It is important to take the right steps to protect young children or those who need help managing money or other life functions. But even when children are grown and managing their own lives, it is important to protect them from other factors, including unnecessary taxation or the potential for legal challenges and conflict. Estate planning can protect loved ones at all different stages of life.

To provide the right safeguards, it is necessary to start with a plan that can evolve to meet changing needs. Then you need to meet with your estate planning attorney periodically to review your plans and changes in laws or circumstances that may require you to make some adjustments in your estate plans. Investing time and resources in planning now can prevent uncertainty, anguish, and waste in the future.

Care for Minor Children or Loved Ones with Special Needs

If an emergency should occur that prevents you from caring for your children or a loved one who relies on you, you need to have documents prepared to enable courts to determine who you want to provide care in your absence. You cannot actually appoint a guardian yourself—that power is reserved for the court. But if you create the right documents nominating your choice of guardian, the court will usually approve your choice.

A guardian is responsible for ensuring a minor child or incapacitated adult receives proper food, housing, education, medical care, and other basic needs. If a child has or will inherit substantial financial resources, a different individual may be designated to manage financial matters for someone who is unable to handle them on their own.

Parents can nominate someone to serve as a guardian with a provision in their will. However, it is also helpful to have a separate document declaring your choice of guardian. This document could be referred to not only in case parents pass away but also in situations where parents become incapacitated, such as if they are in a coma after an accident.

Ensuring that Guardians Have Resources to Provide Care

While parents naturally want to see their property go to their children when they pass away, it is important to ensure that guardians have access to resources to meet the child's needs, and that resources inherited by the child or an adult with special needs are appropriately managed. An adult with special needs may qualify for benefits such as Medicaid and SSI, but an inheritance can jeopardize their eligibility for these programs. If funds are held in a trust, they can be distributed without interfering with benefits.

Sometimes parents or caregivers set up plans to gift guardians with resources to expand their living space or help in other ways. Your estate planning attorney can discuss options and help you choose a plan that fits your circumstances.

Using One or More Trusts to Hold Assets

Whether your children are minors or fully competent adults, placing assets in a trust can be the most effective way to allow your loved ones to access them without delays or unnecessary depletion. But there are many different types of trusts, each designed to accomplish different purposes. If you schedule a free consultation with us, we can review the options and explain how they would work in your family's circumstances. For

general background information, here is an overview of trust options.

Trusts Serve as Virtual Containers

A trust is like a virtual bucket that can hold any type of property. Trusts are artificial entities controlled by caretakers known as trustees. The property in the trust is held for the beneficiary's use. Often, a beneficiary is someone who is not prepared to handle the property independently, so it is held in trust for their benefit. Other times, property is placed in a trust to protect it from creditors or excess tax liability.

The trustees who manage the property under a trust have a fiduciary duty to act in the beneficiary's best interests. A trustee may be paid for management services or act voluntarily, but the trustee can't use trust resources for their own benefit—it is all held for the beneficiaries. (A trust can be created for one beneficiary or many beneficiaries.)

Revocable Trusts

When a trust is created as a revocable trust, it is very flexible. The person who creates and transfers property into a revocable trust can terminate (revoke) it at any time. They can also make changes at any time. Its flexibility makes it easy to use, but it doesn't offer the same protections as other types of trusts.

The primary reason people create revocable trusts is to allow property to pass to loved ones without the need for probate. Ordinarily, when someone passes away, their property becomes what is known in legal terms as an estate. Texas law imposes requirements for handling a deceased person's estate. Family members cannot simply claim their inherited property.

Instead, the court has to approve the will and appoint a person to administer the estate. The deceased person's bills—including taxes—must be paid, and other obligations need to be satisfied in accordance with legal requirements. This is the probate process. It often takes a year or more to complete. At the end of the process, the remaining property in the estate is distributed to loved ones according to the terms of the will or, if there is no will, property is allocated according to the Texas laws of intestate succession.

If you create a revocable trust and transfer your property into that trust, then you can name yourself as the primary beneficiary and primary trustee. This allows you to control and use the property for yourself just as you did before it was in the trust. When you pass away, the property in the trust does not become part of an estate, so it is not subject to the requirements of probate law. Instead, the alternate trustee you've named in the trust document will take charge of the property, pay your final bills, and distribute the property to the people you have named as the alternate beneficiaries. This process can happen quickly, and it does not require court oversight.

When you create a revocable trust, you undertake work in advance so that your loved ones don't have to deal with legal requirements later on. It is a way to protect your children from legal confusion, headaches, and delays.

Irrevocable Trusts

When a trust is set up as irrevocable, the person who created it cannot cancel it or take property out of it. The creator of an irrevocable trust generally cannot make changes to it, although the beneficiaries may be permitted to approve changes, depending on how the trust document is drafted. This type of trust is rigid. The creator loses the right to control or use the property in the trust. The property is held purely for the beneficiaries,

but it does not technically belong to the beneficiaries. This means that creditors of the beneficiaries cannot access trust funds.

Irrevocable trusts can be set up for use in different ways, such as:

Protecting property from lawsuits or creditors
Insulating property from estate tax liability
Allowing a beneficiary to be eligible for Medicaid, including long-term care benefits

Parents can set up a trust to manage money for their minor children (or adult children who are not mature enough to handle a large sum of money). This type of trust can be included in a will as a testamentary trust that only takes effect if the parents die before the child reaches majority. Or a trust can be created while the parents are still alive.

Using Other Estate Planning Tools

An estate plan is not just a collection of documents—it is an actual plan. To plan properly, you need to work with an estate planning attorney who is prepared to review your goals, your family situation, and your assets to determine your best options for reaching your goals. In addition to trusts and guardian designations, you may end up furthering goals through the use of tools and strategies such as:

Life insurance
Beneficiary designations
Payable on death clauses
Retitling property
A traditional or pour-over will
Powers of attorney

As time passes, needs may change. It may be necessary to change trustees, guardians, or beneficiaries. Assets may need to be readjusted to fulfill goals. Periodic reviews can help ensure that everything is on track. Review sessions also provide the ideal opportunity to ask questions and ensure that family members understand how components of the estate plan operate.

The Nordhaus Firm Can Help You Protect Your Children at All Stages of Life

No one enjoys contemplating a time when they are not able to care for loved ones. But taking the necessary steps to protect your family can allow you to feel confident as you face the unknowns of the future.

At The Nordhaus Firm, we create custom protection plans based on your specific situation and goals. To discuss creating a new estate plan or making adjustments to your existing plans, we invite you to call us at 214-726-1450 or contact us online to schedule a free consultation.