

Sample Statement to Trustees

In the form of a letter with inserts or directions italicized that is expected to be drafted after an accompanying Statement to Beneficiaries so it can use the same format and much of the language that is used in that Statement

Dear *[Trustee's Name]*,

[I or we, referred to here in the plural as "we", "us" or "our"] greatly appreciate your willingness to serve as Trustee of the *[Name of the Trust]*. This letter is intended to share our thoughts and desires regarding this important service for our family.

As we have noted in a similar letter to *[name of the current Beneficiary]*, the Trust's current Beneficiary, we have spent quite a bit of time thinking about how we want financial capital we have accumulated that we won't use or give away during our lifetimes to be made available to members of our family. Because our family is the most important part of our lives, it matters greatly to us that any planning we do that impacts the lives of our family members be as positive and meaningful as possible.

We want this financial capital to be available in ways that benefit current and future generations of our family. We are very aware that making significant amounts of financial capital available to people who did not create it can be beneficial, while also presenting unique challenges.

Accordingly, we are determined to do our best to ensure that the financial capital we make available to members of our family is viewed by them as a gift of love that offers opportunities to make new choices that produce benefits and improve their wellbeing, provided they are willing to engage proactively with the challenges this gift also presents.

Background

As we shared in our letter to *[current Beneficiary]*, we believe it is important that *[he or she]*, future generations of our family, and you understand how we accumulated our financial capital.

Insert the description the Grantor included in the Statement to the Beneficiary.

We also shared with *[current Beneficiary]* values that are important to us and that we hope will guide decision making as financial capital is distributed to *[him or her]* and future generations.

Insert the description the Grantor included in the Statement to the Beneficiary.

We appreciate that the financial capital in the *[Name of the Trust]* receives certain tax and financial benefits. *[Consider also mentioning benefits to the family if family business ownership interests are in*

the Trust]. Yet, because at its core this Trust is a gift of love, how that capital is used to support the wellbeing of the current and future Trust Beneficiaries and their families is much more important to us. *[Consider revising the preceding sentence if helping perpetuate a family-owned business is a key purpose of the Trust.]*

In that spirit, it is our desire that the wellbeing of the Trust's Beneficiaries be your primary consideration as you carry out the Trustee's duties of care, loyalty and impartiality. To enable this to occur, we have told *[current Beneficiary]* that it is necessary that *[he or she]* be open, honest, proactive and responsive in *[his or her]* dealings with you as the Trustee, and that we expect *[he or she]* will put forth considerable effort in establishing and growing a productive relationship with you as the Trustee.

We have seen examples in other families of beneficiaries becoming dependent on trust distributions and leading idle and unfulfilling lives. Accordingly, the Trust does not prescribe set distributions; instead, it describes considerations that we intend you as Trustee will use to determine whether to make distributions. These considerations include responsibilities Beneficiaries need to accept and guidelines for applying them. These considerations are consistent with values that are important to us and are intended to have Trust assets provide opportunities and safety nets that support Beneficiaries as they make choices and personal efforts to live in a way that creates happiness and fulfillment in their lives.

We respect each Beneficiary's freedom to make choices about how to live his or her life, and we believe that the ability to exercise choices and take responsibility for them is one of the cornerstones of a fulfilling life. In keeping with this belief, to the extent a Beneficiary wants to receive distributions or other benefits as a Beneficiary, we expect he or she will satisfy certain responsibilities. It is our belief that satisfying these responsibilities should be a requirement to be eligible to receive distributions or other benefits from the Trust, and meeting that requirement is necessary to foster mature and healthy relationships with you as the Trustee and other members of the Trustscape.

Responsibilities of the Beneficiary

The content that follows comes from the Sample Statement to the Beneficiary except, like here, where it is in bold italics. If that Statement has been drafted already, language in its Your Responsibilities section would be included here.

We have intentionally put safeguards in place to mitigate against the adverse impacts that access to trust assets can produce when it is not accompanied by demonstrably fulfilling responsibilities. The responsibilities we have established for the Trust's Beneficiaries are as follows:

Suggested questions for the Grantor to consider:

- *How broad or detailed should these responsibilities be, recognizing that they will be applicable for many years or decades?*

- *What input regarding these responsibilities should be sought from members of the Trustscape?*

The Grantor should tailor this section to address the specific situation. Here are a few examples that use plural pronouns to indicate language coming from parents:

1. Be Self-reliant

Throughout our lives it has helped us to always ensure we lived within our means. We have always been in a position to take care of ourselves and not be reliant on others. Our hope for you is that you never have to depend solely on the Trust or anyone else for support, that you are capable entirely on your own of supporting yourself and your family, and that Trust distributions are used to make new choices that produce benefits and enhance wellbeing.

2. Pursue Your Highest Potential

We have learned that money earned is much more satisfying than money that is given. However, we hope you will never feel guilty about receiving Trust distributions. Remember that it gives us pleasure to provide you with certain things. Our hope is that you will endeavor to use Trust distributions wisely and honorably, and not squander them. Our intent is to give you a “leg up” in your pursuit of your highest potential, not to eliminate your responsibility to be productive and self-sufficient. We want you to view Trust distributions you receive as a “hand up” rather than a handout. Our hope is you will find a meaningful vocation that allows you to use your incredible gifts to their fullest. It matters far less to us that this be financially rewarding or how society perceives its value, and far more that you find meaning and fulfillment from it. We have learned that laziness and dependency on others leads to dissatisfaction and low self-esteem.

3. Be Generous

The pleasure we have derived from helping others is as good as and often surpasses the pleasure of buying for ourselves. Our encouragement to you is to give of your money and your time. With great blessings come great responsibilities. Our view has always been that we have a responsibility to help those less fortunate than us. We hope you will share this view.

4. Have Character

Being able to look yourself in the eye and know that you are a genuinely good person cannot be overvalued. When we have done something we felt bad about, we have always sought to make it right, to apologize, to make amends. Getting up every morning, looking in the mirror, and seeing a happy person, without having to avert our eyes, and then setting about the day doing the things we are passionate about has helped us live very satisfying and fulfilling lives.

5. *Be a Productive Member of Society*

Being a productive member of society through your interests, talents, skills and efforts means making meaningful contributions to others. We do not presume to know the specific path you should take to fulfill this responsibility. It might be through active parenting, business activities, teaching, social service or government service. It is our expectation that you are engaged in endeavors that take dedication, persistence and involve making a meaningful contribution that is satisfying to you and valuable to others. We believe this is imperative for your wellbeing and we hope that you find a way to do this in line with what fills your heart. You do not need to achieve a specific level of financial success in order to be eligible to receive distributions or other benefits from the Trust, and if your endeavors result in financial rewards, this will not inhibit your ability to receive financial resources from the Trust.

6. *Avoid Harming Yourself or Others*

It is important to avoid engaging in activities that are harmful to you or other members of our family. Examples of such activities include addictions, patterns of abusive behavior in relationships, criminal activity that is more serious than a misdemeanor, or any activity that causes similar harm to you or other members of our family, which includes actions that could put shared assets in danger. If anything like this is suspected, we encourage Trust resources to be used for professional treatment and for progress to be demonstrated before any new distributions are considered.

7. *Actively Engage with the Trustee*

It is essential for you to actively engage with the Trustee of your Trust on a regular basis, to understand how the Trustscape works, and to discuss with the Trustee how you are integrating our gifts of financial resources into your life. It is your responsibility to work with the Trustee to examine how additional resources would contribute to your wellbeing.

We expect you, as Trustee, will help the Beneficiary understand these responsibilities and take the necessary steps to determine how well the Beneficiary is fulfilling them. If you determine the Beneficiary is not fulfilling them adequately, we desire that you communicate that determination to the Beneficiary and take reasonable steps to try to help him or her fulfill them. If those steps are not successful, then we expect you to take that failure into consideration as you apply the Trust distribution standard and guidelines we have provided.

Distribution Standard and Guidelines

The content that follows comes from the Sample Statement to the Beneficiary except, like here, where it is in bold italics. If that Statement has been drafted already, language in its Distribution Standard and Guidelines section would be included here.

The standard for making distributions or providing other benefits that we have included in the Trust is as follows:

Actual language from the trust agreement should be included here.

Here is an example of a typical ascertainable standard that provides for health, education, maintenance and support, sometimes referred to as a HEMS standard:

The Trustee may pay to or apply for the benefit of the Beneficiary such amounts as the Trustee, in the Trustee's discretion, shall deem to be necessary or advisable from time to time for the health, education, maintenance and support of the Beneficiary, taking into consideration to the extent the Trustee deems advisable, any other income or resources of or available to the Beneficiary known to the Trustee.

Here is an example of a typical best interests standard:

The Trustee may pay to or apply for the benefit of the Beneficiary such amounts as the Trustee, in the Trustee's discretion, shall deem to be necessary or advisable from time to time for the best interests of the Beneficiary, taking into consideration to the extent the Trustee deems advisable, any other income or resources of or available to the Beneficiary known to the Trustee.

Guidelines we have included in the Trust or provided separately to you as Trustee include:

Suggested questions for the Grantor to consider:

- *How broad or detailed do I (or we, as parents) want these guidelines to be, recognizing that they will be applicable for many years or decades?*
- *What input regarding these guidelines should I (or we) seek from members of the Trustscape?*

Actual language from the trust agreement and/or guidance that has been provided to the Trustee should be included here with a goal of helping Beneficiaries understand when they may receive distributions or other benefits from the Trust.

Here are two examples – one broad or liberal and one narrow or strict – of guidelines for implementing a HEMS standard with optional language shown in brackets:

Broad or Liberal HEMS Standard

We intend that the term "health, education, maintenance and support", when it is used as the standard for making a distribution or other benefit available to a Beneficiary, be interpreted liberally so trust assets are made available [consistent with the responsibilities described above] to the greatest extent permissible, with:

- *"Health" to include conventional and non-conventional diagnosis and treatment of all types of health issues; home health care; memberships in organizations that are intended to maintain or enhance physical, mental or emotional conditions; health-related insurance programs; and other treatments, assistance or activities that are designed to improve overall health.*

- *“Education” to include tuition and other costs, including support during the education, related to public or private schools up to and including professional and other advanced degrees; non-accredited or non-degree granting programs that may further the Beneficiary’s career or a vocation; and schools or programs that are based in or outside the Beneficiary’s country of residence.*
- *“Maintenance and support” to include, at a level consistent with our family’s general lifestyle, mortgage payments, property taxes, and costs of maintaining or making reasonable enhancements to up to two residences; life, property and liability insurance premiums; family vacations; family gifting; charitable gifting and other forms of philanthropic support; and reasonable additional comforts or luxuries.*

Narrow or Strict HEMS Standard

We intend that the term “health, education, maintenance and support”, when it is used as the standard for making a distribution or other benefit available to a Beneficiary, be interpreted strictly so trust assets are made available [consistent with the responsibilities described above] only as necessary and after the Beneficiary has provided information regarding his or her financial situation to support that conclusion, with:

- *“Health” to be limited to conventional diagnosis and treatment of serious health issues that could not be obtained absent a distribution or other benefit provided by the trust.*
- *“Education” to be limited to no more than 50% of the net (after scholarships and work-study program support) tuition and fees for up to four years of enrollment in degree-granting programs at accredited public colleges or universities in the U.S., with the balance of the costs to be provided by the Beneficiary through work, loans or otherwise.*
- *“Maintenance and support” to be limited to mortgage payments, property taxes and insurance, and costs of maintaining one residence that is adequate for the Beneficiary’s family, and food and other necessities required by the Beneficiary’s family.*

Here are two examples – one broad or liberal and one narrow or strict – of guidelines for implementing a best interests standard with optional language shown in brackets:

Broad or Liberal Best Interests Standard

We intend that the term “best interests”, when it is used as the standard for making a distribution or other benefit available to a Beneficiary, be interpreted liberally so trust assets are made available [consistent with the responsibilities described above] to the greatest extent permissible, including for investments, gifts or other uses desired by the Beneficiary. We recognize and are comfortable with the fact that this approach may result in most or all trust assets being distributed to or otherwise used to benefit a current Beneficiary rather than being held in trust for future Beneficiaries.

Narrow or Strict Best Interests Standard

We intend that the term “best interests”, when it is used as the standard for making a distribution or other benefit available to a Beneficiary, be interpreted strictly so trust assets are made available [consistent with the responsibilities described above] only as necessary and after the Beneficiary has provided information regarding his or her financial situation to support that conclusion. We desire current Beneficiaries to be as self-sufficient as they can be and not reliant on trust assets, with a goal of preserving trust assets for future Beneficiaries who need them.

We expect you, as Trustee, will help the Beneficiary understand the standard and guidelines we have designed to reflect our views on how Trust assets should be made available to or used to benefit the Beneficiary. This educational process should be ongoing as we expect your application of the standard and guidelines will evolve to reflect changed circumstances.

Conclusion

As we noted in our letter to *[name of Beneficiary]*, we want *[him or her]* and future Beneficiaries to be open and purposeful when seeking distributions or other benefits from the Trust. We understand the potential for Beneficiaries to feel anxious or even guilty about talking about distributions. While these and similar feelings are normal, it is our firm belief that with appropriate support from you, as Trustee, Beneficiaries of the Trust will learn to handle these feelings maturely so they do not inhibit their engagement with you and other members of the Trustscape.

We want the lives of *[name of Beneficiary]* and future Beneficiaries to be enhanced by using the financial capital we have placed in the Trust in ways that are consistent with the responsibilities, standards and guidelines described above. In order for these hopes to be realized, it is our expectation that in your role as Trustee you will actively work with *[name of Beneficiary]* and future Trust Beneficiaries to develop and maintain a meaningful relationship so that they see you as an important partner in their growth and development.

We expect you to provide reasonable procedures for Trust Beneficiaries to follow in requesting distributions or other benefits from the Trust and to help them follow those procedures.

We welcome any questions you may have about this letter.

__*[Grantor's signature]*_____

[Grantor's printed name]