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Estate Planning
Special Needs Planning

Newsletter



May 6, 2009

Is your Family Protected?

For most people, taking care of their family is their first priority. But making sure that your family is protected, both physically and financially, is not easy. A “Comprehensive Family Protection Plan” provides you with the foundation to create your own personal safety net, in a straightforward and surprisingly affordable package.

Part I: Nominating a Guardian for Minor Children

One of the most important decisions you can make is determining who will care for your children in the event of your death or disability. You should not make this choice lightly. Instead, you should give it serious consideration, and weigh your values.

While you may have close family and friends, you should consider how you want your children to be cared for, and who is the right person to do that. Don't worry about hurting the feelings of another family member or a close friend. What matters is that your loved ones are cared for in the manner you feel is best.

Think about: (a) your potential guardian's age and availability, (b) where you want your children to be raised, (c) your potential guardian's experience with minor children, (d) the lifestyle and environment you want for your children, (e) discipline style and (f) the moral and religious values you want for your children. Consider what is the most important element for you.

It is important also to plan for contingencies. While you can nominate the guardian of your choice, you should also choose up to five alternatives, and list them in order of preference. If you choose a married couple as joint guardians, you should consider the possibility that the couple may become

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

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- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

divorced or that one spouse may die. In that case, you should consider whether you want the single or surviving spouse to continue to serve as guardian alone.

Part II: Providing Financial Resources

You should also plan your financial affairs so that the guardian's financial resources are not an issue. With careful planning, which can include life insurance, annuities and other financial instruments, you can lessen the burden for your family's guardian.

You should pay special consideration to money left to minor children. One tool that is available is to create a trust, which permits the trustee to use the funds for the benefit of the minor children, and then distributes any remaining funds to the children once they become responsible adults.

Part III: Short-Term Contingencies

While you can nominate a guardian, you should be aware that it can take time for courts to formally appoint the guardian of your choice, particularly if the guardians are located outside the jurisdiction of the court. You should also prepare for the possibility that your children may need a temporary caregiver until such time as their permanent guardian can become available. These temporary caregivers are typically persons in the local area that would be willing and able to care for your family on a short-term basis. While some states have a simple process for appointing short-term or interim guardians for minor children, Virginia does not.

Nonetheless, you can provide instructions communicating to emergency personnel (such as the police) who the persons are in the local area who you would want to take care of your children on a temporary basis. For the most part, the police only want child protective services involved as a last resort. Providing clear instructions is one way for the police to know what to do if the permanent guardians are unable to arrive immediately to take care of your children. You should also give the temporary caregivers the authority to seek emergency medical treatment for your children.

Part IV: Instructions to the Caregivers

Finally, you should prepare detailed instructions for both the potential guardians and the short-term caregivers. The instructions should include any medical or psychological issues, and reflect your primary concerns in ensuring that your children are cared for as you think best, including preferences for education, health care, living environment, and accessibility to other members of your family. You should also prepare instructions for the baby-sitters, telling them exactly what to do, and who to contact in an emergency.

While you can never know what the future may bring, a little planning now can avoid an emotional roller coaster for your loved ones and bring you peace of mind.■

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.