

Abstract: A trustee is solely responsible for distributing income and principal from a trust to beneficiaries, both during and after the trust owner's lifetime. In most cases, a trustee may have to exercise discretion in deciding whether and in what amounts to distribute cash in response to a beneficiary's request. This article examines discretionary standards ranges and compares support standards vs. best-interest standards.

It's Up to You Define Your Trustee's Discretionary Powers

The trustee of a trust you establish is solely responsible for distributing income and principal from the trust to your beneficiary, both during and after your lifetime. In most cases, your trustee will have to exercise discretion in deciding whether -- and in what amounts -- to distribute cash in response to a beneficiary's request. When you draft your trust document, give careful consideration to setting discretionary standards.

Discretionary Standards Ranges

Discretionary standards range from liberal to restrictive, and from narrow to broad. For example, when you set up your trust, you may provide for mandatory distributions at specific times or as some events arise. At the other end of the scale, you may give your trustee total discretion to distribute funds, without restriction. Your standards will most likely fall somewhere between the extremes, with a combination of scheduled distributions and limited discretionary power.

The IRS typically isn't interested in your discretionary standards. As long as you and your beneficiary have no control over trust property, the property will be excluded from your estate for estate tax purposes, regardless of the trustee's discretionary power.

Support Standard vs. Best-Interest Standard

To accomplish your trust's purpose, you must clarify the discretionary standard for your trustee. Your trust document can define it as a support standard or a best-interest standard. Here's a brief explanation of each one.

Support standard. The support standard is the narrower of the two. It allows your trustee to distribute money to your beneficiary to pay for necessities, such as food, shelter, clothing, education, medical expenses and taxes. Use this standard if you lack confidence in your beneficiary's ability to manage money or your trustee's ability to conserve trust assets for future or remainder beneficiaries.

Even with the narrower support standard, your trustee must exercise some discretion, because of differing interpretations of "necessity." One option is to prepare a nonbinding side letter. The letter details your values and recommendations regarding how and when your trustee should distribute funds.

Best-interests standard. If you have greater confidence in your trustee's judgment or your beneficiary's money-management skills, you might prefer the best-interests standard. In addition to the necessities, the trustee can distribute money for other purposes, such as buying a second vehicle, traveling, starting a business or buying a home. You can also specify whether you authorize the trustee to distribute money to your current beneficiary, with or without considering the interests of any future or remainder beneficiaries.

You may wish to use the best interest standard for distributions of trust income and the support standard for trust principal.

Choose Your Words Carefully

Of course, the best guarantee that a trustee will follow your wishes is to choose the wisest, most responsible trustee you can find. But even then, you need to provide adequate guidance and set well-defined standards in your trust document. We would be glad to advise you on the best way to set standards for your particular situation and how to define them in your trust.