

Estate Planning for Families with Minor Children

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Most parents live to see their children's 18th birthdays. Most children never need guardians, conservators, or trusts. Statistically, it's unlikely that one parent will die while his or her child is a minor. It's even more unlikely that both parents will die. But it does happen.

For parents with modest estates and minor children, property and guardianship are important estate-planning concerns. The parents need to decide how to provide income for their children if one or both parents die, to whom their property will be distributed, and how it will be managed to provide financial resources for their children. They also must decide who will care for their youngsters should both parents die.

Estate planning attorneys can help the parents of minor children plan their estates and can help parents weigh advantages and disadvantages of various estate planning tools and techniques. The most difficult part of the parents' planning is making complex family decisions relating to lifestyle, values, goals, and relationships.

Every family is different, so they all have different estate planning situations. Some families have one employed parent; in others, both parents are employed. Some parents are single, either because they have never married or because their marriage has ended through death or divorce. When divorced parents remarry, they create families of "yours, mine, and ours." If a family has a handicapped child, extra planning usually is needed.

Let's look at the estate planning of some young families.

A first marriage

Mary and John Douglas have typical young-family estate-planning concerns. In their early 30s, Mary and John have two children, ages 5 and 7. Mary and

John assume that if one of them died, the other would use family assets to provide for the children. They discussed the possibility that the survivor might remarry and have more children, and they still felt comfortable leaving everything to the survivor. They accomplished this by titling car, house, and investments in joint tenancies with rights of survivorship so that if either spouse dies, the property will pass to the survivor. They also have named each other as beneficiary on their life insurance policies. They know that when their assets increase in value and tax planning becomes an issue, this may no longer be an appropriate plan.

Mary and John also need a plan in case they both die when their children are minors. Their first idea was to prepare simple wills dividing their assets equally between the two children. However, they reconsidered this plan after learning that the court would appoint a conservator to manage property passing to the children while they are minors. Then, as each child turned 18, each would receive the property to manage, regardless of financial capability. Even though Mary and John think their children are bright, they don't like the idea of their children managing \$300,000 or \$400,000 while so young.

Rather than leaving the assets to the children, Mary and John followed the estate planner's suggestion to make wills leaving everything to the surviving spouse or, if there is no surviving spouse, to a testamentary trust for the children's benefit. The insurance proceeds also will be paid to the trust if both parents die. In establishing the testamentary trust, the parents selected the trustee and prepared a trust agreement giving the trustee the power to manage the trust and use the income for the children. The trust will avoid the inflexibility of conservatorship.

For the Douglases, the most difficult part of creating the trust involved the family questions they had to answer—questions about what activities and experiences they consider important for their children and, if there is not enough income for everything, which of those are most important. Now they feel they have a flexible plan that will provide financial management tailored to their children's needs.

Mary and John also nominated a guardian for the children in case both parents die. The guardian has the power and responsibility of a parent and makes decisions about the child's upbringing: schooling, religious training, and medical treatment. The mechanical aspects of nominating a guardian were easy; it was done in their wills. The difficult part for the Douglases was deciding whom to nominate, but eventually they decided the best choice was John's sister, Ruth, who lives nearby and has been very involved in the children's lives. They also nominated a good family friend as an alternate in case Ruth cannot or does not want to be appointed when the time comes. Mary and John talked at length with both Ruth and the friend about their dreams and hopes for their children.

Mary and John intend to review their plan periodically to check for financial or family changes that might affect their estate plan.

A family with a handicapped child

When there is a family member who will never be able to care for himself or herself, estate planning is more complex and more important. The Capizzis have

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been married 25 years and have two sons already finished with college. Their third child is 10 years old and was born with Down's syndrome. Robin lives at home and most likely will never be able to care for herself completely. The Capizzis' estate plan must account for Robin's special needs.

The Capizzis have an estate plan that leaves everything to the surviving spouse, and both feel the survivor would use the assets to care for Robin. But because Robin could outlive both parents, they also need to plan for what will happen when they are gone.

At first, the Capizzis thought they might leave everything to their older children, Douglas and Kurt, and instruct them to care for Robin. But they decided that would not be fair to the boys or to Robin. Instead, they will leave some assets outright to Kurt and Douglas and some in trust to provide income for Robin's support.

The Capizzis also knew that if Robin has income, she would become ineligible for need-based government benefits. In addition, income might be claimed to reimburse the state if Robin ever has to be in a state-supported care facility. With help from their attorney and the Association for Retarded Citizens, they developed an estate plan that leaves Robin's assets to a "spend-thrift trust," ensuring that trust assets will not be used in place of public benefits, and that trust income will not make Robin ineligible for government programs.

Because Robin probably will be unable to make her own important decisions, the Capizzis have nominated Evelyn's sister, Louise, as guardian. Louise is well informed about Robin's needs and care. The Capizzis know that this plan may have to be changed later as Louise ages. When they decide to name an alternate guardian, they will amend their wills.

A second marriage

Recently married, both Mary and Richard Zinn have children from earlier marriages. Neither of them wants to leave everything to the surviving spouse; Mary has a 10-year-old daughter to think of, and Richard has two children, a 24-year-old and a

14-year-old. Richard's divorce settlement requires that a stated amount of insurance be for his younger child's benefit.

Mary and Richard own nothing in joint tenancy with rights of survivorship except their cars. Their other assets are titled in just one name—some in Mary's name and some in Richard's name.

Mary's will leaves the household contents to Richard and her other assets to a trust for her daughter's benefit. Her insurance proceeds also will pass into the trust. Mary was especially anxious not to have assets passing outright to her daughter since there is a chance the child's father, Mary's former husband, would be appointed conservator.

The trust agreement instructs the trustee to use income and as much of the principal as necessary for the care and education of Mary's daughter. Any assets remaining in the trust will be distributed in installments starting on her 25th birthday.

Richard's will leaves household contents to Mary. He also has named her as beneficiary on one of his insurance policies. Richard considered dividing his other assets and insurance proceeds equally between his two daughters. However, he decided distributing the estate in equal shares may not provide adequately for each child's needs. If Richard died, his 14-year-old would need more financial support than would his 24-year-old, who already is out on her own.

Richard has planned that all the assets earmarked for his children will pass into a trust. The income is to be used for the care and education of his younger daughter. When she is 22, the assets will be distributed in installments to both daughters.

Mary and Richard used their will to name guardians for their minor children. Deciding whom to nominate was even more difficult for the Zinns than for most people because they had to discuss the plans with former spouses who are, after all, still their children's parents.

Your family's objectives

Estate planning is important for families with minor children. Discuss your family's estate planning concerns and objectives.

Gather the following information:

- List of property owned and how it is titled
- Amount of life insurance payable at death and name(s) of beneficiary
- Death benefits from employment and Social Security
- Existing wills, if any
- Divorce agreements, if any
- Marital contracts, if any

Contact an attorney to develop your family's estate plan.

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Estate Planning: Your Will, EC 1421, by Alice Mills Morrow (Oregon State University, Corvallis, revised May 1994). 50¢

Revocable Living Trusts, FS 314, by Alice Mills Morrow (Oregon State University, Corvallis, revised January 1998). No charge.

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