

Trusts & Estates



Addiction, Disinheritance and Enabling: An Avoidable Outcome

BY DAVID E. SIEGFELD

That's all he's out of the will! "He's just going through a stage ... he stopped using for a whole week and he's a different person." "That lie will NEVER change." "I'm sure financial security will stop her from using." The truth of the matter is that

addressing how to plan their estates when a loved one (i.e., child, grandchild, sibling, etc.) is struggling with the disease of addiction. While most clients do not wish to disinherit a loved one because of the hope that a solution will be found, they struggle with how to ensure success without bequeathing additional resources to fuel the addict's destructive actions. A proper

(either during a parent's/grandparent's lifetime or upon death) which could include various provisions tying the beneficiary's receipt of principal or income distributions to the beneficiary meeting and maintaining certain benchmarks. These trusts have sometimes been referred to as "incentive trusts," "spendthrift trusts," "addiction trusts" or even "recovery trusts." Use

ensure that any distributions would only be made to or for the benefit of a beneficiary to: (1) seek treatment and recovery as would be deemed necessary and/or advisable by the trustee after consultation with professionals who may or may not be directly counseling the beneficiary; (2) ensure that a program of recovery is being maintained, as evidenced by

Top 10 Developments, Lessons and Reminders of 2018



BY SHARON L. KLEIN

From new legislation, to important proposals, to instructive case law, 2018 saw some significant developments, lessons and reminders.

18. Prenuptial Agreements Must Be Acknowledged

Under Domestic Relations Law §236(B)(3), agreements made by parties before or during marriage must be acknowledged with the same formality required to record a deed. In *In re Koege*, 70 N.Y.S.3d 540 (2018), the Second Department addressed the question of whether a defective acknowledgment to a prenuptial agreement could be cured. In an agreement signed before marriage, a decedent and his wife each waived rights to the other's estate and

payments were characterized as taxable income to the recipient and deductible by the payor (Internal Revenue Code [IRC] §671(a) and 215(a)). With the spouse paying alimony likely to be in a higher income tax bracket than the recipient spouse, the recipient potentially could pay taxes on the alimony at a lower rate. This bracket play often resulted in overall tax savings between the parties. Pursuant to federal changes effected by the 2017 Federal Tax Cuts and Jobs Act (the Federal Tax Act), alimony payments made pursuant to a divorce or separation agreement signed after Dec. 31, 2018 will no longer be treated as taxable income to the recipient or be deductible by the payor. Since New York has decoupled from the federal treatment of al-