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ELDER LAW & ESTATE PLANNING CENTER

Plan for Tomorrow, Today

When developing an estate plan, it is paramount you understand how distributions work and what that means for your potential beneficiaries.

For example, a married couple has two children. One child is capable of managing their assets, has a job, no financial issues, and supports their family. The other child, however, is an alcoholic or an addict, cannot keep a steady job, and is in financial trouble. The first child would have no issues receiving a sum of money from an estate, whereas, the second child would have some major issues.

For instance, if the second child was an alcoholic and received a sum of $10,000.00, how long would it take the second child to drink up the entire inheritance? Would they survive having that much money to spend on their addiction?

Or what if the second child had a judgment against them or owed creditors money? The inheritance would be gone as soon as they received it in order to settle the debts.

Is that really what the clients would want for their estate? For it to be spent enabling their child's addiction or to be used completely to pay for creditors? For most, the answer is no. The intention is for any inheritance to be used for the benefit of the child, not to settle debts or feed an addiction.

One prospective client made the comment, "I never expected to have to worry about my adult child inheriting my estate."

One sure fire way to guarantee an inheritance is used for the benefit of the child/beneficiary is through a separate share trust. A separate share trust can be included in any revocable living trust plan or be drafted into your will.

If the separate share trusts are included in a revocable trust, they come into being after the grantor(s) have passed. Instead of the trust being distributed outright to the named beneficiaries, any designated share would be moved to the specified separate share trust and managed for the beneficiary.

Similarly, a separate trust included in a will comes into existence after the estate and will have been probated. Instead of an heir receiving a distribution, the separate share trusts are created and managed for the beneficiary.

Separate share trusts mean the assets are never transferred into the name of the beneficiary. By the assets remaining in trust, creditors cannot reach the assets to settle the beneficiaries' debts. If the beneficiary were to go through a divorce, the inheritance would not be a part of the marital estate. If the beneficiary was struggling with addiction, the separate trust could specify the amount the beneficiary was allowed to receive per month, specify the beneficiary could use any amount necessary for rehabilitation, specify upon proof of sobriety for a certain period of time would allow an increase in the distribution, etc.

The beauty of a separate share trust is they can be tailored to the specific issues and needs of the beneficiary. Whereas, if the beneficiary were to receive an outright distribution, there is no control over how the inheritance is used.

This is the number one reason why it is important to update your estate plan and talk to an experience estate planning attorney. Life happens. People's situations change as years go by and it is vital that you make sure your estate plan is equipped to handle the circumstances of your children/beneficiaries.

Separate share trusts are an extremely useful tool to have in your estate planning toolbox. Talk to an estate planning attorney today to learn more about separate share trusts and whether or not they are right for you and your estate.

For more information, contact: ***The Elder Law & Estate Planning Center – 843-757-5294 – 10 Pinckney Colony Rd., Suite 300, Bluffton, SC 29909.***