

Control freaks

Duncan Bannatyne is a British multi-millionaire businessman and author. He established a trust for his daughters, and each receives the equivalent of \$545 per month from it.

Apparently, Bannatyne is the trustee, and he retains broad discretionary control over it. When he discovered that one daughter had begun smoking, he cut off her trust distributions. “She had probably smoked for a couple of weeks when I caught her four years ago. I smell it in the bedroom and opened her window and saw ash on the windowsill.

“I didn’t confront her about it, I just stopped her direct debit. She called me and said her money hadn’t come through, and I said, ‘I know, I stopped it because you broke the rules of the trust.’”

When the daughter quit smoking after two months, Bannatyne reportedly resumed her monthly stipend from the trust.

Compare that to the last will and testament of a Romanian man, who left his surviving wife his house and \$30,000, subject to one condition. She must smoke five cigarettes a day. According to the will, “She could not stand to see me with a cigarette in my mouth [and] I ended up smoking in the bathroom like a schoolboy. My life was hell.”

Wide latitude on trust conditions

The creator of a trust can include any sort of condition for beneficiaries, but some conditions will not be enforced by a court if they are challenged. It is most unlikely, for example, that a court would agree to deny a bequest or trust distribution on the basis that the beneficiary failed to smoke, or refused to do an illegal act.

Similarly, an insistence that a beneficiary not marry someone of another race or religion will not be enforced. A trust income that terminates upon a surviving spouse’s remarriage may be enforced, but the trust will not then qualify for the marital deduction.

On the other hand, a trust interest may be cut off if a beneficiary becomes a drug addict or a criminal. Extra trust distributions may be conditioned upon the achievement of certain life goals, such as completing an education or beginning a professional practice. The creator of a trust has considerable power to shape the uses to which the trust assets will be put, provided that those uses are not against public policy.

If you would like to learn more about what can and cannot be done with a trust, we would be pleased to consult with you at your convenience.