

CONSIDERING A DISCRETIONARY DISTRIBUTION REQUEST?

One of the most important responsibilities of a trustee is distributing the assets according to the terms of the governing document. These are called the dispositive provisions and can be found in the governing document. They are determined by the grantor of the trust. As a beneficiary, you can help the process by understanding the directions that are laid out in the trust. The following seek to explain the types of distributions from a trust and specifically; discretionary distributions.

Distributions from a trust can be mandated (required) by the trust or not mandated (not required).

MANDATORY DISTRIBUTION:

With mandatory distributions, the trust directs that net income or principal must be distributed at certain points in time. In some instances, net income distributions will begin automatically when a beneficiary reaches a specific age and continue annually or more frequently, until the trust terminates or the beneficiary no longer has an interest in the trust. Trust principal may be automatically distributed to the beneficiary or available for withdrawal with age attainment as indicated in the trust document. The trustee has no choice but to follow the instructions.

DISCRETIONARY DISTRIBUTION:

With discretionary distributions, the grantor has given the trustee full discretion to decide which (and when) members of a defined group of beneficiaries are to receive either the income or the principal of the trust or both. The language in the governing document will dictate the discretionary distribution terms in a trust. It is typically the responsibility of the trustee to make sure the assets of the trust are prudently invested as well as prudently distributed so the assets last and can benefit both current and remainder beneficiaries.

A trustee must follow the instructions written in the governing document. To help the trustee make their decisions, information such as a budget worksheet, receipts or invoices are requested as financial support from the beneficiary for a discretionary distribution request. To determine the amount of money a beneficiary may receive, it helps to use a worksheet or budget to list all expenses and income for the beneficiary requesting a discretionary distribution. Documents may state to consider other sources or not to consider other sources of income that the beneficiary may have.



**HEMS:
HEALTH
EDUCATION
MAINTENANCE
SUPPORT**

HEMS is the acronym for “health, education, maintenance and support” used for discretionary distributions. It’s the most common standard of discretionary distribution

guidelines used in setting up a trust. If the request is for one of those reasons, it stands the best chance to be approved. Those named as trustees are the ones who must discern what’s best in terms of property distribution for all things related to a beneficiary’s well-being, comfort, best interests, quality of life assurances and many others. It can also help avoid transfer tax problems later on and it can also provide a way to limit distributions.

Like most trust companies, First State Trust Company’s New Business and Discretionary Disbursement Committee (“NBDDC”) will either review or ratify all requests requiring the trustee to exercise discretion to make a discretionary distribution to a beneficiary. First State Trust Company’s NBDDC is composed of trust professionals with experience in reviewing and approving discretionary distributions. It is possible for a request to be declined if the committee feels it is not in accordance with the terms of the trust.

All supporting documentation must be presented to the Committee. After review and a vote of the voting members, the Chairman provides approval or denial of the request. Our job as trustee is to ensure the assets are here to support both current and remainder beneficiaries if possible. Examples of discretionary distribution requests that are likely to be approved depending on the language in the governing document are for medical bills, tuition, and to replace the roof on your home. Examples that may not be approved are a luxury car, gifts to other people, purchasing jewelry.

In summary, it is important to remember trust instruments usually provide a trustee some guidance regarding reasons a discretionary distribution can be requested by beneficiaries. Discretionary powers for the trustee may be narrowly prescribed in the trust instrument, limiting the types of possible distributions a trustee might be able

to approve or they may be liberally prescribed. A major responsibility of the trustee is to make sure the assets of the trust are prudently invested as well as prudently distributed so the assets last and can benefit both current and remainder beneficiaries. To this end, when making any type of distribution from a trust, you can help the trustee by providing the information and details to support your request. This will help the trustee determine if the request fits within the directions of the trust.

Please don't hesitate to contact your Trust Officer with any questions or call First State Trust Company at (800)554-1364.

Disclosure:

Trusts are not necessarily appropriate for all clients. There are risks and considerations which may outweigh any potential benefits. Establishing a trust will incur fees and expenses which may be substantial. Trusts often incur ongoing administrative fees and expenses such as the services of a corporate trustee or tax professional. First State Trust Company does not provide tax or legal advice. Clients should consult their tax advisor for matters involving taxation and tax planning and their attorney for matters involving trust and estate planning, charitable giving, philanthropic planning and other legal matters.