



FINANCE

Estate planning for parents of young children no. 9.102

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Quick Facts...

For parents of young children, the primary objectives of estate planning are to ensure that at death property will be transferred to desired individuals, to determine who should handle the business affairs of the estate, and to plan for care of children.

A will allows the parent(s) to determine who will provide for the social training and physical needs of children if there is no surviving parent.

Legal help is necessary for estate planning.

Changes in a family's estate planning are necessary as the family changes, the children grow up and the size of the estate increases.

Why Estate Planning?

A couple has a house with a mortgage, a life insurance policy and a couple of children. Is it possible they need to do estate planning? It not only is possible, it is extremely important.

Too often, the parents of young children neglect or postpone estate planning. The excuses given for this lack of planning include: "I'm too young," "I'm in excellent health," "It's too expensive," and "I don't have enough money to worry about."

These probably are not the real reasons for neglecting estate planning. The real reasons may be that estate planning deals with feelings and attitudes that often are not admitted even to oneself. Estate planning is a mixture of feelings about death, property, marriage and family relationships. These feelings must be explored in order for estate planning to reflect desires and needs.

Feelings and Attitudes

Estate planning ensures that certain things happen at death. Planning is sometimes ignored because of a fear of death. What are the reasons for this fear? The fear may be caused by worry about the care for dependents. The fear may result from the knowledge that personal plans and projects will come to an end. If such fears are identified, estate planning may be a way of minimizing them.

People need to be realistic about their resources. For example, when discussing the care of children, parents often say they want the estate used for college education without thought of how the children will be supported until they are of college age and without thought of whether the children will be college-bound. Parents need to think first in terms of support for young children. While not very glamorous, this is essential.

Every couple needs to ask questions regarding their feelings about marriage and family relationships. How should family property be owned? Is each parent equally able to plan for and support the children? How does each parent feel about the possible remarriage of the surviving parent? How should children be raised if both parents die?

Planning

For parents of young children the primary objectives of estate planning are 1) to ensure that at death property will be transferred to the desired individuals, 2) to determine who should handle the business affairs of the estate, and 3) to plan for the care of children.

Property transfer

Who will receive property? Who will receive the property if both parents die at the same time? Some property is transferred automatically at death to the



person with survivorship rights. This property—called nonprobate property—consists of such property as most life insurance policies and property held in joint tenancy. Even if all property is nonprobate property, a couple still needs wills to transfer the property in the event that the person with survivorship rights does not survive and to provide for the care of children.

Probate property—property with no survivorship rights—is transferred according to a will or by state intestacy law when there is no will. Laws vary from state to state. Colorado intestacy law directs that the property be divided between the surviving spouse and the children.

The division of property between the parent and children may not always be desirable. The children's share of the estate will be supervised by the court until the children become of age. The couple with a small or modest estate may prefer to have the entire estate go to the surviving parent, thus allowing the surviving parent to make the decisions concerning the use of the money for the care of the children. If a will is written, it can indicate that all of the property is to go to the surviving parent.

If both parents die and there is no will, state intestacy laws would direct that the property be distributed to the children in equal shares. This may sound desirable. However, the financial needs of the children usually are not equal. The cost of caring for children will vary due to differences in such things as age, medical needs and career choice. Parents can, with estate planning, have all assets go into a trust fund to be used in any manner that the parents indicate, rather than having assets divided equally.

Who handles the estate?

Another concern in addition to the transferral of property is the appointment of someone to handle the business affairs of the estate. The person is called either an executor or a personal representative. Whatever the title, the duties consist of the performance of routine functions, such as paying the bills of the estate, collecting assets, distributing assets, and hiring an attorney and other necessary advisers. The personal representative should be someone who will carry out the individual's wishes.

If a person dies without nominating a personal representative, the court must appoint one who it feels is suitable. In a will, a person can nominate his or her personal representative, ensuring that the job will be done by someone who knows and cares about the desires of the deceased. This nomination also may save the estate time and money. Directions in a will can eliminate the necessity for bonding the personal representative, which saves money. A will also can expand the powers of the personal representative, allowing the estate to be settled quickly and with less court supervision.

Provide for child care

Perhaps the most important benefit of the will is that it allows the parent(s) to determine who will provide for the social training and physical needs of children if there is no surviving parent. If there is no will nominating a guardian, the court must appoint a guardian even though it cannot possibly know the values, lifestyle and the childrearing philosophy of the parents.

When nominating a guardian, careful consideration should be given to lifestyle and values. Consider the physical ability of the person to raise the children. A small child may be too much for a grandparent. Don't ignore the possibility that the person being nominated might at some time divorce and remarry. Don't ignore the possibility that the person being nominated might move to another part of the country. Under what conditions would this person be acceptable as guardian? Indicate an alternate choice in case the first choice is unable to accept the responsibility. Most important, discuss the plans with the person being nominated.

Parents need to develop financial plans for the care of their children. Review the life insurance program. How much money would be available? Is this adequate or is additional coverage needed until the children are grown? Someone must handle the money that will be left to the children. This should be a person who will spend money as you would under the same circumstances. Parents know best who this is. If parents do not make this known in their wills, the court will have to make the appointment with no information from the parents.

Making a will

The time to start estate planning is now. Make a list of the property owned, how it is titled, its fair market value and indebtedness against the property. Make a list of insurance policies, their owners and beneficiaries. Think about the present and future needs of the family. No plans can be made without this homework.

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Regardless of how simple the situation, legal help is necessary. People who do not have a regular attorney should talk to friends. They may be able to suggest attorneys who they feel are trustworthy. Consult a banker for information. Look for a lawyer referral service or check with the state or county bar association.

When an attorney is located, call for an initial appointment. Ask if there is a fee for this initial appointment. Often there is not. Bring to this first visit information about the family needs and property. Before hiring the attorney to do estate planning, ask about fees. As the client, don't be frightened by legal jargon. Ask questions. Insist on understanding the plan and its implications.

Changing Plans

For the young family, estate planning may be as simple as two wills with testamentary trusts. Each time property or life insurance is acquired, consider estate planning in determining how the property should be titled. Keep careful records of all property acquired. Review the estate plan periodically to make sure that the plan continues to reflect the family's needs. As the family changes, the children grow up and the size of the estate increases, a family's goals will change. Revisions in estate planning also will be needed.

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