Discretionary Distribution Standards in Estate Planning

Description: Learn how to reduce uncertainty, estate inclusion, litigation and other potential negative consequences of discretionary distribution standards.

The wording of a discretionary distribution standard can have tremendous consequences, positive and negative, for the settlor, the beneficiaries, and the trustee. Discretionary language must be carefully tailored to meet a client's objectives, and this requires a thorough understanding of the legal principles that govern the interpretation of a discretionary standard. Failure to draft carefully can result in estate inclusion for the settlor and/or the beneficiary, can convert a discretionary trust into a mandatory support trust, and can make administration a confusing exercise in complexity for the trustee. This topic will help you understand and plan for the drafting traps awaiting the unwary with respect to discretionary distribution standards. It will explain the factors that increase and decrease a trustee's discretion and a beneficiary's right to enforce a distribution.

Learning Objectives:
- You will be able to recognize the effect of savings clauses.
- You will be able to analyze enforceability of standard by beneficiaries and creditors.
- You will be able to explain with more clarity and understand how language is interpreted.
- You will be able to design appropriate private trustee removal provisions to preserve flexibility.

Contents:
The Line Between a Discretionary and a Mandatory Distribution Standard Has Been Blurred
- May vs. Shall, and When Does 'Shall' Still Create a Discretionary Standard?
- How Will a Distribution Provision Affect Estate Inclusion for the Settlor?
- Effect of Savings Clauses and Limiting Clauses

Enforceability of Standard by Beneficiaries and Creditors
- When Does a Beneficiary Have an Enforceable Right to a Distribution?
- When Can a Creditor of a Beneficiary Force a Distribution?
- What Broadens and Narrows Trustee Discretion?
- What Is the Effect of Language Making Discretion Uncontrolled or Unreviewable?
- When Must a Trustee Consider Other Resources Available to the Beneficiary?

Preserving Flexibility and Avoiding Litigation
- Importance of Drafting Clearly and Understanding How Language Is Interpreted
- Weight Given to Intent and Purpose
- Private Trustee Removal - A Very Powerful Tool

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