

Estate Planning for Your Eighteen Year Old: What You Need to Do Now May Surprise You

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If your child is turning 18, you may find yourself wondering where the time went. Their estate planning needs are probably the last thing on your mind (or theirs) as they prepare to enter adulthood. In fact, if you're like most parents, you're probably mentally preparing yourself to drop them off at the college of their choice and trying to enjoy the last bit of time you have with them before you're an empty-nester. Or if college isn't part of your child's plan, you may be helping them settle into their first full-time job or apartment hunt for their first place.

For most parents (and their 18 year-old children), estate planning isn't something they are thinking about. You may think because your child doesn't own anything of value yet and may not have children of their own, why would they need an estate plan? The answer is quite simple. Once your child turns 18, they are no longer a minor in the eyes of the law--they are now adults. Becoming an adult comes with certain privacy rights and independence under the law.

For example, if your child is away at school or on the job and falls ill, you may assume you would be contacted and able to direct their care, as you always have done. After all, to you they are still your little girl or little boy. Then you may be surprised to find out that may not be the case. An 18 year-old has rights under HIPAA (Health Insurance Portability and Accountability Act) and medical professionals will require a release to be signed by your child before sharing their health care information or records with you. The same rule applies to mental health records, which may be particularly difficult to access without your child's permission.

In the event your child is incapacitated, even temporarily, he or she will be unable to consent to you accessing their vital health records or authorize you to make decisions on their behalf. In the absence of such an authorization or release, you'll likely find you are unable to act on their behalf and that court intervention is required for you to do so. In absence of the estate planning documents described below, you would need to file a petition with a court to be named your child's legal guardian. This process can be time consuming, emotionally draining and expensive. For these reasons, it is a best practice to have your child put their wishes into written form as soon as they reach the age of majority (which is 18 years old in most states).

There are two critical documents that any adult over the age of 18 should have:

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1. **Medical Power of Attorney/Advance Directive with a HIPAA provision** – This document appoints an “agent” or “agents” to make health care decisions, including end-of-life care decisions on your child’s behalf. It also offers direction as to the decisions they would like their agent to make. This document should include a HIPAA release authorizing the agent to access important health records and may also incorporate provisions regarding mental health care.
2. **General Durable Power of Attorney** – This document is similar to the Health Care Power of Attorney in that it appoints an “agent” or “agents” to make decisions on behalf of your child. However, this document relates to your child’s financial assets. This may include granting the agent(s) access to bank accounts, scholarship funds from school, rental agreements or other similar accounts.

The Durable Power of Attorney can be a) springing or b) non-springing. A “springing” power of attorney is one in which the agent(s) have no authority to act unless and until the principal (your child) is incapacitated. A “non-springing” power of attorney is one in which the agents’ authority to act is immediate upon execution of the document. Both versions have benefits. A springing document may be advisable in situations where parents still intend to handle many financial matters on behalf of their adult child.

In summary, there is no time like the present to plan for the future. Doing so with your kids might seem awkward at first, but broaching the subject is a great way to acknowledge their new-found adulthood and reinforce their independence.