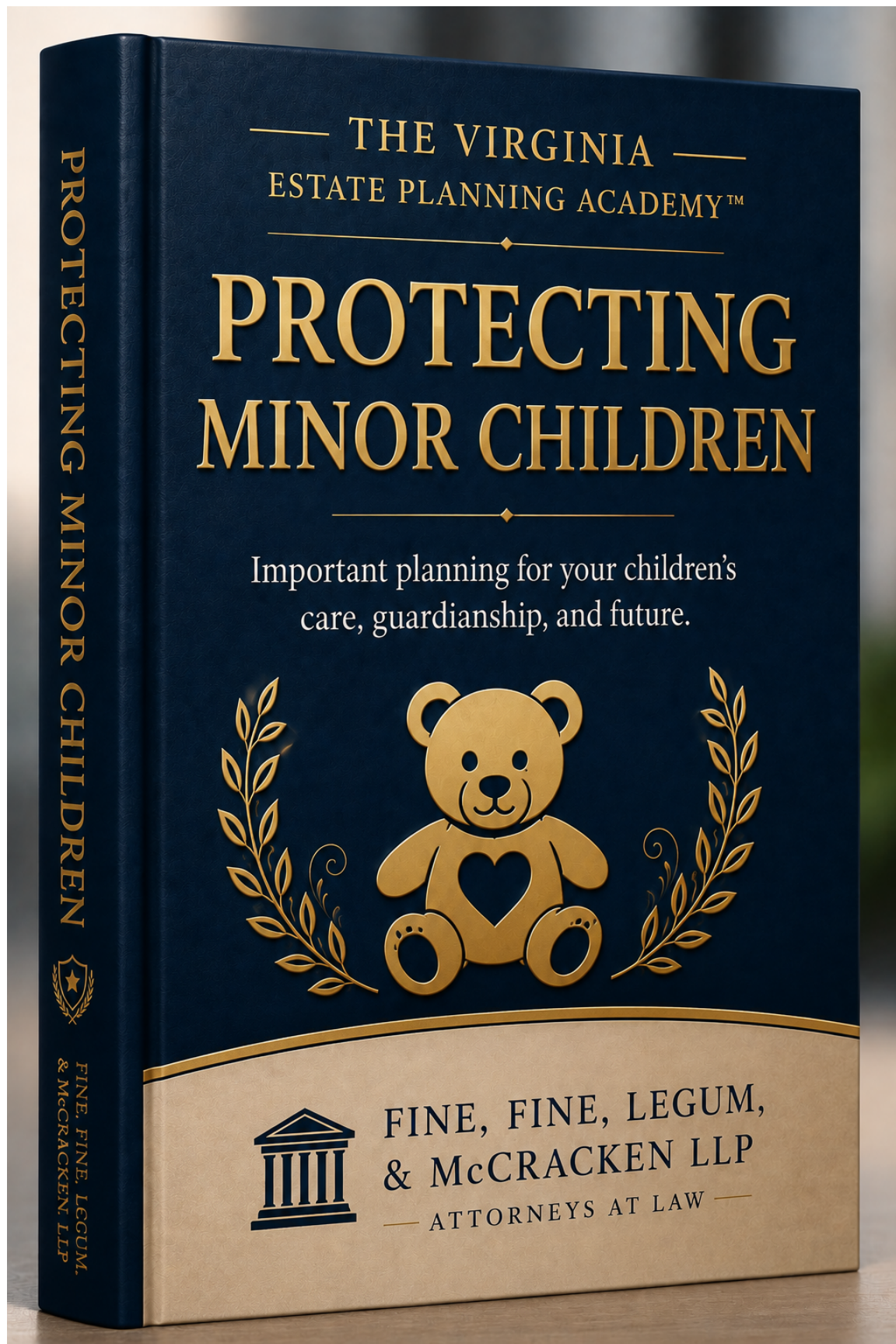




Virginia Estate Planning Academy™

Protecting Minor Children Through Estate Planning

Planning Today for Their Care, Security, and Future

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Serving Individuals and Families Throughout Virginia

Welcome

For parents of minor children, estate planning involves questions that go far beyond deciding who should inherit property.

Who would care for your children if you were no longer able to do so?

Who would manage the money and property you leave for them?

At what age should a child receive control of an inheritance?

Would the person you trust to raise your children also be the best person to manage their finances?

And would the people you choose have the financial resources and legal authority necessary to carry out your wishes?

These are difficult questions to contemplate, which is one reason parents sometimes postpone addressing them. But thoughtful planning allows you to make these decisions deliberately rather than leaving important questions unresolved during an already difficult time.

This guide introduces some of the estate-planning considerations Virginia parents should understand when creating a plan designed to protect minor children.

1. Protecting a Child Requires More Than a Will

A will is an important part of planning for minor children, but protecting a child involves more than simply naming that child as a beneficiary.

A comprehensive plan should consider at least two separate issues:

Who will care for the child?

and

Who will manage the child's inheritance?

Those responsibilities are related, but they are not the same.

Your estate plan can help establish your wishes concerning both the child's personal care and the management of property you leave for the child's benefit.

2. Choosing a Guardian for Your Children

One of the most important decisions a parent can make in an estate plan is whom to nominate to serve as guardian of a minor child if a guardian becomes necessary.

A guardian is responsible for matters involving the child's personal care and well-being.

When considering potential guardians, parents may want to evaluate factors such as:

- The person's relationship with the child.
- Parenting philosophy and values.
- Age and health.
- Emotional stability.
- Existing family responsibilities.
- Geographic location.
- Home environment.
- Willingness to assume the responsibility.
- Ability to provide a stable and supportive environment.

There may not be a perfect candidate.

The goal is to identify the person or people you believe would be best able to care for your child when you cannot.

3. Why Your Guardian Nomination Matters

Parents sometimes assume that family members will simply decide among themselves who should raise the children.

That is not a reliable estate plan.

If a guardian becomes necessary, the appropriate court ultimately determines the appointment based upon applicable law and the circumstances before it.

A parent's properly documented nomination can provide important evidence of the parent's wishes and help the court understand whom the parent trusted to assume that responsibility.

Without clear planning, relatives may disagree about what the parent wanted or may not know at all.

Estate planning gives you the opportunity to put your wishes in writing before they are ever needed.

4. Consider Naming an Alternate Guardian

Your first choice may not always be able to serve.

Circumstances can change because of:

- Illness.
- Death.
- Divorce.
- Relocation.
- Changes in family relationships.
- Financial circumstances.
- The person's own responsibilities.
- A decision that the person is no longer willing or able to serve.

For that reason, consider identifying one or more appropriate alternatives.

The goal is to create a plan that remains workable even if circumstances change.

5. Who Will Manage Your Child's Inheritance?

Choosing who will raise your child is only part of the planning process.

You must also decide **who should manage property left for the child's benefit**.

A minor generally cannot simply manage a substantial inheritance independently.

Depending upon how an estate plan is structured, another individual or institution may need to manage inherited property until the child reaches an appropriate age or other conditions established by the plan are satisfied.

This creates an important distinction:

Guardian: primarily responsible for the child's personal care.

Trustee or other financial fiduciary: responsible for managing property held for the child's benefit under the applicable arrangement.

The same person may potentially serve in both roles, but parents should not assume that is automatically the best choice.

Someone may be an excellent caregiver but not an experienced financial manager or vice versa.

6. Should a Child Receive an Inheritance at 18?

This is one of the most important questions parents should consider.

Even when a young beneficiary becomes legally capable of controlling property, that does not necessarily mean immediate access to a substantial inheritance is what the parent would have wanted.

Consider what an 18-year-old might suddenly be asked to manage:

- Life insurance proceeds.
- Investment accounts.

- Real estate.
- Retirement benefits.
- Savings.
- Business interests.
- Other inherited property.

A carefully designed estate plan can potentially provide a structure for managing property beyond the child's minority rather than requiring the entire inheritance to be distributed outright at the earliest possible age.

7. Using a Trust for a Child's Inheritance

A trust can allow parents to establish rules for how inherited property should be managed and used for a child's benefit.

Instead of transferring a substantial inheritance directly to a young beneficiary, the property can potentially remain under the management of a trustee.

The trust can establish how funds may be used for purposes such as:

- Education.
- Housing.
- Healthcare.
- Support and maintenance.
- Other needs identified in the trust.

The parent can also establish when and under what circumstances the beneficiary may receive greater control over the property.

For some families, this may involve distributions at specified ages. For others, continued trust management may be appropriate for a longer period.

The appropriate structure depends upon the family, the assets involved, and the parent's objectives.

8. Choosing a Trustee

The trustee responsible for a child's inheritance should be selected carefully.

Consider whether the person is:

Trustworthy

Will this individual follow your instructions and place the child's interests first?

Financially Responsible

Can the person manage assets, maintain records, and make thoughtful financial decisions?

Able to Exercise Judgment

Can the trustee distinguish between a reasonable need and an unnecessary expenditure?

Capable of Working with the Guardian

If different people serve as guardian and trustee, can they communicate effectively concerning the child's needs?

Available for the Responsibility

Is the person realistically willing and able to serve for the period contemplated by the plan?

You may also want to consider a successor trustee in case your first choice cannot serve.

9. Life Insurance Requires Coordination

Life insurance can be an important source of financial protection for children after the death of a parent.

But the beneficiary designation should be coordinated carefully with the overall estate plan.

Simply naming a minor child directly as the beneficiary of a substantial policy can create complications because the child generally cannot independently receive and manage the proceeds.

Instead, parents should consider how insurance proceeds are intended to be managed and whether beneficiary designations should coordinate with a trust or another appropriate planning arrangement.

Life insurance and estate-planning documents should therefore be reviewed **together**, rather than as unrelated financial products.

10. Don't Forget Retirement Accounts and Other Beneficiary Designations

Life insurance is not the only asset that may transfer through a beneficiary designation.

Parents may also have:

- Retirement accounts.
- Employer benefits.
- Investment or financial accounts with beneficiary designations.
- Other contractual death benefits.

These designations can have significant consequences for minor beneficiaries.

A beautifully drafted will or trust cannot accomplish its intended purpose if major assets are directed elsewhere through inconsistent beneficiary designations.

An estate-plan review should therefore include an inventory of **how each significant asset will pass at death**.

11. What If Both Parents Die Together?

It is uncomfortable to consider, but an estate plan should address the possibility that both parents could die in the same accident or within a relatively short period.

Parents should consider:

- Who should serve as guardian?
- Who should serve as alternate guardian?
- Who should manage the children's inheritance?
- Where would the children live?
- How would their ongoing expenses be paid?
- How should inherited property be invested and managed?
- At what age or stages should the children receive control?
- How will life insurance and other benefits coordinate with the plan?

Planning for a low-probability event can prevent enormous uncertainty if the unexpected occurs.

12. What If a Parent Becomes Incapacitated?

Protecting children is not solely about planning for a parent's death.

Serious illness or injury may leave a parent alive but unable to manage financial or healthcare matters.

A comprehensive estate plan may therefore include:

- A durable power of attorney.
- An advance medical directive.
- Appropriate trust provisions.
- Coordinated beneficiary and asset planning.

These documents help ensure that there are people authorized to manage important responsibilities if a parent cannot act personally.

A family's estate plan should contemplate both **death and incapacity**.

13. Planning for a Child with Additional Needs

Some children may require more specialized planning.

A child with a disability, significant medical needs, or circumstances that may affect eligibility for needs-based public benefits may require an estate-planning structure specifically designed around those concerns.

Leaving property outright to such a beneficiary can potentially create consequences that parents did not intend.

These situations should be evaluated individually with qualified legal counsel so that the estate plan addresses the child's long-term needs and applicable benefit considerations.

14. Blended Families Require Additional Planning

Estate planning can become particularly important when children are part of a blended family.

Parents may have children from prior relationships, stepchildren, a new spouse, or different financial responsibilities among family members.

Without careful planning, assumptions about who will receive property or care for children may not match the legal result.

A blended-family estate plan should clearly address:

- Which children are intended beneficiaries.
- How a surviving spouse is to be provided for.
- How assets are ultimately intended to reach children.
- Who should manage children's inheritances.
- Beneficiary designations.
- Guardianship considerations where applicable.

Clear documentation can help reduce ambiguity and conflict later.

15. Keep Your Plan Current as Your Children Grow

The estate plan you create when your child is two years old may not be the plan you want when that child is seventeen.

As children grow, circumstances change.

Your original guardian may become older or unavailable. Family relationships may change. Your assets may increase substantially. Your child's needs and abilities may become clearer.

Review your plan after significant events such as:

- Birth or adoption of another child.
- Marriage or divorce.
- Death or incapacity of a guardian or trustee.
- Relocation.
- Major changes in finances.

- Changes in your child's health or needs.
- Changes in family relationships.
- Significant changes in insurance coverage.

Estate planning should evolve with your family.

16. Common Planning Mistakes Parents Make

Failing to Nominate a Guardian

Parents may know whom they would want but never formally document that choice.

Naming Minor Children Directly Without a Management Plan

An inheritance needs a structure when the intended beneficiary is too young to manage it appropriately.

Assuming the Guardian Must Also Manage the Money

The best caregiver and the best financial manager may be different people.

Forgetting Beneficiary Designations

Insurance and retirement benefits may not follow the instructions contained in a will.

Creating a Plan and Never Updating It

The people you selected years ago may no longer be appropriate.

Failing to Plan for Incapacity

Children still require financial stability and responsible decision-making if a parent becomes incapacitated rather than dies.

Not Telling Anyone About the Plan

The people you have selected should generally know that you are asking them to assume significant responsibilities.

17. Minor Children Estate Planning Checklist

Parents should be able to answer:

- ☐ Who would I want to care for my children if I could not?
- ☐ Have I formally documented my guardian nomination?
- ☐ Who is my alternative?
- ☐ Have I spoken with the people I selected?
- ☐ Who should manage my children's inheritance?
- ☐ Should the guardian and financial decision-maker be the same person?
- ☐ At what age should my children control inherited property?
- ☐ Should an inheritance remain in trust beyond age 18?
- ☐ Are my life insurance beneficiaries coordinated with my estate plan?
- ☐ Are my retirement-account beneficiary designations coordinated with the plan?
- ☐ Does my plan address both death and incapacity?
- ☐ Does one of my children have circumstances requiring specialized planning?
- ☐ If I have a blended family, does my plan clearly protect the people I intend?
- ☐ Have my guardian and trustee choices remained appropriate?
- ☐ Would the appropriate people know where to locate my estate-planning documents?

If several of these questions do not have clear answers, your family's estate plan may need attention.

Taking the Next Step

For parents, estate planning is ultimately about more than property.

It is about making thoughtful decisions today concerning **who will care for your children, who will protect what you leave for them, and how the resources you worked to create will support their future.**

No document can eliminate the difficulty of an unexpected loss. But a carefully designed estate plan can provide something enormously valuable during that time:

direction.

Instead of leaving loved ones to guess what you would have wanted, you can document your choices, establish appropriate decision-makers, and create a financial structure designed around your children's needs.

Fine, Fine, Legum & McCracken, LLP can help Virginia parents develop an estate plan designed to protect their children and provide greater clarity for the people who may someday be called upon to care for them.

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Educational Disclaimer

This guide is provided for general educational and informational purposes only. It is not legal advice and does not create an attorney-client relationship. Guardianship, trust, beneficiary-designation, and estate-planning decisions depend upon individual circumstances and applicable law. A court retains authority over guardianship determinations where applicable. You should consult a qualified Virginia attorney regarding your specific situation.