

Do Not Leave Your Minor Children's Future to Luck

We associate March with St. Patrick's Day and Irish traditions such as searching for four-leaf clovers, which are thought to bring good luck. One thing that parents should never leave to luck is providing for their minor children. Young parents work hard to create a wonderful life for their children and pass on wealth to them in the future, but they also need to create a plan for their children's care if something happens to them. If you are a parent, it is difficult for you to think about having your young children grow up without you, but you need to recognize that lack of planning for this possibility could be disastrous for your children.

Choose someone you trust to provide day-to-day care for your children. If one parent dies or becomes incapable of caring for your children, their other parent will likely continue to have physical custody of the children and responsibility for their care. However, it is crucial for you to name a guardian who will step into your shoes to provide day-to-day care for your children in the event that something happens to both of you. If you do not name a person you trust, a court will step in to appoint someone. Because the person the court chooses to be your children's guardian may not be the person you would have chosen, it is vitally important to designate this person in advance in your will or in a separate document. Although the court will still have to appoint the guardian, it will typically defer to your wishes.

There are two types of guardians you should consider nominating in your estate plan:

- **Permanent guardian.** A permanent guardian is appointed by the court to care for children whose parents are both deceased or are otherwise no longer able to care for them. The permanent guardian steps into the parents' shoes to provide for the children's educational, religious, legal, medical, and day-to-day care until they reach the age of majority in your state (often age eighteen or twenty-one). As mentioned, to avoid leaving your children's fate to a court with no input from you, you can name the person you want to care for your children in your will or a separate document specifically addressing guardianship.
- **Temporary guardian.** You can choose a person you trust to act as a caregiver for your children for a limited time period by choosing a temporary guardian in writing. That person will care for your children if you are temporarily unavailable, for example, if you become very ill and need to be hospitalized or are away for an extended trip. You can authorize the guardian to make decisions and take actions that you, as their parent, would normally handle, such as consenting to medical treatment or enrolling them in school. A temporary guardianship is usually only effective for a period of six months to a year, depending on state statute. If you would like to have it effective longer, you will need to sign a new form when the original one expires.

Make plans for your children's inheritance. If you fail to plan ahead, the court may have to appoint a conservator (sometimes called a guardian of the estate) to manage your children's inheritance until they reach the age of majority. This is necessary because minors legally cannot own money or property on their own.

To avoid the appointment of a conservator, sometimes a *custodial account* under the Uniform Transfer to Minors Act or the Uniform Gifts to Minors Act is created through the probate process to hold the money and property your minor children inherit from you. The court will choose the custodian of the account who will manage the funds for the benefit of your children. However, when your children are legally recognized as adults at the young age of eighteen or twenty-one, the account will terminate. Your children will gain full access to their inheritance and can use it in any way they choose, even if they lack the maturity to make wise financial decisions or are addicted to drugs or alcohol. In addition, any present or future creditors could try to reach your children's inheritance to satisfy their claims.

Although a custodial account is less expensive and easier to set up, a *trust* is often preferred over a custodial account because it is more flexible and can be designed to protect the funds against your children's future creditors and their own imprudent spending. You can name someone you trust who is skilled at handling money to manage and distribute the funds for the benefit of your children if you die before they reach adulthood. This could be the same person who will act as the children's guardian, but you can name another individual as the trustee if you choose. You can determine the age at which or the circumstances under which you feel comfortable having the remaining funds distributed to your children and provide those instructions in your trust document.

Give Us a Call

Your children are too important for you to leave their futures to chance. Call us today to set up an appointment to create an estate plan that will safeguard their future and give you the peace of mind that comes with knowing you have done everything in your power to care for them.