

Substance abuse poses problems for estate planning

Harry Funk Aug 1, 2018



As you read about the detrimental effects that substance abuse has on various facets of American society, you may have missed what attorney Martin Hagan hears from clients with growing frequency.

“Well, we basically want to give our children an equal share,” they’ll tell him during estate-planning consultations, “but we have a child who is involved in opioids or alcohol, and there might also be some mental illness involved. And we’re just not sure what to do. Can you give us any ideas?”

The Mt. Lebanon resident and partner in the Private Clients Practice Group of Pittsburgh-based Meyer, Unkovic & Scott shared potential answers with his colleagues as a featured presenter at the Pennsylvania Bar Institute's recent Elder Law Institute in Harrisburg.

His topic, "Estate Planning for a Beneficiary with a Substance Abuse or Mental Health Disorder," addressed the model for a trust, an arrangement that allows a third party to hold someone's assets, that he has developed in consultation with psychiatrists and other medical professionals.

Attorneys, as Hagan explained after returning from the institute, long have recommended trusts as a means of providing for beneficiaries with, say, Down syndrome, autism or other genetic conditions that inhibit the proper handling of money.



Martin Hagan

"When it comes to substance abuse, I think what I have seen is that most lawyers treat this in a manner something like: If a trustee determines that the child is using drugs, then all distributions shall end," he said. "I think that is of limited effect, because it presumes that an addict like that is going to be motivated just by money, an external motivational factor. And typically, that is not going to work."

The intent of Hagan's model is to instill motivation within the beneficiary to stop using.

"If the goal of this trust is to try to effect a change in the child, then the best way to do that is with setting up some incentives that are focused not on passing their urine tests, but working with therapists, clinicians and doctors to develop a treatment plan," he asserted. "And the trust is there to provide the means to accomplish that."

Hagan said some of his clients reject the notion of leaving anything to children with histories of substance abuse.

"I say, 'Are you willing to accept the likely consequence of that?' If they don't have any money and are not able to work, are they going to be hitting up some other relatives who have a sympathetic approach, or are they going to be living out on the streets?" he said. "You should think through what the consequences of that may be."

Others consider taking a different approach.

“The property that we intended for this child with the drug problem, we’ll leave it to our other son. And our other son will hold the money for the child.

“The problem is that, by definition, there are no strings involved, nothing that indicates that the other son is meant to sort of hold this property,” Hagan explained. “Something could happen where there’s a divorce or a bankruptcy. A judgment creditor is coming after the son who is holding the money. And that money could be gone.”

Hagan has been serving clients in the areas of estate planning and administration, estate and gift taxation, special needs trusts, elder law, and estate and trust litigation for more than 35 years. He is a Fellow of the American College of Trust and Estate Counsel and principal author of “Drafting Wills and Trusts in Pennsylvania,” a textbook used by lawyers throughout the state.



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