

A Closer Look

When Your Child Becomes a Legal Adult



Benjamin H. Pruett
Fiduciary Counsel

In Brief

- **In most states, children become legal adults when they turn 18. This overnight shift in legal status brings significant changes for both parents and children.**
- **Parents' legal authority over their children will be significantly curtailed, including their ability to access their children's financial, medical, and educational information. Their 18-year-old children, on the other hand, will suddenly find themselves with a host of new rights and obligations.**
- **For both parents and their children, it can be helpful to devote some time to thinking through these major changes. In this A Closer Look, we explore the most frequent issues and considerations related to this transition.**

Turning 18 is a big deal. Not only does this birthday represent a major rite of passage in our culture; in most states, it also marks the legal transition from childhood to adulthood. When children turn 18, they acquire the right to vote, the right to own and control property, the right to privacy, and the right to live freely and independently of their parents, among many other rights and responsibilities.

Still, for many parents, the day their child attains the age of majority seems to come as a surprise in many ways, particularly when it comes to managing the legal and financial aspects of this milestone. In the following pages, we explore some of the considerations involved in the legal transition to adulthood.

Health and Personal Care Issues

- **Healthcare power of attorney.** The day your children become legal adults, you no longer have automatic access to their medical histories and conditions or the right to make healthcare decisions for them. The federal HIPAA¹ privacy law prohibits any healthcare provider from sharing your children's "protected health information" with anyone else, including you, unless they consent, in writing, to your having such information.

For example, if your adult daughter suffers a serious injury and is in the emergency room, the hospital may be unwilling to provide you with any information about her condition or permit you to give directions about her care, unless she is sufficiently conscious to grant consent or has previously given you that authority in writing.

If she wants you to have the authority to make medical decisions on her behalf whenever she is unable to do so, she can execute a healthcare power of attorney, sometimes called an advance directive, proxy, or surrogacy. A healthcare power of attorney allows your child to designate

¹ Health Insurance Portability and Accountability Act.

When Your Child Becomes a Legal Adult

you as her healthcare agent (or attorney-in-fact, proxy, or surrogate) to make medical and other personal care decisions any time she is unable to express her own wishes. You should keep a physical copy of your child's healthcare power of attorney and also file a copy with her healthcare provider.

- **Protected health information and HIPAA release.**

If your child designates you as her agent under her healthcare power of attorney, as discussed above, then you are automatically her personal representative under the privacy law and are entitled to information about her condition. If you are not the agent under her healthcare power of attorney, she can execute a HIPAA release permitting a healthcare provider to provide information to you about her condition even though you are not the person authorized to direct her care.

- **Living will/advance directive.** While younger people often fail to see the need for “end of life” decision making, it is important for all adults to clearly express their desires regarding the administration or withholding of life-sustaining and death-delaying treatment in the event of a coma or persistent vegetative state from which there will be no recovery. There have been many highly publicized cases of vigorous litigation between family members where there is no documented evidence of a patient's wishes and family members disagree about whether treatments should be administered or withheld. Living wills, also known as advance directives, allow your children's wishes to be made known in advance, hopefully avoiding litigation in the unfortunate event such issues arise. A living will may be a stand-alone document or incorporated into a healthcare power of attorney.

Financial and Personal Business Issues

- **General (financial) power of attorney.** As is the case with healthcare, you will no longer have the authority to manage the finances or personal business affairs of your adult child unless you have written authority from him or her to do so. A general power of attorney allows your child, as principal, to designate an agent, also known as an attorney-in-fact, with the authority to write checks, pay bills, deal with government agencies, and otherwise

act on his or her behalf. Should a child become incapacitated without a general power of attorney, it will likely be impossible for anyone to manage his or her affairs without petitioning a court to be appointed as conservator or guardian of the property. That process can be expensive, time consuming, embarrassing, and more restrictive than desired. Even if your child is not incapacitated, a power of attorney may permit you to take care of certain matters on your child's behalf while he or she is away at school or abroad, for example.

- **Academic records.** Schools legally can disclose certain information to you if your child is listed as a dependent on your income tax return; however, they are not required to do so, and most schools will not release such information without the student's consent. A general power of attorney can include a provision expressly granting to the agent (i.e., you, as parent) access to academic records, but such provisions are not generally included, so be sure to raise this issue with your attorney.

Another way to access information is for your child to provide you with access to his or her online account with the college's business office. Many colleges provide a way for parents to have “guest access” to grades and financial information (when tuition needs to be paid) without granting access to the student's e-mail accounts (which would likely be regarded as an intrusion of privacy).

The Young Adult Citizen

- **Register to vote.** Your children can register to vote after turning 18, and sometimes before 18, if permitted under local law. Children who are away from home during an election should make a note to request an absentee ballot well in advance of any election.
- **Selective Service registration.** Every male U.S. citizen and permanent resident alien is required to register with the Selective Service system within 30 days before or after his 18th birthday. Failure to register can result in ineligibility for any student financial aid. Registration may be accomplished in a matter of minutes online at <https://www.sss.gov/register/>.

Trusts and Other Financial Arrangements

- **UTMA/UGMA custodial accounts and the minor's trust.** Custodial accounts under the Uniform Transfers/Gifts to Minors Act (UTMA/UGMA) mandate the termination of the arrangement and the distribution of the custodial property to the beneficiary, outright and free of trust, at age 21 or, in some cases, as early as age 18. Likewise, if your child is the beneficiary of a minor's trust, the trust must terminate, or the child must have the right to withdraw the property, by age 21.

Under these arrangements, the failure of the custodian or trustee to deliver the funds when required or even failing to inform the beneficiary that the account exists is unlawful. If you believe your child is not prepared to assume control of such assets at age 21, you can encourage him or her to voluntarily place the assets into a new trust (established by your child for his or her own benefit) with the provision that the funds remain in trust until he or she reaches a later age. Distributions from custodial accounts and minors' trusts are generally not required prior to age 21, but children can create a new trust as early as age 18.² Discussing the matter with your child early during that three-year window can often make the most sense.

- **Other trust arrangements.** If your children are the beneficiaries of any other trust arrangements (created by you or anyone else), they may be legally entitled to information about the existence of the trust, the terms of the trust, its assets, and its administration as soon as they reach adulthood, even if the distributions to them do not commence until a future date. Therefore, it is important to review all such arrangements with the trustee and legal counsel to determine what, if any, actions may be necessary when the children become adults. Even if disclosures are not mandatory at the onset of adulthood, our experience is that disclosures to young-adult beneficiaries are preferable to withholding such information.

Other Aspects of Responsible Adulthood

- **Financial and credit history: checking account and credit card.** A good financial and credit history is indispensable in today's world and may take time to

build. We have seen situations where adult children have been unable to acquire a mortgage to purchase a home, notwithstanding a steady job and substantial assets, because the child has never had the need to borrow and so has no credit history.

Establishing a checking account in your child's name and under his or her social security number will start the process of building a financial and credit history. This is often possible even before your child reaches age 18.

Likewise, consider having your child open a credit card account — again, in your child's name and under his or her social security number — to make modest charges, followed by timely payments, to build a credit history.

If your child will be attending college, banks that are local to the college or that have local branches typically offer student-oriented checking accounts and credit cards, often with reduced fees, so this may be the simplest way to get started.

- **Protecting assets from predators and creditors.** A concern for many families is preserving the family wealth for future generations, and this often includes protecting the family wealth from creditors, predators, and a spouse in the event of a divorce. Children should be informed of certain risks faced by families of wealth, including outright swindlers and persons in need pressuring them for gifts or loans of cash. They should be educated about maintaining adequate insurance, why trust arrangements are put in place, and the importance of seeking sound advice from lawyers, accountants, and other family advisors before making important financial decisions.
- **Premarital agreements.** While trusts and other arrangements can be effective in shielding family wealth from claims in a divorce, there is no substitute for a well-drafted premarital agreement, also known as a prenuptial agreement, entered into in writing by parties represented by independent counsel. Cases where a spouse attempts to gain access, directly or indirectly, to the other spouse's interest in a trust are arising with increasing frequency, and while such attempts have had only limited success, it is clear that the best protection is an agreement entered into by both spouses. While not

² Some states permit a custodial arrangement to continue to age 25, if so specified when the custodial arrangement was created. Moreover, some states are considering giving a custodian authority to distribute custodial property to a trust.

When Your Child Becomes a Legal Adult

appropriate in every circumstance or for every couple, such agreements can be limited to protecting a child's "legacy" assets received from a family, which are typically the assets of greatest concern. The onset of adulthood is a good time to broach the subject, even if only briefly, to give your child time to get used to the idea and be prepared when the right person actually comes along.

- **Wills/revocable trusts.** Most 18-year-olds do not think about estate planning. Children of wealthy families, however, often have substantial assets for which they can and should plan. Even if their assets are in UTMA or trust arrangements and will not be under their

immediate control, the assets may nevertheless be subject to their will. Moreover, many trust arrangements give beneficiaries certain powers of appointment to direct the disposition of trust property at death, but those powers must be exercised by a will. Revocable trusts to hold property during lifetime are often useful, in addition to a will. While we certainly hope that no child will need a will for many decades to come, it can make the settlement of an individual's affairs substantially simpler if needed sooner than expected.

For more information about how to help your children transition into adulthood, please contact your Bessemer Trust client service team.

Our Recent Insights

Planning for Today's Residential Construction Project — Wealth Planning Insights (February 2021)

Managing Your Oil and Gas Interests — A Closer Look (February 2021)

Making Changes to Irrevocable Trusts — A Closer Look (January 2021)

Low Rates, High Hopes, and (Maybe) Higher Taxes: Estate Planning for 2021 and Beyond — A Closer Look (December 2020)

Helpful Tips for Year-End Tax Planning and Charitable Giving — Wealth Planning Insights (November 2020)

Is Now the Time to Consider a Spousal Lifetime Access Trust? — Wealth Planning Insights (October 2020)

To view these and other recent insights, please visit www.bessemer.com.

About Bessemer Trust

Privately owned and independent, Bessemer Trust is a multifamily office that has served individuals and families of substantial wealth for more than 110 years. Through comprehensive investment management, wealth planning, and family office services, we help clients achieve peace of mind for generations.

This material is for your general information. It does not take into account the particular investment objectives, financial situation, or needs of individual clients. This material is based upon information obtained from various sources that Bessemer Trust believes to be reliable, but Bessemer makes no representation or warranty with respect to the accuracy or completeness of such information. Views expressed herein are current only as of the date indicated and are subject to change without notice. Bessemer Trust disclaims any liability in connection with the use of this information.

ATLANTA • BOSTON • CHICAGO • DALLAS • DENVER • GRAND CAYMAN • GREENWICH
HOUSTON • LOS ANGELES • MIAMI • NAPLES • NEW YORK • PALM BEACH • SAN FRANCISCO
SEATTLE • STUART • WASHINGTON, D.C. • WILMINGTON • WOODBRIDGE

Visit us at bessemer.com