



In-The-Know Monthly eNewsletter

Estate Planning Issues for Single Parents

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Published: February 20, 2017

More and more, we get less and less "straightforward" estate planning scenarios. Clients come to us single, married to their first spouse, married to new spouses, with blended families, married to non-citizens and dealing with children or spouses that are no longer able to deal with their own lives. One of the more common, not straightforward issues we see, is clients raising children as single parents. Their issues are often almost straightforward, but are occasionally fraught with land mines.

The single parent "population" is growing in America, with the U.S. Census Bureau showing about 12 million single parent families in 2015. Interestingly, 80% of those families were headed by a single mother.

So what are some of the most common estate planning issues for single people with children?

Planning for Disability - Health Care, Legal and Financial Caretakers For Yourself.

For single people with minor children, there are greater stakes involved in choosing your caretakers. Not only must they be able to care for you, but they have to be able to either care for your children, or work with the other parent or caretaker. Identifying someone you trust, with common sense, and who gets along with your ex, can be a hard combination to find, but is exactly what is needed. You have to consider their health and age - your parents may work fine today, but what will they be like in 5 or 10 years? Consider where they live, and how their caring for you and your children, may impact them, you, and your children.

Needed Documents include: A *power of attorney* for legal and financial matters, a *health care advance directive*, and some kind of *temporary guardianship or power of attorney* over your children, to give authority to the person who will be helping.

Planning for Death - Guardians and Trustees for Your Children.

Who gets to be the Guardian? Although you may have sole custody of your children, upon your death, that alone will not allow you to name a guardian other than the other parent. Guardianship and custody are two different things. A divorce decree or separation agreement sets out the terms of custody between parents. But upon your death, you are no longer a party to the custody order or agreement. Full custody, in the vast majority of cases, automatically reverts to the surviving parent. Many single clients with minor children wish to name someone other than the other parent as guardian if they die. While you can name your parents, for example, the only way these grandparents can achieve guardianship over the children is if the "ex" assigns it to them. There are always exceptions based on the surviving parent being a danger to the minor children, but you have to assume that the other parent will have custody and guardianship upon your death. That also gives them the right to advocate to get, or control, financial assets of yours that are to be used for the children after you die.

Making a Plan for Where Money Goes. How can you control who controls your money at death? Well, when a married person dies without a will or a trust, the surviving spouse typically inherits a large part, if not all, of the assets. When you are single and die without a plan, the estate will be distributed to relatives in a way you might or might not like. But when you have minor children, these issues can be fraught with problems. Ideally, clients will create a trust for their children that will come into existence once they die. These "Family Trusts" are created to allow a trustee, named by you, to hold, invest and use your assets for your children during their minority, and usually well into their 20s and often 30s.

A typical trust for young children may provide for holding all trust assets for the health, education (defined to include living expenses, travel, books, tuition, etc.), maintenance and support, and call for outright distributions of trust principle of 5% at 22, 10% at 25, 25% at 30 and the remainder to be distributed at 35, while giving the trustee additional powers to distribute money for "worthy objectives" including, but not limited to, help buying a house, paying for a wedding, providing support to grandchildren, etc. Importantly, such a trust would also allow a trustee **NOT** to make a distribution if they felt it would be harmful to the child. And the trustee is the person chosen by you as the parent, not by the court or by the other parent.

Without such a trust, assets get distributed to minor children through the Uniform Transfers to Minors Act ("UTMA"). Even where a child has a surviving parent, or someone is named as their guardian, any distributions to that child have to be placed either in a UTMA account, or in a court supervised guardianship account. When you put cash or other assets in an UTMA account, the child becomes the owner immediately, but doesn't gain control of the assets until the child reaches the age specified in the law for that state - usually 18 or 21. Most of these accounts are set up by parents, but other relatives or non-relatives can set them up, too.

What this means is there could be hundreds of thousands of dollars, or more, waiting for that child's sole control at 18 or 21. What is often worse for the single parent, that money will not be controlled by the person they may choose, but by the other parent. And if the other parent is good at controlling the children, they may find ways to funnel that money from the child, to themselves.

Needed Documents include:

Last Will and Testament and/or Revocable Living Trust. Either a last will and testament, or a revocable living trust. Everyone, even a single person, needs to have a will (and/or a revocable living trust). A will is essentially a set of instructions for how assets are to be divided after death. It names the person(s) to serve as guardian, the trustee, and the personal representative or executor, the person who carries out those instructions. The will or trust creates the trust for the minor children, and names the trustees to control those funds and the disposition and distribution of those funds.

If you feel strongly that the other parent is not competent to care for your children, you can specifically authorize your trustee to expend trust funds to litigate the issue, and allow them to decline to distribute money for the children, where the trustee feels the money is just being funneled to the surviving parent. Powers like this are essential to give the trustee the power to litigate the issue of guardianship.

Beneficiary Designations. Beneficiary designations are often the conduit by which assets pass from you to the trust you will create for your minor children.

If you are single because of divorce, but have not replaced your former spouse on beneficiary designations, that ex could end up with a gift no one wanted him or her to have. Beneficiary designations for all Federal benefits are not affected by a divorce, and that is true in many states for other beneficiary designated assets as well. That means instead of your life insurance flowing to the trust for your child, it goes to the ex.

Make sure to update all beneficiary designations to make the trust for your children the sole beneficiary. Making the guardian or trustee does not vest the asset in the child, and a subsequent death, remarriage or creditor issues, could keep your child from the assets.

Marc S. Levine, Esq. has been practicing with his firm, Handler & Levine, LLC, and its predecessor firms, since 1992. Mr. Levine regularly represents individuals, including Federal government employees, in preparing their estate plans, including wills, trusts, powers of attorney, health care directives and other estate planning tools; represents Estates and Trustees in regard to decedent's issues and estate tax returns, and represents small and medium size business owners in regard to their estate planning, succession planning and general business issues. Mr. Levine is a member of the Bar in Maryland, Virginia and the District of Columbia and practices regularly in all three jurisdictions. He has been a presenter for NITP for over 10 years. This newsletter is for informational and educational purposes only.