

ESTATE PLANNING ISSUES IF YOU HAVE MINOR CHILDREN

Providing for and protecting your children are the most important obligations we have as parents. Proper estate planning will necessarily provide for these obligations. If both parents die before the children reach the age of 18, several very specific issues will need to be addressed:

1. Who will take care of the children?
2. How will the children be supported financially?
3. Who will manage the assets for the children, and how?

A Will is recommended for the naming of the person who will be in charge of taking care of the children on a day-to-day basis. This person is called a **guardian of the person** for the children, and he or she is appointed by the Probate Court.

The question of how the children will be provided for financially is, for a lot of younger families, answered with life insurance. Making sure you have adequate life insurance in place will ensure that there will be assets to provide for your children if something should happen to both parents. However, leaving assets to the children creates additional issues to be considered.

GUARDIANSHIP OF THE ESTATE

With only a Will in place, a **guardian of the estate** will be appointed by the Probate Court to manage the finances of the children. This type of guardianship has many shortcomings, including:

- The way that the guardian can use the assets will be controlled by the rules of the Probate Court. The Court will determine what is in the best interest of the children, and the wishes of the parents are usually not even known, much less followed.
- The guardian is required to maintain very detailed records on every expenditure of the funds for the children, and must file an annual accounting of the income and expenses.
- The guardianship terminates when a child reaches 18. At that time, all of the remaining assets will be given outright to the child, regardless of whether the assets total \$1,000 or \$1 million. The child is then free to use the assets in any way that he or she wants.

Richard M. Chamberlain, Attorney at Law

801 W. South Boundary, Suite D, Perrysburg, OH 43551

Phone ~ 419-872-7670 E-mail ~ richard@chamberlain-law.net Website ~ www.chamberlain-law.net

AVOIDING A GUARDIANSHIP OF THE ESTATE

To avoid leaving money outright to their children, parents should consider setting up a **Revocable Living Trust** and making provisions for their children in that document. This will allow the parents to:

- Avoid a guardianship of the estate for their children.
- Control how the assets will be used by the Trustee of the Trust for the benefit of the children. The parents can give instructions for the use of the assets, consistent with the parents' values and priorities.
- Give permission to the Trustee to provide assistance to the guardian of the person of the children. The guardian of the person may need to purchase a larger vehicle or a larger home to accommodate the addition of the children to their family, and the parents may authorize the Trustee to "chip in" a certain amount or a percentage towards these extraordinary expenses.
- Protect the children by keeping the assets in the trust even after the children turn 18. The parents can have the Trustee continue to manage the assets until the children turn 21 or 25 or 35, or whatever age the parents feel comfortable with. Instead of a "lump sum" distribution at a certain age, the parents could choose to make staggered distributions over time (such as a portion at age 25, another portion at age 30, and the rest at age 35), which could give their children continued help with the management of the assets while they also learn to do it on their own.

If you are interested in learning more about the planning issues that arise for parents with minor children, please request a copy of "**Estate Planning for Parents with Minor Children**", which also includes worksheets to assist with making planning choices. Call us at (419) 872-7670.

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