"I'll Disinherit My Daughter If She Marries That Man"

This is a recent news headline. Many people have spent all of their lives building up a nest egg and hope to leave some assets to next generation as an inheritance. There are times when people have reservations about what the children or beneficiaries will do with the inheritance after their death. What can you do if you have reservations about that inheritance going to the next generation and making sure that it will last when it is received by the beneficiaries? We often encounter this problem in the following situations:

Young Beneficiaries

For people with young children or grandchildren there are often large life insurance policies that would be paid out at the parents' death. If the life insurance pours into a trust, an option would be to set up what is called a testamentary trust (or a sub-trust) for the benefit of the young children. This testamentary trust allows someone else to manage and to have sole legal authority over the assets, but the assets are for the benefit of the beneficiaries. The trustee makes payments for the benefit of those beneficiaries (such as for education and other needs), but they do not receive the assets outright in a lump sum until they reach certain ages designated by the parents.

Irresponsible Beneficiaries

If a parent has a child that is either 1) a spendthrift and likely to spend through the money quickly, or 2) is married to a spendthrift (or if the child has a rocky marriage), then it might be prudent to set up a testamentary trust for the benefit of the child to make sure the assets are available for the rest of the child's lifetime.

Disabled Beneficiaries

This also applies when we have beneficiaries who are disabled and are the recipients of needs-based government programs (e.g. Medi-cal, SSI, VA "Aid and Attendance"). For these beneficiaries, if they receive an inheritance, it may disqualify them from their government needs-based benefits. They would be forced to spend most of their inheritance before they are be able to re-apply for their government needs-based benefits.

In this instance, it is sometimes advisable to prepare a special needs trust for the benefit of the beneficiary. This allows a share to be set aside for the benefit of the beneficiary, without giving the beneficiary direct access to the funds. The trustee can pay for things that supplement the beneficiary's lifestyle for which the government benefits would not pay. The share does not count as an "available asset," thereby preserving the government needs-based benefits.

Disadvantages to Testamentary Trusts

Control beyond the grave has its disadvantages: 1) It causes added administration for the designated party acting as trustee of the child's share for a period of time after the client's death, sometimes for the rest of the child's lifetime. 2) It can sometimes be difficult to have a sibling as trustee over another sibling's share.

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