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JOURNAL REPORTS: WEALTH MANAGEMENT

Trying to Control Your Heirs' Behavior From the Grave Often Backfires

It's hard enough to influence people's behavior when you're alive. After you're dead? You may be inviting trouble.



The lack of trust implicit in rigid demands on descendants' behavior can sow resentment, lead to family breaks and long legal battles. PHOTO: PETER OUMANSKI

By Harriet Torry

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Death is inevitable, but life can be unpredictable. And that's a key reason why many estate-planning advisers discourage so-called dead-hand control.

Dead-hand control describes a situation where people try to control their heirs' behavior from the grave. It typically involves incentive wills and conditional trusts that tie inheritance or trust disbursements to beneficiaries achieving certain goals. They can include things like graduating from college and taking a certain career path; staying sober or marrying within the family's faith.

Bobbi Bierhals, a partner at law firm McDermott Will & Emery LLP, had a client whose trust would pay for graduate-level education but "law school will not be paid for because that's not useful." Another said the beneficiary could be a member of a band or an artist—but only a

commercially successful one. If he or she weren't successful, the trust distribution wouldn't be forthcoming.

But the experiences of estate planners and beneficiaries who have lived with such stipulations suggest that they can easily backfire. The lack of trust implicit in rigid demands on descendants' behavior can sow resentment, lead to family breaks and even long legal battles.

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“It really can hurt a family’s dynamic where a beneficiary is expected to act a certain way, or select a certain school, or marry into a certain religious tradition when that’s not really their life choice,” says Donna Trammell, director of family wealth stewardship at Bessemer Trust. “It also doesn’t allow them to differentiate from the family. It can be more of an opportunity for them to try and game the system.”

Max Feinberg, a Chicago dentist, died in 1986 having built up considerable wealth through investing. His granddaughter Michele Feinberg Trull remembers him giving her stocks as gifts, like on her bat mitzvah at age 13.

“He was strong, probably somewhat controlling,” and “religion was important to him,” Ms. Feinberg Trull says of her grandfather, who planned his estate so that once his wife, Erla, died, his grandchildren would become the beneficiaries of trusts he set up for them. However, if any of them married non-Jews, or if their spouses didn’t convert to Judaism within a year, they would be cut off from the trust.

When Mrs. Feinberg died in 2003, having amended the distribution plan slightly, the one grandchild who had married within the faith was left \$250,000. The four grandchildren who had married non-Jews, including Ms. Feinberg Trull, didn’t meet the conditions of the beneficiary restriction clause and were left nothing. That touched off a series of bitter legal actions among the Feinberg heirs. And 16 years after Erla Feinberg’s death, the case remains in probate proceedings.

“It’s disappointing to me that this came about, it’s been hard for me, I don’t talk to my father or my brother,” says Ms. Feinberg Trull, whose husband, Ethan Trull, is not Jewish. “Did we need to necessarily get married? We don’t have children of our own but we wanted to be married. So if Ethan and I were just living together this probably would have been a nonissue.”

Michael Feinberg, Ms. Feinberg Trull's father, says his father's decision to disinherit grandchildren who married outside of the faith was because "he felt that Judaism was part of his background and wanted it to continue."

While some conditional wills and incentive trusts end up locking family members out of the family fortune, others might have broad provisions that can be manipulated, which can lead to discord between other trustees, estate planners say.

Pam Lucina, chief fiduciary officer for wealth-management firm Northern Trust Corp., oversaw a trust that required beneficiaries get a prenuptial agreement before marriage, but the trust didn't specify what the document should say. "So they just established a prenup that said I'm going to give everything to my spouse," she says.

So rather than proscribing behavior, many estate planners now encourage trust creators to prepare children and grandchildren for inheritances long before they die—and to make clear what is important to them. Some trusts offer financial support for heirs who choose a vocational career path over a highly remunerated one.

"Talking about money is really emotional for people," says Emily Bouchard, a wealth coach at Ascent Private Capital Management of U.S. Bank, whose job involves helping facilitate a harmonious dynamic among ultrahigh-net-worth families when they broach this topic. Starting the process early is key, she says, as more families are taking a values approach that includes beneficiaries in trust and will discussions.

Estate planners also encourage flexibility: If a trustee can make distributions in a beneficiary's "best interest" or for their "comfort and well-being," that gives them discretion in managing a trust that could exist for hundreds of years. A power-of-appointment clause, for instance, allows a beneficiary at each generation level to rewrite the trust for their own descendants.

Writing a statement of intent or a letter of wishes, while not legally binding, is another option to convey family values to future generations. Planning specialists such as lawyers or corporate-trust companies often provide sample letters to families, which go into more detail about the trust's purposes for distributions. The document might lay out a benefactor's visions for how the wealth will bring the beneficiary opportunities for growth and fulfillment or encourage travel and philanthropy.

Estate lawyer John Warnick, who set up the Purposeful Planning Institute in 2010 to rethink best practices for legacy families, says a "family giving statement" might suggest the kind of charitable causes a family member would like future generations to support, without attaching strings.

“The problem with [incentive trusts] is that life is so unpredictable, and you’ll be dead,” says Liza Hanks, an estate-planning lawyer in San Francisco. “It’s important to remember maybe the best time to teach and empower your children is when you’re alive.”

Ms. Feinberg Trull, the dentist’s granddaughter, recently made her own will. She says the message it conveyed was clear: “When I’m dead, do what you want.”

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