



Legal Planning for Your College-Bound Child: How to Build More Peace of Mind

Summer is a time of transition for most families with school-age children. For families about to send a child off to college, it's a good time to review the important legal issues that affect 18- to 21-year-olds, including how to best prepare for what's ahead—both known and unknown (much of the advice here applies recent college graduates as well).

First, remember that 18-year-olds are legally "adults" for most purposes. Accordingly, parents no longer have the same access to information or control over their children after this age. Proper planning for the legal issues that arise with a college-age child can help bring everyone some peace of mind. Here are some key issues and considerations:

Durable Power of Attorney

What if, for example, your child were studying abroad or, perhaps, became temporarily or permanently incapacitated? A durable power of attorney can allow a parent to handle financial matters, such as banking or signing tax returns, on behalf of their son or daughter. This can eliminate the need to have a court-appointed guardian or conservator. If the student's parents are separated or divorced, it is especially important to pin down which parent should handle financial matters on the student's behalf.

Health Care Proxy

A child over 18 has authority to make his or her own health care decisions, including whether or not to disclose information to parents or anyone else. Under federal law, information regarding your adult child's health cannot be disclosed to anyone other than your child. A health care proxy can designate a parent or other person to have access to the student's medical information and make medical decisions for the student in the event the student becomes incapacitated. As with the durable power of attorney, designating which parent has primary authority to act on the student's behalf (and who is to be an alternate agent) is especially important if the student's parents are separated or divorced.

Will and Trust Instruments

No one wants to consider the possibility that a young person may become incompetent or die. While it may be a difficult issue to address, it is an important consideration.

While the estate tax is suspended for 2010, it is scheduled to reappear next year. For college students who have significant assets in their own name, it is important to consider whether a will or revocable trust is necessary. If a person dies without a will, the laws of intestacy determine how that person's assets will be distributed. If the college student has no children of his or her own, intestacy laws would generally provide for distribution of the student's assets to his or her parents. From an estate planning perspective, this is usually not a favorable result since it will add to the size of the parents' taxable estate.

A better alternative may be for the student's property to pass to any siblings (outright or in

trust) or to other designated beneficiaries. The will or trust also allows your child to designate the person in charge of the child's assets.

A revocable trust may also be a helpful and efficient vehicle to manage any investment assets held in the student's name. The student, their parents and, potentially, one or more professional fiduciaries can administer the trust for the student's benefit and encourage the student to take an active role in investment and budgeting decisions. Assets held in the student's trust will not need to pass through probate.

Passwords

From online banking and bill payment to email and social networking sites such as Facebook, young adults depend on password-protected websites. Whether or not they prepare an estate plan, young adults should make available to their parents a hardcopy of the child's usernames and passwords to their online accounts so that parents can access the accounts should the child become incompetent or die. Websites that store passwords have varying degrees of security but may be an option for young adults who are hesitant to give their parents this information, even in a sealed envelope or held by a third party.

Disclosure of Information/ Waivers

The Family Educational Rights and Privacy Act ("FERPA") is a federal law that restricts colleges and universities from releasing a student's educational records without his or her permission. Although FERPA allows for many exceptions, interpretations and policies vary by college.

Look for written permission forms students receive over the summer or ask the college or university directly for its disclosure policies and waiver forms.

Insurance

Most college students are covered by their parents' health insurance policies. The recent federal health care reform provided a benefit to young adults, allowing them to stay on their parents' health insurance policies as dependents until the age of 26. In addition, many colleges also offer low-cost health care plans for students who are not covered by their parents' plans. Students are also usually covered by their parents' personal property and casualty insurance.

Parents should also review their homeowners policy to determine if their child's belongings would be covered when staying in a college dorm. In addition, if your child is renting an apartment off-campus, or their first apartment post-graduation, the lease may require that they obtain a separate insurance policy covering the contents of the apartments.

"Life"

Financial responsibility is another part of your young adult's education. If you have not discussed financial matters with your children before they go to college, we recommend that you do so now and consider the following:

- *Bank Accounts and Credit Cards.* The student should get used to writing checks, balancing checkbooks, and paying bills on-time. Getting a credit card in his or her own name, in addition to one you might get for him or her, will enable your child to establish his or her own credit history.
- *Annual Gifts.* If you have been making annual gifts, you might make your children

aware of such gifts.

- **Employment.** If they're employed while in school, your child will need to think about state and federal income taxes. Students with earned income can also start a Roth IRA account.
- **Registration.** And, of course, as your child turns 18, it is important to remind him or her to register to vote. Male children must register with the Select Service.

For more information contact your Hemenway & Barnes attorney or the authors of this advisory to discuss the appropriate planning for you and your adult child. For most people, a few basic documents can provide tremendous peace of mind. We would also be happy to review any school-specific disclosure policies and waivers.

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