

WANG & KASHOU LLP

FREQUENTLY ASKED QUESTIONS ON LEAVING PROPERTY TO A CHILD

What are the different ways for a parent to leave property to a minor child?

In order to leave property by a will to your minor child (any child under the age of 18), you can arrange for distribution of the property to a trustee or guardian of the estate. Please note that a “guardian of the estate” is different from a “guardian of the person,” who is typically understood as the person who cares for and resides with the child.

- Guardian. A guardianship of the estate allows you to nominate someone to manage and control your minor child’s property until your child reaches the age of 18.
- Trust. A testamentary trust is a legal entity in which a trustee selected by you administers your property for the benefit of your child under your estate plan.

Does using a trust allow a parent greater flexibility than using a guardianship?

For the reasons discussed below, trusts are superior to guardianships for handling a minor child’s property due to the greater degree of flexibility available with trusts.

- Control Over Investment Powers. The principal advantage of a trust is that you can direct the trustee to invest the trust assets. In contrast, you cannot determine the investment powers of a guardian. Under a guardianship, many investments must be authorized by court order.
- Flexibility in Termination Date. As stated earlier, a guardianship of a minor’s estate terminates when the minor dies, reaches the age of 18, is adopted or is legally “emancipated,” regardless of the child’s ability to handle financial matters. In a trust, distribution of the property held in trust can be postponed until a time after the child reaches the age of 18.
- Flexibility in Providing Support. A trust allows you to specify the kind of support to be given to your child, such as directing the trustee to provide your child with an annual vacation. A guardianship does not have such flexibility because the law stipulates the kind of support that a guardian may provide.

Furthermore, with one guardianship, you cannot provide for the needs of more than one child. If all the funds in one of your children’s guardianship are depleted for any reason, the funds in the guardianships of your other children will be unavailable to help the “impoverished” child. On the contrary, with a single trust for all of your children, the trustee can make distributions to or for the children according to each of their needs, enabling you to provide for unusual expenses incurred by one child.

- Flexibility in Tax Planning. You can structure a trust to enable the trustee to minimize tax costs while providing for your child. Generally speaking, a guardianship presents little opportunity for tax planning.

Does using a trust avoid the costs and delays associated with probate court proceedings?

Yes, the appointment of a trustee does not require the time and expense of probate court supervision and court approval. In contrast, your nominee as guardian may serve as guardian only after court appointment, which typically requires approximately \$2,000 – \$3,000 in various legal fees.