

Naperville lawyer suggests reasons for estate planning

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Naperville is a very family-focused community. Families move here for the excellent school system and award-winning public library — reasons Money Magazine has ranked Naperville in the top 5 best places to live in America three of the past six years. According to the U.S. Census Bureau, the average Naperville family size in 2006 was 3.47 people.

If you have a family, ask yourself, “If something happens to me today, how will my family be affected tomorrow?”

Estate planning focuses on wills and trusts, powers of attorney and the potential for guardianship. The documents that are completed during estate planning are meant to protect your family in the event that something happens to you. It might be that you have died in an accident, or you might still be alive but unable to care for yourself. While we cannot predict the future, without having these documents in place, the only certainty is that your family will rely on the statute and what that statute says your family must do.

For instance, if you are alive, but unable to care for yourself, your family will have to go to court to have you declared incompetent to manage your own affairs and have a guardian appointed. The guardian might be someone you would want over your affairs or it might be a person you would not have selected. The court might prefer a spouse to be the guardian, but that person could be overwhelmed at your condition and dealing with the physical nature of it.

A better approach would be to have your road map set out in the estate planning documents that you complete. Instead of a guardian, you may have a financial power of attorney that you have appointed in a document who starts in that position at such time as you become disabled, coupled with a living trust that selects a trustee to act if you are unable to do so. That trustee will pay your bills, invest your assets, make sure that your income is deposited, and in general, do whatever you would do for yourself.

So, if you still aren't convinced to do estate planning — it's not enough for you to wonder how your family will cope with the financial aspects of your disability or death — what if you also have either minor children or you have children or family members with special needs? Who will be their guardian and care for them? A child in Illinois is considered an adult at the age of 18. Is



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that the age you want that child (now considered an adult) to obtain your wealth? Imagine that you have two minor children, an estate of \$2 million and no spouse that survives you, do you want your children to each receive the amount of \$1 million at age 18?

The situation is more pronounced if you have a child born with special needs. Who will care for that child in the event that you are not around? In addition to having a provision in your will to appoint a guardian, you also will need to file a guardianship proceeding in court about the time that child will reach 18, because that child is considered an adult at that age, in spite of any medical condition to the contrary. This means that you are not able to even inquire about medical issues, because the HIPPA law does not allow you to do so.

The purpose of this article is not to scare you or make estate planning more complex than it is, but rather to suggest that you should be more proactive in these uncertain times. While many times clients are uncertain about what choices to make, the worst choice is the one that is not made. Most documents are not irrevocable, and you can change the choice if you later determine you need to. Not making a choice is making a choice.

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