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Estate Planning for Parents:

What You Need to Do to Protect Your Family's Future



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By Paul Riekhof

Among the many important responsibilities for a parent is providing for their children in the event of an untimely death or incapacity. There are several critical considerations involved in this type of estate planning. They include selecting guardians for your children who will make parental-type decisions for them, helping to manage your children's financial resources and decision-making while they are still minors and planning for the management of your financial resources for the benefit of your children.

Selecting Guardians

Selecting the guardians themselves may be the most important issue as they will take the parental role for the children if both parents pass away.

- **Guardians** make the living arrangements, health and education decisions for your children, help shape and grow them into good and responsible people, guide them through the various personal and moral challenges that occur as they grow up and be responsible for everything else that a parent does for a child.
- Guardians of the property will help your children manage any income they make through work, receive as an inheritance from someone else or acquire through other means. Great care needs to be exercised in selecting guardians for your children.

Financial Responsibility

Regarding the management of the parents' financial resources, testamentary trusts are often used to accomplish the parent's goals. A testamentary trust is written into a last will and testament or an **inter vivos** (living) trust to come into existence upon the death of the person making that document. It is written while the parent is alive but does not have any legal existence or get funded until the parent passes away.

For married couples when one spouse passes away, they typically leave all of their assets to the surviving spouse and rely on the surviving spouse to manage the resources and leave whatever is left to the kids upon the surviving spouse's later passing. This can work fine unless the surviving parent gets remarried or has additional children.

Managing Assets

When married parents are concerned about those possibilities, they may leave their assets in trust for the benefit of the surviving parent to use during his or her lifetime. This trust can be written to exclude the assets it holds from being considered as: 1) marital property in a future marriage, 2) the surviving spouse's own assets for the purposes of their creditors and death taxes and 3) estate assets upon the surviving parent's passing. Upon the surviving parent's death, the disposition of the assets in this type of trust is controlled by the provisions written by the first parent to die, not the wishes of the surviving parent.

Young children: All parents of young children should also make provisions in their estate planning to ensure that their assets are properly managed and used for the children's benefit. This is often accomplished by leaving the assets in trust for the benefit of the children, until the children reach a specific age by which the parents believe the child should be able to appropriately handle the assets themselves.

Older children: Once the children are older and have become independent and responsible, parents will typically leave assets directly to the children to manage themselves. However, there are a few circumstances that might prompt the parents to take a different approach:

1. If the parents or their families are wealthy enough to be concerned with generational estate taxation, they may use certain types of trusts to hold and manage the assets so that they skip taxation at the children's passing (and potentially at other generations' as well).

2. If the children have certain incapacitating conditions that cause the parents to believe that they could not manage the assets properly or would be hurt by doing so, the parents may use trusts that protect the assets for their children and perhaps allow for the children to receive means-tested benefits as well.
3. If the parents have concerns with how the children are living their lives, such as concerns regarding their significant others, how they spend their money or certain habits the children may develop, the parents may use a trust written to exclude the assets it holds from being considered as: a) marital property in any marriage, b) the child's own assets for the purposes of their creditors and c) estate assets upon the child's passing.

Parental divorce: For a parent who is divorced or estranged from their child's other parent, the planning considerations will generally be similar. However, great care is usually given to excluding the other parent from controlling or benefitting from the estate in any way.

Making a thoughtful and comprehensive estate plan to benefit your children is one of the greatest gifts that you can give to them.

Paul Riekhof is Joseph, Greenwald & Laake's managing director and a principal in the firm's Estates and Trusts Group. He has more than 25 years of experience in representing individuals, families and businesses in matters including estate planning, probate, trust administration, estate tax planning, business planning, guardianships and estate litigation matters.

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