

Maintaining Family HARMONY

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Preserving unity in any family isn't easy, but **Estate Planning** can help you prevent family division ahead of time and make sure your plans are carried out as you intended.



When my parents passed away, they had no Last Will, and we, their three children, were left to squabble over their assets—which ended for the probate court to sort out. Though the estate was settled 15 months later (and at great expense to us for attorneys and court costs), bitterness and rivalry remains between the three of us.

How should my husband and I prepare our estate planning now, so that we may avoid bestowing upon our children the horrific impact of squabbling, bitterness, rivalry and legal costs for them to pay after we have passed away?

Many of us either postpone, or ignore altogether, the subject of estate planning, which may subject the estate to a probate court proceeding to monitor the payment of debts and the distribution of the assets. This is costly in time, money and frustration, and, if you have no Will, you lose control over who will be appointed to handle the estate administration, how your assets will be distributed and who will take custody of your minor child and their assets.

The probate process takes several months and requires hiring a lawyer, paying court fees and publication costs. In the meantime, the assets are tied up and cannot be used to support the children. If you have minor children, a legal guardian must be appointed until they reach age 18, not only for the purposes of handling their property, but also to take care of their physical needs. State social services could take them into custody, at least until someone is appointed by the court to take care of them.

While any child age 18 or older can act as the guardian of minor children and as your personal representative, he or she will have to work with a lawyer to open the probate proceeding to transfer your belongings and will also need to open a guardianship proceeding to be appointed the legal guardian of your minor children and their inherited assets. Neither job is an easy one and would be quite a burden on a young adult.

There is also the possibility that your assets, if not properly managed, will be insufficient to provide for your children's needs for very long. Of course, this could mean the guardian child will have to get a job and postpone other plans they may have planned.

By doing estate planning, to place and manage your assets in a

Trust for the benefit of your children (including for their support, health and education), there is no need for a probate proceeding. You can also name a guardian to take custody of minor children until they reach age 18. An adult child could immediately attend college, and there would be someone else designated to manage and invest the assets and to take care of minor children until they reach an adult age specified in your estate plan.

Probate is virtually inevitable if you do no estate planning. Even a Last Will requires a probate proceeding; after all, the word “probate” means “to prove the Will.” By creating an effective estate plan, including a Living Trust, probate can be avoided, and your assets will be passed on to your heirs as you intend without the involvement of courts, lawyers, asset guardianships, high fees and delays. In addition, because you have clearly expressed how to manage your affairs at your death, a well crafted estate plan can alleviate disputes among your loved ones and help to maintain harmony in the family. ■

Kristen M. Jackson, attorney and founding partner of the Jackson Montoya Law Firm (407-363-9020), has over 29 years of experience in estate planning, business, real estate and family law. She has earned an AV rating from Martindale Hubbell signifying the highest level of professional excellence as obtained through opinions from members of the Bar and Judiciary.



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