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GRANDPARENTS' GUIDE TO SECOND GENERATION PLANNING

Why Your Adult Children Need an Estate Plan



ABOUT THE FIRM

As an estate planning firm in Sioux Falls, South Dakota, Thompson Law, Prof. L.L.C. provides a wide range of estate planning services to clients. Our primary focus is to help our clients provide for the security of their families, reduce estate taxes and avoid or at least minimize the costs and delays of probate, all with a well-crafted estate plan. The mission statement for Thompson Law, Prof. L.L.C. is defined as "helping people leave a legacy for their loved ones, not solely in terms of financial means, but also with a reflection of the values and the beliefs that can be shared for generations to come." The attorneys at Thompson Law, Prof. L.L.C. understand the growing importance of estate planning and dedicate themselves to helping clients address their personal circumstances in a way that best fits their goals and family needs.



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GRANDPARENTS' GUIDE TO SECOND GENERATION PLANNING

One morning you wake up and ask yourself, "Where has the time gone?" Your babies are now adults and likely parents themselves. You have done your job of raising responsible adults with lives of their own. You have taught them right from wrong, how to treat others, and many other important life skills. Although they are off on their own, you still worry and want to protect them from all of life's uncertainties.

The question of what will happen to your children without you or their own partner will be answered someday. In preparation for the unexpected and the inevitable, it is important to set up a proper estate plan. It not only makes sense for you, but it is equally important for your adult children. For those who have young children, drafting an estate plan is absolutely essential. Without sufficient planning, your family's future will likely be decided by the judicial system. A prospect that makes most of us shudder.

WHAT KEEPS YOU AWAKE AT NIGHT?

Even though your children are now grown, there are many areas of concern about which parents of adult children still worry. One of which is that many adult children of baby boomers, do not even have a Simple Will in place, let alone a comprehensive estate plan for their family should something happen to them. Couple their lack of an estate plan with the very real possibility that the assets or wealth you envision passing on to them can quite easily be lost to divorces, remarriages, lawsuits, and/or simple poor money management. What if part of your legacy is to promote and provide education for your heirs and there's nothing left for that purpose?

"Shirt sleeves to shirt sleeves in three generations." Basically, this means the one who earned the wealth by working hard and rolling up their sleeves, has had that entire wealth lost by their third generation. Sadly, it is far too common that wealth is lost within three generations because heirs are not prepared and assets are not protected with an estate plan.

If your children have no estate plan of their own in place, there are many ways they can quickly lose the hard-earned inheritance you planned to pass on, as well as the one they planned to leave to your grandchildren. These are easily preventable losses.

As we know, with life comes change. Some changes bring joy and happiness, like your daughter's wedding day or the birth of your first grandchild. Other changes may bring heartache or financial hardship. These life cycles of change play out every day in every home, leaving no family immune to them. The following assumptions and common family events clearly demonstrate why your family needs to plan now, not later.

“WE DON’T HAVE MUCH, SO WE DON’T NEED AN ESTATE PLAN”

If your children pass away without a will or a Revocable Living Trust, any assets, including life insurance proceeds, pass by intestacy and will be divided according to predetermined, state guidelines in probate court. These guidelines are based on a formula written by legislators, often as a one-size-fits-all approach to division of wealth. Each state has different rules, so if your children own physical property in more than one state, it can become excessively difficult and expensive to sort out. If your children change their state of residence, a whole new set of intestacy rules would apply. Even without these complications, in some states probate may be a costly, time-consuming, and potentially distressing public process that can easily be avoided.

Moreover, having their estate settled in probate court makes all of your deceased child’s finances and personal information a matter of public record. Not only is this embarrassing and invasive, but it can be risky for your surviving family members, as it makes them easy targets for predators, solicitors, and scam artists.

“WE USE JOINT TENANCY AS OUR ESTATE PLAN”

Joint tenancy is a common method for holding title to real estate, brokerage accounts, and other property, giving each joint tenant an equal right to the property. At the death of one of the joint tenants, the surviving joint tenant automatically gets the interest of the owner who died. Joint tenancy is seemingly simple, right? Well, not quite. It is not necessarily the best way to plan for the future. One of the pitfalls is that creditors of either joint tenant can take that joint tenant’s proportionate interest or they can file suit for a partition of the property or force a sale. This is especially problematic if your adult child adds your adult grandchild as a joint tenant to the family home for “simplicity” purposes, and then ends up losing half the property when the grandchild gets sued for a car accident.

For some things, like real estate, the transfer into joint tenancy is considered a gift. The removal of a joint tenant from the title is considered another gift. For example, if your child adds your grandchild as a joint tenant, that is a gift from your child to your grandchild. Later, if your grandchild is removed from the title, that is another gift, this time from your grandchild to your child. If financial accounts are held in joint tenancy, there is no gift until the joint tenant, who did not contribute the funds, withdraws those funds. If a gift is over \$15,000, a gift tax return must be filed. The existence of gifting might be especially problematic if one of your children is trying to qualify for Medicaid benefits, because gifting typically causes a period of ineligibility.

In addition to gifting and creditor concerns, your adult grandchildren could get divorced and your grandchild’s interest in the property, gifted from your child, could be part of that settlement. Suddenly, this “simple” form of holding property is not so simple after all and is full of potential pitfalls.

A solution many rely on is to establish a Revocable Living Trust and put that property, among other assets, in the name of the trust. The trust will avoid probate and can specify when and how your grandchildren will receive the property.

“WE’RE HAVING (OR ADOPTING) A BABY!”

Ah, the joys of grand-parenthood! It’s the news most grandparents have waited years to hear and, for others, it may come as a complete surprise. Either way, grandchildren are a blessing to be rejoiced. Once the news has sunk in and the baby showers have come and gone, the nursery is freshly painted, and little outfits are neatly placed in the dresser. All the details for the baby’s arrival are looked after. Or are they?

Once the baby powder dust settles, the new parents suddenly find themselves in a whole new world of worry and concern about who will care for their son or daughter if something were to happen to them. Without even a basic will, your adult children will not have any say about who assumes custody of your grandchildren. A judge, who has no knowledge of your children’s wishes, would appoint a guardian for their kids. Potentially, family and friends could end up pitting grandparents against each other, battling over custody arrangements, causing emotional rifts among your loved ones for years to come. Or worse yet, your grandchildren could temporarily or permanently be placed in foster care.

Every parent should have a complete estate plan created that includes nomination of a guardian and successor guardians. A guardian can be named in a Simple Will or in the Pour-Over Will prepared along with your Revocable Living Trust. The court may or may not follow your children’s wishes, based on what the court believes is in the best interest of the grandchildren at that time.

With a trust, your child may also decide, for instance, that your minor grandchildren should receive regular distributions for education, maintenance, health care or other essential expenses. Or they can instruct their trustee to provide lump sums to your grandchildren after they achieve certain milestones, such as an attained age or a major event like college graduation, marriage, or a new baby. The trustee has to follow what is written in the plan.

“OUR CHILD’S SPECIAL NEEDS REQUIRES SPECIAL PLANNING”

What if an untimely disability or death strikes one of your adult children? Who will care for your grandchildren? The mere idea wrenches the heart of any grandparent, especially the grandparent of a special needs child. Because no one is shielded from death or tragedy, most of us recognize the need for an estate plan, ideally one that appoints a suitable guardian for your special needs grandchild to see to their emotional and financial needs, and overall comforts. In the best of circumstances, it’s a task requiring clear thinking and good legal advice.

When a child has physical, emotional or mental challenges, careful estate planning becomes even more crucial for three important reasons.

First, is the simple fact that special needs children have different needs than other grandchildren may have. Depending on the degree of their disability, your grandchild may require specialized treatment that encompasses therapy, housing, education, adaptive equipment, and in-home care, among many other costly services. The need for this care may extend throughout their childhood and last well into adulthood, or even their entire lives. Providing the appropriate degree of care requires careful financial planning.

The second critical reason is that a proper estate plan is the only way to ensure that your grandchild can be provided for without jeopardizing the child's eligibility for government and private programs.

Lastly, for your adult children, a comprehensive estate plan is perhaps the best way they can protect their special needs child's emotional and financial interests today as well as in the future, when you or they may no longer be around to look after such important matters.

“WE’RE GETTING A DIVORCE”

With the high divorce rate, you and your adult children cannot afford to ignore this other real reality. Is it possible that your children or their descendants could be a party to a divorce? Definitely. In some states, a divorcing spouse can walk away with 50% of the inheritance you leave to your son, daughter or grandchild if things are not properly set up in advance. You worked hard your entire life to build up a nest egg and planned carefully to make sure it was transferred into the right hands. You may not want a big chunk of it to end up in the hands of a “soon-to-be-ex” in-law.

Upon death, the custody of children whose parents are divorced usually falls to the ex-spouse as long as he or she is the biological parent. A successor guardian should be named, in case the ex-spouse is unable or unwilling to care for the children.

When assets are distributed outright to children being cared for by an ex-spouse, the ex-spouse, as guardian, has complete control over how the inheritance is managed. Similarly, if a step-parent has been appointed the guardian, then he or she has authority to manage the inheritance of minor children. In either case, the wishes of the deceased regarding his or her children may not be followed. However, the grandchildren can't be expected to manage their own money at such a young age.

It is important that your children put an estate plan in place so that your grandchildren do not lose half of their inheritance in case of a divorce.

“I’M GETTING REMARRIED!”

Marriage can be just as difficult the second time around, especially when you blend families. The trend toward multiple marriages has resulted in millions of “blended” families, where one or both parties have remarried or have children from other relationships.

While each family is unique, blended families bring even more challenges. Each spouse may have children from prior marriages and/or the two spouses may have children together. Spouses may even come to the marriage from different financial positions. In a traditional couple's estate plan, the couple wants the surviving spouse to have access to all of the assets at the first spouse's death. Typically they want the assets split equally among their children at the death of the survivor. This traditional couple's plan often does not meet the complex needs of blended families.

You may love your new son-in-law who has two children of his own, but you also want to protect the inheritance you envision leaving for your own grandchildren from your daughter's first marriage. You want to make sure that, no matter what happens, your children and grandchildren are taken care of the way you promised yourself they would be.

If your adult child remarries, it is imperative that they, too, set up an estate plan that will protect and pass their assets and legacy to your grandchildren, instead of the new spouse.

“CREDITORS ARE CALLING!”

Sometimes protecting your family means protecting individual members from their own inexperience or irresponsible behavior. Perhaps you have a child who is not financially savvy or responsible. Do you have visions of them taking the money you worked so hard for all those years and squandering it in one afternoon, a week, or a year? Are they likely to live beyond their means and over-extend themselves on credit cards or high-interest loans? Will they still be able to pay the mortgage on the house they bought five years ago?

A wise option for your adult child is to set up an estate plan. They can take the inherited assets you leave, together with their own assets, and put them into the name of a trust. Upon your child's death, the assets in the trust could pass to your grandchildren and be protected from your grandchildren's creditors and even your grandchildren's misjudgment.

“I'M BEING SUED!”

The harsh reality is that we live in a litigious society, where people are looking for someone to hold accountable for their difficulties or their own poor decisions. A simple fender bender, a tree limb falling on a neighbor's home or an accident at home can be just one step away from a lawsuit and losing it all.

The number of lawsuits is expected to increase in the future. So, it is important for your adult children to do what they can to protect their own children (your grandchildren). The assets that you will leave to your children plus your children's own assets could pass down to your grandchildren, only to be lost to your grandchildren's creditors because of a lawsuit. But, your children can guard against that by setting up their own estate plan in a manner that protects their children (your grandchildren) from the emotional and financial ravages of these lawsuits.

NO TIME LIKE THE PRESENT

Will the inheritance you leave behind be lost by the third generation? Will your hard-earned assets be lost to a grandchild's divorce? Will a blended family jeopardize the legacy you intended to leave to your grandchildren? There is simply too much at stake to risk leaving it to chance. It does not have to be that way.

Setting up an estate plan takes less time than most of us spend planning our next vacation, purchasing this year's holiday presents, or picking out a good college. Not only does it not take long to prepare, it also provides the necessary protection your family needs with long-lasting and far-reaching benefits for your children, grandchildren and future generations to come.

MOM AND DAD KNOW BEST

You have probably already set a fine example of setting up your own estate plan for your children to benefit. Don't stop there! Educating and inspiring your children to put a customized estate plan in place for themselves and your grandchildren will help solve, not create problems later.

Just remember, passing your estate outright to your heirs without their own estate plan in place will not be enough to protect the inheritance and legacy you envision passing on to future generations.

The best place to start is to encourage your children to seek out an experienced attorney who focuses on estate planning. The attorney and your son or daughter can discuss the many practical strategies for achieving all of their personal, financial and estate planning goals. Talking to and ensuring that your children create effective estate plans will provide your family with peace of mind knowing they are all financially secure, even if the unexpected happens.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We

recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.



The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine*, *Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

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- Protecting Your Assets with the Limited Liability Company
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- The Trouble with Joint Tenancy
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