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TWO THINGS CERTAIN®

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How do I name a guardian? Estate planning for young parents

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Many parents—particularly young parents—do not consider estate planning a high priority. Some want to wait until they are more established, and others simply never think about estate planning at all; however, there are several reasons why all parents with minor children should seriously consider creating an estate plan to protect their family and their savings.

Nominating a Guardian

Even if you have little to no assets, if you have minor children you will need an estate plan to nominate a guardian for your children upon your passing. If you pass away without an estate plan, the court will choose a guardian from the family members who are interested in the appointment and based on what the court deems to be in the best interest of your children. Multiple family members may fight in the courts over who should be guardian—parents should establish an order of priority to quell potential family arguments over whom the court should appoint. Additionally, if no clear guardian is nominated, the court may send your children to Child Protective Services to stay with a foster family until the court finds a suitable guardian.

Protecting Your Children from Themselves

If your child is the beneficiary of your will or listed as a beneficiary of a life insurance policy, 401(k), or IRA, then your child will receive full control over the inheritance—which includes death benefits from life insurance policies—at 18. Because many 18-year-olds do not make smart financial decisions, many parents consider using a trust plan instead of a will plan to effectuate their wishes. With a trust, you can name a trustee to manage your child's assets until your child reaches a specific age. Your child is still the primary beneficiary and can receive benefits from the inheritance; however, a more prudent trustee must approve any distributions from the trust.

In addition to providing protections for young beneficiaries, a trust will also ensure the inheritance will not be treated as a marital asset, providing your children financial protection in the event of a divorce.

Protect Yourself from Incapacity

A very important yet often neglected component of a good estate plan is incapacity planning. Typically, nominations for guardianship are effectuated with a will. Unfortunately, far too many parents rely solely on a will for guardianship nominations. If you are incapacitated, whether through illness or accident, and your children need a guardian, you cannot use your will to nominate a guardian, as the will is only active after you pass. Instead of a will, you need a power of attorney that specifically grants your agent the power to nominate a guardian if you are incapacitated. It is important to nominate guardians in both a will and a power of attorney to ensure you are properly prepared for what will happen after death and incapacity.

In addition to using a power of attorney (PoA) for guardianship nomination, PoAs are also important to protect you from becoming subject to a guardianship. If you become incapacitated, your spouse and/or parents do not have the authority to make decisions on your behalf. Unless you have the proper documents—a PoA or trust for financial decisions, and a health care power of attorney for medical decisions—your family members may be forced to petition the court to become your legal guardian. A complete estate plan will have enough supporting documentation to ensure you have properly planned for both incapacity and death.

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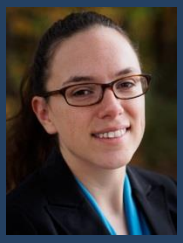

About the Author:

Kelsey and her husband live in Williamsburg. They are both enjoying the milder climate of Virginia, after moving from Michigan. When Kelsey is not working with her clients, she enjoys playing soccer and home brewing beer.