



When Your Child Turns 18

A checklist of legal documents for parents and students

Many families are not aware of important legal issues that affect their 18 – 21-year-old children. Parents are often so focused on the fact that the drinking age is 21 that they do not realize that their 18-year-olds are, for most other purposes, adults in the eyes of the law. Parents no longer have the same access to information or control over their children after age 18. Proper planning for the legal issues that arise with an 18 – 21-year-old child can help avoid problems later. What should parents and young adults consider?

- **Durable Power of Attorney:** Parents have no legal authority to act on behalf of their children who have turned 18. A durable power of attorney can allow a parent to handle financial matters, such as banking or signing tax returns on behalf of the child, if the child is unavailable or becomes temporarily or permanently incapacitated. Designating one or both parents to act on the young adult's behalf via a durable power of attorney can eliminate the need to have a court appointed guardian or conservator. If the young adult's parents are separated or divorced it will be especially important to pin down which parent should handle financial matters on the child's behalf.
- **Health Care Proxy and HIPAA Authorization:** A child 18 or older has authority to make his or her own health care decisions. Parents' rights with respect to their child are very limited, and this can come as a surprise to parents who have accompanied their children to every doctor's appointment up to the time they leave home.

A health care proxy can designate a parent or other person to make medical decisions for the child in the event that the young adult becomes incapacitated and can allow the agent to access the child's medical information. As with the durable power of attorney, designating which parent has primary authority to act on the child's behalf (and who is to be an alternate agent) can be especially important if the child's parents are separated or divorced.

But a health care proxy will likely not allow access to an adult child's medical records unless the child is deemed incapacitated. The Health Insurance Portability and Accountability Act of 1996 (known as "HIPAA") is a federal law that significantly restricts medical professionals from disclosing medical information to unauthorized persons, including parents. A HIPAA Authorization Form designates individuals who can obtain the child's health information. This can be especially important when dealing with mental health issues. Many colleges offer their own HIPAA forms for this purpose, at least with respect to medical records from the college health center.

Now is also a good time to make sure your child knows his or her own medical history (allergies, chronic conditions, vaccines, medications) and insurance information. Your





health insurance provider likely has or can recommend a phone app that will enable your child to access this information and have doctor appointments using their phone. Otherwise, a picture taken by and stored on the child's phone is a good way to store this information, although there are security risks with this approach. Your child should also arrange to have his or her medical records sent to the college health center, and pack a first aid kit, a thermometer, and plenty of face masks.

- **Will and Trust Instruments:** For young adults who have significant assets of their own, it is important to consider whether a will or revocable trust is necessary. If a person dies without a will, the laws of intestacy determine how that person's assets will be distributed. If the young adult has no children of his or her own, intestacy laws would generally provide for distribution of the young adult's assets to his or her parents. From an estate planning perspective, this is usually not a favorable result since it will add to the size of the parents' taxable estate. A better alternative may be for the child's property to pass to his or her siblings (outright or in trust) or to other designated beneficiaries. The will or trust also allows your child to designate the person in charge of his or her assets.

A revocable trust may also be a helpful and efficient vehicle to manage any investment assets held in the child's name. The young adult, his or her parents and others can administer the trust for the child's benefit and encourage the child to take an active role in investment and budgeting decisions. Assets held in the child's trust will not need to pass through probate.

- **Disclosure of Information / Waivers:** Most colleges and universities have policies that restrict the release of a student's educational records to anyone except the student, unless the student gives written permission. Such educational records include grades, university bills, and medical records. The Family Educational Rights and Privacy Act ("FERPA") is a federal law that also restricts colleges and universities from releasing such educational records without the student's permission. Although FERPA allows for many exceptions to this non-disclosure rule, colleges may interpret the exceptions differently or may have their own more restrictive non-disclosure policies. Some schools provide waivers for the student's signature which allow the release of records to the student's parent. We recommend that parents look for such forms in the numerous forms that students receive over the summer. If they do not see them, parents may request information regarding the college or university's disclosure policies and waiver forms.
- **COVID-19 Waivers / Acknowledgements:** Colleges and universities are asking students returning to campus – or sometimes even those starting only with online courses – to sign agreements related to COVID-19. With an array of waivers being used, it's important to understand what you are signing. The most common include: waivers to preclude liability, acknowledgments of risks, or "pacts" to work mutually to mitigate risks.





Now is also a good time to talk about your plan in case your student becomes sick or needs to quarantine. Heading off to college is especially stressful for parents and students these days. Learn about the counselling resources that are available to your student. For a child currently receiving counselling, it may be possible to continue those from college using video conference services such as Zoom or FaceTime.

- **Insurance:** Most college students can be covered by their parents' health insurance policies until the age of 26 (if the student will be attending school in another state, check your plan's out-of-state coverage). Be sure they have a copy of their insurance card and take a picture of it. In addition, many colleges also offer low-cost health care plans for students who are not covered by their parents' plans. Students are also usually covered by their parents' personal property and casualty insurance. Parents should also review their homeowners policy to determine if their child's belongings would be covered when staying in a college dorm. In addition, if your child is renting an apartment off-campus, or their first apartment post-graduation, the lease may require that they obtain a separate insurance policy covering the contents of the apartment.
- **"Adulting":** While many parents will have taught their children "the value of a dollar" long before age 18, if you have not discussed more complex financial matters with your children, we recommend that you do so now. Getting them used to the idea of bank accounts, check-writing, budgeting, credit cards and the like is part of their education. Establishing good credit now is also important. Adding your child as an authorized user on your own credit card can be a good first step to establishing their credit history (and monitoring their use of a credit card!). Consider signing them up for a credit monitoring service to alert them of any identity theft. Be sure they have strong passwords for any money transfer apps such as Venmo or PayPal, and that they change those passwords regularly. Ensure they have a PIN or password that prevents unauthorized access to their phone and that they know how to "wipe" its contents should it be stolen. If you are a parent who has been making annual gifts, you might decide to make your children aware of such gifts. If your son or daughter is working for the first time, he or she will need to think about state and federal taxes. Be sure they file their tax returns promptly to prevent data thieves from filing false returns and collecting the refunds. Young adults with earned income can also start a Roth IRA account, a great way to save money for retirement. And, of course, as your child turns 18 it is important to remind him or her to register to vote and to remind your son to register with the Select Service (women are not required to register).

We would be happy to discuss the appropriate planning for you and your child. For most people, a few basic documents can provide tremendous peace of mind. Please feel free to contact us for assistance with any documents. We would also be happy to review any school-specific disclosure policies and waivers.





Contact Us

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Your Checklist of Legal Documents

DOCUMENTS	NOTES
✓ Health Care Proxy	
✓ HIPAA Authorization	
✓ Durable Power of Attorney	
✓ Will	
✓ Revocable Trust	
✓ Disclosures of Information & Waivers	
✓ COVID-19 Waivers/Acknowledgements	
✓ Insurance	
✓ Civic and Financial Responsibilities	

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