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ESTATE PLANNING FOR MINOR CHILDREN

By Thomas D. Begley, III

One of the most overlooked areas of estate planning is how to make distributions to minor children or grandchildren. Most people would agree that it is important to make funds available for minors for their health, education and support and maintenance as they are growing up. In addition, most people agree that any outright distribution of assets to children or grandchildren is not prudent until they attain an age of maturity such as twenty five or thirty years of age. Unfortunately, most estate plans do not achieve these objectives.

The reason for this failure is twofold. First, most wills do not typically provide for prudent distribution to minors. Second, many individuals are unaware of how non-probate assets are distributed when minors are involved.

Most form wills typically call for distribution to a minor at the age of eighteen (18) or twenty-one (21) years. Prior to attaining such age, any right of distribution is inadequate if set forth at all. Moreover, most people are not capable of handling large sums of money at these ages. In addition, these form wills typically do not appoint an individual or entity to handle these funds until they are distributed.

At the very least, most wills should have a trustee clause and an age requirement section. A trustee is the individual or entity that can manage the money for a minor beneficiary until he or she is mature enough to receive outright distributions. An age requirement section calls for the age of ages at which a beneficiary will receive outright distributions and how assets held in trust, prior to those ages, may be spent. Frequently, this section will state that a beneficiary will be entitled to outright distribution of an inheritance at the age of thirty. For larger estates, these distributions may be staggered - such as one-half at thirty and one-half at thirty-five. The ages can be adjusted due to the preference of a testator.

Prior to attaining these ages, distributions for the beneficiary can be made for any purpose set forth by the testator. Typically, distributions are authorized for health, education, maintenance and support. Authority, at the discretion of the trustee, is sometimes given to allow a beneficiary to start a business or obtain funds for a down payment on a home. Using the aforementioned concepts, a will can be properly drafted to take care of minor children or grandchildren.

Of course, when planning for children, as opposed to grandchildren, it is typically advisable to set up a sprinkle trust and a share trust. A sprinkle trust places all assets into one trust to be spent, as the trustee deems fit, until the youngest child attains a mature age, such as 22 or 23 (i.e. the time one graduates from college). At this point, any remaining assets are divided into equal share trusts for as many children as survive the testator. These trusts are administered in the same manner as set forth in the preceding paragraph.

This planning, though, is not effective unless the beneficiary designations of contract assets are properly made. Contract assets are IRAs, 401ks, other deferred retirement plans, life insurance annuities. Payments from these assets are made to the designated beneficiaries and such designations supercede any provisions in the will. As such, an individual could have a properly drafted will with the aforementioned trust language. However, such planning will be ineffective if a minor or minors are named as beneficiaries on these assets. Such assets are either held by the financial entity that manages them until the minor attains the age of 18 years or said assets are distributed to the Surrogate's office to be held until that age. In order to properly utilize these assets, the beneficiary should be changed to be the trust under the will (or living trust in which these trusts can be established as well).



Begley & Begley P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Avalon and Lawrenceville.

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