

WHEN MONEY COULD SPELL SERIOUS TROUBLE - ESTATE PLANNING FOR SUBSTANCE ABUSE BENEFICIARIES

By Tobias C. Pierce

The statistics are staggering. According to the United States Substance Abuse Services Administration, there are approximately 21.5 million Americans over the age of 12 who have an addiction to alcohol, illicit drugs, or both. 100 people die every day from drug overdoses, a number which has tripled in the past 20 years. Overdoses caused by painkillers are more common than heroin and cocaine overdoses, combined. Even more troubling, in 2015, 1 in 5 young adults admitted to regular use of illicit drugs.

These are harrowing numbers, and sadly, more and more trustees are finding themselves in the unenviable position of holding assets for the benefit of a substance abusing beneficiary. Knowing that a beneficiary may have a substance abuse problem presents the trustee with an inherent conflict of interests. On the one hand, the trustee has a duty of care to carefully manage the trust's assets for the benefit of the trust's beneficiaries. On the other hand, if the trustee knows that the beneficiary is using trust funds to fuel their substance abuse needs, an argument could be made that making an unrestricted distribution to the beneficiary is akin to wasting trust assets. Even worse, depending on the situation, a trustee may be faced with a distribution request from a beneficiary that the trustee knows is abusing dangerous substances, and thus knows that such distribution would likely either enable the beneficiary's addiction, or in the worst case scenario, result in death.

Fortunately, through the use of creative estate planning techniques, the problems outlined above can at the very least be minimized, and at best, be avoided altogether. The first option in dealing with a beneficiary who has a substance abuse problem is to simply disinherit the beneficiary. While not the most pleasant approach, this action would provide assurance that there is little chance of trust assets being used to promote a beneficiary's substance abuse issues. In the worst situations, this may be the safest option if it does not appear that the purported beneficiary is going to recover from their addiction.

Another way to protect a beneficiary is through the use of what is commonly referred to as an "Incentive Trust". An Incentive Trust is designed to provide for a beneficiary's basic needs, and at the same time, provide a financial incentive to maintain sobriety and seek out help in their recovery. Typically, the Incentive Trust will require the beneficiary or beneficiaries to submit to random drug and alcohol testing, and will reward the beneficiary financially for reaching certain goals outlined in the trust document.

While there is no surefire method to insure that trust funds never end up in the hands of a substance abusing beneficiary, active planning before a named beneficiary is ever entitled to distributions can drastically limit the negative effects inherited money can cause. If you have any concerns about your wealth ending up in the hands of a beneficiary who has substance abuse problems, please schedule an appointment to meet with one of our estate planning attorneys to discuss your options. Our experienced advisors can help you formulate a plan that will both protect your trust's assets and empower your beneficiaries to live healthy, productive lives.