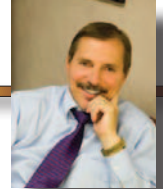




Dealing with Addiction: The Estate Planner's Role in Helping Families Heal

By: R. Scott Corey, J.D.



Over the past twenty years I have worked with a number of clients whose lives were impacted by alcoholism, chemical dependency, gambling and other self-destructive behaviors (collectively “addiction”). Statistically, 43 percent of Americans have been exposed to alcoholism in their families¹ and the outlook for the future is not improving. In a recent study, 1 in 8 Oregon children 12 and older reported using an illegal drug in the 30 days prior to the survey². How many will become addicts or alcoholics? Will they be your client’s children or grandchildren?

Parents are concerned about protecting and preserving their children’s financial legacy and the dark horse of addiction could impact their plan design in three ways: First, even if there are no signs of addictive behaviors among family members it may be an unlikely but possible future problem. Second, if the family’s genetic history indicates a propensity for addiction, it is a more likely potential problem. And finally, known addiction may be affecting one or more immediate family members (parents or children). The addiction may be active or the family member may be in “recovery” after undergoing successful treatment. If the family member is in recovery, your planning should address the needs of a beneficiary who is 30 days clean and sober, one with 10, 20 or 30 years of continuous sobriety, and the possibility of relapse.

If the estate plan you ultimately develop for your clients does not take these possibilities into account, it may not only fail to function as intended – the consequences could be fatal.

In order to offer real solutions for families affected by addiction, you must be able to uncover a problem your clients may be reluctant to disclose. In the client interview, we ask clients to tell us about each of their children and listen carefully for the symptoms of addiction such as multiple marriages, an irregular employment history, habitual financial problems and minimal savings or retirement

plans. Even if nothing is disclosed, before moving on we ask if there are any drug or alcohol issues we need to look at in planning for that child.

This is a sensitive, emotionally charged issue. A parent may feel it is somehow their fault or be ashamed to admit they don’t have a perfect family. It may be difficult for them to let you into the dark corner of their world where the skeletons are hiding. Building trust with your clients is critical, and your initial client meetings should not be rushed. Allow yourselves the time necessary to bond and build a comfortable, trusting relationship. Your clients need to know they are in a safe space, that everything they share is confidential, and that to truly help them design an effective plan you need to know the good, the bad and the ugly about their family. Be open, be compassionate, and be ready for the tears that may flow once you break through the client’s emotional walls.

You do not have to be an expert, but if addiction is or may be an issue, a basic understanding of addiction, the resulting dysfunctional family dynamic and the recovery process is indispensable. You must be able to communicate a sense of compassionate understanding of their problem. There is abundant information about alcoholism and addiction on the internet and the trained medical staff at your local treatment centers should be able to walk you through the basics and offer suggested reading materials.

If your practice embraces the concept of lifetime trusts for adult children, you are already well on the way to offering the solution. The more difficult task is selecting an appropriate trustee and drafting flexible, discretionary instructions that will allow the trustee to adapt to a dynamic rather than static condition.

A family member may be able to exercise their discretion in making distributions as trustee with a higher degree of care and compassion than a corporate fiduciary. However, if the alcoholic consumed a disproportionate share of the

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family's emotional and financial resources over the years, a resentful sibling would be a poor choice. In that case, the dispassionate professional fiduciary may be the better choice so it is important to ask the client how the other family members relate to the alcoholic.

In either case, it is essential to draft instructions which allow the trustee to develop creative solutions within a framework of recovery outcomes rather than fixed, inflexible situational responses. In our drafting we encourage trustees to seek outside assistance from qualified professionals in order to balance making recovery resources available against funding potentially destructive behaviors. For example, requiring the trustee to pay for treatment could result in nothing more than a revolving door to serial relapse with no long term benefit. We also learned that some addicts never recover and we may need to set a baseline distribution plan for medical care, food and shelter that will always be available for that child.

Like anything else in our practice, one size does not fit all when it comes to addiction. We need to educate ourselves in this area to be compassionate counselors who offer real, long term solutions.

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1. <http://www.drug-rehabs.org/alcohol-statistics.php>
 2. Substance Abuse Mental Health Services Administration (SAMHSA) 2010 State level data report

About the Author:

Scott is a native Oregonian and grew up in an entrepreneurial family, earning his law degree and business law certificate from the University of Oregon in 1990. Since 1992 Scott has been a sole practitioner committed to changing the way Americans plan through excellent client service and professionalism. He was a founding member of WealthCounsel® in 2000. Being a compassionate writer, he enjoys creating detailed, family oriented trust provisions that allow his clients to pass their personal and business assets to their survivors with a warm and caring heart, and to share their wealth through family philanthropy. In 2005 Scott began working as a collaborating attorney part time with his long time colleague Eden Rose Brown. He leads her business planning practice and is often the wordsmith for her detailed, family values trust provisions. Scott serves his profession and his community as:

- A long time member and current Board member of the Eugene Estate Planning Council and member of the Willamette Valley Estate Planning Council in Salem

- Member, past President and current Board member of the Greater Oregon Chapter of the Society of Financial Service Professionals
- Past President and Director of the Eugene Mid-Valley Club of Rotary International
- Past Director of the Lane County Bar Association Probate Committee
- Current Board member, Willamette Family Inc., a Eugene, Oregon, residential and outpatient treatment facility
- Trained volunteer outreach attorney for the Oregon Attorney Assistance Program

As an accomplished public speaker, Scott has presented numerous seminars and classes to the public, to private groups and to other estate planning and allied professionals.