



Wealth Planning Update

Before Your Child Turns 18: Five Documents You Need

August 2021

Key Takeaways:

- » Unless you have certain documents in place when your child turns 18, you will not be able to make any legal decisions on their behalf and lose the ability to access any of their health, education, or financial records.
- » In the unanticipated situation where your child is incapable of making decisions on their own, you will be barred from making them on their behalf.

What this may mean for you:

- » Having the appropriate documents in place and considering the legal impact that turning 18 has on your child, you may be better equipped to navigate this transition and hopefully avoid any unintended consequences.

In your eyes, your child will always be “your child,” no matter what their age, but in the eyes of the law, that “child” is legally an adult on their 18th birthday. This seemingly minor change in nomenclature can have a major impact if not carefully planned for. Without having certain documents in place on their 18th birthday, you will have no access to their medical, financial, or academic records.

Furthermore, in the unanticipated situation where your child is incapable of making decisions on their own, you will be barred from making them on their behalf. This can present a unique set of challenges if your child is away at college. Planning for these and other issues that may arise is key to avoiding the various pitfalls that you and your children may face.

Investment and Insurance Products are:

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

How does the law view your child now that they are 18?

The “age of majority” – Once your child hits a certain age (usually 18), they have reached the “age of majority.” This means, as far as the law is concerned, he or she is an adult, and information regarding their health, finances, and education will not be disclosed to anyone without their written consent.

What can be done? – Certain legal documents must be put in place to designate you as your child’s legal representative.

What documents should you consider having in place on your child’s 18th birthday?

1. **Health care power of attorney.** Often referred to as a “health care proxy,” this document is essential because it gives you the authority to make health care decisions on behalf of your child. Health care proxies don’t normally kick in unless your child is determined to be physically or mentally incapable of making decisions on their own. It’s a scenario you never want to have to consider as a parent, but it’s a document you will be thankful to have in place if you ever need it.
2. **HIPAA authorization.** The Health Insurance Portability and Accountability Act, otherwise known as HIPAA, is a privacy law that prevents anyone from inquiring about your child’s current medical condition or medical records. If you want to maintain access to that information, a HIPAA authorization document must be on file. Additionally, if your child feels uncomfortable allowing unrestricted access to their sensitive information, he or she can limit its breadth according to their comfort level.
3. **Financial power of attorney.** Similar to the health care proxy, the financial power of attorney allows you to make financial decisions and access financial records on your child’s behalf. The list of benefits is long as to why it is a good idea to have this in place, but a practical reason is simply that if they are getting ready to head off to college, details like tax deadlines, contractual obligations, and other time-sensitive financial decisions can be easily overlooked amongst their busy schedules. By exercising the authority granted in a Power of Attorney, you may be able to maintain access to these matters, and you and your child may be able to avoid some headaches or costly mistakes that could result if these details were overlooked.
4. **FERPA authorization.** FERPA stands for the Family Educational Rights and Privacy Act, which requires that students over age 18 give written consent before any educational records can be released to another person. “Educational records” is broadly defined under FERPA to mean those records that are: (1) directly related to the student, and (2) maintained by an educational agency or institution acting for the agency or institution. Of course, this include transcripts, disciplinary actions, scholarship information, and tuition information, but what is less apparent is that records maintained by the college campus’s health clinic are also considered an “educational record” and therefore not covered under HIPAA. For example, if your child visits his or her university’s health services center for treatment, you would not have access his or her medical records merely by presenting a signed HIPAA form. By way of contrast, however, if your child is sent to the local hospital for treatment, then the HIPAA form would permit you to access his or her medical information.
5. **Simple will.** If your adult child dies owning assets, his or her estate is subject to the probate laws of their jurisdiction. If the child does not have a will or will substitute, any untitled assets will pass according to the intestate laws of the state. Generally, the assets of an unmarried child with no descendants will pass to his or her parents, if they are living. If the parents are not living, the assets will go to their siblings. Although the appropriateness of a will or will substitute varies based on the complexity of the child’s estate, you should consider discussing this with your adult child.

Uniform Gifts to Minors Act (UGMA) and Uniform Transfers to Minors Act (UTMA) accounts

UGMA and UTMA accounts are custodial accounts set up for minors that can hold cash, investments, and, in some cases, collectables. These accounts are controlled by a custodian, usually the parent. Depending on state law, when the child attains age 18¹ or 21², he or she assumes control of the account.

Beyond the legal requirements

Dealing with the legal aspect, of course, is just part of this journey for you and your child. Turning 18 is an important milestone and an opportunity for you to engage in meaningful conversations about your hopes and wishes as well as getting an idea of your child's dreams.

Making sure you have the legal documents described above will give you access to important information, but, ideally, much of this information will come via speaking with your child. If your child will be away from home, discussing how much contact and what method will vary by child. It'll also be a time for your child to stretch their wings and build their own experiences. Some may discover that their initial choice, whether it be college or career, may not be right for them, or they may not be making the most of the experience. This is an opportunity for you to coach them on being accountable as well as finding their own path. Whether your child is nearing their 18th birthday or has already crossed that threshold, consider the steps outlined above to help you both be prepared for the exciting road ahead.

Disclosures

Wells Fargo & Company and its affiliates do not provide legal or tax advice. In limited circumstances, tax advice may be provided by Wells Fargo Bank N.A. Please consult your legal and/or tax advisors to determine how this information, and any planned tax results may apply to your situation at the time your tax return is filed.

The Private Bank offers products and services through Wells Fargo Bank, N.A., Member FDIC, and its various affiliates and subsidiaries. Wells Fargo Bank, N.A. is a bank affiliate of Wells Fargo & Company.

Wells Fargo Bank, N.A. offers various advisory and fiduciary products and services including discretionary portfolio management. Wells Fargo affiliates, including Financial Advisors of Wells Fargo Advisors, a separate non-bank affiliate, may be paid an ongoing or one-time referral fee in relation to clients referred to the bank. The bank is responsible for the day-to-day management of the account and for providing investment advice, investment management services and wealth management services to clients. The role of the Financial Advisor with respect to the Bank products and services is limited to referral and relationship management services.

Brokerage services are offered through Wells Fargo Advisors. Wells Fargo Advisors is a trade name used by Wells Fargo Clearing Services, LLC, and Wells Fargo Advisors Financial Network, LLC, Members SIPC, separate registered broker-dealers and nonbank affiliates of Wells Fargo & Company.

¹ Age 19 in Alabama and Nebraska www.savingforcollege.com/article/age-of-majority

² Some states allow the UGMA account to be set up until the recipient attains age 25.