

SEPTEMBER 2018 NEWSLETTER

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MY CHILD HAS A SUBSTANCE ABUSE PROBLEM, WHAT ARE MY OPTIONS WHEN PLANNING MY ESTATE?

FIRM ANNOUNCEMENTS

A. NEW ASSOCIATE

Pozzuolo Rodden, P.C. is pleased to announce that Christina Snyder has been hired as an associate attorney at the firm practicing primarily in the area of estate planning and estate administration. Ms. Snyder graduated from Temple University Beasley School of Law and is currently enrolled in the Graduate Tax Program at Temple University Beasley School of Law to earn a LL.M in Taxation. Ms. Snyder is also an honor graduate from the Fox School of Business of Temple University.

B. BLOGS

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. No Hire Provisions Between Two Businesses Violated Public Policy By Disallowing Non-Signatories Employees the Opportunity To Work Elsewhere;

- b. Orphans' Court Has The Authority To Modify Incapacitated Person's Will ; and,
- c. Age Discrimination Suit For Failure to Hire Is Dismissed Where There Are Employment Restrictions With Prior Employment.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estates and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Mother Awarded Primary Physical Custody Of Minor Children Due To Children's School Commute;
- b. Father's Petition to Modify Mother's Primary Physical Custody Of Child Denied Where Shared Physical Custody Is Untenable; and,
- c. Alimony Tax Changes Under The Tax Cuts And Jobs Act May Effect The Dynamics Of 2018 Year End Divorce Proceedings And Settlements.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

Please visit our Facebook page to read all of our past and future blogs: Pozzuolo Rodden, PC

MY CHILD HAS A SUBSTANCE ABUSE PROBLEM, WHAT ARE MY OPTIONS WHEN PLANNING MY ESTATE?

Do you have a child or relative that suffers from substance abuse? Drug and alcohol abuse is a growing problem affecting everyone from all economic backgrounds, ages, education or social status. This growing epidemic is changing the way people plan their estate. It is important to consider the potential implications that could arise if the child inherits and receives a lump sum of cash that could lead to disastrous results, including a squandered or wasted inheritance. This could lead to unknowingly contributing to the child's unhealthy lifestyle. Determining how to address substance abuse and addiction among beneficiaries can be a sensitive and difficult decision. However, there are different options available when faced with this difficult decision.

It is important to talk to an experienced estate planning attorney about the different options. The attorney can draft a trust that is flexible yet effective to ensure that the basic needs of the child are supported. For this reason, the language of the trust and the choice of trustee are extremely important.

I. ESTATE PLANNING OPTIONS:

A. DRUG TESTING PROVISIONS IN TRUSTS: In this type of trust you would include a substance abuse provision that can require the trustee or give the trustee the discretion to have all or certain of the beneficiaries to take a drug test before distributions are made. In such an instance, you are providing support to a loved one who has a drug or a substance problem while protecting his or her inheritance with a properly drafted drug testing provision. Such a requirement involves a careful balancing act to support the basic needs of the beneficiary without becoming an enabler. In drafting such a provision, you should provide your trustee with guidelines and minimize the possibility that the trustee will second guess your intent. There should be specific instructions regarding how and how often the beneficiary child can be tested and for what drugs.

B. DISINHERITANCE: Although parents do not want to consider it, disinheritance is often an option for those considering estate planning for addicts. Parents believe they have spent enough on the child. Depending on the situation it might be the right decision, but parents often do not want to consider it. Disinheritance is the process whereby your child receives nothing of your estate. If you decide to disinherit your child, you should leave specific instructions in your will or trust explicitly stating that such child was intentionally excluded. If disinheritance is not an option the best alternative is to create a trust for the child.

C. STAGGERED DISTRIBUTION TRUSTS: A staggered distribution is a trust with staggered principal distributions that are spread out over a period of years such as twenty five (25%) percent at ages 25, 30, 35 and 40. This type of trust is an option for children who may be experimenting with drugs during his or her college and/or early working years when the child is going through growing pains . If the parents believe it is a temporary phase and the child can and will use the money for good use when he or she is older this trust can be beneficial.

D. DISCRETIONARY TRUSTS: A discretionary trust is a trust that is created for the benefit of a person who often is unable to control his or her spending. It gives an independent trustee full authority to make decisions as to how the trust funds may be spent

for the benefit of the beneficiary. The discretionary trust allows you to put spending authority in the hands of a trustee, or a trusted person, who can control the reckless spending of your child. Discretionary clauses can be used to provide necessary funds for the child's health, support, and maintenance without allowing him or her to spend any more. Most importantly, the funds are there for "direct payments" of the child's basic needs such as shelter, food, clothing, health insurance and medical needs, including treatment. Creditors of the beneficiary generally cannot reach the funds in the trust. The funds are not actually under the control of the beneficiary, and will be paid directly by the trustee to the landlord, medical personnel or treatment center. In other words, the trustee will assume the role of the financial gatekeeper for the child.

E. INCENTIVE TRUST: Parents can also consider an incentive trust for their child.. The trust can be drafted to prohibit distributions to children with addiction unless certain milestones are met. For example, a portion of the trust could be distributed upon receipt of diploma, establishing continuous employment, completion of drug or alcohol treatment, or consecutive clean results on random drug tests. The trust should have the intent to motivate the beneficiary to stop using. The best way to do this is by setting up some incentives that are focused not on passing his or her urine test, but working with therapists, clinicians and doctors to develop and continue a treatment plan. The trust should specify a means to accomplish that. Specifying that your child cannot start using again once they receive the funds is crucial to the success of incentive trusts. If incentives are not met, the trust could provide for alternate distributions to charity or other individual beneficiary(ies).

II. CHOOSING A TRUSTEE:

Choosing the individual as trustee is a crucial step in establishing a trust for a child who struggles with addiction. Depending on the type of trust, the trustee is tasked with deciding when and how much to distribute to each beneficiary. The trustee also has the responsibility with managing and investing trust assets appropriately. Selecting the right trustee should not be taken lightly. A sibling or other family member is often a bad choice and could result in a conflict in family relationships. The family member can feel pressured to support the addict and this could result in an adversarial family relationship. The better

option is to appoint an independent person or corporate trustee, or independent co-trustees such as an attorney, certified public accountant, bank and/or trust company. While independent fiduciaries or corporate trustees charge a fee for their services, the benefit outweighs the cost by avoiding the potential for family conflict. These trustees have financial expertise and experience in handling distributions to those suffering from addiction. The trustee needs to be sure the beneficiary gives him signed consent to view medical records and speak to doctors and therapist. This will allow the trustee to receive drug test, medical records, and information about treatment centers before making a distribution.

III. COMMON MISTAKES WHEN PLANNING FOR THE ADDICT:

Some parents consider leaving the share of the child with the addiction with another child or relative to hold. This person would then be responsible for the money. This is a problem for many reasons. The child with the money could file for divorce or bankruptcy. A judgment creditor of the child in control of the money could garnish/attach the funds and he or she could lose the money. Also, the child or relative could feel pressured to give his or her sibling money if the sibling pressures him or her enough. All of this could cause tension between the family.

Estate Planning can be difficult for anyone but particularly for someone with a beneficiary who suffers with addiction. With careful planning parents can ensure that their child will be supported after their death while assuring their inheritance is not supporting or enabling the addiction.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees

- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

Estate Planning Articles

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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