

WE JUST HAD A CHILD. IS IT TIME FOR AN ESTATE PLAN?

THE IMPORTANCE OF ESTATE PLANNING SERIES

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Having and raising children can be one of the most incredibly rewarding stages in someone's life. However, this blessing also comes with the weight of having to provide and care for someone other than yourself. Fortunately, a well thought out estate plan can ensure the continued support of loved ones in the event of an unexpected death. This article is designed to provide a brief overview of some of the concerns that parents of minor children need to be aware of, as well as the potential solutions that an estate plan can offer.

Who Will Take Care of Our Kids When We No Longer Can?

Without a Will in place, the court system will decide who is best suited to raise your children. If multiple parties petition the court for guardianship, it could place your children in the middle of a custody battle.

Although difficult to think about, parents must consider who will watch over their children after they are gone. Without having a Will in place, parents leave it to the Orphans' Court to decide on a legal guardian for their children, which can become an uncomfortable, drawn out process for those involved. Appointing the appropriate guardians for your children in the event of your passing has proven to be one of the most important reasons for drafting a Will. Selecting these individuals often involves candid conversations with family and friends, but can lead to much needed peace of mind.

If One of Us Dies, Don't All of Our Assets Pass to the Surviving Spouse?

Without a Will in place, Maryland law dictates that only one-half of your estate will pass to your spouse. The other half of your estate will pass to your minor children in a protective bank account.

Maryland law provides a default method of passing along one's assets if there is no estate plan in place. Unfortunately, some of these statutory defaults can result in undesirable outcomes. For example, for those who die without a Will leaving a surviving spouse and minor children, any assets that are not jointly owned will be divided up with half going to the surviving spouse and half going to the children. The share that passes to the children will be controlled by the guardian of their property (usually the spouse), but will require extended court involvement and regular reporting. Most couples would prefer that all of the assets go to the surviving

spouse so that he or she can have unrestricted access to these assets in order to continue to care for the family privately. The simplest way to avoid this issue is by having a Will in place that can direct all assets to the surviving spouse.

If Both of Us Are Gone, Who Will Manage Our Kids' Inheritance?

Without a Will in place, your children will have unrestricted access to their inheritance by as early as age 18, thereby exposing it to creditors and foolish spending.

Maryland's Uniform Transfers to Minors Act provides that a guardian of the property will hold and manage the inheritance on behalf of any minor children. However, your children will gain complete access to these assets by as early as age eighteen. Most parents most would agree that their eighteen year old is not ready to manage a large sum of money on his or her own. To protect against the spendthrift tendencies of teenagers, an effective estate plan will provide that any inheritance passing to children be held in a trust for their benefit well beyond the age of majority. In this respect, a testamentary trust is one of the most creative and effective ways in which parents can maintain control over how their children are provided for well beyond their death.



Whether it be ensuring the appropriate distribution of your assets, planning for incapacity, or avoiding unnecessary taxes, estate planning is important for everyone for a variety of reasons. Having children, in a way, raises the stakes. Not only are you thinking about yourself, but providing for your family comes to the forefront. Be sure to have an estate plan specifically tailored to you and your family's needs, so that you can support your loved ones even after you are gone.

For more information, please feel free to contact Gregory J. Ferra at gferra@liffwalsh.com.

** This article is not to be construed as legal advice.*

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