The Essential Parent's Handbook




The Top 5 Mistakes Parents Make in Estate Planning

Learn about the biggest mistakes, misunderstandings, and oversights when it comes to planning for emergencies in your own family and how you can fix them right now.




Sarah Breiner, The Legal Mama®

TABLE OF CONTENTS

INTRODUCTION

Did you know?

Over 60% of parents in this country have not completed estate plans which means their children and assets are at risk in the event of an emergency.

When prospective clients come to me embarrassed that their children are starting elementary school and they don't have wills, I let them know they are in the majority. I also remind them that I am not here to judge, or to create fear and panic in parents. I am here to educate them in the best way to protect their family and to implement a plan that allays the fears they do have -- by knowing they will be fully protected when we are done.

These five issues come up in every single meeting I have with parents either because they have questions on the topic or because I review plans they have previously made and see the error in their previous planning.

So let's start at the beginning...

1. NOT HAVING A WILL

There are so many reasons that parents do not have an estate plan complete. When parents do not have a will it is usually for one of a few common reasons. Commonly they do not want to think about making decisions in regards to naming guardians for their kids; it is too hard to decide or they feel they don't have a good option. Maybe it will cause conflict in the family or between the parents themselves to make a choice or they cannot agree on who it should be. Some parents don't know that the will is the only legal place that they can actually name those guardians. For others, they are focused more on their assets, or lack thereof, and think if their estate is not worth a certain amount that there is no use in having a will. For those parents that do have a will and name a guardian there are some routine mistakes that are overlooked by many attorneys or not realized when a parent prepares their own documents. Some of those common mistakes are:

- Naming one guardian and no backups - often the named guardian is a family member but consideration is not taken for the possibility of the named guardian being with the parents in an accident or while traveling. I require my clients to strive for three named guardians.

- Failing to exclude a family member who the parent does not wish to have any access to or responsibility to care for their children. We all have one of these family members, right? You will see below why this is so risky. There are proper channels to document and exclude these relatives and keep them from getting guardianship of your children.

- Naming a married couple as guardians without designating what would happen in the event of divorce or death of one partner. Often times my clients will name a sibling and their spouse as guardians when in reality, if something happened to their sibling, the parents would not wish for the in-law to care for their children alone, but rather move to another family member. In contrast, some parents would not want any further upheaval in the children's lives and would wish to designate that the children stay put.

Most important to understand is what actually happens when you do not have a will but have minor children. Even an individual, whether married or not, should have a will simply to avoid the court having control of the decision making for the family. When children are involved it is even worse to die without a will. When this happens, the family must probate the estate and ask the court to name someone to handle the administration of the estate and also to give the family access to the money while the probate is ongoing. On average, the probating of an estate when someone dies without a will takes between 12 and 24 months and costs roughly 5% of the value of the estate.

If you have a life insurance policy for $500,000 your family may be looking at a probate case of $25,000! That money should be going to your spouse and/or children.

HOW YOU CAN FIX IT:

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2. NOT HAVING A TRUST

A will only covers property solely owned in your name.

A will does not cover property co-owned by you with others listed as joint tenants, nor does your will cover assets that pass directly to a beneficiary by contract, such as life insurance.

Trusts, on the other hand, cover property that has been transferred, or "funded," to the trust or where the trust is the named beneficiary of an account or policy.

That said, if an asset hasn't been properly funded to the trust, it won't be covered, so it's critical to work with your Personal Family Lawyer® to ensure the trust is properly funded. Unfortunately, many lawyers and law firms set up trusts, but don't then ensure your assets are properly re-titled or that the beneficiary designations are updated, and the trust doesn't work when your family needs it.

My practice has systems in place to ensure that transferring assets to our clients' trusts, and making sure they are properly owned at the time of their incapacity or death happens with ease and convenience. This is as important as thedrafting of the trust itself.

HOW YOU CAN FIX IT:

I hear all too often, "but I don't have a large estate so I don't want a complex plan". The reality is that estate planning now a days has very little to do with the value of your estate unless you are reaching the limits of estate tax exemptions.

Beyond that, the way we create a trust focuses on how you want to protect your money for the next generation and whether you want to shelter your assets from creditors, divorce, future blended families of a surviving spouse, and so on.

There are a wide range of options when it comes to trust drafting that can fit any family dynamic and budget.

You have the option of creating what is called a testamentary trust which does not get created or funded until your death.

Other options include a wide range of revocable living trusts which allow you to safeguard assets by transferring them into the trust now making management easy for your family.

3. NAMING MINOR CHILDREN AS A BENEFICIARY ON LIFE INSURANCE POLICIES

For the same reasons as stated in number 2 above, minor children cannot inherit directly and this includes inheritance through beneficiary driven accounts such as life insurance and retirement accounts.

Many parents name their spouse as the primary beneficiary and list their children as the backup in the event that something happened to both parents. The problem is that the life insurance carriers, or banks, brokerage houses, etc. will not distribute the funds to the minor and the court must get involved.

Those assets will go into the court registry as discussed above. This can be detrimental to a family who needs that money to live off of after a tragedy.

The parents must take action to make sure there are funds available for any guardians who take on the responsibility of raising their children.

The guardian's primary responsibility should be loving and caring for your children and not worrying about how they will pay for extra groceries and school clothes.

HOW YOU CAN FIX IT:

The proper way to name a backup beneficiary in your life insurance or beneficiary driven account is to name your spouse, as you normally would, as the primary beneficiary and then name the trustee, on behalf of the trust, as your backup beneficiary.

his way if something happens to both parents while the children are minors, then the trustee has the authority to receive those funds on behalf of the trust and deposit them in a trust account.

4. ONLY NAMING PERMANENT GUARDIANS IN THE WILL AND NOT PREPARING FOR OTHER EMERGENCIES

What would happen if you left for date night with your spouse and the kids were at home with your babysitter? If you are anything like me (before I knew not do do this!) you would tell your babysitter to call your cell if there is an emergency.

But what if YOU are the emergency and you don't make it home? Would your babysitter know who to call? What if you were in an accident on the way to daycare or school and your kids didn't get picked up? Would first responders at the scene of an emergency know who to call to come and pick up your children from the scene if you were unresponsive?

Would anyone have legal authority to take care of your children? Likely not.

In these situations the police would have no choice but to call child protective services until someone could figure out who to call or where the children should go and often times that would include the court's decision so the kids would stay in custody of child protective services or placed in foster care until it could be worked out.

HOW YOU CAN FIX IT:

You must choose temporary guardians for your children that can take action in the event of an emergency. This may be a temporary situation if you are incapacitated but expected to recover.

This may be longer if your permanent guardians are not local to you and arrangements must be made before they can arrive and take the children permanently. This is a place where there is a large gap in estate planning.

Most lawyers only address what happens to your children if you die and not the interim. In my practice, I provide my clients with the Guardian Guide™ which includes these temporary guardianship designations but also ID cards for parents to let first responders know there are children at home and lists emergency contacts to pick them up. Similar documentation is necessary when traveling away without your children and leaving them with a caregiver.

You should leave with them not only a temporary guardianship agreement but also a medical release with HIPAA language to provide medical treatment to your children in an emergency where the child needs medical treatment. You should always leave medical insurance cards and an updated medical history for the caregiver as well.

5. NOT HAVING ALL ASSETS DOCUMENTED AND TRACKED WITH CLEAR INSTRUCTIONS TO ACCESS THEM

Here's another "what if" for you. Sorry about that.

What would happen if you and your spouse died and your family had to gain quick access to your accounts? Would they know what you had? How to log on and pay your mortgage? Not likely.

Are all of your accounts with your spouse joint or do you maintain some separate accounts?

A financial power of attorney document can give your family member authority to access your accounts and make transactions on your behalf but that only helps if they know what accounts you have.

With technology and fraud the way it is now, it can take weeks or months to gain access to an account if you don't know the account number or password.

HOW YOU CAN FIX IT:

No matter what kind of plan you have, you must track your assets. You can do this by creating an asset spreadsheet. If you don't have an estate plan that includes your attorney doing this for you or providing you a document to do it, then you need to create a spreadsheet.

One of the biggest mistakes an individual can make is not telling their family how to access their accounts and what accounts they even have. This is the main reason accounts end up with the Department of Unclaimed Funds.

You must track, track, track!

If any of these common mistakes speaks to you, now you know and you can take action to fix it! By reading this Handbook, you are showing up and taking control of your estate. You deserve a high five. Seriously! This is hard work and no one wants to think about it but we have to.

If you have more questions, or you feel ready to sit down for a Family Wealth Planning Session to go over these issues and more, then you can email me at: sarah@breinerlawllc.com or click here and schedule a consult with me. Happy Planning!

MEET THE LEGAL MAMA®

Sarah founded Breiner Law and the Legal Mama brand in 2012 after having kids and the realization that estate planning firms didn't cater to the realities of families and their needs.

Breiner Law now serves families in MN, WI, GA and KS.

Sarah Breiner

Owner, Breiner Law Firm, LLC

I take it as a compliment when someone meets me and says, "but you don't seem like a lawyer..."

I pride myself on bringing heart to the process and I will treat your family like you are mine. I will always be honest with you and true to who I am.

My process is unique and I like it that way. I believe there is a great deal of value in taking time to know my clients and making sure you have the knowledge you need to make educated decisions for yourself.

Breiner Law Firm, LLC

info@legalmama.com

www.legalmama.com

@thelegalmama