

Trusts & Estates Notes

A Series of Articles on Legal Issues Regarding Estate Planning and Estate Administration

Estate Planning for Parents of Young Children

*By Stewart Richardson
srichardson@thoits.com*

Parents of young children have many of the same estate planning needs as other individuals. However, parents of young children must also address two unique issues: directing the care of each child until adulthood in the event that the parents die; and determining the nature of the inheritance each child will receive in adulthood, even though the child's adult personality is not yet known.

Caring For Each Child Until Adulthood.

Foundational estate planning for the parents of young children will include various instructions affecting the upbringing of each child if the child's parents die while the child is a minor.

Each parent should nominate a guardian and alternate guardians to care for each child in the event the parents cannot do so. The nominations may be conditional. For example, a parent may nominate an individual as guardian only if that person will raise the child in the family home, or nominate a married couple as co-guardians only if they are still married to each other.

Parents must also provide for management of money on behalf of young children. Ordinarily, a trustee selected by the parent or parents will be responsible for preserving the wealth of the deceased parent or parents and making appropriate distributions to the child's guardian. Parents of young children may wish to provide specific financial instructions regarding the child's lifestyle, or to prevent the imposition of financial hardship upon the child's guardian.

An estate plan may also include specific requests for the minor child's upbringing. For example, some parents request that a child continue with immersion education, or express their preference that the child work during summer vacations to earn spending money. Such communications can give guidance to the guardian of a minor child who wishes to raise that child in accordance with the values of the deceased parents.

“Inheritance Planning” For Children Whose Adult Personalities Are Unknown.

One of the most challenging aspects of estate planning for parents of young children is directing the future inheritance of such children without knowing their adult personalities. For example, the parent of an infant (or a child who is not yet born) cannot possibly know whether that child will grow up to be self-motivated, a good manager of money, capable of handling responsibility at a young age, and so forth. Yet, in the unlikely event that the parent or parents die before the child reaches adulthood, the estate plan will give specific directions for the eventual distribution of money to or for the benefit of the child.

Designing appropriate financial directions is important. Such directions should be an expression of the parent or parents' child-rearing philosophy. For example, an estate plan may include:

- Directions to fully distribute the child's inheritance to the child at one or more ages (to avoid exerting control "from the grave");
- Creation of a lifetime trust for the child, with distributions to the child only when they are needed (to prevent the child from squandering the inheritance, e.g., on a bad investment or a lavish lifestyle the child has not earned);
- Flexible provisions granting the child more control over the inheritance when the child maintains employment, graduates from college, reaches a specific age, or otherwise acts in a manner the parent or parents believe demonstrates the ability to manage money responsibly;
- Provisions to encourage, reward, or support the child when specific milestones occur, such as educational accomplishments, starting a business, purchasing a home, or marriage; and
- Controls to prevent distributions to the child if a trusted person (e.g., an aunt or uncle) determines that they would not be in the child's best interests (e.g., if the child has a substance abuse problem or is likely to give money away to an undesirable recipient as soon as it is received).

Parents of young children often wonder what other clients typically direct in similar circumstances, but they never – in the author's experience – instruct their attorney to simply include whatever directions are most common. Rather, every parent of young children wishes to discuss alternatives and to design an estate plan that reflects the types of judgments that parent would have made had he or she been living.

An estate planner who focuses on representing parents of young children must be familiar with these and other options, and must be able to make appropriate suggestions based not only on legal and practical requirements, but also on an understanding of the values and goals of particular parents.

This publication is of general applicability and not specific to any set of facts. Thus, it should not be relied upon for any specific case or matter without further discussion. No attorney-client relationship is formed as a result of your reading or replying to this publication, which is not intended to provide legal advice on any specific matter, but rather to provide insight into current developments and issues.

Internal Revenue Service Circular 230 Disclosure. Please note that any discussion of or advice regarding United States tax matters contained herein (including any attachments hereto) does not meet the requirements necessary to be a "covered opinion" as defined in Internal Revenue Service Circular 230, and therefore, is not intended or written to be relied upon or used and cannot be relied upon or used for the purpose of avoiding federal tax penalties that may be imposed or for the purpose of promoting, marketing, or recommending any tax-related matters or advice to another party.

THOITS, LOVE, HERSHBERGER & McLEAN

www.thoits.com

285 Hamilton Avenue, Suite 300

Palo Alto, California 94301

Telephone: (650) 327-4200

Facsimile: (650) 325-5572

8030 Soquel Avenue, Suite 100

Santa Cruz, California 95062

Telephone: (831) 425-4660

Facsimile: (831) 425-4543

[*Thoits Law Blog*](#)