

Old Enough To Live Away From Home? Old Enough To Plan!

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Turning eighteen is one of life's milestones. It's a time when many are graduating from high school and going off to college or to find a job and an apartment. A child is now an adult in many respects, although he or she may not always act like one, or even want to accept that fact. Nonetheless, in the eyes of the law, at eighteen the powers, privileges and liabilities of adulthood are vested overnight. Most newly-minted adults have lots of other things on their minds, however, so it falls to parents to advise their children to arrange their legal and financial affairs. Here is a quick list of items that parents of new adults should consider discussing and dealing with:

Bank Accounts

Your son or daughter is now old enough to enter contracts and so may have checking, savings and even brokerage accounts in his or her name alone; alternatively, a parent may remain as a joint tenant, but control of the account is given to the child (see the discussion

of joint tenancy, below). This is a time when many parents, if they haven't done so already, start to teach their children about managing their own finances.

Durable Power of Attorney

For convenience, or in anticipation of possible incapacity, a child should give one or both parents (and in the case of divorced parents, specify the order) a durable power of attorney to act on the child's behalf for any financial matters. Without this document, if a person is incapacitated, whether by accident or health condition, a court may need to appoint a guardian or conservator to act for the person.

Health Care Proxy

To cope with a medical problem serious enough to prevent your child from making or communicating medical decisions, he or she should designate one or both parents or older siblings as an agent to make medical decisions on his or her behalf. Usually only one person at a time can be the child's designated health care decision-maker. Signing this document should prompt a conversation not only about these extreme circumstances but about safe behavior in general.

HIPAA Authorization

Under federal privacy laws, your child's medical information may not be disclosed without prior authorization, which should be given to the parents and any other agents designated in the health care proxy and durable power of attorney.

Wills and Trusts

If your child has any assets, he or she should have a will to designate who will inherit the property and who will serve as executor. In some families it may be desirable to send the assets to siblings rather than "back upstream" to the parents. In other cases it may be desirable for management and tax purposes to leave assets to a trust (or place the assets in a trust established by the child) for other

family members. The options are highly fact-sensitive and should be discussed with a skilled estate-planning attorney.

Joint Property

True joint property comes with a "right of survivorship". This means the property is deemed as owned pro rata among the joint tenants, and a deceased joint tenant's share passes to the other joint tenants by operation of law, rather than through a will. As to bank accounts, if a parent is a joint owner "for convenience" it is important to document that fact if the intent is that the property pass to persons other than the parents. Only clear expression of such intent will defeat the presumption that the property passes to the joint tenants. As to real estate, discuss with an attorney whether a child should be a joint tenant *before* making any transfer, as such transfer could have negative consequences.

A word about prior gifts

Many parents may have made transfers to a child using "UTMA" (Uniform Transfers to Minors Act) registration. Such property will fall under the sole control of the child at age 21. Some new adults can deal responsibly with such property, but many cannot. An estate planning attorney can help guide the family through the pitfalls here. In some cases a trust to be established by the child is a viable solution.

It is never too soon to begin planning for the exigencies of adult life. The Trusts & Estates Group at Burns & Levinson LLP has guided many families through this transition. If a child of yours is about to "face the music" of adulthood, feel free to contact us for assistance.

For questions regarding this Estate Planning Advisory, please contact your Burns & Levinson estate planner or attorneys Clifford Cohen at 617.345.3286 / ccohen@burnslev.com or Malcolm Starr at 401.861.2601 / mstarr@burnslev.com.