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The Importance of Wills and Trusts

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It is important for all adults to have a last will and testament drafted by an estate planning attorney. Depending on a person's needs and desires, a living trust may also be needed.

For an individual with at least one minor child, a will can appoint the guardian who will care for the child. A will or trust will also 1) name the person or entity to manage the individual's assets and money (called a personal representative or successor trustee) after the individual's incapacity or death; 2) state to whom the personal representative or trustee can make distributions (to beneficiaries such as children, grandchildren, friends, etc.); and 3) determine the age that the beneficiary/child of the deceased individual will receive control over his or her share of the assets.

If a person with a minor child does not have a valid will and/or trust, a probate court judge will appoint a guardian for the care of the minor child and a conservator to manage the assets for the child. There will be uncertainty for the child and the potential guardians until the court makes this appointment. Additionally, the court may not pick the person that the deceased individual would have chosen. The court-appointed guardian and conservator will each need to file annual reports with the court and the conservator will need to obtain approval from the court to spend money for the child. The balance of the child's share will be distributed upon the child's 18th birthday, regardless of whether the child is financially responsible or not.

Having an attorney who is experienced, trained, and specializes in estate planning prepare a person's estate plan is the best way to ensure that person's wishes are fulfilled.