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Give A Gift that Makes a Big Difference

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Do you have children that are 18 years of age or older? Are your children married? Do your children now have their own minor children? People 60 and older are significantly more likely to have an estate plan than those in their 20s, 30s, and 40s. This is because the energy and finances for younger generations are consumed with starting a career, buying a house, getting married, raising children, etc. Additionally, young people frankly do not spend much time thinking about the possibility that they could ever need an estate plan. Do your kids have the following?

Durable Power of Attorney: This document allows your child to name someone to act on your child's behalf regarding business affairs during the child's life. If your child is in an accident, has a medical emergency, or for any other reason is unable to make business decisions, someone will need to be legally named to manage your child's money and assets, including writing checks, paying bills, cashing checks, dealing with utility service providers, dealing with creditors, etc. A person's spouse can only act on behalf of the person if named in a Durable Power of Attorney.

Designation of Patient Advocate: It is very important for your adult child to name an individual to make medical decisions should your child be unable to do so, including withholding or withdrawing life support (if so desired). Only the person properly appointed can act on your child's behalf. You are no longer able to make those decisions. Your child's spouse can only make medical decisions if the spouse is named in a Designation of Patient Advocate.

A person that becomes unable to make business or medical decisions who has a valid Durable Power of Attorney and Designation of Patient Advocate avoids the need for the probate court to be petitioned for the appointment of a conservator and guardianship. A conservator is required to file annual accountings with the probate court each year and typically will be required to obtain permission from the court before using money to meet that person's needs. The guardian must file annual reports as well.

Will or Living Trust: A Last Will and Testament (Will) and/or Living Trust is a set of instructions that names who will manage a deceased person's assets. If the person has at least one young child, the Will names who will be the guardian of the child(ren), how the money will be managed and who will manage and distribute the assets for the child(ren), and at what age a child will no longer need someone else to manage the money for the child. Unless named in a properly executed Will, the probate court will appoint a guardian for the care of the minor child and a conservator to manage the assets for the minor child. The court may not pick the guardian that the deceased person would have chosen, the minor child(ren) will be in limbo until the court makes this appointment, the guardian and conservator will 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 to him or her upon the child's 18th birthday, regardless of whether the child is financially responsible or not. A carefully drafted Will and/or Trust can provide for private management of the assets and the assets can be held in trust and managed for the child at an age older than 18.

Would you be willing to pay for all or part of the attorney fees to make sure your child has these documents? Would you consider encouraging your children to meet with an estate planning attorney to have these documents drafted for them? I hope that your child would never have a use for these documents, but no one knows what tomorrow will bring. Wouldn't you feel better knowing that your child was protected?