

# Expanding the Family System Framework

Professional Advisors as Integral Players in the Family System  
When Addiction and/or Behavioral Health Issues are Present



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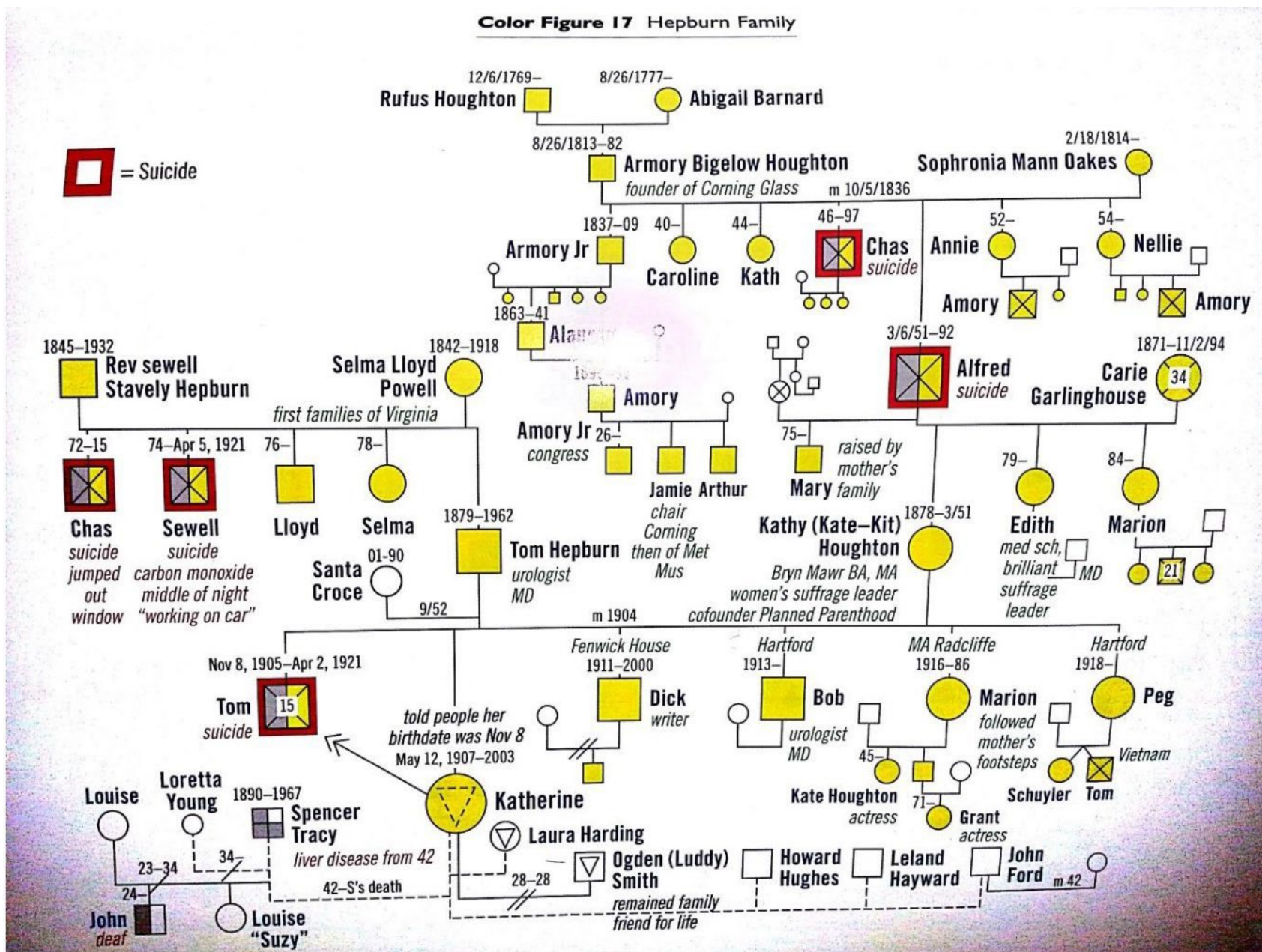


# Traditional Orientation of Addiction in the Family System

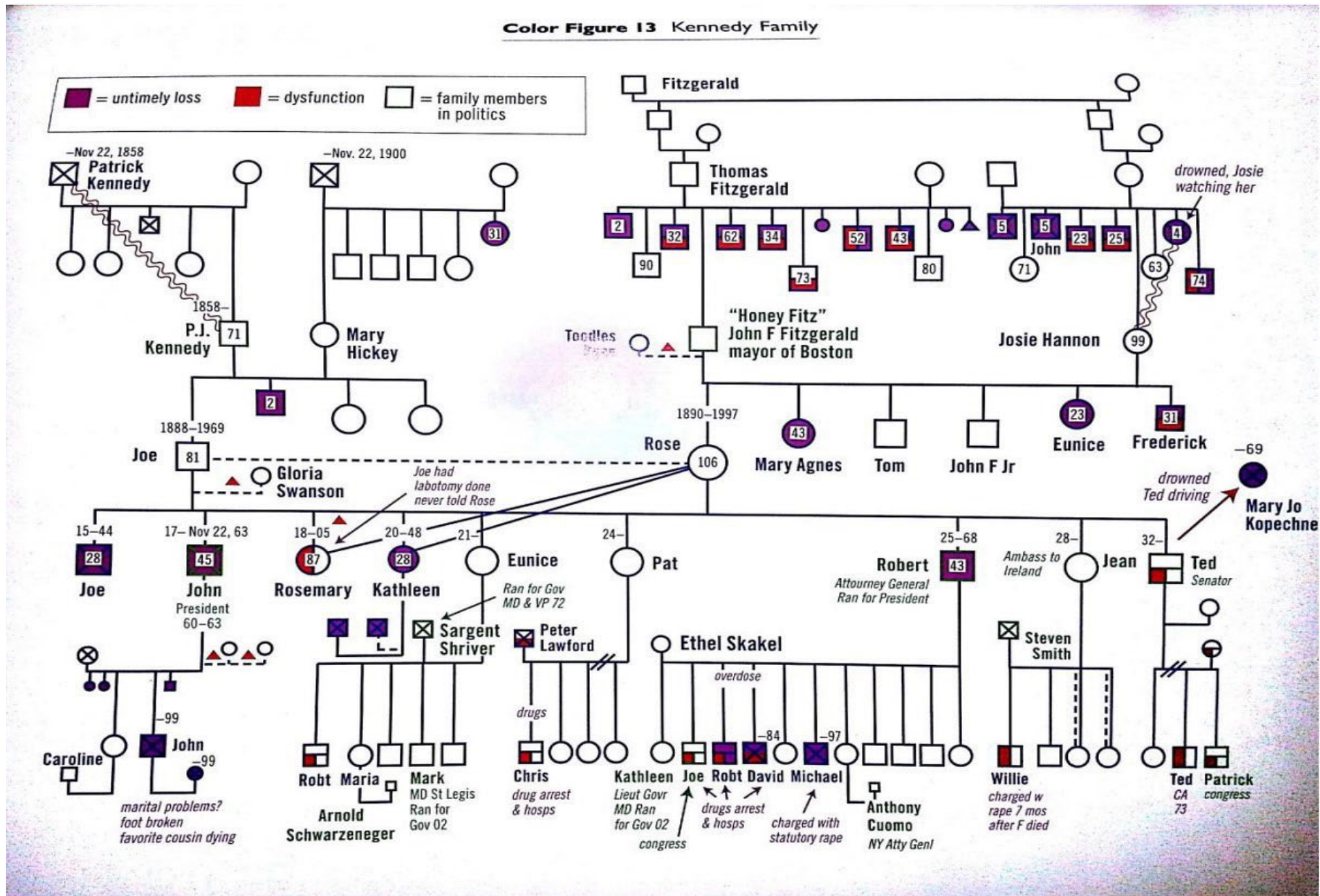




Color Figure 17 Hepburn Family



Color Figure 13 Kennedy Family





# More Money, More Problems...

- By age 26, upper-middle-class young adults' lifetime chances of being diagnosed with an [addiction to drugs](#) or alcohol were **two to three times higher**, on average, than the national rates for men and women of the same age
- **Rich kids had rates that were at least double the national U.S. average** for taking stimulant drugs, such as [Adderall or Ritalin](#), as well as for experimenting with cocaine, the study found.
- By age 22, lifetime **rates of addiction to drugs or alcohol** were 11 to 16 percent among women from **affluent families**, which is similar to the national norms; the rates were 19 to 27 percent among men from affluent families, **twice the national norms**, according to the study.
- But a more troubling trend emerged by age 26: **Lifetime rates of addiction to drugs or alcohol were 19 to 24 percent among women from wealthier upbringings and 23 to 40 percent among men** from those families. These rates were **three times higher** than the national average for women, and two times higher in men.
- **The risk of addiction is said to be the leading factor in loss of wealth over generations and one of the reasons why 90% of family fortunes are lost by the third generation.**

# Intergenerational Dynamics of Wealth: A Set-Up For Addiction

- Wealth provides a cushion to avoid consequences of drinking and using
- Money makes problems disappear and masks lack of coping skills
- Overabundance – what is normal is not normal
- “Hitting rock bottom” is impossible when there is no bottom
- Children of wealth and success struggle to form personal identity
- High expectations and no expectations
- Relational issues
- Stigma
- Family privacy and trust of outsiders are barriers to seeking help



# Advisor's Role in the "Family System"

Your role as an advisor is to get personal. These issues are no exception.

- Be aware of the role that money plays in addiction and the prevalence of behavioral health issues
- Be direct and ask
- Be inquisitive about family dynamics and relationships
- Be attuned to signs and symptoms



# Lawyers & Professional Advisors: Language and Action

## As Enablers

- Recognizing the problem and failing to address it
- Continuing to make distributions
- Allowing people to avoid consequences

## As Disruptors

- Create consequences
- Allow natural consequences to happen



# Drafting Tips To Address Addiction, Mental Illness and Recovery

1. Clearly stated purpose of trust when the beneficiary is impaired by addiction and/or mental illness
2. Define Addiction and Recovery broadly
3. Give trustee sole discretion to withhold income and principal
4. Provide trustee authorization to hire and rely on professionals
5. Authorize trustee to utilize funds to pay for experts, treatment and recovery
6. Authorize trustee to receive reports and require beneficiary to give full release
7. Provisions to resume distributions when beneficiary is in recovery
8. Authorize distributions to spouse and dependents during restriction or cessation of beneficiary's distributions
9. Alcohol and Drug Testing
10. Indemnification
11. Savings Clause



# 1. Clearly Stated Purpose

- Identify the purpose of the trust when addiction and/or mental illness issues are present. HEMS is not good enough.

The following provisions shall apply to any trust created herein for a Beneficiary who is impaired by an addiction and/or mental illness, as defined herein. My intent is to allow the trust to be used to support such Beneficiary in his or her evaluation, treatment, and recovery, prevent such Beneficiary from dissipating financial resources from such trust due to their addiction and/or mental illness, and to support such Beneficiary's successful efforts toward rehabilitation to be a productive, healthy individual, and to otherwise provide for such Beneficiary's general health and support.



## 2. Broad Definition of Addiction

The term “**Addiction**” shall include, but not be limited to, a substance abuse problem with alcohol, drugs, prescription medications, or other harmful substances, as well as any addictive behavior that is destructive to the Beneficiary’s emotional, physical, or financial health and well-being, such as gambling or sexual impulsivity.

OR

The phrase “**actively dependent on and/or abusing drugs or alcohol**” has the meaning set forth in DSM-5 defining alcohol and drug dependence and abuse. Other addictions, compulsive behaviors, or mental health concerns shall be identified as defined in the DSM-IV-TR, and as updated by current medical information and/or credible research on addictive behaviors.





## 2. Broad Definition of Recovery

- A. “**Recovery**,” as used herein, is defined as no less than a minimum of two years of continuous sobriety (including abstention from addictive prescription medicine, drugs, alcohol, or other addictive or compulsive behaviors). Recovery includes, but is not limited to, ongoing participation in activities addressing issues related to drug addiction, alcoholism, or other compulsive behaviors, and any mental illness (i.e., participating in a “recovery program,” as determined by the Trustee in consultation with the treatment team).
- B. The **two-year minimum** shall be extended if the Beneficiary has a history of relapse or is not actively engaged in a recovery program, with such extension(s) of time determined at the sole discretion of the Trustee. In the event the Beneficiary has not completed the two-year minimum of Recovery or extensions thereof, the Trustee has the discretion to disburse income and/or principal on behalf of the Beneficiary in amounts to support the Beneficiary’s recovery program. Conversely, the Trustee shall not disburse funds for activities that may lead to relapse. The Trustee is authorized to rely on the advice of experts, as described herein, in implementing this Section and exercising discretion.



### 3. Sole Discretion of Trustee to Withhold Income and Principal

The Trustee is under **no obligation to distribute income or principal to an addicted or mentally ill Beneficiary** of any trust created hereunder who is or may be using or consuming any illegal drug or other illegal substance or who is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board-certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist, or is engaging in behavior determined by said doctor or psychiatrist to be harmful.

If the Trustee has reason to believe that as a result of such use or consumption or behavior, the addicted or mentally ill Beneficiary is incapable of caring for himself or herself or is likely to dissipate his or her financial resources, the Trustee **may request the Beneficiary to submit to one or more examinations** determined to be appropriate by a qualified health care provider, board-certified medical doctor, psychiatrist or psychologist, or other licensed health care professional selected by the Trustee.

The Trustee, in the exercise of his or her sole and absolute discretion, **may totally or partially suspend all distributions** otherwise required or permitted to be made to that Beneficiary until the Beneficiary or the parent or legal guardian of a minor Beneficiary consents to the prompt examination and complete disclosure of all information derived from such test(s) or from information held by a state agency, local health authority, insurance company, health maintenance organization, or employer to the Trustee.



## 4. Authorization to Hire and Rely on Professional Expertise

The Trustee is authorized to employ and retain experts on alcohol and drug addiction, other addictions, mental illness, and family conflict to advise the Trustee regarding any matters, issues, or determinations. The Trustee has sole discretion regarding the employment and use of any such experts, treatment centers, or other resources as needed; **however, all such experts shall be licensed or credentialed pursuant to applicable state guidelines and standards.** The Trustee is authorized to utilize and rely on the recommendations of such professionals to determine appropriate treatment requirements and compliance, and to determine conditions for trust distributions based upon compliance with treatment.





## 5. Authorization Regarding Expenditure of Funds for Intervention, Treatment and Recovery

The Trustee has **full authority and discretion to expend funds** for advice from experts, evaluations, treatment and all related costs, for post treatment recovery programs, safe housing, companions and all related expenditures deemed appropriate by the Trustee in the Trustee's sole discretion.



## 6. Authorization to Receive Reports/ Beneficiary Consent to Release Information

In determining whether the Beneficiary is participating in and/or has successfully completed an approved and applicable treatment and/or is engaged in an active recovery program, **the Trustee must be permitted to receive reports** from the case manager, staff from treatment programs of any kind, sponsors, and all health care professionals or others providing assistance to the Beneficiary, and share such information among the members of the treatment team.

**The Beneficiary must sign consents for full release of information to the Trustee** in consultation with the treatment team in order to be in compliance with this Section. Failure to sign all requested authorizations means the Beneficiary is not in Recovery as that term is defined herein. The Trustee must maintain strict confidentiality of all information disclosed to him or her, and cannot disclose that information to anyone other than the Beneficiary, and care team, unless required by law.



## 7. Resuming Distributions When the Beneficiary is in Recovery

“Recovery,” as used herein, is defined as no less than a minimum of two years of continuous sobriety (including abstention from addictive prescription medicine, drugs, alcohol, or other addictive or compulsive behaviors). Recovery includes, but is not limited to, ongoing participation in activities addressing issues related to drug addiction, alcoholism, or other compulsive behaviors, and any mental illness (i.e., participating in a “recovery program,” as determined by the Trustee in consultation with the treatment team).

The two-year minimum shall be extended if the Beneficiary has a history of relapse or is not actively engaged in a recovery program, with such extension(s) of time determined at the sole discretion of the Trustee. In the event the Beneficiary has not completed the two-year minimum of Recovery or extensions thereof, the Trustee has the discretion to disburse income and/or principal on behalf of the Beneficiary in amounts to support the Beneficiary’s recovery program. Conversely, the Trustee shall not disburse funds for activities that may lead to relapse. The Trustee is authorized to rely on the advice of experts, as described herein, in implementing this Section and exercising discretion.





## 8. Distributions to Spouse, Children or Other Family Members

In the event of withholding of or restriction on distributions to the Beneficiary, the Trustee is authorized to make distributions for the benefit of the Beneficiary, including to those owed a duty of support by the Beneficiary, such as the Beneficiary's spouse, children, or other family members. The Trustee is authorized to make payments directly to persons or organizations who are furnishing housing, utilities, health care (including health care insurance), and other basic goods and services to such class of Beneficiaries, rather than directly to the Beneficiaries.



## 9. Alcohol and Drug Testing

The Trustee in consultation with the treatment team shall be authorized to engage a reliable and licensed drug testing company to **randomly drug test the Beneficiary**. The Trustee in consultation with the treatment team is authorized to require continued testing for so long as the Trustee deems such testing to be advisable, regardless of any other provision herein. Full disclosure of results from such tests shall be made in a timely manner to the Trustee [in consultation with the treatment team].



# 10. Indemnification

All decisions made by the Trustee are to be made upon information and investigation deemed appropriate by and to the Trustee. Any such decision(s) made by the Trustee shall be binding upon all parties. Nothing contained herein shall be construed to provide the Beneficiary with a right of action nor to any right of recovery, legal obligation, trust or will reformation, monetary damages, injunction, attorneys' fees, or other relief. The Trustee (and any professional, advisor, assistant, or other person, including their business entities and affiliates, hired and/or retained by the Trustee or encountered during the performance of the Trustee's duties) will be indemnified from the trust estate for any liability in exercising the Trustee's judgment and authority granted herein, including any failure to request the Beneficiary to submit to medical examination and including a decision to distribute undistributed amounts to the Beneficiary, unless a court of competent jurisdiction determines said Trustee acted in bad faith with intentional disregard of his or her duties hereunder. This indemnification clause includes any allegations of any kind brought by the Beneficiary, or on behalf of the Beneficiary, directly or indirectly, against the Trustee and those hired and/or retained by the Trustee. If such allegations occur, the respondent has the option of requesting the Trustee to provide the defense or to pay to the respondent funds for his or her defense.



# 11. Savings Clause

Despite the distribution provisions above, the Trustee may not suspend any mandatory distributions to or for the benefit of a Beneficiary that are required in order for the trust to qualify for any federal transfer tax exemption, deduction, or exclusion available with respect to the trust, or that are required to qualify the trust as a qualified subchapter S trust or electing small business trust.





# Solutions for Updating Trusts That Do Not Contemplate Addicted or Mentally Ill Beneficiaries

1. Judicial Modification the Trust
2. Decant to a New Trust

# Levers and Pressure Points

- Role of leverage in initial interactions
- Therapeutic language with the affluent = controlling money, participation in family business, and access to family resources and relationships
- Critical importance of leverage timing
- The family is the client - treatment buy in and support
- Coordinated effort and transparency/ communication between all interested parties
- Tangible levers/behavior modification tools: soberlink, drug testing, ELC documents, distribution advisors, truelink, etc.

# Role of Mental Health and Addiction Specialists/Clinicians as Members of the Advisory Team

- Educator
- Family counselor
- Distribution advisor
- Case manager
- Essential members of the advisory team to enforce boundaries and leverage points
- Ethical considerations

# Coordinated Care & Recovery Management

All successful models of recovery employ leverage in various forms, as well as coordinated care between all interested parties.

- Leverage or choice vs. leverage or neglect
- External motivation moves people into treatment, while internal motivation develops through the actual treatment experience
- Family/Addict two-track system of recovery

“In all of my interactions with beneficiaries, none ever told me they were cut off too soon.” - William Messinger



# California Sober vs. Sober Sober