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ESTATE PLANNING ISSUES FOR CHILDREN

Providing care for a minor child is one of the most important factors in estate planning and is usually on the top of the list for most parents when they consider creating an estate plan. Caring for a child in the event of the death of a parent is complex to say the least. It's something that most people either don't want to think about and those that do simply don't consider what's involved and how difficult it will be if a parent doesn't plan appropriately. A quality estate plan will consider not only the care of the child's person, but also the care of the property the child will own during the parent's lifetime, and what the child will inherit upon the death of a parent.

The appointment of a Guardian is the first issue which must be addressed. The Guardian will be responsible for the care of the child and/or the child's property. He or she will be responsible for the daily care of the minor as well as the determinations of the child's residency, education, religious affiliation and medical care. One responsibility that a Guardian doesn't have is financial support and, in fact, is entitled to be reimbursed for incurred costs from the child's assets.

Family members and close family friends are a logical choice as Guardians. However, Grandparents are not a wise choice. Although they are great for weekend parenting, they are usually not the best choice for every day parenting because as children grow, so do their issues, which can be too overwhelming for grandparents to handle. Also, appointing someone of advanced age will most likely result in the Guardian dying before the child reaches the age of majority.

Caring for a child's person is quite a bit different than caring for a child's finances. When determining Guardians, the parent should consider those who will provide care in a manner that emulates what the parents' wishes would be. However, when considering the Guardianship of property, the parent should consider the person best qualified to handle finances, preserve assets and is most capable of making financial decisions relating to health, education and wellbeing.

In addition to the selection of appropriate Guardians, parents should also consider the appropriate instrument for holding the minor's property. Due to the fact that no minor is allowed to maintain his own property, a Trust will be mandatory. In a quality estate plan, the type of Trust created can (and should) be tailored to both the needs of survivors as well as the size of the estate.

Typically, a Trust is created which will include a single fund for all of the beneficiaries,



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including a surviving spouse which is commonly known as a “Pot Trust”. Later on, the Trust assets will be divided into separate Trusts for the benefit of each of the minor beneficiaries. This is often times known as “Special Needs” Trusts or “Separate Shares” Trusts.

One of the most important reasons for converting a Pot Trust into a Separate Shares Trust is the individual financial requirements of different children. Many parents fail to consider that as children grow, their needs become individualized. Therefore, by providing for each of the children independently, through separate Trusts, each child can be provided what they require without creating an adverse financial affect on the other beneficiaries.

The considerations for children in estate planning are almost boundless. However, it is the one factor that should be the most prominent aspect of your estate plan. If you have not considered proper estate planning for your minor children, I encourage you to learn more.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a question for this column, or to receive Medico’s free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.