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Estate Planning | Wills & Trusts

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Estate Planning to Keep Your Children Motivated

POWER POINTS:

- ***You want to provide for your children, but you do not want them to depend on their inheritance.***
- ***A proper estate plan can limit distributions to your beneficiaries to provide for basic necessities but not luxuries.***
- ***Using an independent trustee will increase protection from creditors and reduce the likelihood of abuse by a beneficiary.***

In the 2011 film, *The Descendants*, George Clooney's character, an estate planning attorney, tells the viewer that "you give your children enough money to do something but not enough to do nothing." One way to accomplish this goal is to only leave your children a limited amount and leave the rest of your estate to other individuals or charitable organizations. However, if you do not want to leave a significant portion of your estate outside of your family but instead have it serve as motivation for your children to continue to be productive members of society, a properly drafted Revocable Living Trust can accomplish this and ensure that your children will have enough support "to do something, but not enough to do nothing."

In addition to using your estate plan to keep your descendants motivated, proper drafting and utilization of available estate planning tools can protect the trust assets against not only outside creditors but also the divorces and poor or wasteful decisions of the beneficiaries themselves. By retaining assets in trust and appointing a trustee to oversee distributions, you can limit your beneficiaries' reliance on trust assets and protect those assets from internal and external dangers.

For purposes of this discussion, it is important to understand that there are typically three parties to a trust: (1) the "grantor" is the individual who established and funded the trust; (2) the "beneficiaries" are the individuals to whom distributions may be made from the trust; and (3) the "trustee" is the manager of the trust who is responsible for making distributions to the beneficiaries.

Restricting Distributions

When you setup a trust for the benefit of your loved ones, you can choose the purposes for which the trustee is permitted to make distributions to the beneficiary. These purposes can range from very broad, such as anything that the trustee determines to be in the best interest of the beneficiary, to very limited, such as education only. The trustee must abide by the terms of the trust document and can be held liable for distributions beyond the scope of those terms.

It is up to the grantor at the time the trust is prepared to determine how restrictive he or she wants beneficiary access to be. By using more restrictive language, you can force the beneficiaries to earn and provide for their own luxuries while supplying a safety net in case the beneficiaries need the trust assets to pay for necessities or items you deem important, such as food, shelter, education and medical expenses.

Delaying Ages of Withdrawal

Beyond the purposes for which a trustee may make distributions to the beneficiaries, the grantor can determine the ages at which a beneficiary may withdraw some or all of the trust assets to be used as the beneficiary wishes. If there is no concern of the beneficiaries' responsibility or liabilities, these withdrawal rights can be granted at very young ages or even immediately upon the grantor's death. However, if divorce, creditors, substance abuse or loss of motivation are concerns, it may be better to set older ages or eliminate withdrawal rights all together so that distributions from the trust may only be made at the trustee's discretion.

Achievement Goals

One of the features of any trust is that it continues to live on beyond the life of the grantor, allowing the grantor to voice his or her wishes through the trust agreement. These wishes can include provisions regarding not only the distribution, withdrawal and protection of assets, but also certain achievement goals that the grantor may value and wish to impose upon the beneficiaries. The grantor may choose to allow distributions based on common goals such as completing a bachelor's degree or being employed full time, or more unique wishes, such as attending a particular school, undertaking a particular profession or even marriage requirements. By utilizing this feature, the grantor can express his or her wishes and keep the beneficiary motivated.

Using a Third-Party Trustee

As mentioned above, the trustee is the manager of the trust and can be an individual or financial institution. An individual trustee may be related to the grantor or may even be a beneficiary of the trust. However, if protecting the trust assets is a priority—whether from the beneficiaries' own decisions or their creditors—then utilizing an independent trustee is the ideal arrangement for the trust and its beneficiaries. By doing so, distributions can only be made at the discretion of the trustee, creating protective separation between the trust and its beneficiaries. Additionally, if one or more of your beneficiaries is financially irresponsible, naming an unrelated trustee to oversee distributions is the best way to reduce the likelihood of creating conflict among family members.

How You Can Use These Tools

When it is not earned, a financial windfall can cause the recipient to lose motivation and become careless. Proper planning can allow you to pass on your values to those who will benefit from your estate while also protecting the assets for their exclusive use.

It is important to understand all of the purposes, benefits and consequences of the numerous estate planning options that are available to you when you are establishing a trust. By working with an experienced estate planning attorney, you can maximize the assets that you have earned and ensure that your children, grandchildren and other beneficiaries will abide by the wishes expressed in your trust.

Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Trust and Estate Administration and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish has served as Vice President of Professional Development for the Indian American Bar Association and board member of the Young Professionals of Evanston.

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