

Chicago Daily Law Bulletin®

VOLUME 166, NO. 166

LAW BULLETIN MEDIA

Well crafted estate plan could be perfect gift for an adopted child

November is National Adoption Month, which aims to celebrate families that have grown through adoption, and raise awareness of both the adoption process and the need for adoptive families for children in foster care.

One of the many ways adoptive families can celebrate National Adoption Month is through the gift of creating an estate plan tailored toward adoption-specific concerns. Newly adoptive parents, such as my colleague and fellow Chuhak & Tecson P.C. principal, Christina Mermigas, who also focuses her practice on estate planning, can commemorate their growing family by providing safety and security for adopted children in an estate plan.

“The statutory laws in most states provide that legally adopted children have the same inheritance rights as biological children; however, adoptive parents shouldn’t just rely on default rules to care for their family – there are many other aspects beyond a typical estate plan parents have to consider, such as special needs considerations, guardianship, open adoptions and asset distribution” Mermigas said. “First, these equal inheritance rights do not vest until the adoption is finalized, which can take months to years. If adoptive parents die while the adoption is still pending, the adoptive child will not inherit unless specifically drafted into the estate plan. Additionally, adoption agencies fail to educate adoptive parents on the importance of creating a



THE BUZZ LINDSEY PAIGE MARKUS

LINDSEY PAIGE MARKUS, a shareholder at Chuhak & Tecson P.C., draws on her early career in business, finance and clinically applied neuroscience to communicate with clients and develop creative solutions to fit their estate planning, wealth protection and corporate needs. Lindsey is a dynamic contributor to local news outlets, and has been recognized one of the 40 Under Forty.

comprehensive estate plan for their little one – despite all of the rigorous training and programs involved with adoption. Putting an estate plan in place during the ‘waiting period’ is another form of parent preparation that should be added to the checklist along with decorating the nursery or buying a car seat.”

As a refresher, an estate plan generally consists of your will, a revocable living trust, and powers of attorney (for property and healthcare). These documents delineate who acts on your behalf in the event of your incapacity and upon your passing as well as



Chuhak & Tecson principal Christina Mermigas with her adopted daughter Raelynn.

how your family wealth is distributed.

However, there are unique challenges for adoptive families that require the parents to plan accordingly and work with attorneys who are familiar with the adoption process. Here are some common instances that both adoptive parents and their attorneys should take into consideration when creating or updating their estate plans.

Naming a guardian

In ‘traditional’ estate plans, parents name a guardian in their wills to provide physical and financial care and custody of minor children. Adoptive parents may choose a guardian who knows the details of the adoption, is sensitive to adoption-specific issues, and can maintain the child’s relationship with the birthparents, if any.

“It’s important for parents

to have that stipulation in the plan because in the event something happens that renders them incapable of taking care of their child, there is some assurance that the adoption plan the parents’ carefully put into place will be preserved for the child’s benefit,” Mermigas said.

Open adoptions

Oftentimes there are more people to consider in adoptions besides you, your adopted child and a potential guardian. These days, adoptive and birth parents are more inclined to choose “open” adoptions, which allows the biological parents access to information (such as pictures and updated), visitation, or any combination in between.

“Studies have shown that a closed adoption severs a sense of an adopted child’s identity, especially if the child

is ethnically or racially different from the adoptive parents,” Mermigas said. “Not having that access may have a negative effect on the child in adulthood not only mentally and emotionally, but also physically, especially if they have any hereditary health conditions,” she said.

The more open the adoption is, the more likely there should be a provision in the estate plan to maintain the relationship with the birthparents. For example, parents may mandate trust distributions so the child can visit his birthparents annually and be exposed to his native culture.

“Almost every family who has an open adoption arrangement incorporates these requests,” Mermigas explained. “Estate

planning attorneys need to ask these adoption-specific questions to parents and memorialize these concepts in a plan so that the next generation of adoptees stay connected to all aspects of their identity,” she said.

Special needs provisions

Incorporating a special needs trust into a plan is crucial in the event a child has or develops a disability or special needs. This will allow the parents to set aside funds for the child’s care without jeopardizing receipt of government disability benefits.

“Cases dealing with fostered-to-adopted children tend to have a higher probability that there will be some level of special needs plan-

ning,” Mermigas said. “So even if a child does not have a known disability or special needs at the time of the adoption, it may be prudent for parents to include this type of provision as a precautionary measure.”

Distributing assets

Parents should also strongly consider establishing a revocable living trust that delays distributions to their child until a later date. Distribution of assets to a minor child outright will trigger a court-focused guardianship proceeding. Additionally, holding assets for your child in a trust under the control of an independent trustee, whom you chose, will ensure that the trust assets are used for the

child’s care and benefit.

“Also, in the event parents have both minor adopted children and adult biological children, it may be wise to stipulate how the assets are divided,” Mermigas said. “The younger children will typically be more financially dependent, so parents should take this into account to make sure their expenses will be covered.”

Since there is no telling what joys or sorrows the future will bring, especially during these uncertain times, it is a good idea for parents to have their estate plan reviewed by an attorney after they begin the process of adoption so that it can be revised to accommodate their growing family.