

# WILLS, TRUSTS & ESTATES:

## PLAIN AND SIMPLE Should You Create Trusts for Your Kids?



### legally speaking

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If your children are under age eighteen, you should have trusts for them in your Wills, in the event you and your spouse should die before all your children reach age 18. If minors receive assets prior to reaching age eighteen, a guardian of the property must be appointed to take care of those assets for your child. A guardian of the property must be bonded (which requires annual premium payments), and the guardian must file a formal accounting with the court annually, along with a petition for approval. The guardian will need a lawyer, and perhaps an accountant, to assist with satisfying these requirements. The costs of all this are paid from your child's funds.

Alternatively, in your Will, you could direct that a trust be created for each of your minor children at the death of you and your spouse. You can provide that the Trustee need not post a bond, and a Trustee is not required to file an accounting with the court every year. Creating a trust for a minor child is generally procedurally easier and less costly than leaving assets outright to a minor child and having a guardian of the property appointed.

Even if you expect your children to be over age eighteen by the time you and your spouse die, you may want to consider keeping assets in a trust for your children to "protect them from themselves" until they reach a certain age when you think they will be financially and otherwise mature. This could be age 30 or 35, or older. You may even want the trust to continue for their lives to protect the assets in the trust from future claims of your child's creditors, including in the event of your child's divorce. (Awful and hard to think ahead like that, I know.) Assets that continue to be held in the trust are not subject to the claims of a child's current or future creditors.

Trusts created for your children can be extremely flexible. The trustee can have the power to make liberal distributions to the child for any reason you would like, or for no reason (complete discretion). At a certain

specific age, the child can become a co-trustee of his or her own trust, and can have the power to remove and replace the co-trustee making the distribution decisions, thus giving the child enormous control over his or her own trust.

There are many reasons to create trusts, and each family's circumstances are different. It is important to discuss these issues with your estate planning professional.

If there is a trusts or estates topic that you would like to know more about, please feel free to email me at [pmarcin@farrellfritz.com](mailto:pmarcin@farrellfritz.com) with your suggestion and I will do my best to cover it in a future column.

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