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WHY EVERY FAMILY SHOULD HAVE AN ESTATE PLAN

Dear Friends,

I am frequently asked by parents and those planning for children if they really need a Will or estate planning documents. The simple answer is “Yes.” We all hope that we will not need these legal documents in the near future, but unfortunately, unexpected events do occur. It is these unfortunate and unexpected events that we must plan for in advance in order to ensure that our loved ones are properly cared for.

I strongly recommend that all parents have a Will or other estate planning documents that clearly designate who they would like to care for their children. In the event of a tragedy that prevents parents from raising their children or making important decisions on their behalf, someone must be appointed to act in the best interests of the children.

Earlier in my career I served as a judicial law clerk in the Probate and Family Court. I witnessed firsthand the difficult nature of the court proceedings to appoint a guardian for children whose parents were either incapacitated or recently deceased. Such proceedings can be financially and emotionally costly and may also lead to unnecessary family disputes. A well-drafted Will or Trust that clearly designates who will raise your children can help avoid these often complex guardianship proceedings.

After working closely with many judges in the Probate and Family Court, I can say that most of these judges would rather not be the ones left deciding who is the best person to raise your children, especially when you can easily provide for such circumstances. No one knows your children better than you, so why leave the planning of your children’s future to a judge?

Below are a few questions that all parents should consider before choosing who they would like to raise their children in the event of a tragedy:

- Who most closely matches your parenting philosophy? Do you believe in home-schooling, public school or private education? What method of discipline do you prefer? Consider the parenting style of the proposed guardians and where your children would feel most comfortable being raised in a manner you would have chosen for them.

- What is the age and health of the proposed guardians? Your parents love your children, but that does not necessarily mean that they should be the guardians of them. Consider their age, physical and mental health, living arrangements and lifestyle. It might be more appropriate to choose someone closer to your age, maybe with similarly-aged children, or someone who can at least handle the day-to-day activities of your children.
- Where are the proposed guardians located? You will have to consider whether your choice of guardian would cause your children to be moved across the state or even the country, or would allow them to stay in the same school system and neighborhood.
- Do you want to choose an individual or a married couple? Whether you have chosen your best friend or one of your siblings, you need to consider whether you want to name that person's spouse as well. Remember, they could separate or divorce, which could complicate the scenario. You may wish to name just one person with an alternate guardian named as well in the event the first guardian is unavailable or later unwilling to serve.

I recommend contacting your attorney to draft your estate planning documents as soon as possible. If you do not have an attorney, I would be happy to discuss these documents with you in greater detail and address any concerns you may have about creating an estate plan. We all lead busy lives and it often seems difficult to find the time to do even the simplest of tasks. However, this type of planning for you and your children should be a priority.

Ultimately, don't you and your spouse want to be the ones deciding who will care for your children instead of a judge who does not know you, your parenting style, or your wishes for your children's future? Why take this risk when a relatively simple and inexpensive estate plan can help you avoid this scenario?

I hope this letter has been helpful in your decision-making process. Please feel free to contact me if you would like to plan for your children's future. I would be happy to assist you in answering any further questions you may have. I look forward to speaking with you soon.

Very truly yours,

A handwritten signature in cursive script that reads "Michael B. Cabral".

Michael B. Cabral, Esq.