

Stewarding of a Life

ESTATE STEWARDSHIP

Katherine Charapich



How important is maintaining your child's quality of life in the event you are no longer on this earth? That love, protection, provision, and safety on which they have come to rely can be planned for in the event something happens to you.

The Code of Virginia provides in § 64.2-1700 Natural Guardians, that "the parents of an unmarried minor child are the joint natural guardians of the person of such child with equal legal powers and legal rights with regard to such child, provided that the parents are living together, are respectively competent to transact their own business, and are not otherwise unsuitable. Upon the death of either parent, the survivor shall be the natural guardian of the person of such child."

What happens upon the occurrence of death of both parents? Estate planning has tenets of risk management. It is rare that a parent of a minor child would knowingly leave anything related to their child to chance. Hence, using an estate planning document, like a Last Will and Testament, to plan in the event neither parent is able to care for a minor child is sound provision.

Take what recently occurred in my office. Different clients. Same goal. To shepherd and protect. The first to affect good stewardship of all ages, the second focusing on that of her minor children.

Spending time with clients often affords me the opportunity to learn from them. In the midst of the dialogue with the first client, a word was shared about the effects of folly on all generations. My mind immediately reflected on a book that I had read to my children when they were young that referenced a character called, "Loud Lady Folly."

Searching thru boxes hours after regular business hours were long gone, I found it! The children's book, "A Mouse in Solomon's House," was unearthed. The precious book filled with a storyline based on Proverbs 3:13 (KJV) "Happy is the man that findeth wisdom, and the man that getteth understanding," resonates with foundational truths written in prose for those with younger ears, but applicable for all. Those principles were shared from parent to child – Don't engage in folly. Be a good steward of your resources and time. Remain humble. Speak the truth. Most

importantly – Stay within the shadow of Wisdom.

These same precepts were concerns expressed by the second client as she referenced her minor children. The questions posed – Who can I trust to take care of my children if my husband and I are in a fatal accident? Am I able to select that person? Can I direct funds to be used for the benefit of my minor children? Will I be able to express my intent for the education of my children, their religious upbringing, and the fundamentals taught to them?

§ 64.2-1701 of the Code of Virginia - Testamentary Guardians, provides a means for a parent in her Last Will and Testament to nominate and appoint a guardian for a minor child in the event her spouse fails to survive her, or if her spouse cannot serve as guardian of their minor children. "Every parent may by will appoint (i) a guardian of the person of his minor child and (ii) a guardian for the estate bequeathed or devised by the parent to his minor child for such time during the minor's infancy as the parent directs. A guardian of a minor's estate shall have custody and control of the estate committed to his care. A guardian of the person of a minor other than a parent is not entitled to custody of the person of the minor so long as either of the minor's parents is living and such parent is a fit and proper person to have custody of the minor."

Perhaps most parents feel that there simply is no one who could take his or her place. Reasonable questions to ask when considering whether a person would make an appropriate guardian of your minor child include: Would they provide a stable and loving home environment? Do they have similar values? Do they have the same faith and practice of worship as you? Thought should also be given to what happens if you name a couple as the guardian(s) and they are separated or divorced. In addition, does the person you are considering as a guardian have children of her own? And, if so, would they be compatible with your children? What scenario would provide for the most continuity and least disruption? For example, if that person were to become guardian would your children be uprooted from their home, neighborhood, friends, and schools?

All of those questions were ones I contemplated when what seems like years ago, wanting to protect the interests of my then minor children, including addressing their care upon my death, executing

a Last Will and Testament with guardianship language was my first official estate planning document. Knowing that I had put in place a structure and provision for the care of those little ones who depended on me, brought me a great deal of peace.

Realizing that same peace is often experienced by a client who has memorialized care for her minor children in the event something happens to the client. Often a client has family members who have expressed a willingness to be named as guardian. In addition to family members, some clients also name trusted friends. When an individual is nominated and appointed in a Last Will and Testament as a guardian of a minor and is willing to accept such a role, that person is required to appear in the court in which the Last Will and Testament is admitted to probate within six months after the probate to accept the guardianship.

Until a parent who has minor children executes a Last Will and Testament, she will not have the confidence that she has affected all she could to ensure that relatives or strangers will not become embroiled in litigation regarding the care of her children upon her death. Taking no proactive action will leave the appointment up to the circuit court, which will appoint the person who the circuit court determines will serve in the best interests of the minor.

A parent who is addressing the care of her children may simultaneously address assets used for the care of her children. The same person who may be the one who will unconditionally love your children and raise them as if they are her own, may not be ideal at managing the assets for their benefit. Speaking with an estate planning attorney about who would be most appropriate in such a fiduciary role, and whether the origination of the administration of those assets should occur through your Last Will and Testament in a testamentary trust, or in a revocable trust is an essential component of consideration.

Our children are entrusted to us – they are our most important gift. Using wisdom imparted to us and taking action is paramount. Guarding our children now and putting in place structures and provisions for their future is good stewardship.

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