Rethinking Trustee Discretion:
Managing Beneficiary Behavior, Family Dynamics, and Fiduciary Risk in a Changing Landscape

Introduction

For families, establishing a trust can provide a thoughtful way to protect and preserve assets while supporting a beneficiary over the long term. Rather than simply transferring wealth outright, a trust can create a structure for how, when, and under what circumstances assets are made available.

It can help protect the beneficiary from financial mismanagement, outside claims, or the unintended consequences that can accompany a sudden transfer of substantial wealth. Most importantly, a well-designed trust allows a family to pass along not only financial resources, but also a framework for stewardship, stability, and the family's long-term intentions.

Trust law has changed significantly over the past several decades, making it important for families to revisit estate plans that were designed under an earlier legal and tax environment. Courts have developed new interpretations of fiduciary duties, beneficiary rights, trustee discretion, and the standards governing the administration and modification of trusts, while federal and state tax laws have substantially altered the treatment of inherited wealth, generation-skipping transfers, estate taxes, and trust income.

At the same time, beneficiaries today may have greater access to information and greater ability to challenge trustee decisions, particularly when they believe a trustee has acted outside the terms of the trust, failed to meet fiduciary obligations, or abused discretionary authority. As a result, a trust drafted decades ago may still be legally valid but no longer provide the level of flexibility, protection, clarity, or tax efficiency that a family originally intended.

What happens when access to wealth and trustee discretion intersects with mental health, addiction, or a general lack of purpose?

Over the past two decades, families, trustees, and advisors have been navigating a growing tension that traditional trust design was never fully built to handle:

Historically, the answer was straightforward. Trusts relied heavily on:

- broad trustee discretion, and
- familiar standards like "health, education, maintenance, and support."

On paper, these tools gave trustees both authority and flexibility. In practice, that assumption no longer holds.

Today, trustees are operating in a far more complex environment—one shaped by:

- increased beneficiary sophistication and awareness of how to challenge trustee discretion,
- evolving family dynamics across generations,
- heightened sensitivity to mental health and substance use issues, and
- the desire to avoid resolving disputes through litigation.

The result is a consistent pattern: **structures that appear strong in legal drafting often prove fragile in real life.**

This article reflects what we've seen working directly with families, trustees, and advisors—and outlines a more effective, modern approach.

What We See in Practice

At its heart, establishing a trust is an expression of a family's hope for the future. It allows a family to provide for a loved one while preserving the values, intentions, and protections that they believe should guide the use of their wealth. A trust can offer confidence that resources will be available when they are needed, while giving the next generation the opportunity to develop their own sense of responsibility, independence, and stewardship.

Ultimately, families create trusts not simply to preserve wealth, but to use that wealth thoughtfully in ways that support the well-being of those they love and the legacy they hope to leave behind.

Across families of different sizes and structures, two unhealthy patterns show up repeatedly.

1. The Dysfunctional Beneficiary

This includes individuals struggling with:

- substance use
- compulsive behaviors
- untreated mental health conditions
- chronic financial instability

These situations are rarely obvious at first. In fact, many beneficiaries:

- present well in short interactions,
- minimize or rationalize behavior, and
- resist "course correction" from a strong conversation or reprimand until consequences are severe.

By the time concerns are undeniable, the legal, financial and relational damage is often significant.

2. The Underperforming Beneficiary

Equally common—but often less discussed—is the beneficiary who is not in crisis, but also not moving forward in a way that could be recognized as meeting life or career benchmarks. For example, a beneficiary who has an MBA but is unwilling to take an entry level job to start a career. Or a beneficiary who creates financial stress that requires ever increasing distributions to offset debts.

These individuals may:

- remain financially dependent well into adulthood
- avoid meaningful employment or responsibility
- rely on trust distributions to sustain an unproductive lifestyle

In these cases, the issue is not acute dysfunction—it's **drift**.

And over time, that drift can become just as costly to the individual and the family.

A Common Thread

In both situations, trust distributions—directly or indirectly—often **sustain the very patterns families hope to change**. That creates a difficult but unavoidable question: ***Is the trust functioning as a support system—or as an enabler?***

Where Traditional Structures Break Down

1. Discretion Alone Is No Longer a Reliable Control

In theory, broad trustee discretion should allow thoughtful decision-making. In reality, discretion is often undermined by pressure.

That pressure can take many forms:

- coordinated requests from multiple beneficiaries
- emotional appeals from close family members
- indirect legal threats or collateral disputes
- persistent, personal lobbying of individual trustees

Even experienced trustees can find themselves shifting from principled decisions regarding access to distributions to negotiated outcomes designed to avoid prolonged conflict or family fracture.

2. "Ascertainable Standards" Invite Interpretation

Standards like "health, education, and support" appear objective. In practice, they are highly elastic.

What qualifies as:

- appropriate housing?
- necessary support?
- an "emergency"?

Beneficiaries, advisors, and family members often arrive at very different answers. These differences rarely get resolved through legal interpretation. They get resolved through **pressure, persuasion, and compromise**.

3. Prohibitions Without Process Are Easy to Circumvent

One of the most difficult issues in administering a trust for a beneficiary with addiction or significant mental health challenges arises when the trust permits distributions based largely on the trustee's discretion but does not provide a clear process for evaluating requests. For example, a beneficiary may request funds for housing, medical treatment, transportation, or another legitimate need, while the trustee may question whether the stated purpose is accurate or whether the money could ultimately support substance use or other harmful behavior.

The trustee is then placed in a difficult position: protecting the beneficiary and honoring the family's intent while also exercising fiduciary judgment without necessarily having reliable information about the beneficiary's circumstances.

Many trusts attempt to address risk by prohibiting distributions in cases of:

- addiction or mental health illness
- incapacity
- financial mismanagement

On their own, these provisions are rarely effective. *Why?*

Because they depend on:

- proving a condition, and
- agreeing on whether that condition exists

Beneficiaries may:

- deny or minimize issues
- present selectively favorable information
- engage their own professionals
- limit access to records

Without a structured evaluation process, these provisions become **arguments—not safeguards**.

4. Family Dynamics Often Override Design

Even well-drafted structures can be overtaken by relationships.

Common scenarios include:

- a parent-trustee struggling to say no to a child
- siblings aligning to increase distributions
- “good” beneficiaries becoming frustrated by restrictions driven by others’ behavior
- trustees making one-time exceptions that become long-term precedents

In these moments, decisions are rarely about the document alone.
They are about **relationships, history, and emotion**. You can find several Case Studies for your consideration of these type issues in our Blog center.

<u>An Emerging Risk: Trustee Exposure</u>

As expectations around fiduciary responsibility evolve, trustees are facing a more nuanced form of risk.

Questions are beginning to surface such as:

- What if distributions clearly sustain harmful behavior?
- What if other beneficiaries are negatively affected?
- What if the grantor’s intent is undermined in practice?

While legal standards continue to develop, one principle is increasingly difficult to ignore:

Inaction can carry its own form of liability. This is especially relevant in situations involving:

- repeated patterns of destructive behavior
- impact on minor or dependent family members
- long-term dissipation of trust assets

What Actually Works: A Modern Approach

What we’ve found is that effective trust administration in these situations requires a shift: **from static provisions → to structured processes.**

1. Use Independent, Qualified Professionals

Trustees are not addiction or mental health clinicians, executive or recovery coaches, or behavioral health case managers—and shouldn’t be expected to act as such.

Bringing in qualified, experienced professionals allows for:

- objective assessment
- informed recommendations
- ongoing monitoring and support

It also changes the dynamic:

- decisions are no longer purely subjective
- the focus shifts from money to underlying issues
- the burden of action moves to the beneficiary

2. Link Distributions to Clear, Observable Conditions

Rather than relying solely on broad standards, effective structures:

- define expectations
- outline pathways forward
- connect financial support to participation and progress

This may include:

- engagement in the appropriate level of care (treatment) and/or recovery programs as recommended by a clinically led team or treatment provider
- participation in coaching or vocational development to find purpose in life including but not limited to educational and career pathways
- financial planning and accountability measures designed to demonstrate budgeting and achieve financial wellbeing short and long term

The goal is not punishment—it is **alignment**.

3. Create an Evaluation Framework (Not Just Restrictions)

Instead of asking: *"Is this beneficiary compliant or not?"*

A better question is: *"What is actually happening—and how do we know?"*

This requires access to information, consent for communication with professional, and a process for ongoing review Without this, trustees are left making decisions with incomplete or unreliable data.

4. Distinguish Between Beneficiaries

Equal treatment is not always equitable treatment. A one-size-fits-all distribution approach can:

- reward harmful behavior
- penalize responsible beneficiaries
- create long-term resentment

More effective approaches recognize that different situations require different response and discretion should be applied thoughtfully—not uniformly

5. Support the System Around the Beneficiary

In some cases, limiting direct distributions is necessary. But support can still be provided through:

- direct payment of essential expenses
- support for spouses or children
- funding for treatment, education, or development

This allows the trust to protect assets, reduce harm and maintain alignment with its broader purpose

A Shift in Mindset

At its core, this is not just a technical issue—it's a philosophical one. Traditional trust design often assumes: *"If we control access to money, behavior will follow."*

Experience suggests the opposite is often true:

If we understand and address behavior, financial decisions become clearer—and more effective.

Conclusion

A well-designed trust should do more than preserve wealth—it should provide a thoughtful framework for navigating the realities that may arise during a beneficiary's lifetime. For families affected by addiction, mental health challenges, or other circumstances that can complicate the management of significant assets, clarity around trustee discretion, distribution standards, documentation, and accountability can protect both the beneficiary and the trustee.

Trustees today are being asked to operate in a space that blends:

- fiduciary responsibility
- human behavior
- family dynamics
- and long-term legacy planning

Discretion, standards, and prohibitions still matter—but they are no longer sufficient on their own.

Establishing a defined process for reviewing requests—including what information may be required, who may provide independent verification, and how disputed or urgent requests are handled—can reduce uncertainty, create consistency, and help ensure that both the beneficiary and trustee are treated fairly.

The most effective approach is one that:

- combines structure with flexibility
- incorporates professional insight
- and recognizes that money is rarely the root issue

Handled well, these situations present not just risk—but opportunity: **the opportunity to protect both the assets and the people those assets were meant to serve.**

The goal is not to create barriers to a beneficiary's access to family resources, but to establish a process that allows those resources to be used responsibly, consistently, and in accordance with the family's intentions. Ultimately, thoughtful trust planning can give families greater confidence that the wealth they have worked to preserve will continue to serve its intended purpose: providing opportunity, stability, protection, and hope for the generations who follow.

Clere Consulting offers strategic support to families, trust offices, and legal teams when establishing a trust, consulting support to families and trustees to define a process for reviewing treatment progress, and long-term monitoring of beneficiaries, among other services.

To find out more about Clere Consulting, LLC and the opportunities for us to work together, please contact us at 651-316-4111.

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