they would make the best guardian for your children, you may want to consider talking to a qualified attorney about Trust provisions that can make this easier.

In addition to discussing your wishes with your chosen guardian, it is recommended that you and your partner write letters of intent for your children. These letters can vary significantly, but most people use the opportunity to describe their expectations and hopes for their kids. A letter can be a much more comfortable format for expressing these desires than a verbal discussion, and it also serves as a permanent record. It is recommended that individuals update their letters of intent yearly or bi-yearly as their circumstances evolve.

Whether you have several guardians in mind or just one, it's vital that you weigh each and every variable to determine if he or she is the right person to care for your most valued treasures: your children.

DISABILITY PLANNING AND POWERS OF ATTORNEY

In addition to naming a guardian for your children, every parent needs a Power of Attorney to authorize someone to make financial decisions in the event you become incapacitated by an unexpected accident or illness. The appointment of a trusted individual to make these financial decisions helps ensure financial stability for your spouse and your children during your incapacity. The Power of Attorney and nomination of a guardian allow someone you have chosen to care for your minor children in a loving and attentive manner, rather than as the subject of a cold impersonal court bureaucracy.

When executing a financial Power of Attorney, you will want to discuss the implementation of a Health Care Directive and Health Insurance Portability and Accountability Act (HIPAA) Authorization Form with your estate planning attorney. A Health Care Directive will allow you to select an agent to make health care decisions for you, in the event that you are unable to do so for yourself, and to state your wishes for the types of life-sustaining or invasive medical treatments that you do and do not want administered. A HIPAA Authorization Form will allow the individuals you select to have access to your medical records and authorize doctors to release information to them about your current medical status.

THE ROAD AHEAD

One thing should be clear by now; we do our families a great disservice when we fail to plan for every contingency. That's why a critical first step in your planning process should be a consultation with an attorney who focuses their practice in estate planning. Taking the time to form a thoughtful, detailed, and durable estate plan will ensure that you, your spouse and your children are provided for in the event of a tragedy.

Considering our own mortality may seem like a frightening obligation, especially for parents of younger children, however, undertaking this emotional challenge now will pay off exponentially in peace of mind in the future. Ideally, you will always be around to provide for your family and witness those wonderful milestones in your children's lives. But at the same time, you will take comfort in knowing that your loved ones will be provided for, no matter what lies ahead.

For current estate tax, gift tax, & income tax figures, please visit our website at woodlegallgroup.com or contact our office at (626) 898-9195.

ABOUT THE ACADEMY



This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.

The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine*, *Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

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