Having a Baby Changes Everything: Guardianship Considerations for Parents Creating Wills

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Once couples have children, they are eager to get a plan in place for who will take guardianship of their children. Having children and not having a will or a selected guardian means parents are left to worry about what would happen in the event of their untimely death. For example, if both parents die, leaving no will, and minor children, any money the parents had will pass to the children. For children under the age of 18, the court would then need to supervise any money the children inherit in a conservatorship. This involves an attorney filing to have someone be appointed a conservator, and the conservator having to work with the court to manage the money, including the court having to approve any expenditures for the child. The conservatorship ends when the child turns 18, and at that point, all of the money in the conservatorship is turned over to the 18 year old.

A conservatorship can be avoided by creating a trust, either within a will (a testamentary trust), or within a stand-alone trust (like a revocable trust). Using a trust allows parents to control the timing and manner of distributions to a child. For instance, parents can choose to have all of the money held for the benefit of their child, in order to pay for expenses associated with education, health, maintaining the child's lifestyle, and support costs. The parent can then decide how old they would like a child to be when they have a right to receive any funds outright, so maybe parents decide that the child will get a right to withdraw upon college graduation, and then a third at age 25, 30, and 35. Or, some parents want to make sure that funds are always there for their child, so they choose to leave assets in trust for the child's lifetime.

Some parents have funds they want to give their children now, and so they set up standalone trusts for their children. These trusts can be created and funded immediately for the benefit of the child, allowing the parent to create and manage the funds in the trust for the exclusive benefit of the child. Some examples of these types of trusts are irrevocable gift trusts, and qualifying minor's trusts.

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Most parents create trusts for the benefit of their children upon their deaths. They do this through their last will and testament (testamentary trust) or through their revocable living trust. Both wills and revocable trusts are a part of a basic estate plan, and are easy to set up and maintain.

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