

Why Families With Minor Children Need Wills and Estate Planning

Estate planning. If you are a parent with minor children, this is, or should be a very important issue for you. Most parents do not like to think about what would happen to their children if they were not able to take care of them. Many think that it will never be an issue for them and that it “couldn’t happen to them”.

While it is highly unlikely that you will die while your children are minors, are you willing to take that chance with your child’s well being? Who will care for and raise your children if you and your spouse die at the same time? If you are a single parent and the sole caregiver of the child what will happen to him or her if you die? Most of these concerns can be addressed with proper estate planning. Estate planning attorneys are trained to know what questions to ask and what types of tools and techniques to discuss with their clients to help them with these dilemmas.

A common concern among parents of minor children is how to provide income for the care of their children should something happen to them. In addition to worrying about how they will provide income for the care of their children, they worry about who will manage those funds in order to make the money last until the children reach adulthood and self-sufficiency. Many parents put off the issue of discussing their estate planning with spouses because it is difficult to decide who they would want their children to live with if both parents died. One parent may want their family to take care of their child, while the other parent may have a different caregiver in mind.

Each family is different and has different things they need to consider. Some families have one parent who works outside the home. Some families have both parents working outside the home. There are single parents with children. There are blended families where each parent has children from a prior marriage. There are families who have special needs children. In most cases the parents of a special needs child are the sole caregivers for that child. These parents must decide who will care for this child and how the child will be supported should something ever happen to them. All of these situations can be planned for if you take the time in advance to do it.

Who will take care of my children if something happens to me and can I legally name that person in advance?

Often when both parents die unexpectedly at the same time there are two different sides of a family fighting over who will take custody of the child. Proper planning in advance can lessen or prevent the likelihood of this happening, prevent family arguments and can give parents the opportunity to decide for themselves who will care for their children if they are no longer able to.

In Florida the person who cares for a minor child is called a guardian. Florida law considers parents the natural guardians. If something happens to the parents of a child there will have to be someone who can legally make decisions for that child, both financially and personally. A parent, through proper estate planning, can and should choose the person or persons who they want to takeover these very important jobs.

Many times parents name one individual to care for their child and another (whether it be a family member, bank/trustee etc.) to manage their child's money. Parents usually choose someone who they believe will raise their child with the same morals, values and beliefs as themselves. When choosing a person to manage their child's money, they need to name an individual or entity who they believe will responsibly administer the funds in the way the parents would have. The person chosen to take care of the child's money will be responsible for making financial distributions for child's health, education, maintenance and support and the parents need to feel secure in the fact that the person will act responsibly with those funds.

Once you as the parents have decided who will take care of your child and your child's money you need to sit down with those people to discuss what you are considering doing. Make sure that the people you choose for these jobs are willing and able to take on the duties. It can surprise someone when you ask them to raise your child if you are not able to. You will want to give that person time to absorb the idea of what you have asked of them and to make sure it is something they are willing and able to do. You need to name at least one person as a back-up in case your first choice is unable or unwilling to perform the duties for any reason. Make sure to review these choices on a yearly basis. If the person named has had a change in their life's circumstances (e.g. divorce, marriage, illness, death) and could no

longer raise your children or manage your child's money, you should change your documents to name someone else.

Do you really want to leave an Eighteen year old child a large sum of money with no restrictions to protect that money for their future?

Florida law states that you cannot leave a minor child more than Fifteen Thousand Dollard (\$15,000.00) without setting up a guardianship through the Court system. However, with proper estate planning there are ways to avoid this from happening. In addition to the expense and Court involvement with a guardianship, a major pitfall is that a child will receive any remaining funds not used for the child's care when that child turns 18. Most parents do not want to give an eighteen year old a large sum of money with the risk of wasting that money on frivolous purchases within a short period of time.

Without proper planning on the part of the parents there is no way to prevent this from happening. That is where your estate planning attorney can help you. A trust can be set up for the management of your child's money should something happen to you. Many times parents leave all of their assets to the surviving parent. But what happens when both parents die? A will can be drawn up to establish a trust to protect your child's money. Distributions can be made from the trust for the health, education, maintenance and support of the children. You, as the parent, can make the decision as to when would want the balance of the money in the trust distributed. Within the trust you will need to name a trustee who is the person who will distribute money from the trust to your child until its termination. As we discussed above, make sure the trustee is someone who you think will properly care for your child's money and who you believe will make responsible distributions of the funds.

I have a special needs child. How can I protect my child if I am not here to care for him or her myself?

Parents of special needs children are well aware of the challenges that these children will face over their lifetime. In most cases the parents are the sole care givers of these children. These children are many times part of special government assistance programs that offers services for their care and well being. It is very easy for a parent to disqualify a child from these important government programs when no planning or improper planning has

been done. By giving these special needs children even a small amount of money you may disqualify them from these programs. That being said, there are ways to provide support for these children, while not disqualifying them from these government programs. The services a special needs child gets through these programs can usually not be paid for with any amount of money so proper planning is vital.

Another consideration is who would care for their children if they were not able to do so. You need to make sure the person is willing and able to take on this responsibility you will want to sit down and discuss it with the person you are considering.

Conclusion

Parents with minor children face many tough decisions when considering what would happen to those children if both parents were to die. How will I provide money for my child's livelihood should I not be around? Who will take care of my children if I cannot? By sitting down and taking the time to discuss and consider these concerns with an estate planning professional, many of your fears can be put to rest. There are many estate planning tools available to those who choose to explore them. I encourage all parents with children to begin asking themselves these questions and to seek out advice on the subject.

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