

BENEFIT THE BENEFICIARY

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Consider the beneficiary(ies). Estate planning for the elderly involves drafting wills and trusts. Remember that in doing this estate planning, we are helping our client to benefit the beneficiary -- the spouse, children, relatives, and contingent beneficiaries. Frequently, clients will have disabled or minor beneficiaries. Intervivos or testamentary trusts may provide for special and delayed distribution provisions to benefit the beneficiary. As attorneys, we must insure that our estate planning provides the greatest benefit to the beneficiary and not just insure that a beneficiary receives an inheritance.

For all beneficiaries, the attorney should inquire as to the beneficiaries' mental condition; psychological problems; drug or alcohol problems; learning disabilities; physical disabilities; whether the beneficiaries can handle assets, investments, real estate, etc.; does the beneficiary have experience and knowledge about investments. True Story - My legal assistant handed an estate distribution check of ,012 to a man over 30 years old. He signed the receipt, looked at the check and said "WOW, I've never seen so much money at one time in my life. I think I will just carry this around for a while before I cash it." (Unfortunately, he was serious.) What if the check had been for ,000 or 0,000?

Will the beneficiary be influenced by others (spouse, children, "friends")? Does the beneficiary have financial problems, pending lawsuits, tax problems, existing or potential payroll tax liability? Should distributions to a beneficiary be delayed? How long?

Solutions: For younger beneficiaries, I always recommend as a minimum that until age 25, the trustees hold and manage the assets and have complete discretion as to the distributions of principal and income. If the beneficiary is capable of continuing his/her education, make distributions to assist. If the beneficiary is capable of continuing his/her education but elects not to do so, no distributions or limited to health costs.

Consider making periodic distributions of principal. Example: 1/3 at age 25, 1/3 at age 30 and 1/3 at age 35. Often, clients will think these ages are too young. Make distributions contingent upon performance by the beneficiary. Example: The beneficiary may receive distributions from the trust equal to his/her (or the spouse's) earned income during the preceding calendar year.

For older beneficiaries, inquire as to whether they might be in a nursing home and qualify for medicaid except for my client's funds. Provide for a supplemental needs trust. Since the trust assets are not originally the beneficiary's assets, the Trustee can have complete discretion and authority (preferable instructions) to NOT make distributions for basic support if the distributions would disqualify the individual from receiving governmental assistance.

Provide for contingent beneficiaries. What if the primary beneficiary dies before final distribution of the trust? What if the primary beneficiary dies within a year or two of the testator's death?

Planning for the contingent beneficiary is as important (often more important) than planning for the primary beneficiary. Our clients will often know more about the primary beneficiary (an adult child, nephew, etc.) than the contingent beneficiary (grandchild, great-nephew, etc.).

Drug or Alcohol Problems. Many times the Settlor/Testator has no idea about a beneficiary's potential for drug or alcohol problems. This is especially true for clients who have young children or grandchildren. Without special provisions, a Trustee would not have an option to delay distributions because of mandatory distribution provisions at certain ages. Distributions without restrictions of any funds or assets to a person abusing alcohol or drugs is not a benefit to the beneficiary. If the beneficiary cannot get off drugs and stay off drugs, then forfeit his/her interest in the trust and distribute the trust assets to other relatives or even to a charity.

Explain to the client that the Trustees are substitute parents as their authority relates to discretionary distributions. The Trustees must have discretion to require drug tests, make investigations or delay distributions. If the drug abusing beneficiary is not going to benefit from the distributions, do not mandate that the Trustee make distributions.

In undergraduate school, I had a college professor for several government courses. He could have been in psychology. One statement he made several times is "Be thankful every day that you are poor. Too much money can be a terrible burden." Too much money or assets too soon is not a benefit. It can destroy initiative. It can permanently ruin a person with a tendency to use drugs or alcohol.

Wills and trusts may not control all assets. Most clients have named a designated beneficiary(ies) of their life insurance, IRA, profit sharing plans, etc. If the designated beneficiary needs the protection of an independent Trustee and delayed distributions, be sure that the designated beneficiary be changed from the individual beneficiary to the Testamentary Trustee(s) or the Trustee(s) of the intervivos trust. Remind the client that the will and intervivos trust have no affect on joint tenancy property and payable on death (POD) ownership.

Conclusion. Very few of our clients have thought out how best to benefit their beneficiaries. As counselors at law, we are uniquely qualified to give advice. We have learned by our training, education, personal experiences, observations and experiences of our clients how to benefit beneficiaries. We must pass on to our clients this knowledge so they can properly plan to benefit their beneficiaries.

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