Why Parents Need an Estate Plan

As a parent, I know that life is busy. It took me a while to get an estate plan completed, and I'm a lawyer. But here is the thing: it is something you MUST do. Why? Well, read on.

1. Protect Your Children

Having a proper plan will allow you to name both temporary and long term guardians for your children. Right now, without a plan, if you and your spouse passed away, the court would appoint a guardian, and that person might not be who you would have chosen to care for your children. At worst, the person you would never want to parent your children could be appointed.

Also, if you have not appointed any guardians and there is no one locally with authority to care for your children, there is a risk that your children could be placed temporarily with the Children's Aid Society until this could be sorted out. As a mother, I cannot imagine that happening to my children.

As well, with proper estate planning, you could provide for how you would want your property distributed to your child (and future children) in the event that you both passed away. For example, you could set up a trust so that your child would inherit any property at specified ages, for example, part at age 21 and the remainder at age 25. In the absence of a plan, your property would be held in trust for your child and managed by a government agency until your child reached 18, when all of it would all be distributed to him or her outright. I know that I would not have been very responsible with any large sums of money when I was 18, and most of my clients agree and decide to wait until the children are older for the funds to be distributed.

2. Distribute Your Assets the Way You Want

Your estate plan will also allow you to determine what should happen to your property if one of you were to pass away, leaving the survivor as a single parent. Currently, if the value of your estate is over $200,000, the surviving spouse is entitled that amount. The remainder of your estate would then be divided equally between the surviving spouse and your children. The funds for the children would be held in trust and managed by a government office and distributed upon the child attaining the age of 18. The surviving spouse could only manage those funds if a court application is made and even then, the funds would still require distribution at the age of 18.

3. Appoint a Person You Trust to Administer Your Assets

Aside from all the estate planning issues that come up as parents, your Will can provide for who will administer your assets and property in the event a death of you or you and your spouse. Right now, without any planning, someone you love, even the surviving spouse, would have to make an application to the court to be appointed as the person to administer your estate. Again, this person may not be who you would have wished to make these decisions for you.

4. Provide for Incapacity, or Give Your Loved Ones the Power to Make Decisions

Protecting your children and your assets is not the only important reason to do estate planning. As part of our plans, we would draft Powers of Attorney for Property, and Powers of Attorney for Personal Care. This would allow you and your spouse to make decisions for the other in the event that one spouse became incapacitated. As part of this process we also appoint alternate individuals to act in the event that both of you are incapacitated or there is only one surviving spouse who can no longer handle his or her personal affairs, or medical decisions.

Making decisions for a loved one who is incapacitated without a Power of Attorney is a bit of an unknown. Under the legislation, the spouse is one of the persons entitled to make decisions. However, without a document specifying who will make the decisions and what decisions should be made, there is the risk of disagreements between family members, especially if difficult personal care decisions need to be made. In the event that both you and your spouse were incapacitated or one of you had passed away, things can become even more complicated.

We also can do a Living Will instruction as part of our Power of Attorney for Personal Care. This would allow you to specify any conditions regarding your personal care in the event you were unable to make decisions for yourself, or each other. Many clients choose to include a “no extraordinary measures” clause, but you may have some additional conditions you would like to add.

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