Take These Three Steps When Your Child Turns 18

If your child has reached the teenage years, you may already feel as though you are losing control of her life. This is legally true once your child reaches the age of 18 because the state considers her to be an adult with the legal right to govern her own life.

Up until your child reaches 18, you are absolutely entitled to access your child's medical records and to make decisions regarding the course of his treatment. And, your child's financial affairs are your financial affairs. This changes once your child reaches the age of 18 because your now-adult child is legally entitled to his privacy and you no longer have the same level of access to or authority over his financial, educational and medical information. As long as all is well, this can be fine. However, it's important to plan for the unexpected and for your child to set up an estate plan that at least includes the following three crucial components:

1. Health Care Proxy with HIPAA Release

Under the Health Insurance Portability and Accountability Act, or HIPAA, once your child turns 18, her health records are now between her and her health care provider. The HIPAA laws prevent you from even getting medical updates in the event your child is unable to communicate her wishes to have you involved. Without a HIPAA release, you may have many obstacles before receiving critically needed information, including whether your adult child has even been admitted to a particular medical facility.

Should your child suffer a medical crisis resulting in her inability to communicate for herself, doctors and other medical professionals may refuse to speak with you and allow

you to make medical decisions for your child. You may be forced to hire an attorney to petition to have you appointed as your child's legal guardian by a court. At this time of crisis, your primary concern is to ensure your child is taken care of and you do not need the additional burden of court proceedings and associated legal costs. A health care proxy (also called a health care power of attorney or Advance Directive, depending on your state) with a HIPAA release would enable your child to designate you or another trusted person to make medical decisions in the event she is unable to convey her wishes.

2. Durable Power of Attorney

Like medical information, your 18-year-old child's finances are also private. If your child becomes incapacitated, without a durable power of attorney you cannot access his bank accounts or credit cards to make sure bills are being paid. If you needed to access financial accounts in order to manage or resolve any problem, you may be forced to seek the court's appointment as conservator of your child.

Absent a crisis, a power of attorney can also be helpful in issues that may arise when your child is away at college or traveling. For example, if your child is traveling and an issue comes up where he cannot access his accounts, a durable power of attorney would give you or another trusted person the authority to manage the issue. An alternative may be to encourage your child to consider a joint account with you. However, this is rarely recommended because of the unintended consequences for taxes, financial aid applications, creditor issues, etc.

3. Will

Your child owns any funds given to her as a minor or that she may have earned. In the catastrophic event that your child predeceases you, these assets may have to be probated and will

pass to your child’s heirs at law, which in most states would be the parents. If you have created an estate plan that reduces your estate for estate tax or asset protections purposes, the receipt of those assets could frustrate your estate planning goals. In addition, your child may wish to leave some tangible property and financial assets to other family members or to charity.

While a will may be less important then the health care proxy, HIPAA release or durable power of attorney, ensuring that your child has all three components of an estate plan can prevent you, as a parent, from having to go to court to obtain legal authority to make time-sensitive medical or financial decisions for your child.

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