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THE BOVE & LANGA REPORT: NEXT GEN 2.0

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INTRODUCTION

Several Bove & Langa Reports have touched upon the interconnection of the generations, but here we focus only on children – not just your own children, but children who may be in your life by blood or choice. Childhood jokes come easy: “When I was a kid my parents moved a lot, but I always found them.” (Rodney Dangerfield). “I want my children to have all the things I couldn’t afford. Then I want to move in with them.” (Phyllis Diller). But, seriously folks, whether you are the parent, the fun Aunt, or the next door neighbor who simply listens and laughs, we can all help Next Gen grow and take our place in the world. What follows is a brief jumping off point for those who care. As always, our focus is on Massachusetts law.

CHILDHOOD

WHO WILL CARE FOR YOUR CHILD? All new parents worry about who will care for their child in the event of a tragic death. But what if you just want a vacation alone with your spouse? Or your child is off to camp? Here we discuss the various options available to parents who need to designate a caregiver, but please be aware that each one of the documents discussed has its own rules and specific execution requirements that must be observed for the document to be valid.

- **DELEGATION OF POWERS BY PARENT:** What if you just need someone to care for your child for a period of days or weeks - such as a visit to the grandparents while you attended the Olympics in Rio? One very beneficial tool is the “*Delegation of Powers by Parent*” (“Delegation”), which allows you to delegate parental powers to a temporary caregiver for a period of time not to exceed 60 days. The temporary caregiver will have the power to do many of the same things a parent can do, such as consent to medical treatment. One important requirement to keep in mind is that one parent cannot delegate without the other parent’s consent. This, of course, is not required if the other parent no longer has parental rights.
- **CAREGIVER AUTHORIZATION AFFIDAVIT:** What if your child resides with a non-parent who participates in parenting duties, such as your partner or a grandparent residing in the home? For this situation, a parent may use a *Caregiver Authorization Affidavit* (“Authorization”) to permit the non-parent caregiver to exercise certain parental rights related to the child’s medical care and education on an ongoing basis. Under the Authorization, the caregiver’s rights are concurrent with the parent’s rights and in the case of a disagreement, the parent’s

decision controls (if only that worked with teenagers!). An Authorization can also be utilized when the child is living with the caregiver away from the parent for some reason, such as residing with a host family while training for the next Olympics. The law, however, prohibits the use of an Authorization in a few instances, including solely for the purpose of attendance at a particular school. Therefore, this is not the solution for getting your child into that swanky school district the next town over.

- **PARENTAL APPOINTMENT OF A GUARDIAN AND NOMINATION OF A CONSERVATOR FOR A MINOR CHILD:** Here, a court is involved. To begin, it is helpful to differentiate between a “guardian” and a “conservator”. A guardian is the person who will have the care and custody of your child and make the decisions about your child’s day-to-day life, residence, education, and medical care. A conservator is the fiduciary who has authority over your child’s assets. Depending upon what is in the best interest of your child, the roles of guardian and conservator may be filled by the same person or different persons. A parent may appoint a guardian and nominate a conservator for a minor child in the parent’s Last Will or other writing. Since a Last Will is intended to be controlling upon only at your death, having these designations also set forth in a stand-alone document is a smart planning choice. Although uncomfortable to contemplate, there may be a situation where you are still alive but completely unable to care for your child. In that case, your stand-alone combination appointment and nomination document could then be utilized to ensure that the people you have chosen will be appointed by the court and have the legal authority to care for your child. One important thing to remember is that a child age 14 or older has the right to object to a guardian nominated by a parent either in the parent’s Last Will or a stand-alone document.

FINANCIAL EDUCATION

LOVE COMES FROM THE HEART, NOT THE CHECKBOOK. OK, OK, we can all agree that money isn’t everything. But, don’t you wish someone had taken you aside at a young age and counseled you as to financial literacy? If so, you might not be running full tilt now to save for retirement – a time when a person typically needs 65% - 80% of “working years” income to feel comfortable. Does history have to repeat itself?

- The next time you groan about a household chore you’d rather not do, think about paying a youngster to do the job. Your own children are a possibility (but talk about groans!), so instead you might look to your local community foundation or high school to find a young person who needs the income, and could benefit from the responsibility of a job.
- Do you know a young family member who is a go-getter, already earning taxable income shoveling snow, babysitting, or running a small business (camp care packages, anyone)? That child probably has many uses for her earned income, and saving may not be her first thought. Think about matching that earned income through a gift to the child which is then

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used by the youngster to start an individual retirement account. The time value of money is a wonderful thing. Think about it: If for 5 years when the child is age 16 –20 the youngster earns \$2,000 each summer, which you then match by gifting the young entrepreneur \$2,000. The child then deposits the gift into her own IRA. Your gift totals \$10,000. Assuming a 7% growth, the IRA will have \$172,219 in 2046 when the child is 58, and retirement starts to become more a reality than a distant dream. If \$3,000 a year was deposited to the IRA it would grow to \$258,339.

- A wonderful by-product of the IRA idea is that the youngster can become involved with making investment decisions within the IRA account, typically with the assistance of an adult, at least at the beginning. You'd be surprised how savvy a young person can become fairly quickly. If you are not keen on the IRA idea, but have been funding a Section 529 Plan over the years to help finance a college education, consider bringing the child into the annual process of choosing the mutual fund buckets to hold the 529 Plan investments.
- Then there is the big question of credit cards. Young people are often targeted by credit card companies and must be taught the pros and cons of such arrangements at a young age. You might be comfortable giving your child his own card linked to your account, perhaps with a spending limit and guidelines discussed in advance. As monthly statements come in, review them together, paying particular attention to finance charges and minimum payments, and whether your child has stayed within the agreed upon plan.
- Hand in hand with credit cards is the introduction of the importance of credit reports. You may or may not be willing to share and dissect your own with your child, but you can at a minimum teach the youngster what a credit report is, how it is used in the financial world, and how to run a credit report. Knowledge is power.
- Are you a business owner? If so, you may already be employing your child or other youngster in your business. Good for you. The next step is to consider the formation of a "Junior Board of Directors" – without the power of a typical Board of Directors, of course, but with some limited access to business information and mentoring by the adult Board.

DEALING WITH A NET LOSS—THE INTERNET AND PARENTAL CONTROL

Millennials remember a time without the omnipresent technology, but cannot remember anything without an alert from their iPhones. Children have the world at their finger tips, and cannot imagine life being any other way. That is a lot of power for someone that does not even have a fully developed brain yet!

AT WHAT AGE IS THE CYBER PASSPORT GRANTED? It is no longer surprising to see a very young child expertly manipulating an iPad. Technology is wonderful, and access by children to such technology has made many a plane ride or restaurant dinner more pleasant for the surrounding adults.

But children need guidance for their own development and safety since internet access is everywhere, and many online sites do not have age restrictions that block inappropriate usage. To start, it is important to know what accounts your child wants to use, whether the site itself imposes age restrictions, and whether you think it best to be stricter in your child's use than the site permits. Here are some of the most popular social media sites and the age a child must attain to open an account:

- Twitter, Facebook, Instagram, Pinterest, and Snapchat: 13
- LinkedIn: 14
- WhatsApp: 16
- YouTube: 18 (or 13 with parent's permission)

In addition to knowing when your child may open a social media account, there are other ways to restrict or monitor use of the internet. If your child is using your internet access at home, you can filter what sites they can access by using router based filtering programs like OpenDNS. Also, most browsers have parental control settings that you can adjust or you can buy third party software to download onto any device (such as Norton's). When it comes to keeping your child safe and protected online, the devil is in the details!

THE (CYBER) BULLY PULPIT: The Internet has increasingly become a favorite spot for the ubiquitous playground bully – now the cyberbully, who uses electronic means in the bully's cruel trade. Massachusetts has reacted and enacted laws which include criminal statutes and policies that public schools must follow. For example, any repeated cyberbullying may be prosecuted as harassment and/or stalking with fines and prison time attached. Even the seemingly innocent sleepover favorite, the prank-call, may be prosecuted. Although you may think this behavior is just "kids being kids," the state begs to differ. You, as a parent, may be liable if you fail to prevent an incident that causes the victim damages. It may be worth it to discuss the fact that while the internet is a virtual reality, people's actions on the internet have very real consequences. There are some safeguards from outside the home to protect kids. The school board for each Massachusetts school district must have a policy that prohibits bullying, outlines a reporting procedure, and defines what disciplinary action and steps will be taken. A victim may pursue school discipline, civil, and criminal damages. Make a point to speak with the children in your life, and let them know that if you mess with the bull(ying), you get the horns!

TURNING SIXTEEN

THE FIRST CAR: Do you remember your first car? One of us at Bove & Langa learned to drive on a diesel Ford Escort (not naming names). Once a child turns 16 and goes through the steps of obtaining a license in Massachusetts, a new world of independence opens up. Here are some thoughts and tips for parents of new drivers.

- It might be a good idea to go ahead and get that license, even if the child won't be driving for a while. Insurance rates are higher the first few years after a new driver gets a license. The sooner you get the license, the sooner the rates decrease.
- Stay in touch with your auto insurance agent. Be sure your vehicles are covered and your family's use of the vehicles matches your coverage. For example, if your child is off at school most of the year but wants to drive during the summer, ask your agent if the child can be insured for June through August. Ask your agent for ways to reduce premiums, like taking a defensive driving course.
- Has your child gone off to college with her own car? Title the car in her name so her actions won't affect the rest of the family's insurance rates.
- Consider roadside assistance programs, like AAA, for the whole family. Look for one that allows your child to call even if he is a passenger in someone else's vehicle.
- Little-known facts: (1) If your child walks into a dealership and successfully purchases a car, the contract is binding even though she's a minor! (2) If your family recently moved to Massachusetts and your 15-year-old has a driver's license from another state, she has to stop driving until she turns 16!

REALLY, WE MEAN IT - WATCH THE ROAD! One of the not so sweet parts of turning 16 is the very real temptation teenagers have to text and drive. In Massachusetts, this temptation could be expensive as well. Two local laws operate hand-in-hand (no pun intended!) to make texting a bad idea. One law prohibits composing, sending, or reading electronic messages while driving. Anyone who is caught texting is fined \$100 for a first offense, \$250 for a second offense, and \$500 for a third or next offense. The other law makes it a crime for a person under age 18 to use a mobile telephone, a hands-free mobile telephone or mobile electronic device while driving. Are you modeling the proper behavior for our young compatriots, or are you driving 20 miles per hour in the fast lane fielding a client email or catching your next Pokémon?

TURNING EIGHTEEN

WHAT?!... MY 18 YEAR OLD IS ACTUALLY AN ADULT? Yes. As hard as it is for many a parent to believe, high-school seniors and college freshmen are treated as adults in the eyes of the law. They vote, they serve in the military, they are responsible for their own financial and medical lives. But, often, young adults are not emotionally independent of their parents. Many still rely on their parents for financial and medical advice and want their parents (or others) to have access to their medical records and financial accounts. This is when a basic estate plan is important for a young adult. A basic estate plan includes a durable power of attorney, a health care proxy, a HIPAA authorization and release, and a Last Will.

Just like with your own durable power of attorney, a child's durable power of attorney gives an agent (an "attorney-in-fact") power over the child's financial accounts. Of course, the agent must act in the child's best interest. As a parent, you might think to yourself: *why does someone need access to my child's bank account?* Consider this, your son decides to travel to Pyeongchang, South Korea for the 2018 Winter Olympics and decides to extend his trip. He is probably not thinking about the financial burdens accumulating at home, such as outstanding rent, credit card bills, and utility bills that must be paid. If someone does not have access to his accounts, or has to go to court to get access (which is time intensive and costly), he could lose his apartment or seriously damage his credit score.

Similarly, it is important for a young adult to have a valid health care proxy and a HIPAA authorization and release in her medical file. A health care proxy gives a health care agent (usually a parent) power over the child's medical decisions when the child is unable to communicate her wishes herself, and a HIPAA authorization and release grants access to medical records. Unlike the attorney-in-fact, the health care agent may only make decisions for the principal when the principal is unable to do so. For example, if an Olympian equestrian gets thrown from a horse while training and is temporarily sedated due to her injuries, her health care agent would make medical decisions for her. If she did not have a health care proxy in place, a parent may have to petition the court to be appointed her guardian (which again is timely and costly, and may involve a court battle if parents do not agree on an appointment or course of treatment).

Lastly, it is important for young adults to have a Last Will. Even if they do not have many assets, a Last Will provides them with choice in how their assets are distributed at their death. Otherwise, their assets will pass under Massachusetts' "laws of intestacy" – how the Commonwealth has decided assets should pass in the absence of a Last Will, which would be to a parent if the child was unmarried not a parent herself. Often not the best tax result, especially if the young adult is a successful athlete with sponsorship contracts, and the parents do not need the assets themselves.

TRUST ACCOUNTS: Many parents of young adult children have set up trusts in which their children are beneficiaries. This has the benefit of allowing the trusts to provide for the child when the parents are no longer able to do so. However, when children are beneficiaries of a trust, they are entitled to information about the trust. Under statute, the trustee is required to account to the beneficiaries of a trust at least annually. This means that a child will have information on how the trust assets are invested and what distributions have been made. If this presents an issue for you or you are concerned about privacy, there are ways to draft around such a requirement.

REGISTER TO VOTE AND VOTE! Last summer online voter registration became possible. Send your first time voters to the Secretary of the Commonwealth's Online Voter Registration System and follow the prompts (which differ depending upon whether or not the youngster has a valid driver's

license, learner's permit, or non-driver ID issued by the Massachusetts Registry of Motor Vehicles, as well as a signature on file with the RMV). www.sec.state.ma.us/ovr

TURNING TWENTY-ONE

THE “UTMA” ACCOUNT: It is common knowledge that minors do not have the “legal” capacity to own property. To remedy this, decades ago a “uniform” law was developed and ultimately adopted in all U.S. jurisdictions, allowing an adult to hold any type of property or asset as custodian for a named minor. This law is referred to as the Uniform Transfers to Minors Act (UTMA), and avoids the substantial time, trouble, and legal fees that would otherwise be encountered without the act.

As a general rule and from a practical standpoint, the UTMA works perfectly when it comes to setting up bank accounts to receive gifts given to the minor, or purchasing securities and mutual funds to invest for future college costs, the usual objective for such accounts. This works out nicely because by the time the custodian must make the remaining UTMA funds available to the minor at age 21 the funds are all but gone towards educational costs.

But then there are situations where the UTMA does not work so perfectly. For one reason or another, some families accumulate far more than is necessary for college, or in other cases, the child does not go to college or gets into financial trouble. Despite such circumstances, the UTMA funds must still be made available to the child. Obviously, this can lead to problems where large sums are involved and distribution of those funds or investments outright to the child is not advisable. In these cases, many advisors recommend that the parent or custodian plan for such an event in advance, and consider placing the UTMA funds in a family owned partnership or limited liability company (herein each a “Family Entity”), so that instead of the custodian holding cash or securities in the UTMA, she is holding a partnership share or member interest in the Family Entity.

There are two excellent reasons for this. First, the child’s interest in the Family Entity can be non-voting, leaving the parents or other family members in control even after the assets are transferred to the child, and second, if the child becomes the object of a lawsuit or other claim, the child’s creditor may not be able to reach the underlying Family Entity assets but may only reach funds that are actually distributed to the child from the Family Entity. The foregoing plan is equally attractive if the UTMA assets consist of an interest in a family business, since the last thing a family would want is for a child’s creditor to obtain an interest in the business.

THE MINOR’S TRUST: In addition to UTMA accounts, one of the commonly used methods of transferring assets to a minor without the need for a court-appointed guardian is the so-called “minor’s trust,” also referred to as a “2503 (c) trust” in the vernacular of tax advisors, referring

to the section of our tax code that permits such trusts to qualify for annual tax-free gifts up to the current exclusion amount – \$14,000 this year. The tax code, like the UTMA law, requires that the funds in the minor’s trust be made available to the minor at age 21. And as with the UTMA law, this requirement can be troublesome if the circumstances make such a distribution inadvisable. Although similar investment strategies (i.e., the Family Entity) can apply to the minor’s trust, that trust allows one more strategy that is not available with the UTMA. That is, the trust could allow the minor a “window” of withdrawal, say 30 or 60 days after reaching age 21, and if the minor does not make the withdrawal within the window, the trust would provide that the funds/investments will remain in trust for the child’s benefit for an additional period, say ten years. Note that during the ten year period (and periodically thereafter when the child has the funds) the child’s creditor could reach those assets, but if the assets consist of Family Entity interests as illustrated above, the funds or other assets inside the Family Entity would be protected.

Still another planning idea for BOTH the UTMA and the Minor’s Trust would be to convince the child (now an adult) to contribute the funds from the account to a domestic asset protection trust (“DAPT”) for the child’s own benefit. There are 16 states that permit such trusts, and it is believed that after the period of limitations applicable to the transfer to the DAPT (ranging from 18 months to 5 years, depending on the state selected), the child’s creditors (often including a spouse suing for divorce) cannot reach the assets in the trust.

YOUNG ADULT LIFE

TO THEIR CREDIT, YOUNG ADULTS CAN BE SMART ABOUT MONEY: College and the first few years of working life can provide a great education – about money. Between student loans, car loans, and rents, young adults can quickly become overwhelmed and ask for help. What’s the best way to help? Surprisingly, co-signing for a loan may be the worst option. The child’s credit score becomes linked to the co-signer’s credit score, and if the child stops paying on the loan and doesn’t tell the co-signer, significant penalties can accumulate. Instead, consider directly lending to the child, so the child’s payments are coming to you and you’ll know if they miss one. If you’d like to boost the child’s credit score so they can qualify for better loans on their own, consider adding them as an authorized user on one of your credit cards. Of course, this comes with a risk that they might use the card more than you wish, but you have the power to put a stop to that. As long as the child shares your credit card, they benefit from your credit score. The opposite is true as well, so be sure your child is maintaining good debt practices.

WHAT IMPACT WILL YOUR ESTATE PLAN OR GIFTING HAVE ON YOUR CHILD’S OR GRANDCHILD’S ABILITY TO RECEIVE FEDERAL FINANCIAL AID? For many American families the completion of the Free Application for Federal Student Aid (most commonly referred to as the “FAFSA”) is a dreaded annual event. FAFSA requires a full disclosure of both the child’s assets and, if the child is still considered a dependent student, the assets of the parents to determine whether

or not the student has the requisite financial need. This information, along with the other information gathered on the form, is then used to determine what federal student aid the student will qualify for, if any.

What if you have made your child or grandchild a beneficiary of a trust or set up a 529 Plan? Will these assets be taken into account? In short, yes. Although the consideration of student aid should not be a bar to establishing an estate plan or setting up a lifetime gifting strategy, it is important to keep in mind these assets will be taken into account when the student later applies for federal student aid. Under the instructions for the FAFSA, assets such as trust funds, UTMA accounts, qualified educational savings accounts (e.g. Coverdell savings accounts, 529 college savings plans and the refund value of 529 prepaid tuition plans) are all reportable as investments of the student (or in some cases of the parent). The reportable value of the student's (or parent's) interest in a trust fund will depend upon what interest the individual has in the trust and generally what the present fair market value of that interest is.

Some useful governmental websites that review applying for and qualifying for federal student aid (and paying back federal student loans) are:

- U.S. Department of Education – Federal Student Aid: studentaid.ed.gov/sa
- U.S. Department of Education – FAFSA home: fafsa.ed.gov
- U.S. Department of Education – student loans: studentloans.gov/myDirectLoan/index.action

Well, we hope this was helpful. As the Boomers used to say: See you later, alligator! The kids today? Later Gator (L&r 🐊)!

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