



ELDER LAW AND ESTATE PLANNING

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Making one son trustee for the other could create sibling conflict

Question: My wife and I have two sons. “Steve” is 31, married, gainfully employed. “Bill” at 35 has been on and off drugs for years and has a sketchy work history. We’ve spent thousands of dollars on rehab for him, with some temporary successes. We love both of them, but as we think about who will get our assets after we pass, we’ve got to face facts. We’re thinking of creating a living trust that gives Steve his inheritance up front, but makes Bill’s contingent on his being drug-free and employed. We spoke with Steve and he’s willing to be the trustee. We’d like your opinion.

Answer: There are numerous red flags here! Making one son gatekeeper of the other’s inheritance could cause conflict between them. No one wants to be his brother’s keeper ... or be kept by his brother. Under the provisions you propose for your living trust, Steve would have to arrange for Bill’s periodic drug testing, check on his job status, etc. Things could get ugly.

If you want to incentivize Bill by making his inheritance contingent on certain behaviors, name someone else as trustee, not his brother. Then any resentment Bill feels won’t be aimed directly at his brother. Also, an independent trustee or trust company would be less vulnerable

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to any manipulation from Bill.

Can dangling an inheritance over an addicted person’s head change behavior? Maybe, maybe not. But let’s assume Bill does change. If the new and improved Bill then runs into a legitimate problem that keeps him from working – a serious health issue, say – he would end up disinherited under your plan, through no fault of his own. Surely this is not what you would want.

This is a complex family issue, but one an experienced estate planning attorney will have dealt with many times. Please make an appointment to discuss your options. Wishing you and your sons the best.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.