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Estate Planning With Minor Beneficiaries: What Are My Options?

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As they say, "the best laid plans of mice and men often go awry." The same is true with respect to estate planning when minors are involved.

When a client has minor children or other minor intended beneficiaries, it is important as attorneys and estate planners that we consider all available options, the desired level of oversight over the minor's funds, and the amount of flexibility to be given to the fiduciary who will administer the funds.

We must also consider the potential outcome if no plan is implemented – how will the client's funds pass in intestacy, and will they pass outright to a minor?

This article will address some of the options available to clients with minor beneficiaries, including the options available when assets pass to minors in intestacy, under a Will or Trust, or through other designated accounts.

A Minor's Inheritance Rights in Intestacy

The Surrogate's Court Procedure Act (SCPA) refers to minors as "infants," and defines an infant as any person under age 18. SCPA §103. However, for purposes of the appointment of a guardian of an infant, the term "infant" also includes a person who is under age 21 who consents to the appointment of a guardian after age 18.

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EPTL §4-1.1 governs the distribution of a decedent's estate in intestacy. Where a decedent is survived by a spouse and children, the spouse receives $50,000 plus one-half of the residue, and the decedent's issue receive the balance by representation (i.e., children and issue of predeceased children).

Where a decedent is survived by children but no spouse, the entire estate passes to the children (or issue of predeceased children, by representation). EPTL §4-1.1(a)(1), (3). Many clients will be surprised to learn that their children will inherit from their estate, and have an incorrect assumption that their spouse will inherit everything.

It is important to explain to clients that without a thoughtful estate plan, their minor children (or grandchildren if any children predecease them) may

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inherit significant assets outright, leading to potential pitfalls, as described herein.

If a client comes to you for advice on administering an estate where a minor will inherit funds outright, there are options depending on the amount at issue. If a minor is inheriting $10,000 or less, the funds may be paid to a parent or competent adult with whom the minor resides, for the "use and benefit" of the minor. SCPA §2220.

If a minor is inheriting more than $10,000 outright, the funds must be paid to the court-appointed guardian of the property for the minor, which process is governed by Article 17 of the SCPA. This is typically the surviving parent, but may be another family member or person interested in the minor's welfare if both parents are deceased or the surviving parent is not qualified or is unable to serve. SCPA §§1703, 1705.

It is important to explain to clients that without a thoughtful estate plan, their minor children (or grandchildren if any children predecease them) may inherit significant assets outright, leading to potential pitfalls, as described herein.

A parent may also nominate a property guardian in their will, but one parent's "attempt to designate someone other than the other parent as guardian by will is void unless the surviving parent is disqualified." Turano & Radigan, *New York Estate Administration*, §9.03[c] (2021) [hereinafter "Turano & Radigan"].

A property guardian appointed under Article 17 is a fiduciary and has a fiduciary duty to manage and protect the guardianship funds. The court may require the guardian to post a bond (SCPA §1708[1]), and has oversight with respect to how the guardianship funds are invested and held.

The guardian "may hold the infant's assets with a designated person (such as the clerk of the court [or a bank])," or may "enter into an investment advisory agreement with a bank…" and invest the funds pursuant to the Prudent Investor Rule (EPTL §11-2.3). Margaret Valentine Turano, Practice Commentaries to SCPA §1708 (McKinney's 2011) [hereinafter "Practice Commentaries"]. Distributions from the guardianship account will usually require court approval, which is not freely granted.

Indeed, the court may authorize a withdrawal "only if it is needed to provide for necessities or education that cannot otherwise be met by a person responsible for the infant's support." *Matter of Darlene C.*, 96 Misc.2d 952 (Sur. Ct., Bronx County 1978).

Depending on the method of investment, annual accountings may also be required. Turano & Radigan §9.04[b][2]. The funds remain in the guardianship until the infant reaches age 18, until 21 with the infant's consent, or earlier if the guardianship is terminated by the court. SCPA §1707(2).

When the infant reaches majority, the guardianship funds are paid out directly to the infant, unless the court directs otherwise. Practice commentaries to SCPA §1708. The testator will have no control over the distribution of the funds and no ability to hold back funds from a fiscally irresponsible beneficiary.

Planning for Minor Beneficiaries

To avoid this result, clients with minor beneficiaries should consider executing a Will or Trust to govern the disposition of the minor's bequest. As set forth above, without a properly implemented estate plan, a minor inheriting more than $10,000 outright will cause the estate or property guardian to incur additional time and administrative cost, including a bond, annual accountings, and the time and expense associated with petitioning for guardianship and withdrawals from the guardianship funds.

To avoid these potential pitfalls, clients should consider establishing a trust for the minor, and funding the trust with the bequest, rather than leaving the bequest to the minor directly.

Clients have several options in this regard. At a basic level, the client may establish a testamentary trust for the minor's benefit in their Will, by funding the trust with a particular amount and nominating a trustee to administer the trust for the minor's benefit. The client may set conditions on distributions

and provide for limitations on the trustee's discretion to make distributions, such as for education or medical expenses.

The client may also extend the time period in which the funds will be held in trust, to a specific age or for the life of the child. This is often an attractive option for clients who do not want their children to inherit large sums at a young age when they may not be fiscally responsible, or when the child has debts or other personal considerations and it would not be ideal for the child to inherit the assets outright.

Notably, a testamentary trust established under a Will is only effective upon the admission of the Will to probate, and the Surrogate's Court will issue letters of trusteeship to the trustee. Any change in trustee will require a subsequent petition for the issuance of successor letters of trusteeship.

Alternatively, the client may consider executing a revocable trust, including a sub-trust established thereunder for the benefit of the minor, to be funded upon the client's death. In such a case, no probate proceeding is required to fund the trust, any change in trustees will be governed by the terms of the instrument, and will not require subsequent court filings.

A Will may also appoint what is known as a "donee of a power during minority," such that the "infant's interest in an estate shall vest immediately on the decedent's death but shall be held by a named person, such as the executor or the child's parent or guardian, until the child reaches 18 or 21." Turano & Radigan at § 9.05[b].

The donee is a fiduciary and must be issued letters (Practice Commentaries to SCPA §1714), and "has whatever powers the testator gave him by the will, typically to use income and principal in his discretion for the child's support and education until the child is 21 and then to pay the principal outright to the child." Turano & Radigan at §9.05[b]. As with the case where a property guardian is appointed, the testator will have no oversight of the funds after the child reaches the age of majority at which time the funds vest in the child.

Lifetime Gifts to Minors

Clients may also consider making lifetime gifts to minor beneficiaries. New York's Uniform Transfers to Minors Act (UTMA), set forth in Article 7 of the Estates, Powers and Trusts Law "governs all transfers made after Dec. 31, 1996 to a custodian for persons under 21 years." Practice Commentaries to EPTL §7-6.1.

At a high level, an UTMA account allows a donor to transfer assets to a child, by designating a custodian to manage and spend the money for the beneficiary. The statute requires that the asset be titled to "[Name of Custodian], as custodian for [Name of Minor] under the New York Uniform Transfers to Minors Act." EPTL §7-6.3.

Note that the same designation may be used to name a minor as the beneficiary of a particular asset upon the client's death, such as a life insurance policy or retirement account. A client may nominate successor custodians by Will, Trust, deed, or other written instrument. EPTL §7-6.3.

The custodian may expend the funds for the minor's use and benefit during the period of minority, without court order. EPTL §7-6.14. Upon age 21 (unless age 18 is affirmatively elected by the donor), the remaining property vests in and must be transferred to the beneficiary by the custodian. EPTL §§7-6.20, 7-6.21.

When minor beneficiaries are involved, careful consideration must be given to structuring their bequests, whether by Will, Trust, beneficiary designation, or lifetime transfer. Estate planners should be aware of the pros and cons of each option.