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Estate Planning 101: 5 Lessons for New Parents

You've prepared the nursery, stocked up on diapers and even sent your baby shower thank-you notes. Now it's time to check a big one off your to-do list: Preparing for the unexpected.



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Whether you are adopting or giving birth to a child, overseeing a minor's life is fraught with expansive (and expensive) tasks: Feeding, fretting, toileting and procuring seem to consume the new parent. So, while it is understandable why new parents are laser focused on their newborn's immediate needs, they should have the wherewithal to remember the importance of making preparations for their child if something were to happen to themselves.

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Here are five steps to get new parents started.

STEP 1: Set up "Living Documents"

Just like placing the oxygen mask on yourself in the airplane before placing it on a child's head, the most important aspect of any person's estate planning relates to their own personal needs. That means starting with a person's own living documents. By naming a proper health care proxy and executing a power of attorney, a parent who becomes incapacitated can ensure someone else can access their funds for their child's needs and make proper health care decisions for the parent in the interim.

STEP 2: Decide on a Guardian and Trustee

If you are not present, your child will require individuals to cover two roles for their continuing needs: A custodial individual known as a guardian and a financial individual known as a trustee.

About Guardians

A guardian tells your child where he or she will go to school, what is on or off the dining menu, when to brush their teeth and what toothpaste to use, and try to convince them creamy peanut butter is not an acceptable substitute for chunky peanut butter. The issue is that the courts determine who should act as your child's guardian, always asking, "What is in the best interest of the child?" That means that while your stated choice of guardian in your will does carry some authority, a court may overrule your decision if it feels you have made a bad choice.

It is crucial that you and your child's other custodial parent have a detailed discussion regarding who should be your child's guardian if neither of you are around. Also, you should always ask your choice of guardian whether they will accept the responsibility: Appointing someone as a guardian may seem like an honor, but it can also be the ultimate burden.

About Trustees

Next comes your child's treasurer: The trustee. A trustee is the financially empowered individual in your child's life. Your trustee pays bills for your child, files any income tax returns due, invests left-over money and ultimately may (or may not) distribute the remaining funds to your child at some time. And unlike guardianship, the court tends to have limited authority over your choice of trustee.

Remember that while a guardian is legally necessary until your child is 18, a trustee may be required until your child is financially responsible (which could be 30, 40 or never), so name alternatives in case your trustee can no longer serve. Also, if you feel as though your child's guardian is a suitable choice to also act as trustee, you may want to name an additional individual to act as a co-trustee with them to ensure trust funds are not being absconded with.

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STEP 3: Establish Post-Mortem Documents

You next want to focus on what would happen if you pass away while your child is still young. This tends to be accomplished by drafting a will and possibly a separate trust document. If creating both documents seems too expensive or complex, you can create a "testamentary trust" in your last will and testament that is simpler, yet still effective if funded properly.

People tend to forget that if they die without a will their state may have default laws that split the estate's money between a spouse and children (which will make your surviving spouse curse your name for years to come) — many times you will want the other parent to have complete access to your funds if you die — so make sure to state

that in your documents. Here is something that everyone seems to forget: Minors cannot own property. So, you need to make sure you figure out how and when you want the children to receive access to your former accounts.

For most parents, including trustee powers to distribute funds for their child's health care, education and support is a no-brainer, but this is also an opportunity to craft your own views and desires on a future generation, and instill your values on your child after your passing. Can a guardian act as trustee to send your child to summer camp? Do you support your child attending alternative schooling or learning unusual experiences on an exotic vacation? Would you like to allow your child to have funding for a business venture? All of these extras are acceptable, but you need your expectation to be realistic based on the actual amount of money you leave to your child.

STEP 4: Review Your Life Insurance Requirements

The age at which people are becoming first-time parents continues to rise, but that doesn't mean new parents today are any more financially stable than their progenitors. Most people don't have much money when they are young, so life insurance becomes critical to ensuring your child has adequate funds available if you pass away at a young age.

Figuring out how much life insurance to purchase is not an easy calculation, so focus on two factors:

1. How much do you think your family will need? Consider this "needs-based" question instead of how much you think you would otherwise earn during your lifetime ("income replacement").
2. How long do you think you will have the need? The answer to this question will help you decide on whether to buy term insurance, which covers a finite period of time, vs. permanent insurance, which is a lifelong policy.

If you have an illness or are uninsurable, look for groups and associations that offer group policies with guaranteed-issue policies. If this fails, focus on procuring insurance for the parent who can qualify for a policy: While it is difficult to deal with the passing of one parent without life insurance, the passing of both parents without insurance can devastate a child's lifelong prospects.

STEP 5: Update Account Ownership and Beneficiary Designations

You now need to finalize your affairs by properly titling accounts and naming the right beneficiaries to your investment accounts and life insurance policies. And while it makes sense to name a spouse, partner or adult child as a primary beneficiary, you should NEVER name a minor as a primary or contingent beneficiary of any investment accounts or life insurance policy. Remember: Minors cannot control property, meaning a court may appoint an attorney to oversee the accounts until the minor turns 18 years old, or it may require another adult (possibly the child's other parent, who may also be your ex-spouse) to move for a financial guardianship or conservatorship over the funds and report back to the court annually.

Better yet, make sure to name a trust for your child as a beneficiary for your life insurance and retirement plans. Work with an attorney, financial adviser or life insurance agent to ensure you have completed the beneficiary designation forms correctly. Where possible, make sure to name successor owners on 529 college savings plans and contingent custodians on UTMA accounts (Universal Transfers to Minors Act).

Change your solely owned accounts to joint accounts or "transfer on death" accounts for the benefit of a trusted adult: Any property that gets transferred by your will during the probate process may require an attorney to oversee your child's interests, but leaving money directly to your beneficiary outside of your will avoids this possibility of that happening.

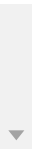
Lastly, make decisions that you feel you will be comfortable with for the next several years. While you can change these documents at any time, you can avoid the mistakes of not updating your document by drafting it with a 10- to 15-year time frame. Since many first-time parents still have at least one of their parents living in good health, you may want to name your spouse or partner as your primary agent and your parent(s) as an alternative if your partner is unavailable.

Keep all your documents in a safe-but-obvious location in your house where other people can access them. And, when appropriate, share copies of your legal documents with your agents and successor agents.

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Daniel A. Timins is an estate planning and elder law attorney and a certified financial planner, helping clients with wills, probate, living needs and Medicaid planning.



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