

Estate Planning for the Adult Child Who Acts Out, Has Addictions, or Is Otherwise Challenged

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Parenting an adult child who has behaviors that include acting out or oppositional behaviors, drug or alcohol addiction, lying, or an infrequent work record, or who exhibits psychological or emotional dysfunction, can be particularly challenging and exhausting. Often these adult children did not manifest these behaviors until their teenage or early adult years. Initially, it is easy to downplay or dismiss these behaviors as immaturity and hope that the adult child will “outgrow” them. When a child reaches his mid-20s and is still showing signs of emotional immaturity and dysfunction, it is understandable why a family would want to “divorce” the child and ban him or her from the home, or give consideration to disinheritance until he or she “straightens out.” Trying to find a fix or cure for an adult child that acts-out takes a huge financial and emotional toll on the other members of the family. Parents throw up their hands, often in disgust, after numerous attempts at rehabilitation, intervention, or drug/alcohol treatments.

My experience as a former school social worker and attorney for the past 40-plus years is that many of these dysfunctional adult children suffer from a yet-to-be-determined mental health, emotional, or learning disorder. They often are challenged with undiagnosed autism or Asperger’s syndrome, attention deficit disorder, learning disability, or other physiological/psychological mental health issues. It is not unusual for a child to overcompensate in school and avoid detection of a disability. Although as a child or teenager they may have escaped being identified as having a disability, the undiagnosed issue may follow them into adulthood and have a lifelong effect on their ability to function as a responsible adult.

In some cases a child may have an inherited predisposition to addiction or mental health issues. One never knows why one child with a similar predisposition is able to function in the way our society expects him or her to act, while another child is overwhelmed by societal norms and rebels against them. Parents will often question their parenting skills, wondering whether they were too lenient or too disciplined, what they could have done differently, or whether the child’s school or peer group was to blame. And while environmental factors within the home or outside factors in the community can affect a child’s emotional maturity, when a client comes to me with this family dynamic, it is counterproductive to try to determine what caused the dysfunction. As an estate planner, it is my job to assist the client with developing a plan that is in the best

interests of the whole family. It is important that the parents get the advice they need to create an estate plan that provides for the dysfunctional adult child so that he or she is protected from exploitation and does not squander his/her inheritance on drugs, impulsive or imprudent purchases, gambling, or other wasteful acts.

A number of options are available for the family challenged with a child in this situation:

- Create a discretionary spendthrift support trust for the child’s future care and support (a spendthrift trust protects the trust assets from most creditors).
- Disinherit the problem child but provide a trust for his/her children.
- Create an “incentive” trust that conditions distributions on certain behavioral or employment goals.
- Create a discretionary, spendthrift, supplemental needs trust that protects the trust assets from creditors; enables the child to qualify for needs-based government benefits such as SSI, Medicaid, subsidized housing, and food stamps; and provides flexibility in making distributions from the trust for the benefit of the problem child or his or her children.

Estate planning for the family with an acting-out or addicted child requires careful thought and an experienced planner to help each client choose the option that is right for his or her family. When planning under these conditions, there is no such thing as one-size-fits-all estate planning. Your will or trust must reflect the specific needs of your entire family, including the child with dysfunctional behaviors.

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