



## OLD NORTH STATE TRUST, LLC

### **Trusts Can Include Incentives for Heirs to Act Responsibly**

One of the most difficult issues in estate planning is what to do about heirs who may need something like a parent's guiding hand long after they become adults. A child or grandchild may have a mental illness, a problem with substance abuse, or chronic trouble holding a job.

Helping such a person by giving them money may, in fact, be harmful, by enabling bad or self-destructive behavior. One possible solution for such dilemmas is what's known as an incentive trust. This gives the trustee power to enforce provisions that encourage desired behaviors—or penalize the heir for failure to meet a certain standard.

This is different from situations in which a person with a disability, or the beneficiary of a settlement as the result of an accident, is cared for through a trust. I addressed those “special needs” trusts in a July 2015 article.

Incentive trusts must be set up carefully. Trying to control too many aspects of an heir's life can be counter-productive. I have seen many experienced lawyers and trust experts warn against trying to “rule from the grave.” For example, making an inheritance conditional on completing a certain degree, or entering a certain line of work, may not jibe with an adult's actual talents or aspirations. But where a clear pattern of negative actions exists, the right sorts of incentives can encourage an heir to make better life choices.

It's important to be realistic. Sadly, addictions can often cause people to lose careers, families and their own assets, even their freedom. So the promise of inherited money may not be enough to overcome a pattern of severe substance abuse. An alternative, such as the threat of giving the inheritance to charity if specified incentives aren't met, may be necessary.

Still, it may be worth offering help to someone who succeeds in breaking out of old habits and taking a better path.

One practical approach that some trusts take is to attach age restrictions. A child who's irresponsible with money in her teens may have learned to manage it better by the time she turns 25, or 30, for example. So a trust might be structured so the heir doesn't have access to the estate's principal until a certain age. Or it could combine an age restriction with a requirement of steady employment. Some trusts set up staggered distributions, at specified ages. This may or may not help the beneficiaries learn to be more responsible, but at least it prevents them from burning through the entire inheritance right away.

Another way to encourage a responsible lifestyle is to distribute funds from the trust on a matching basis. That might be dollar for dollar, pegged to what the beneficiary earns on his own. That has been called a “work ethic” clause.

Another sort of incentive clause could specify, in detail, that the trustee would not distribute any money until the recipient had demonstrated his or her ability to handle the

funds. This could be determined by such measurements as employment history, a clean criminal record, or lack of alcohol or drug abuse. It could be enforced by specifics like having the beneficiary submit to random drug testing. Failure to comply with the conditions could result in undesirable consequences such as assets being distributed to alternate beneficiaries, such as charities.

Will mandatory drug testing as a condition of earning an inheritance cure a drug addict? The odds, frankly, are against it. But that's not to say it isn't worth trying. Instead of flatly disinheriting a child or grandchild, an incentive trust can work as an escape clause. It might just help to motivate someone who's struggling to turn their life around. As with matching-fund provisions, it can serve as an additional reward for people who are already doing the right thing, for their own reasons.

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