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Elder Law • Special Needs Planning • Estate Planning

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Using an Inheritance to Teach Your Problem Child a Lesson

Many of our clients have struggled with how to leave money or assets to children who have made bad life choices, have poor behavior or financial habits, or are troubled by substance abuse, gambling or other addictive problems. This article by New York Times writer Paul Sullivan outlines some of the possible solutions for these difficult situations.

By Paul Sullivan

PARENTS want to raise their children to be independent and successful and to use whatever resources they have to give their offspring a leg up in life.

Paul Sullivan writes about strategies that the wealthy use to manage their money and their overall well-being.

But it's sometimes difficult for parents to find the right balance between making financial and professional resources available and encouraging their children to grow into independent adults. I have written a lot over the years about the counsel that parents seek to help them do this. A whole industry now exists around "next generation" advice and about how to "launch" children into adulthood.

And let's be honest: if affluent parents were not anxious that their children could end up as alcoholics, say, or plagued by bad decision-making, this industry would not exist.

But what the industry doesn't play up is what happens when the best efforts fail and the children end up troubled. At some point, those parents will have to decide what to do about leaving money to their problem children. And if they do not come up with a plan first, that money could make a bad situation worse.

"Everyone today is worried about their children even though their children are wonderful right now," said Jerry Hesch, of counsel at the law firm Carlton Fields and an adjunct professor at the University of Miami School of Law. "They worry, 'My child is going to marry someone who is going to take him for a loop. Or what happens if my child is in an auto accident and someone sues him?'"

So what should parents do? Advisers say this is among the toughest conversations to have.

“Some couples, it comes out pretty quickly, but for most people it’s not a conversation they’re willing to have,” said Jean A. Dorrell, president of Senior Financial Security in Summerfield, Fla., a town next to The Villages, a large retirement community. “Then I say, ‘Which one of your children do you trust the most to handle your financial affairs.’ People will say, ‘This one isn’t good with money’, or ‘This one is, but we don’t trust her husband.’ That’s how I open the conversation.”

If ever there was a Pandora’s box for parents, this is it. Do parents leave more money to the good children and less to the bad ones, or vice versa, since the bad ones will presumably need more help? Is there a way to use an inheritance, regardless of the size, to give incentives for better behavior? What do you do if a child has turned out fine but has married someone you think will take your money and run?

There are many options to protect your children from themselves but the options are the epitome of tough love. Still, they could help your child in the end.

RESTRICT ACCESS Money does not cause problems, but it can sure accelerate them. The simplest strategy is to choke off that fuel.

Trusts are a popular way, but they can seem complicated and expensive to set up. Ms. Dorrell said she often recommended simple annuities for clients who had life savings in the hundreds of thousands, not millions, to restrict how the money was passed to heirs.

By titling the assets precisely through a beneficiary designation form, the money can be distributed as the parent wants. If the problem child dies before the term of the annuity, whatever is left can stay in the family line.

For those who worry about how their child will feel about their decision to, for example, restrict the money in the inheritance because of a spouse, Ms. Dorrell offers solace. “I tell them, ‘Your child knows how you feel about their spouse.’ ”

Plus, cutting someone out of your will may feel satisfying at the moment, but if the goal is to get a child to change, it rarely accomplishes that.

Anne Marie Levin, vice president at PNC Wealth Management, recalled a client who came into her office seven years ago with the intention of cutting off her daughter, a drug addict.

The client had a net worth about \$10 million. “She said, ‘The last thing I want to do is leave her an inheritance,’ ” Ms. Levin said. “I said: ‘The last thing you want to do is abandon her. What if she needs rehab? Or help paying her rent?’ ”

INFLUENCE BEHAVIOR Other strategies seek to use a carrot-and-stick approach to encourage children to act in a desired way.

Incentive trusts can set hurdles for children to receive money or make payments only for set reasons. Pretty much anything can be a trigger, from being admitted to a certain college or

matching money children earn on their own to being clean from drugs for a certain number of years.

“I don’t know what the success rate is on these things, but it doesn’t have to be a single trigger,” said Stan Smiley, senior vice president in the advanced planning group at the Cetera Financial Group, a broker-dealer based in Los Angeles.

But these trusts are like salads at salad bars: the more heavy items you add, the more you have to pay. “Why the trust ends up costing a lot of money is the parents aren’t willing to give the trustee sole responsibility on what to do,” Mr. Hesch said. He advocates a simpler approach of using an independent trustee you know. “If the independent trustee doesn’t do what you tell him to do, remove him.”

There are more personal ways to make your point, like telling your heirs in writing what you hope for them. Chris Boyett, chairman of the private wealth division in South Florida for Holland & Knight, said he was so impressed by the thoughtful language in a client’s trust document that he has adapted it for many clients.

Mr. Boyett pointed to one line that could be a model for every parent: “While I am hopeful that the beneficiary’s basic needs will be met, I am not concerned that all of his or her material desires be fulfilled. I regard it as much more important that the beneficiary live a meaningful and purposeful life.”

That could be any parent’s mantra. To that end, he advised parents not to pick one of their children as a trustee of their will: that child will almost always be pressured by the problem child for extra money.

PROTECT THE FUTURE Everything may be fine now, but will it stay that way forever? This is where dynasty trusts come into play. They are intended to last forever or until the money runs out.

This is one area that has been affected by the generous gift tax exemptions in place until at least the end of next year. People with substantial wealth may want to take advantage of the \$5 million exemption from taxes and 35 percent tax rate over that amount, which President Obama and the Republicans in Congress agreed to in December.

Ms. Levin, who is based in Delaware where many dynasty trusts are written, said she had seen an increase in interest in these trusts since January. But, she said, the tax exemption has also prompted parents to think more deeply about the needs of their children — let alone heirs they will never meet.

“Personal goals have been coming into play,” Ms. Levin said. “They say, ‘We want to pass wealth to our children in a way that won’t harm them.’”

It is unlikely that even a trust that lasts forever is long enough to keep future problem children from harming themselves. But parents will at least have done their best.

[By Paul Sullivan, New York Times (Estate Planning, September 2, 2011)
http://www.nytimes.com/2011/09/03/your-money/estate-planning/using-an-inheritance-to-teach-your-problem-child-a-lesson.html?_r=1&ref=paulsullivan]

For help designing trusts and other plans to provide for “challenged” or “challenging” children, call us today at 601-987-3000.