

INCENTIVE PLANNING — A NEW TREND IN ESTATE PLANNING¹

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As recently as the mid-1990s, the typical estate plan provided that after the death of the parent or parents, and the payment of taxes and administration expenses, the remaining assets were distributed outright to the children or other beneficiaries. However, in recent years, the estate plan has become an increasingly popular mechanism by which parents and grandparents attempt to influence their descendants' values, behaviors, and lifestyles. This is sometimes referred to as "incentive planning."

There is nothing new about conditioning a beneficiary's inheritance on the satisfaction of general conditions. However, the degree to which incentive planning is being used is on the rise. It is, of course, difficult to gauge the actual extent of the use of incentive provisions in estate plans, but judging from the topics of recent articles and legal and financial seminars, we can safely conclude that attorneys and financial planners are seeing this approach used more frequently by their clients.

Examples of common incentive provisions include:

- Limiting a beneficiary's access to trust assets if the trustee learns that the beneficiary has a substance abuse problem. In most instances, the trust provides that the assets may be used for the individual's treatment - but nothing else.
- Granting the trustee the discretion to withhold distributions if the beneficiary is not gainfully employed or otherwise living a productive life.
- Authorizing the trustee to distribute additional trust assets to a beneficiary to assist with the costs of starting his or her own business.

Examples of less common incentive provisions include the following:

- Employment incentive: Matching a beneficiary's earned income with trust distributions in a specified amount. In most cases, this will require the beneficiary to provide to the trustee a copy of his or her Form W-2 and/or income tax return.
- Family incentives: Providing for distributions to a beneficiary who chooses to be a "stay at home" parent, or who remains married to the parent of his/her children and is living with that person.

¹ We cannot guarantee that this information is consistent with current law. Please contact Willms, S.C. for current information on this topic.

- Career incentive: Distributions to a beneficiary who enters a profession or industry that does not provide a large salary (i.e., teaching, clergy).
- Academic incentive: Tying distributions directly to performance in school, by requiring the beneficiary to submit his or her grades to the trustee before receiving a distribution.
- Investment incentive: Providing for a lump-sum distribution at a specified age. At a specified date in the future, the beneficiary would undergo an audit of his or her personal assets. If the value of the assets is the same (or greater) than at the time of the distribution, the beneficiary would be entitled to additional distributions.

The trust is not the only estate planning tool used to provide incentives. The family limited partnership/limited liability company is a common technique that provides not only significant income, gift and estate tax benefits but also an incentive for children and grandchildren to become active in the management of the entity (and hopefully their own) assets. To learn more about family limited partnerships and limited liability companies and their uses in estate planning, please visit our web site at www.willmslaw.com.

Of course, incentive planning is not for everyone. There are those who believe such an approach to estate planning implies a certain level of distrust in their beneficiaries (usually their children). Others express concern over the beneficiaries acting a certain way simply to obtain a larger inheritance. Still other clients express concern over trying "to control an inheritance from the grave." Ultimately, the question is a personal one and will depend on a number of factors.

If you would like to discuss incentive provisions as part of your estate plan, please call us to schedule an appointment or send us an e-mail at "firm@willmslaw.com".