CHILDREN'S TRUST ISSUES

OK. So you finally got around to buying that life insurance policy. If anything should happen to your spouse or yourself, the other will be well taken care of. If something would happen to both of you, your children will be well provided for. You're feeling pretty good about that, as well you should be, but ...here's the rest of the story.

If something happens to both you and your spouse, insurance companies cannot pay proceeds to a minor child. The insurance company will insist that a conservatorship be established before payment is made. A conservatorship is an ongoing court supervised legal proceeding that keeps track of all the money or property for the child. It requires an annual accounting and court permission for most major expenditures. Ok, you are saying, the court is going to supervise any money that my minor child is receiving. That's a good deal. Things are all set up. You may be interested to know that this arrangement may terminate far sooner than you would desire.

The court will require a detailed annual accounting only until your child reaches the age of majority. At that time, the court's supervision terminates. What is the age of majority? In Kansas the age of majority is 18. If, for example, the life insurance proceeds in the conservatorship total $250,000.00, then, when your child reaches the age of 18, he or she can simply draw out the money. How long do you think it will last?

Even during those years in which the court is supervising your child's money, who is actually making the day to day spending and investment decisions? Since the conservatorship is established after your death, you will have had no input. You will not have chosen the conservator or been able to give your opinion about who would be best for the job. Anyone may step forward and request that they be appointed so you cannot be assured that it will be someone who is competent to manage a substantial amount of money.

The questions keep getting harder and more important. Who is going to raise your child? Do they live in your hometown or will your child be moving to an unfamiliar place? (In addition to losing you) Who is most likely to instill your family values in the child? Is the best candidate an individual or would a couple be preferable?

By drafting a **Minor Children's Trust** (sometimes referred to as a testamentary trust) within your Last Will and Testament or Revocable Living Trust, all these problems can be avoided. Careful drafting can help you specify who will raise your child if you and your spouse are not there to do it. You can choose who will be in charge of the money during your child's minority. The real key is to put the will in place and then change the beneficiary designation. If you are married, typically you will have your spouse as the primary beneficiary. You will want to name the Trustee of the Minor Children's Trust as the contingent beneficiary. It is usually never a good idea to make your "estate" the beneficiary of your life insurance because you then make the death benefit available to your own creditors at death.

As an added bonus, you can specify at what age your child will receive the money. For example, you might want to arrange for your child to receive a portion of his inheritance at age 25, an additional amount at age 30 and the remaining portion at age 35. This allows you to make the critical decisions taking into account your child's maturity level and needs.

This kind of estate plan is not complicated or expensive**.** A competent estate-planning attorney can guide you in exploring these extremely personal areas of family and finance. The cost of putting these documents in place is minimal; when compared to the costs of a court supervised conservatorship proceeding.

The real savings comes in knowing that if something happens to you and your spouse, your children's future will not depend on a Probate Judge who does not know your family, nor will it depend on well intentioned, although sometimes misguided, relatives. You and your spouse have the responsibility for making these decisions and an estate plan can help you carry out those responsibilities.

We hope you find this information helpful. As you know, every situation is unique. Please get advice from a knowledgeable estate-planning attorney to ensure the best outcome for you and your family.

Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners,* a select group of nationally known and recognized Estate-planning Attorneys.