

Caretakers and Decision Makers: Planning for your Children

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Children bring a lot of joy to a parent's life, but also come with a great amount of responsibility and stress. Prior to children, my hardest decision was whether or not to cook dinner or eat out with friends. That decision is a cake walk compared to the decisions I now make as a parent: daycare or nanny, bottles or sippy cups, feeding choices, public school or private school, sleeping habits, immunizations, etc.

Plus, as a parent, I now worry about the fact that a piece of my heart is outside of my chest walking around vulnerable to the world around us. The kicker is that I cannot control it and can only do my best to protect my children.

As an estate planning attorney, I often have clients call me anxious that they are going out of town next week and leaving their child in the care of a loved one. "What if something happens to my spouse and I?" "What if something happens to our child while we are gone?" "How can I best protect my children" These are great questions and I assure you that proper planning is the answer.

If you pass away without an estate plan, state intestacy laws provide that your spouse receives half of your estate and your children receive the other half. This may be an unintended consequence since most parents would prefer that the spouse get everything in order to take care of the children. Furthermore, if your children are minors, your spouse would be required to petition the Court to appoint him or her as conservator over your children's share of your Estate.

By creating a plan, you can properly dispose of your Estate according to your wishes and name your spouse as Trustee of any share to which your children may be entitled. Furthermore, planning allows you to name those persons you wish to act as Guardian for your children if something were to happen to both you and your spouse. This is one of the single most important responsibilities and decisions you will ever make in your life.

Additionally, you can prepare powers of attorney for your children's care while you and your spouse are out of town. This will allow the caretaker to step in as decision maker if you are unable to do so for the limited time in which you are unavailable.

The bottom line is that the only way to truly protect your children if you are gone is to put a proper plan in place – who will be their caretakers and decision makers?