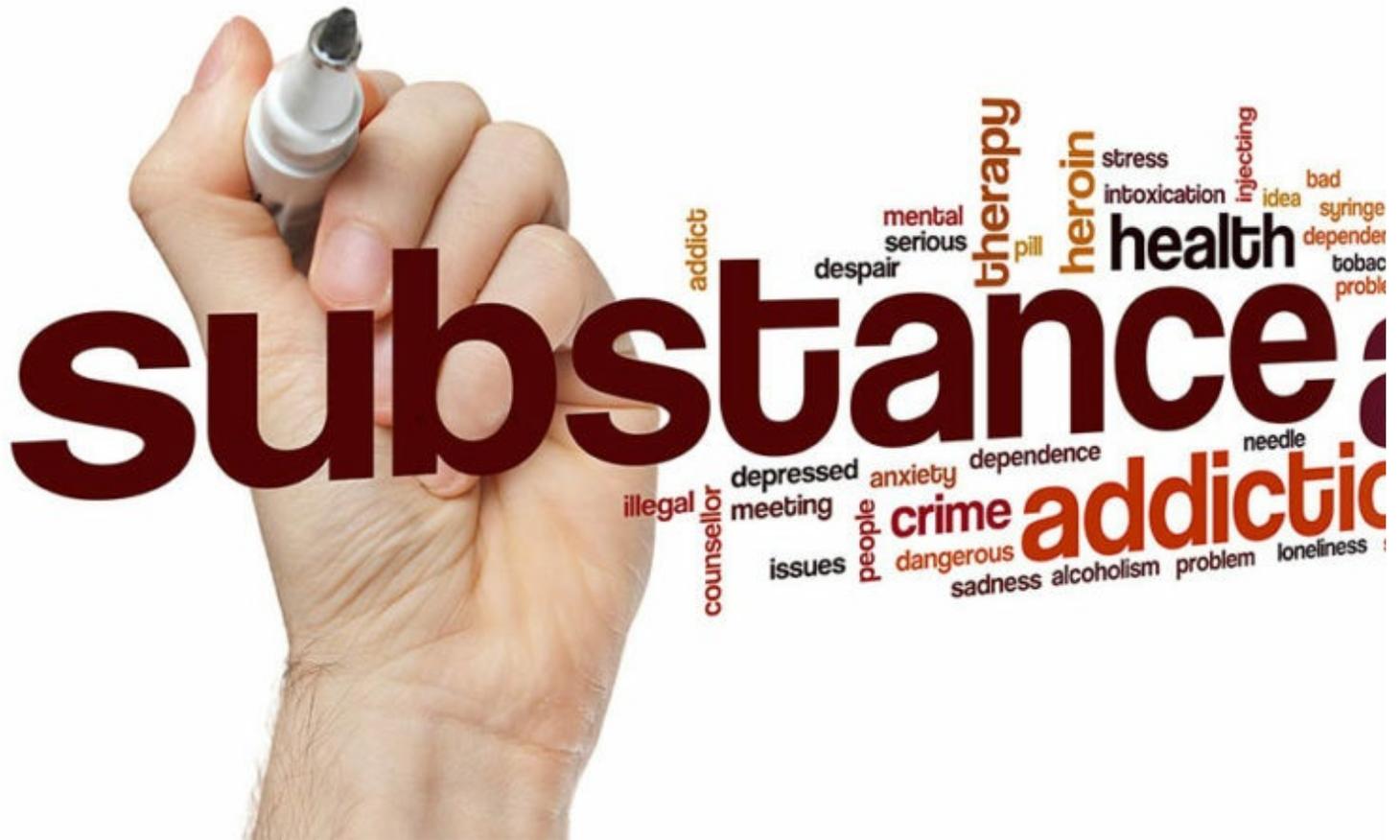

Estate Planning When an Heir has a Substance Abuse Issue

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We are all familiar with the news that illegal substances, alcohol, prescription drugs, and even household chemicals used in ways not intended by the manufacturer are being abused in our society. You may have witnessed co-workers, neighbors, or friends having to address the issue within their families. Substance abuse or addiction, sometimes referred to as a “substance use disorder,” may be even more personal and affect someone in your family – a child or grandchild, a sibling, a spouse, or a parent. It is an issue that a growing number of estate planning clients are talking about, and sadly, needing to address as they plan the disposition of their estates.

An initial reaction is often a desire to disinherit the family member who has “the problem.” In other cases, family members may simply postpone planning for the disposition of their estate so that they do not need to face the reality of the situation. There are better options available.

Illustrative Scenario: For illustration purposes, let’s assume that Mom and Dad do not have wills or other estate planning documents in place and Child (or any other heir) has a substance abuse issue. Mom and Dad are concerned about leaving some or all of their estate to Child for fear that he will squander his inheritance on drugs or alcohol or become the victim of opportunist “friends.” Mom and Dad may also be concerned that by providing Child with a windfall of funds at their deaths, Child may be more easily tempted to participate in self-destructive or undesirable behavior.

Avoiding the Problem Can Compound the Problem: First, the really bad news.... If Mom and Dad choose to ignore the

problem by not preparing wills or other documents to plan for the disposition of their estates, the problem does not go away. Intestacy laws (the laws that determine who will inherit assets when someone dies without a will) dictate who will receive the assets in Mom's and Dad's estates when they pass away. Under the laws of many states, Child may be entitled to a percentage of Mom's and/or Dad's estates upon their deaths (sometimes even if only one parent dies).

The same result may occur if Mom and Dad have estate planning documents (wills, trusts, powers of attorney) in place that name Child as a beneficiary or as a fiduciary (executor, trustee, agent) but do not account for Child's substance use disorder. Without restrictions built into those estate planning documents, Child may inherit or gain access to some or all of Mom's and Dad's assets.

By avoiding the issue, the problem often becomes worse by putting money directly and immediately in the hands of Child with no restrictions on its use. In addition to the consequences that may arise from funding Child's participation in self-destructive behavior, other surviving family members often resent Mom and Dad for failing to take some simple steps to protect Child from poor decisions that may result from unfettered access to an inheritance. The story does not usually have the ending that most parents would hope.

Construct a Safety Net and Provide Incentives. Certainly disinheritance (which often requires an affirmative action) is an option, but more often than not, parents are looking for some sort of middle ground. As part of our firm's conversation with clients, we address the use of trusts to construct a safety net while protecting assets from immediate access by a substance-dependent beneficiary.

In our hypothetical situation, a trust (within a will or revocable trust or as a stand-alone document) would allow Mom and Dad to be able to put some money aside for Child at their deaths. The money could be used for Child's benefit but protected from Child's unrestricted access and poor choices.

Within the trust, Mom and Dad would name a trustee (who can be a family member, a trusted friend, or a professional trust company) to hold the funds and use the funds for the specific purposes that Mom and Dad determine. Mom and Dad may also give the trustee the flexibility to assess the situation and distribute funds as the trustee would determine to be in Child's best interest. Depending on the severity of the problem or the amount of control that Mom and Dad may want to exercise posthumously, Mom and Dad may require drug testing as a prerequisite to any distributions and may provide for payment for Child's treatment or rehabilitation. Additionally, Mom and Dad may build incentives into the trust to provide motivation to seek treatment and/or make responsible decisions.

Explore Options: Making plans for the disposition of one's estate is always important, but planning takes on new significance when an heir has a substance use disorder. Avoiding the issue only compounds the problem. Instead, the best solution may be to work with a competent attorney to develop a plan that would protect that heir from unrestricted access to an inheritance while providing a safety net and incentives for making responsible decisions. For advice appropriate for your particular situation, please contact an attorney in your state who can help create an appropriate solution for you.

Susan Haberberger is an attorney licensed to practice law in North Carolina and is Of Counsel with the law firm of Young Moore and Henderson, P.A. in Raleigh, North Carolina. Susan concentrates her practice in the areas of estate planning and administration and wealth transfer.

The information contained in this article is of a general nature and is not intended as, nor should it be relied upon for, legal advice. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

Relevant Links:

- Estate Planning, Wills, Estates and Trusts
- Estate, Trust, Fiduciary and Guardianship Litigation

CONTACT US

Phone: 919-782-6860

Fax: 919-782-6753

OFFICE

Young Moore and Henderson, P.A.

3101 Glenwood Ave. Suite 200

Raleigh, N.C. 27612

MAILING ADDRESS

Young Moore and Henderson, P.A.

P.O. Box 31627

Raleigh, N.C. 27622-1627