

Estate Planning Considerations for “Empty Nesters” and “Snowbirds”

By

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Summertime represents an important planning time for two categories of individuals, “Empty Nesters” and “Snowbirds.” By “Empty Nester” I am not merely referencing parents whose children have all left home for college or other reason, but rather any parent who has an adult child that is leaving home for an extended period of time. I am also not limiting the term “Snowbirds” to those in retirement who travel between homes during different seasons to avoid harsh winters/summers, but am including all those in retirement who are making significant seasonal trips. Both Empty Nesters and Snowbirds are experiencing significant changes in their lifestyle that may necessitate additional estate planning documents or revision of their current documents. Whether you are traveling for pleasure, or your family member is traveling for school or a new job, your estate plan must address the following concerns.

Planning for Time in Multiple Jurisdictions. Whether visiting children in new locales, or moving to a winter home in another state, it is important to make sure that your estate planning documents will “travel.” While documents executed in your home state will generally be given full faith and credit in another state pursuant to the United States Constitution, it is often more seamless and much more cost-effective to execute additional documents for states or countries where you will be spending significant time. Many of our clients maintain residences in both Virginia and North Carolina (or another state) and frequently an additional Power of Attorney and/or Advance Medical Directive will be executed to provide clear compliance with the other state’s statutes in case it is needed. Additionally, you should ensure that your Advance Medical Directive is retrievable in the event of an emergency by leaving a copy with your agents and having it uploaded onto the U.S. Living Will Registry or a similar database accessible to healthcare practitioners. We regularly help our clients in completing necessary forms to accomplish registration with such databases.

Planning for Assets in Multiple Jurisdictions. If you own real estate in multiple states, then it is time to consider a revocable living trust as a vehicle for holding that asset. Effective use of a trust can prevent the need for extra probate administration (“ancillary probate”) in multiple jurisdictions. In fact, effectively funded trusts can avoid the need for probate in any jurisdiction. This can significantly reduce legal fees, taxes, court costs, and other expenses related to the court administered probate process, which lasts an average of 18 months in Virginia. By planning ahead, you avoid leaving your assets to lawyers and the court system, and instead leave them to your intended beneficiaries.

Adult Children Needing Help. As soon as your child turns eighteen, the law recognizes them as an adult, even if they still cannot do their own laundry or need to call a parent for any one of life’s challenges. “Adulting” can be hard for young adults and often they need the assistance of their parents or loved ones performing tasks so that they can focus on studies, personal development, relationships, and other pursuits. In order for a parent to successfully help an adult child with lease arrangements, a dispute over a car accident, discussions with a medical provider, or other important adult tasks, the adult child has to give the parent legal authority to do so. We can assist in preparing those necessary documents.

Managing the Needs of Grandchildren. Many of my “Snowbird” clients travel so that they can assist their children with the care of grandchildren. Often this is the only opportunity that the parents of young children have to take a trip or spend significant time to themselves. Unfortunately, this respite from caregiving for minor children can create a disaster for the Snowbird grandparents if there is a medical emergency. Proper consent to make healthcare decisions for a child must be given by the natural guardian of that child. This means that the parents must give effective legal consent for a grandparent to make emergency healthcare decisions. In order to provide young families with the tools necessary to accomplish this, we provide parents with such consents that they can use to name an individual (such as a grandparent) as temporary medical decision maker for their child. This prevents an emergency from becoming a catastrophe and allows the caregiver to be comfortable in accepting that role if the parents are going to be away for an extended period of time.

Please contact our Trust and Estate Group Coordinator, Amy Popp, at 757-552-6072 to schedule a meeting. Also be sure to let Mrs. Popp know if you would be interested in attending an exclusive seminar discussing the recent law changes.

Mr. Lipskis is an Estate and Elder Law attorney at Poole Brooke Plumlee PC licensed to practice in all Virginia Courts and in the United States District Court for the Eastern District of Virginia. His practice includes all facets of trusts, estate planning, estate administration, and elder law.