



# TECHNICAL

## *Consideration*

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## Estate Planning for Married Persons with Minor Children

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### THE NEED FOR ESTATE PLANNING

Married couples with minor children are probably busier today than ever before. Their lives are overflowing with commitments (work, school, soccer practice, dance and music lessons, etc.) and most think they don't have time to fit one more thing into their already busy schedules. So "we're too busy" may be the excuse they give for not having done any estate planning. Or such couples may feel that they are just "too young" or "not rich enough" to need estate planning. However, estate planning for a young married couple with minor children and few assets is just as important as it is for a senior couple with lots of assets and grown children. Planning for young married couples with minor children must address the situation where only one parent survives and where neither parent survives.

### BASIC PLANNING

Although estate planning for a married couple with minor children is similar in many respects to planning for a married couple with adult children (i.e., it involves wills, trusts, and medical directives), the paths differ in where the primary emphasis is placed. Whereas estate planning for an older couple focuses on minimizing estate taxes and planning for distribution of assets, estate planning for the younger married couple with minor children is focused on guardianship, income replacement, and education planning in the event of the untimely death of one or both parents.

The basic estate planning documents for a married couple with minor children are:

- Wills
- Trusts
- Durable General Power of Attorney
- Health Care Power of Attorney
- Living Will ("Advanced Directive")

- HIPAA Authorization
- Funeral, burial, and remains planning

### Wills

Like any other married couple, couples with minor children should make wills to specify how property should be distributed instead of letting such matters be decided under state intestacy laws. For a married couple with minor children, the wills take on an even greater degree of importance. The executor is named, of course, and he or she will distribute the deceased spouse's estate according to the decedent's wishes. But most importantly, the will contains the name(s) of the person(s) who will take care of the minor children in the event of both parents' deaths—the guardian. The guardian must be someone who is physically able to care for the children and who is familiar with the desires of the parents for the children.

The will may also contain provisions for testamentary trusts to be established upon death for the benefit of the children, or testamentary trust provisions may be included in the parents' revocable trusts (see below). The trusts resolve the problem of who will handle the children's property for them and under what conditions the money will be distributed.

### Insurance and Retirement Accounts

It is important that married couples with minor children have adequate life insurance coverage. The policy or policies must be large enough to support several needs including monthly living expenses, health care, and long-term needs such as education funding.

Typically the surviving spouse will be named as the primary beneficiary of the life insurance. A testamentary trust for the children's benefit should generally be named as the contingent beneficiary. This arrangement usually includes a sub-trust for each child.

Likewise, for qualified retirement accounts and IRAs, the surviving spouse is usually named as the primary beneficiary. Naming a trust for the benefit of the minor children as the contingent beneficiary of an IRA may allow for "stretching" the tax deferral of the IRA using the oldest child's life expectancy.<sup>1</sup>

### Trusts

For married persons with minor children, trusts are especially critical because they provide guidance for how the money is to be distributed to the children as they age. Consequently, picking the right trustee is just as important as picking the right guardian.

When selecting a trustee, the best option might be to name an individual and a corporate trustee as co-trustees. This arrangement can provide the benefit of the individual's personal knowledge of the children's circumstances combined with the corporate trustee's objectivity.

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<sup>1</sup> This is a complex area. The trust must be drafted properly to allow for the ability to "stretch" payments.

A young married couple may set up a revocable trust during life that can be used to carry out the couple's distribution of assets upon one or both spouses' deaths. If one spouse survives, the estate assets may be divided into the marital trust ("A" trust), which is primarily for the benefit of the surviving spouse, and the credit shelter bypass trust ("B" Trust), which provides income and principal to the children (and income to the surviving spouse).

Typically the trustee will be required to distribute certain portions of trust income/principal to the children at specific ages (e.g., 25, 30, and 35), but the age and frequency can be as liberal or restrictive as the parents choose. The trustee generally uses his/her/its discretion in distributing funds, usually under the ascertainable standard of health, education, maintenance, and support. Trust provisions can also be included that allow the trustee to restrict or wholly forego distributions if the children do not attend college or meet certain life goals. Spendthrift provisions should be included in trust language.

## **CONCLUSION**

Perhaps the most important aspect of estate planning for married couples with minor children is the recognition by the parents that they actually need to get started and stop letting excuses delay critically needed planning. It is best that the couple plan now in the event that disaster strikes later without warning.

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