

Whatever our age, upbringing, education, or social status, many of us know and love someone who has been impacted by drug or alcohol addiction. Substance abuse affects not only the user but also his or her friends and family, who must decide if and how they can maintain a relationship with and support their loved one. In particular, estate planning for individuals and families with a loved one who suffers from substance abuse involves a careful balancing act to support the basic needs of the beneficiary without becoming an enabler.

If you are considering leaving an inheritance to a loved one who has a drug or alcohol problem, you can provide support while protecting his or her inheritance through a Trust with a properly drafted drug testing provision. The following are some tips for creating a flexible yet effective provision:

DO provide specific instructions regarding how and how often the beneficiary should submit to a drug test. Clearly state the drugs for which the testing facility should screen. This gives your trustee guidelines and minimizes the possibility that the trustee will have to make guesses about your intent.

DO allow the trustee to make distributions which will provide for the beneficiary's basic needs. Consider including language which permits the trustee to make direct payments for rent and utilities. If a family member or third party can be appointed to purchase food and clothing for the beneficiary, the trustee can be directed to reimburse him or her for any such purchases.

DON'T overburden the trustee with monitoring duties. For one thing, a trustee (particularly a corporate trustee) will be less likely to accept his or her appointment if doing so comes with a string of difficult and time-consuming duties. Further, certain monitoring responsibilities may be impossible to carry out. For example, if a Trust states that distributions to the beneficiary will be suspended if the beneficiary consumes any alcohol, at any time, the trustee simply cannot monitor the beneficiary closely enough to ensure that he or she has consumed zero alcohol. If you believe that intense monitoring is necessary, you may want to consider appointing a Trust advisor or Trust protector to take on those responsibilities.

DON'T make the terms of the Trust so inflexible that the trustee cannot alter distributions if the beneficiary's needs or circumstances change. You may want to allow the trustee to make distributions for education or even a small allowance if the beneficiary's condition improves, or to pay for unforeseen medical expenses if it deteriorates. Because you cannot predict the future, it is important not to tie the trustee's hands.

Remember, if you are faced with the difficult task of planning for a beneficiary with substance abuse problems, you have options. Your estate planning attorney can walk you through your available choices and help you create a plan tailored to your family's needs.