

TAX & ESTATE PLANNING ALERT

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Why college kids need an estate plan

It is an exciting rite of passage when high school graduates move on to college. Equally exciting is when an undergraduate heads to graduate school. Some will be moving far from home while others will be staying in their hometown. And while students focus on packing their things, organizing their class schedules and sorting out their future professions, not to be forgotten is the importance of getting their legal documents in order.

The age that changes everything

Frequently overlooked among the list of to-dos is the fact that once a minor turns 18, they are legal adults, maturity notwithstanding. Why is this important? Because once a child is an adult, a parent's ability to make medical and financial decisions for their child terminates. Consequently, if an emergency should arise, a parent will not have an automatic right to be notified or even assist their adult child.

Consider the scenario if a child should suffer a medical emergency while at school, whether as a result of a car accident, a sports activity or a medical illness or condition. As a minor child, the parent would naturally have legal authority to select the medical treatment facility, communicate with doctors, obtain information about their child's condition and treatment options. As an adult child, those rights belong to the child. A parent does not have any legal right to receive medical information or participate in any medical decisions without the consent of the child. If the adult child is unconscious or otherwise incapacitated, the parent may be required to seek court appointment as a guardian (also known as a conservator in some states) to obtain the legal authority to make medical decisions on behalf of their adult child. This can be costly and time-consuming, and particularly challenging in an emergency situation.

Avoiding unfortunate situations

By having the adult child execute a Healthcare Directive, they can appoint their parents (or any other adult) to serve as agent to make medical decisions for them should they become incapacitated. This includes consenting to treatments, selecting hospitals and care providers, and obtaining prescriptions and medications. It also allows the adult child to inform the agent of their wishes to be removed from life support in circumstances where they are permanently incapacitated. In some states, the Healthcare Directive further allows an adult child to identify burial and organ donation instructions. Typically, a HIPAA release will either be incorporated into the Healthcare Directive or executed as a separate document to allow the agent access to medical information and records.

It may also be helpful for an adult child to execute a Durable Power of Attorney for Financial Management. Consider again the scenario of the medical emergency. During this time, there may be insurance claims, student loan issues, housing concerns, credit card bills and other ongoing expenses that require attention while the adult child is incapacitated. By executing a Durable Power of Attorney, the parent, as the appointed agent, can assist with all such financial matters until the adult child is ready and able to resume these responsibilities. The agent can also communicate with the school to access grades or even terminate enrollment if the child is unable to resume their studies.

Even in non-emergency situations, parents can use a Durable Power of Attorney to assist their adult children with their transition into adult responsibilities. In states where a Durable Power of Attorney can be enacted without establishing incapacity, parents can assist their adult children in a variety of areas, including car purchases, housing leases, and establishing and managing bank and credit card accounts.

Furthermore, Healthcare Directives and Durable Power of Attorneys are valid outside of an adult child's home state. Whether an adult child attends school across the country, or is travelling over holidays or school breaks, the documents will still be valid and accepted in other states.

Establishing a Last Will and Testament

Another important document that should be considered is a Last Will and Testament. This document allows the adult child to designate who will receive their assets and who will be in charge of closing out their affairs. While most young adults will not have significant monetary assets, most will own a bank account or a vehicle. There may also be personal property items, such as musical instruments, sporting equipment or sentimental items, that an adult child may want to bequeath to others. For student athletes who may start to monetize their name, image and likeness during the school year, having a Last Will and Testament becomes even more important.

An alternative to a Last Will and Testament is for the adult child to either have a joint account with a parent or designate their parent as a Payable on Death beneficiary of the bank account. However, this will address only that particular account. If there are other accounts or assets in the adult child's name, each will require joint ownership or Payable on Death designations.

While no one expects anything less than an enriching and exciting college experience, it never hurts to prepare for the unexpected. Parents should take the time necessary to work with their adult child and trusted counsel to establish basic estate planning documents before the adult child heads to campus.

For more information, please contact [Michelle Wong-Halabi](#) or any member of Porter Wright's [Tax, Estate Planning and Personal Wealth Practice Group](#).