

Setting Trust Standards

Determining the Appropriate Discretionary Standard for Your Trustee

When setting up a trust, give careful consideration to when and how the beneficiaries receive distributions of income and principal. For example, you may provide for mandatory distributions from the trust to occur at specific times or on the occurrence of certain events. Alternatively, you may give the trustee partial or complete discretion to make distributions. Although it is impossible for the trustee to know exactly what you would want done in any given circumstance, you can structure your trust so that the trustee has a good indication as to what to do.

There are two widely used discretionary standards that give guidance to a trustee: a narrower “support” standard and a broader “best interests” standard.

Support standard. A support standard allows the trustee to provide for the necessities of your beneficiaries. Distributions may be made, for example, for the beneficiary’s living expenses, including rent, groceries, clothing, utilities and taxes. In addition, using this standard, you can specify that support includes educational, medical and dental expenses. You may want to use a support standard if you are concerned that either the beneficiary will demand too much from the trustee or that the trustee will not be inclined to adequately conserve the trust assets. You can either require the trustee to use discretion and to make distributions for support, or you can merely give the trustee authority to make distributions for support if the trustee believes it to be necessary.

Best interests standard. If you have greater confidence in your trustee’s judgment or if you simply want the beneficiary to have greater use of trust assets, then consider a best interests standard. Under this standard, distributions may be made for the support items identified above and for additional purposes such as traveling, buying a home or starting a business. You can give the trustee even greater authority to make distributions to the beneficiary if you specify that the interest of the current beneficiary may be considered over the interests of any future or remainder beneficiaries.

Income vs. Principal Distributions

When deciding on a standard, you may wish to use different standards for distributions of income and principal. If you use the broader best interests standard for income, the impact of any questionable use of the trustee’s power is limited to the income amount earned by the trust, and the trust principal remains undisturbed. In some situations, such as under most marital trusts, the trustee is required to distribute all income to the beneficiary at least annually. For other beneficiaries, however, such a requirement could lead to indolence and would not be advisable.

You may want to be more restrictive with the standard for distribution of principal if the trust is intended to exist for a long period of time, or if the trust is intended to benefit future beneficiaries in addition to the current beneficiary. If the intent of the trust is to simply preserve assets until the beneficiaries reach a specified age, then grant withdrawal powers to the beneficiaries. Once a beneficiary reaches the specified age for withdrawal, then much of the pressure on the trustee to make distributions is relieved.

Beneficiary’s Needs

In addition to making distinctions between distribution of income and principal, establishing different standards for distributions based on the needs and maturity of the beneficiary may be advisable. For example, you may want to provide for either no distribution of principal or a strict standard for distribution of principal to a wayward child where your intent is simply to provide for that child's necessities during his or her lifetime, and to provide for that child's children after the child's death.

You can also create a single "pot" trust, which is used for all of your children until the youngest living beneficiary reaches a specified age, such as age 21. The distribution standard for "pot" trusts often allows the trustee to make either equal or unequal distributions. After the youngest living beneficiary reaches the specified age, the trust is often split into separate trusts so each beneficiary has the same amount available to him or her. At that point, consider changing the differing distribution standards.

Choosing the Right Trustee

The best guarantee that a trustee will do as you wish is to choose the right trustee, one you believe will approach situations the same way you would. Giving guidance with the trust agreement helps the trustee make the right decisions. We would be glad to help you set trust standards that achieve your objectives. Please call us with any questions you may have on this matter.

Basic Rules Of Conduct For a Trustee

If you are asked to serve as a trustee, there are basic rules of conduct that must be followed:

1. You must agree to serve.
2. You must follow the terms of the trust agreement.
3. You owe a duty of undivided loyalty to the beneficiaries.
4. You must keep trust property separate from your personal assets.
5. You must keep accurate accounts and invest the trust assets prudently.
6. You must deal fairly with all classes of beneficiaries.
7. You have a duty not to delegate the full administration of the trust to another.