

Estate Planning for the “Troubled” Adult Child

You never stop being a parent, but in some cases, estate planning decisions can be challenging if you have an adult child who may be troubled or demonstrate problematic behavior in some way (e.g., is addicted to drugs or alcohol, is financially irresponsible). You likely already know the heartbreak associated with trying to help that child make healthy decisions. Perhaps this person is in a rocky marriage, owes money to creditors or banks and may need to file for bankruptcy, or is on government needs-based benefits (like food stamps, certain types of disability or MassHealth). Do you struggle with the thought of what will happen to your child after you pass away? The last thing you may want to do is to provide this child with a blank check inheritance. This could lead to disastrous unintended results, including a squandered inheritance, loss of the inheritance to debt, or worse, you could unknowingly be contributing to your adult child's unhealthy lifestyle. There are options for how best to handle this situation.

The Old Way: Disinherit the Child

The traditional approach many parents would choose was to disinherit this child. Parents would skip their “troubled” child and instead provide only for their healthy and responsible children. It is important to note that if you do not prepare a Last Will and Testament, your child may be entitled to a share of your estate under the Massachusetts intestacy statute. If you decide to disinherit your child, you must leave specific instructions in your Will or Trust explicitly stating that such child was intentionally excluded. Disinheriting a child is a difficult decision and often not an option a parent wants to consider. If that is the case, creating a trust can provide a more acceptable alternative.

The “New” and Better Way

In traditional trust planning, beneficiaries receive their inheritance outright. Unfortunately, by owning their inheritance, the beneficiaries are then needlessly exposed to the claims of spouses in divorce, creditors, lawsuits, the loss of government needs-based benefits, and potential estate taxes.

Instead of receiving their inheritance directly, a beneficiary may instead receive their inheritance in a special trust. This new trust for the child is called a “spendthrift trust”. This on-going trust can be tailored to your unique child’s circumstances. For some, the trust may be controlled by the beneficiary in such a manner as to virtually give him or her nearly all of the same rights as ownership, without the liability exposures ownership brings. For others, the trust may be controlled by another individual (a sibling, trusted friend, or bank or financial institution) who can manage funds on the troubled child’s behalf.

In some instances, protecting our loved ones requires protecting them from themselves. This can be accomplished through proper estate planning. If you have a child or other loved one who you are unsure how to best provide for upon your passing, seek advice from a qualified attorney. This and other strategies may be available to help your family make the best decisions for you.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.