

Jill H. Teitel, Esq.

Attorney at Law and Mediator



Estate Planning for Parents with Young Children

Questions Worth Contemplating



- Who will take care of your child(ren) when both custodial parents become incapacitated or die? Where will your child(ren) live? Who will make medical treatment decisions for them?
- What happens to the property you have accumulated if you become incapacitated or die?
- What happens to the proceeds of your life insurance policy. Minor children cannot own property, so who will take possession and manage those life insurance proceeds?
- When will your children actually receive the property you leave for them? Who will manage those assets until it is time to distribute them to the children?
- How will you protect your children from creditors, predators, and themselves?

New York WILL MAKE A WILL FOR YOU IF YOU DON'T HAVE ONE



- In your will, you name guardians to raise your children if you die.
- Children are unable to inherit outright, if you try, the court will intervene. Therefore, do not distribute assets to your minor children in a simple will.
- Back-up guardians can be named.

Choosing the Right Guardian



- Proper advance directives allow the parents of a young child to designate who will be responsible for caring for the child in the event of the parents' incapacity.
- Appropriate considerations: Age, experience, temperament, values, religious beliefs, relationship with children and whether the guardian has their own children.
 - Best to choose a person(s) who is your contemporary
 - Best to choose a person(s) who resides in New York State
- A properly drafted last will and testament and/or a Trust under New York law, allows parents to designate who will be the legal guardian of a minor child after the death of them both.

The Role of Guardian



- A guardian over the person takes care of the day-to-day care, such as deciding where your children will live and go to school. The guardian over the person will also have the ability to make medical decisions on the children's behalf and be responsible for their upbringing.
- A guardian over the property is responsible for handling the assets of the children until they reach legal age. This person manages the money you've left for your minor children.

Property designated under the Uniform Transfer to Minors Act (UTMA)



- Any type of property can be transferred into the custodial account
- Custodianship can extend until minor reaches 21
- No annual accountings
- Taxable income to the surviving parent
- Principal must be distributed to minor upon turning 21 years old.

Guardian appointed by the Surrogate's Court



- Must post a bond unless waived by the court if the estate does not exceed
- Guardian must file annual inventory, creating fees.
- If there is a living parent, the distributions from the estate are limited due to the parent having an obligation to support the minor.

Stand-by Guardians and First Responder Authorization



- Execute a first responder authorization which appoints trusted friends neighbors to stay with your children in an emergency, until your named guardians arrive.
- Because your will is only effective if you're dead, you also need to appoint stand-by guardians in a separate document. This guardianship authorization is effective if you are incapacitated, but alive, and unable to care for your children.

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**Call for a free consultation to discuss
your estate plan**

(646)522-4905

or email at jt@teitelwise.com

Website: www.teitelwise.com