

The University of Texas at Austin School of Law  
2021 Stanley M. Johanson Estate Planning Workshop

Reading Interpreting and Drafting  
Distribution Provisions That:  
*Say What You Mean and Mean What You Say*

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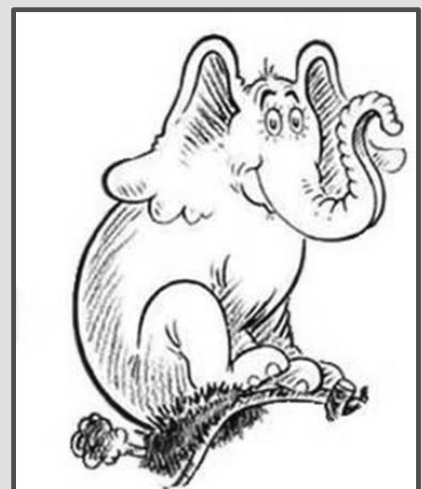


DECEMBER 3, 2021

1

1

"I meant what I said,  
and I said what I  
meant. An elephant's  
faithful - 100 percent."



DECEMBER 3, 2021

2

2

## Defining the Terms

### SUPPORT

Pay only for health, education, maintenance and/or support. "HEMS" Is Ascertainable.

*Trustee shall provide maintenance and support to my surviving spouse for so long as she lives.*

### DISCRETIONARY

Absolute discretion to pay any amount the trustee chooses to pay or apply.

*Trustee has complete and unfettered discretion over income and principal to make or withhold distributions to my children until each child reaches age 25.*

### HYBRID

Hybrid includes elements of Support and Discretionary trusts combined. Usually also Ascertainable.

*Trustee may pay from principal, income, or both in the trustee's sole discretion as reasonably necessary for the health, education, maintenance, or support of the beneficiary.*

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3

3

## *Trustee shall distribute ... as necessary to provide for the Child's reasonable health, support, and education...*

- *Standard of living at creation of the trust;*
- *Child is the primary beneficiary.*
- *Consider resources known to be available to Child upon reasonable inquiry.*
- *Enable vocational, college, graduate, and/or professional education **as long as it is pursued to Child's advantage.***
- *Enable Child to obtain, improve, and furnish a home commensurate with Child's standard of living.*
- *Assist Child to obtain capital to enter a business or profession.*
- *Intent is that trust distributions **not serve as a disincentive** to Child's motivation to provide for his own needs in life, and Settlor instructs Trustee to reduce or terminate distributions if, in the judgment of the trustee, that objective is served by doing so.*

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4

4

“This Court cannot substitute its discretion for that of the Trustees and can interfere with their exercise of discretionary powers only in case of fraud, misconduct, or clear abuse of discretion.”

*Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 284 (Tex. Civ. App.—Houston 1966, writ ref’d n.r.e.)



*An endowment ... donated "to the instruction of the white inhabitants of the City of Houston, ... by the establishment ... of a Public Library and Institute for the Advancement of Literature, Science and Art... \* \* \* The Endowment Fund ... shall be devoted to the following objects, and purposes... \* \* \* To the establishment and Maintenance of a Free Library, Reading Room, and Institute for the Advancement of Science and Art ... provide for the establishment and maintenance of a thorough polytechnic school, for males and females, designed to give instructions on the application of Science and Art to the useful occupation of life ... Said Library, Reading Room, Scientific Departments, and Polytechnic School, and the instruction, benefits and enjoyments to be derived from the Institute to be free and open to all; to be non-sectarian and non-partisan ...*

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5

5

## Methodist or ...

*In the event any beneficiary should be unable to prove (by affidavit or otherwise) to the complete satisfaction of the Trustee that such beneficiary is a member in good standing of a Methodist Church, or being trained in such Church, beneficiary shall not receive any payments and all rights to which beneficiary would otherwise be entitled shall cease and become null and void as if beneficiary was then deceased.*

DECEMBER 3, 2021



6

6

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