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ATTORNEYS AT LAW

BUSINESS ◇ ESTATE PLANNING ◇ PROBATE ◇ ASSET PROTECTION

How do I protect assets for my kids after my spouse and I die?

If your kids are still minors, then the laws in your state likely prevent them from owning property until they reach a certain age (usually 18), so a legal representative must be appointed to manage the assets left to the kids. There are a couple options you can choose from that can protect assets for the kids.

First, you can nominate a “Conservator” (sometimes called a Guardian for property) to manage assets on behalf of any minor children inheriting property from you. You can nominate the Conservator in your Last Will and Testament, or, if you don’t have a Will, the courts will appoint a Conservator since *someone* must manage property for the minor children. While the assets are held by the Conservator, they are generally protected from creditors, but state laws can also limit how easily the assets can be accessed for the benefit of a child. In addition, the Conservator is usually subject to oversight by the probate court and must provide periodic asset inventories and returns to keep the courts updated. Of course, the goal of these legal requirements is to make sure the Conservator is properly using the assets for the benefit of the child, but it can be administratively tedious and costly. Moreover, when the child reaches 18, whatever assets the Conservator still holds must be handed over to the child. Think about it: would *you* like your child to get all his inheritance (e.g. house, cars, insurance money, etc.) outright when he turns 18?

Alternatively, you can leave your assets in one or more Trusts for the benefit of your kids and nominate a Trustee to manage the Trust(s). You can nominate a Trustee in your Last Will and Testament and lay out guidelines for your Trustee to follow when managing the Trust, including how and when to distribute assets for kids and perhaps the age(s) when you want your child to receive large portions of his inheritance out of the Trust (e.g. 50% at age 30, and the rest at 35). You may even choose to allow your children to assume partial or full control as a Trustee over their Trust when they reach a certain age. A Trust should be tailored to your family and financial situation. So, unlike a Conservatorship, a Trust is not something a court can create for you. You must create the trust planning yourself or work with a qualified advisor to create a Trust that makes sense for you.

If you want to protect assets that you are leaving to your older children, then a trust is your primary option. A properly structured Trust can provide great benefits over the Trust’s assets by allowing you to:

- control the amount and timing of distributions of your assets to your children;
- give children some degree of control, if appropriate, over the use of trust assets during their lifetime and some degree of control over how trust assets pass to others after the child’s death;
- protect Trust assets from your children’s creditors in the event of a lawsuit or bankruptcy;
- protect Trust assets for your child from the claims of a spouse in a future divorce;
- preserve and manage assets for children who (i) may not be capable or mature enough to manage the funds appropriately by themselves, (ii) may suffer from mental disabilities, or (iii) may suffer from substance abuse problems;
- preserve assets for grandchildren and possibly protect assets from multiple layers of taxes when children die and grandchildren become beneficiaries of the trust.

Protecting assets for children is one of the most common financial planning goals. If you want to protect assets for your kids, make sure you understand your options so you can be confident that your planning will achieve your goals.

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