



Estate Planning Dilemma: How to Plan When a Beneficiary has a Substance Abuse Issue

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We are all familiar with the news that illegal substances, alcohol, prescription drugs, and even household chemicals used in ways not intended by the manufacturer are being abused in our society. We may have witnessed co-workers, neighbors, or friends having to address the issue within their families. Such abuse or addiction may be even more personal and affect someone in your family — a child or grandchild, a sibling, a spouse, or a parent. It's an issue that a growing number of our estate planning clients are talking about, and sadly, needing to address as they plan the disposition of their estates.

An initial reaction is often a desire to disinherit the family member who has "the problem." In other cases, family members may simply postpone their estate planning so that they do not need to face the reality of the situation.

For illustration purposes, let's assume that Mom and Dad do not have wills or other estate planning documents and Child (or any other heir) has a substance abuse issue. Mom and Dad are concerned about leaving some or all of their estate to Child for fear that he will squander his inheritance on drugs or alcohol or become the victim of opportunist "friends." Mom and Dad may also be concerned that by providing Child with a windfall of funds at their deaths, Child may be more easily tempted to participate in self-destructive or undesirable behavior.

First, the really bad news.... If Mom and Dad choose to ignore the problem by not preparing a will and other documents to plan for the



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disposition of their estates, North Carolina intestacy laws (the laws that dictate who will inherit assets when someone dies without a will) dictate that Child may be entitled to a percentage of their estates upon their deaths (even if only one parent dies). Under this scenario, the problem often becomes worse by putting money directly and immediately in the hands of Child with no restrictions on its use. The story does not usually have the ending that most parents would hope.

Certainly disinheritance (which usually requires an affirmative action) is an option, but more often than not, parents are looking for some sort of middle ground. As part of our firm's conversation with clients, we address the use of trusts to provide a safety net while protecting assets from unfettered access by a substance-dependent beneficiary.

In our hypothetical situation, a trust would allow Mom and Dad to be able to put some money aside for Child at their deaths. The money could be used for Child's benefit but protected from Child's unrestricted access and poor choices. Mom and Dad would name a trustee (who can be a family member, a trusted friend, or a professional trust company) to hold the funds and use the funds for the specific purposes that Mom and Dad determine. Mom and Dad may also give the trustee the flexibility to assess the situation and distribute funds as the trustee would determine to be in Child's best interest. Depending on the severity of the problem or the amount of control that Mom and Dad may want to exercise posthumously, Mom and Dad may require drug testing as a prerequisite to any distributions and may provide for payment for Child's treatment or rehabilitation.

There are options if you or someone you know is confronted with planning that involves an individual with a substance abuse problem. For advice appropriate for your particular situation, please contact one of the estate planning attorneys at Young Moore at (919) 782-6860.

The information contained in this article is of a general nature and does not constitute legal advice. If you would like advice related to your particular situation, please contact one of the estate planning attorneys at Young Moore and Henderson, P.A.

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