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BARATELLI INSTITUTE - PRACTITIONER GUIDE SERIES

Trust Administration

Fiduciary Duty - Distribution - Disputes

SAMPLE CHAPTER IN THIS PREVIEW

Chapter 10 -- Discretionary Distributions: The Hardest Decisions

21-page preview - drawn from the 156-page full guide

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MENTORING AT SCALE

ABOUT THIS FREE PREVIEW

Trust Administration, Free Preview

Trust Administration & Fiduciary Management is the 156-page practitioner reference for the corporate trustee, the individual successor trustee, the family-office director, the RIA advising trust portfolios, the trust litigator, and the CPA serving Form 1041 filings. Sixteen chapters across five parts -- the trust landscape, being a trustee, the trust lifecycle, disputes and liability, and worked examples -- plus the Trustee's Year-One Checklist, an AI-prompt appendix keyed to each chapter, a glossary, a term-to-chapter index, and the Rockefeller Trust Architecture deep-dive added in the 2026 edition. Cited cover-to-cover to Uniform Trust Code sections, IRC, Treas. Reg., and leading case law.

This free preview gives you the cover, the table of contents, the Reading Map by Role (so you can find your starting point), and one complete chapter -- Chapter 10, Discretionary Distributions: The Hardest Decisions. Discretionary distributions are where the highest fiduciary-liability exposure lives; the HEMS standard, the framework for evaluating beneficiary requests against trust corpus, and the documentary discipline that turns a defensible decision into one that actually survives a beneficiary challenge are the single most consequential teaching unit in the book.

Read it the way a trustee actually reads it: skim the TOC, locate your role in the Reading Map, then work the discretionary-distribution framework against the next request sitting on your desk and check whether the documentary trail you are building would hold up under the Form A-1 review.

WHAT YOU GET IN THIS PREVIEW

Cover - About This Preview - Table of Contents - Reading Map by Role - one full sample chapter

Sample chapter: Chapter 10 -- Discretionary Distributions: The Hardest Decisions (the HEMS standard in practice, the c

CONTENTS

Table of Contents

WHO THIS GUIDE SERVES

A Reading Map by Role

Trust administration is multi-disciplinary by design. The corporate trustee, the individual successor trustee, the beneficiary, the family-office director, the RIA, and the estate attorney each enter the trust document with different questions and different stakes. This guide is built so each role can read the chapters that matter to them first.

You are…	Read in this order
Corporate trustee (bank trust officer or trust company)	• Ch 5 - The Fiduciary Standard • Ch 7 - Administration Mechanics: Accounting, Reporting, Tax • Ch 8 - Handling Beneficiary Relationships • Ch 10 - Discretionary Distributions: The Hardest Decisions • Ch 15 - Red Flags and Fiduciary Liability • Apx - Year-One Checklist *Then index into Ch 6 (investment duties), Ch 11 (modification), Ch 13-14 (disputes) as cases demand.*
Individual successor trustee (family member or close advisor)	• Apx - Year-One Checklist • Ch 2 - The Players and Their Roles • Ch 5 - The Fiduciary Standard • Ch 7 - Administration Mechanics • Ch 8 - Handling Beneficiary Relationships • Ch 10 - Discretionary Distributions *Read Ch 14-15 (when to fire / liability) before signing on. Get professional support — this is personal-liability work.*
Family-office director / COO	• Ch 4 - Choosing the Right Jurisdiction • Ch 7 - Administration Mechanics • Ch 8 - Handling Beneficiary Relationships • Ch 11 - Modifying Trusts: Decanting, Reformation, NJSA • Ch 16 - Four Trustees, Four Situations *Owns trustee selection, situs, and the operating cadence; coordinates RIA + CPA + counsel.*
RIA / investment advisor (advising trust portfolios)	• Ch 6 - Investment Duties and the Prudent Investor Rule • Ch 7 - Administration Mechanics (DNI / FAI) • Ch 5 - The Fiduciary Standard • Ch 10 - Discretionary Distributions (income vs. principal) • Ch 8 - Handling Beneficiary Relationships *UPIA / UTC §902 prudent-investor framework drives IPS; coordinate with trustee on income-vs.-principal allocation.*
Estate / trust attorney	• Ch 11 - Modifying Trusts: Decanting, Reformation, NJSA • Ch 12 - Terminating and Transitioning Trusts • Ch 13 - Common Disputes and How They Arise • Ch 14 - When to Fire a Trustee • Ch 15 - Red Flags and Fiduciary Liability *The drafting / dispute / modification work; pair with Estate Planning Decoded for transfer-tax mechanics.*

You are…	Read in this order
Beneficiary (current or remainder)	• Ch 1 - What a Trust Is and Why It Exists • Ch 2 - The Players and Their Roles • Ch 5 - The Fiduciary Standard (what you're entitled to) • Ch 8 - Handling Beneficiary Relationships • Ch 14 - When to Fire a Trustee *Understand your rights before approaching the trustee; Ch 13-15 are your protection.*
Trust litigator	• Ch 13 - Common Disputes and How They Arise • Ch 14 - When to Fire a Trustee • Ch 15 - Red Flags and Fiduciary Liability • Ch 5 - The Fiduciary Standard • Ch 7 - Administration Mechanics (documentary-trail discipline) *Documentation discipline in Ch 7-8 is what wins / loses the case.*
CPA serving trust filings	• Ch 7 - Administration Mechanics: Accounting, Reporting, Tax • Ch 9 - Funding the Trust • Ch 10 - Discretionary Distributions (DNI / K-1 mechanics) • Ch 11 - Modifying Trusts (tax consequences of decanting) • Ch 12 - Terminating and Transitioning Trusts *Form 1041, K-1 allocation, §645 election, state fiduciary returns; coordinate with trustee on FAI / DNI.*

The guide is designed to be read in any order. Apx A consolidates AI prompts; Apx C the glossary; Apx D the index. Cross-references at the end of every chapter point to surrounding material.

Chapter 10

Discretionary Distributions: The Hardest Decisions

Discretionary distribution: the hardest decisions a trustee makes, the HEMS standard in practice, ascertainable vs. non-ascertainable authority, and the documentation that supports a discretionary decision under scrutiny.

Discretionary distributions are the hardest decisions a trustee makes. The trust instrument grants the trustee discretion to distribute principal or income to one or more beneficiaries under specified conditions, typically for ‘health, education, maintenance, and support’ (the HEMS standard) or under broader ‘absolute’ or ‘sole’ discretion. Every discretionary decision is a judgment call about how to balance competing interests, honor the grantor’s intent, and steward the trust across time.

The HEMS standard.

The Health, Education, Maintenance, and Support (HEMS) standard is the most common discretionary distribution trigger in modern trusts. It is favored because it qualifies as an ‘ascertainable standard’ under Internal Revenue Code Section 2041 — meaning a beneficiary-trustee who is also a potential beneficiary can make distributions to themselves under HEMS without causing the entire trust to be included in their estate for estate-tax purposes.[1]

What HEMS covers in practice:

- **Health:** medical expenses, mental health care, dental, vision, long-term care, wellness activities reasonably related to health. Broad.
- **Education:** tuition, books, fees, room and board, graduate and professional education, reasonable educational-travel and related costs. Traditionally construed to include elementary and secondary as well as higher education.
- **Maintenance and Support:** the beneficiary’s accustomed standard of living — housing, food, clothing, transportation, household expenses, and other costs of ordinary life at the level the beneficiary was accustomed to when the standard became relevant.

The ambiguity in HEMS is ‘accustomed standard of living.’ A beneficiary born into a wealthy family and accustomed to private school, domestic staff, and international travel has a different ‘accustomed’ standard than a beneficiary accustomed to middle-class suburban life. The trust instrument may or may not specify whose standard is controlling; the trustee’s judgment fills the gap.

The framework for discretionary decisions.

Trustees exercising discretion should consistently apply a framework that includes:

1. Read the instrument. Every discretionary decision starts with the specific language of the distribution provisions. Is the standard HEMS or broader? Are specific priorities mentioned? Are beneficiaries' other resources required to be considered? Are specific categories of expense explicitly authorized or prohibited?

2. Gather information. The beneficiary's request should come with specific information about the need: amount requested, purpose, beneficiary's other resources, any offsetting considerations. The trustee has standing to ask for reasonable documentation.

3. Consider impartiality. In a trust with multiple beneficiaries, a distribution to one affects the amount available to others. The trustee must consider whether the distribution is consistent with impartial treatment across beneficiaries, given their respective circumstances and the trust's purposes.

4. Consider trust purposes. Most instruments include language about the grantor's broader purposes — multi-generational preservation, promoting productive behavior, providing security without dependency. Individual distribution decisions should be consistent with the articulated purposes.

5. Consider co-fiduciary views. Co-trustees and distribution advisors should be consulted when required or when helpful. Unanimous decisions are ideal; majority or mandatory-consensus structures should be followed exactly as the instrument prescribes.

6. Document the decision. A written record of the request, the information gathered, the factors considered, and the conclusion reached is the trustee's protection if the decision is later challenged. Documentation is prudent for distribution approvals; it is essential for denials.

7. Communicate the decision. The beneficiary should be told the decision promptly, with explanation of the reasoning in terms they can understand. For denials especially, the explanation matters — beneficiaries who feel treated with respect even when denied rarely escalate; those who feel dismissed routinely do.

Specific hard cases.

Recurring discretionary distribution situations that deserve special care:

- **Business capital for the beneficiary.** A beneficiary requests trust funds to invest in a new business venture. Usually outside HEMS. Evaluate whether the instrument authorizes investment distributions; if so, evaluate the business proposal on its merits (track record, plan quality, risk) rather than on sentiment.
- **Real estate down payment.** Common under HEMS when the residence is reasonably scaled to the beneficiary's circumstances. Document the scale analysis.
- **Medical expenses for a high-earning beneficiary.** Strictly within HEMS. Some trusts require consideration of beneficiary's own resources; this provision turns the decision partially on whether the beneficiary reasonably can fund from their own means.
- **Distributions during divorce.** Distributions to a beneficiary during a pending divorce can create significant marital-asset and support implications. Consider deferring, distributing to third parties

on behalf of the beneficiary, or structuring to minimize marital exposure — with explicit family-law counsel coordination.

- **Beneficiary with substance or psychiatric issues.** Distributions in cash may be harmful. Distributions to third-party providers (rehab facility, treatment providers, landlord directly) often better serve the beneficiary's actual interests than direct payments.
- **Large lump-sum lifestyle request.** Wedding, car, luxury travel. Evaluate against the HEMS 'accustomed standard of living' analysis and against the trust's broader purposes. Beneficiaries who experience a large one-time boost often expect continuing pattern; consider the precedent the distribution sets.

Every discretionary distribution is a decision the trustee will potentially defend.[2] *Make it with the documentation you would want on the record if the question reaches a courtroom five years from now.*

NOTES

1. HEMS as ascertainable standard: IRC §2041(b)(1)(A) ("health, education, support, or maintenance" does not constitute a general power of appointment when the beneficiary is both trustee and discretionary beneficiary). Treas. Reg. §20.2041-1(c)(2). HEMS interpretation: Old Colony Trust Co. v. Silliman, 352 Mass. 6 (1967) (HEMS construed in context of beneficiary's accustomed standard); Heyn v. United States, 138 F. Supp. 185 (Ct. Cl. 1956) (early articulation of ascertainable-standard doctrine); Stephens v. Stephens, 213 Cal. App. 3d 31 (1989) (state-level HEMS application).
2. Abuse-of-discretion standard for trustee distributions: UTC §814 (limits on exercise of discretion). Restatement (Third) of Trusts §50 (discretionary trust distributions). Marsman v. Nasca, 30 Mass. App. Ct. 789 (1991) (trustee liable for failure to inquire into beneficiary's needs before denying distribution); Wells Fargo Bank v. United States, 437 F.3d 1069 (10th Cir. 2005) (no general-power-of-appointment inclusion for HEMS distributions to beneficiary-trustee).
3. Consideration of other resources: Treas. Reg. §20.2041-1(c)(2) implicitly recognizes that some trusts require the trustee to consider the beneficiary's other resources. Trust instrument language determines whether consideration is required, permitted, or prohibited; a "without regard to" provision eliminates the consideration; silence is generally interpreted as permitting but not requiring it.
4. Documentation of discretionary decisions: no specific UTC section requires contemporaneous documentation, but UTC §810 (duty of recordkeeping) and §802 (duty of loyalty) combined with generally applicable evidentiary principles make contemporaneous records the trustee's primary defense against later challenge. See Charles M. Bennett, "Discretionary Distribution Documentation," Trusts & Estates magazine (various issues) for practitioner approaches.

FIGURE 10.1

The Discretionary Distribution Framework

1

1. Read the Instrument
What does the specific distribution provision authorize?

2

2. Gather Information
Amount, purpose, other resources, circumstances.

3

3. Consider Impartiality
Impact on other beneficiaries under competing interests.

4

4. Consider Purposes
Alignment with the grantor's broader articulated intent.

5

5. Consult Co-Fiduciaries
Required consultations; advisor input where governance mandates.

6

6. Document Decision
Written record: request, info, factors, conclusion.

7

7. Communicate
Prompt, substantive response to beneficiary.

Every discretionary distribution is a potential future exhibit in a courtroom.
Treat the documentation accordingly.

AI IN PRACTICE · CHAPTER 10

Discretionary Distributions — AI assist

Discretionary-distribution decisions are the highest-stakes recurring trustee work. The Distribution-Decision Memo discipline below is what protects the trustee from later challenge.

Prompt 1. Distribution-Decision Memo

Beneficiary [name / class] requested $[amount] for [purpose]. Trust standard: [HEMS / absolute / specific]. Trust corpus: $[X]. Other facts: [income, other beneficiaries, prior distributions]. Draft a memo documenting the request, the standard analysis, the needs-and-resources test, the impact on remainder beneficiaries, the decision and rationale, and the documentation retained.

> ***Practitioner guardrail.*** *Distribution decisions remain the trustee's responsibility. The AI-drafted memo is a starting point; the trustee must verify the analysis reflects the actual facts and exercise their own discretion. See Apx A for the consolidated AI Tool Prompts library.*

CHAPTER 10 · CONTINUED

Discretionary Distributions — Depth Reference

The preceding sections of this chapter introduce the HEMS standard and the seven-step decision framework. The reference material that follows develops those points in the depth the working trustee requires: the prong-by-prong meaning of HEMS under Treasury authority, the ascertainable-versus-discretionary distinction, the trust-protector overlay, the fiduciary duties that govern every discretionary act, the Heckerling analytical frame, documentation standards, the common attacks brought by disappointed beneficiaries, the income-tax consequences of distribution choices, and three worked examples that compress the law into facts.

10.A HEMS Prong-by-Prong

Treasury Regulation § 20.2041■1(c)(2) is the controlling authority on what counts as an "ascertainable standard related to the health, education, support, or maintenance" of the beneficiary. The regulation gives the standard its safe-harbor effect: a beneficiary who is also a trustee can hold a power to distribute to themselves limited by HEMS without that power being treated as a general power of appointment, and the trust property therefore stays outside the beneficiary-trustee's gross estate under IRC §§ 2041 and 2514. The same regulation is the textual anchor every practitioner returns to when a distribution standard is challenged.

Health. The regulation's phrase is broad. Authority and practice consistently read "health" to include physician fees, hospital expenses, surgical procedures, prescription drugs, dental and orthodontic work, vision care, mental-health treatment, psychiatric and psychological care, addiction treatment, long-term care, in-home aides, hospice, assisted-living facility fees, medical equipment, and health-insurance premiums (including supplemental Medicare and long-term-care policies). It generally does *not* reach purely cosmetic procedures with no documented medical purpose, elective wellness travel, fitness-club memberships absent a physician's order, or alternative therapies with no recognized clinical foundation. Trustees who want to fund borderline items should obtain a treating clinician's letter tying the request to a documented condition.

Education. Education traditionally reaches tuition, fees, books, supplies, computers and software reasonably required for coursework, room and board for the school term, and related transportation. Graduate and professional degrees are within scope; vocational training and licensure courses are as well. Continuing-education and executive-program tuition qualifies when the program is recognized and tied to the beneficiary's career. Elementary and secondary private education, including boarding-school tuition, is squarely covered. The closer cases are study-abroad add-ons, luxury-accommodation upgrades on top of base room and board, and "gap-year" travel that is loosely educational. Trustees should ask for the enrollment letter, the fee schedule, and (for graduate work) the program description in the file.

Maintenance and Support. The hardest prong. "Support" and "maintenance" under the regulation include the beneficiary's ordinary living expenses — housing, food, utilities, clothing, transportation, household help — at the beneficiary's *accustomed standard of living*. The Restatement (Third) of Trusts § 50 cmt. d states that the accustomed standard is the one the beneficiary enjoyed when the trust was established, or when the standard became operative, absent contrary trust language. Comment d also notes that the trustee may, in appropriate circumstances, allow modest improvements in standard of living over time. The grantor's expressed intent controls. Where the instrument is silent, the trustee's reasonable judgment, applied with documentation, carries the day.

Treas. Reg. § 20.2041■1(c)(2); Rev. Rul. 77■460; Restatement (Third) of Trusts § 50 cmt. d (2003); Estate of Vissering v. Commissioner, 990 F.2d 578 (10th Cir. 1993) (scope of HEMS power).

10.B Ascertainable Standard vs. Discretionary Standard

The two terms are often used loosely in practice and carry distinct legal consequences. An *ascertainable* standard (HEMS, or a similar formulation reasonably measurable by an outside party) is the safe-harbor formulation. A *discretionary* standard — "absolute," "sole," "uncontrolled," or simply discretion to distribute for any purpose the trustee deems appropriate — grants the trustee broader authority but withdraws the safe-harbor protection.

Feature	Ascertainable (HEMS)	Discretionary (absolute)
Estate-tax inclusion if beneficiary is trustee	Excluded — § 2041(b)(1)(A)	Included — power treated as general
Scope of authority	Health, education, maintenance, support	Whatever trustee deems appropriate
Judicial review standard	Reasonableness review; standard is measurable	Abuse-of-discretion review; high deference but not unlimited
Documentation pressure	Tie request to one of four prongs	Tie request to trust purposes and grantor intent
Beneficiary protection	Stronger — trustee compelled to consider request that meets standard	Weaker — trustee may decline if consistent with trust purposes

Even “absolute” discretion is not absolute in practice. UTC § 814(a) provides that, notwithstanding the breadth of discretionary language, a trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. Drafters of modern instruments often pair broad discretion with an explicit statement of grantor intent (multi-generational preservation, productive behavior, security without dependency) to give the trustee an anchor.

UTC § 814(a) (good-faith exercise of discretion); Restatement (Third) of Trusts § 50(1); IRC § 2041(b)(1)(A).

10.C The Trust Protector in the Distribution Loop

Modern instruments increasingly insert a trust protector — a third party with limited authority over discrete matters — into the distribution decision chain. The protector’s role on distributions varies by instrument and may include: (a) *removal authority*, allowing the protector to fire and replace a trustee whose distribution pattern departs from grantor intent; (b) *veto authority* over specified distributions, typically large principal invasions; (c) *direction authority*, where the protector can direct the trustee to make a particular distribution; (d) *standard modification*, where the protector may modify the distribution standard itself in response to changed circumstances; (e) *tax-status preservation*, with authority to remove grantor-trust triggers if the structure no longer serves the family.

Delaware codifies the protector role at 12 Del. C. § 3313 (directed trusts) and § 3303 (instrument may grant powers to non-trustees). South Dakota’s SDCL Ch. 55■1B is the broadest-known protector statute. Nevada (NRS 163.5553), Alaska (AS 13.36.370), and a growing number of UTC states permit protector arrangements with varying default rules on whether the protector is a fiduciary. The distribution trustee’s job when a protector exists: *follow the document*. A directed trustee who acts on a valid protector direction is generally protected from liability for the act so directed, provided the trustee did not commit willful misconduct (UTC § 808(b); 12 Del. C. § 3313(b)).

UTC § 808 (powers to direct); 12 Del. C. §§ 3303, 3313; SDCL Ch. 55■1B; NRS 163.5553; Restatement (Third) of Trusts § 75 (powers held in trust).

10.D Fiduciary-Duty Mechanics in the Distribution Act

Every discretionary distribution implicates at least four fiduciary duties simultaneously: loyalty, impartiality, prudent administration, and the duty to inform and report. The trustee’s exposure is at its peak in the discretionary moment because every duty is engaged.

Duty of loyalty (UTC § 802). The trustee must administer the trust solely in the interests of the beneficiaries. In a distribution decision, this duty forecloses the trustee from considering the trustee’s own fee economics, future business from the family, personal relationship pressure from one branch, or any other extraneous interest. A trustee with even an indirect personal interest in the outcome should disclose and either obtain consent under UTC § 802(b) or recuse.

Duty of impartiality (UTC § 803; Restatement (Third) § 79). Where the trust has multiple beneficiaries — current and remainder, or several current beneficiaries with competing needs — the trustee must act impartially in giving due regard to the respective interests. Impartial does not mean equal. It means that the trustee’s reasons for unequal treatment are grounded in differential need, differential standard of living, differential trust purposes, or other principled factors and are documented as such.

Duty of prudent administration (UTC § 804). The distribution decision must be made with the care, skill, and caution of a prudent person. A trustee who approves an expensive principal invasion without considering portfolio consequences, sustainability for remainder beneficiaries, or tax effects has not been prudent. The prudent-investor analysis from Chapter 6 follows the dollars into and out of distribution decisions.

Duty to inform and report (UTC § 813). Beneficiaries have a right to material information. A trustee who denies a distribution should explain the reasons in writing. A trustee who approves an unusual distribution should be prepared to explain it to remainder beneficiaries on request. Silence creates suspicion and is itself a breach risk.

10.E The Heckerling Framework for Distribution Analysis

The Heckerling Institute on Estate Planning has, over many years of proceedings, produced what is widely regarded as the standard analytical frame for working through a discretionary request. Practitioners variously articulate it in five or six steps. The version used in this guide compresses to six and tracks the order a trustee actually works in the moment:

- **Step 1 — Standard.** Identify the precise standard in the instrument. HEMS? Absolute? Hybrid? Are any prongs explicitly limited or expanded? Are specific exclusions (“not for purchase of real estate without trustee consent”) drafted in?
- **Step 2 — Other resources.** Does the instrument require, permit, or forbid the trustee to consider the beneficiary’s other resources? Default-rule answer under Restatement (Third) § 50 cmt. e: the trustee *may* but is not *required* to consider other resources unless the instrument speaks. Modern instruments increasingly require consideration; HEMS-only instruments without other-resources language can cut either way.
- **Step 3 — Grantor intent.** Read the recitals, the preamble, any letter of wishes, and the instrument as a whole. Multi-generational preservation? Incentive design? Equal treatment across branches? The trustee’s job is to implement the grantor’s intent, not to substitute the trustee’s own values.
- **Step 4 — Impartiality test.** Map the distribution against current and remainder beneficiaries. Is the request consistent with impartial treatment? If not, are the reasons principled and documented?
- **Step 5 — Sustainability.** Project the distribution against trust corpus and projected returns. Will the distribution materially impair the trust’s ability to meet future obligations? Is a partial distribution, a loan, or a deferred distribution a better fit?
- **Step 6 — Documentation.** Memorialize the foregoing analysis before communicating the decision. The memorialization is the trustee’s defense if challenged.

Heckerling Institute on Estate Planning, recurring sessions on discretionary distributions (1990–2024); Restatement (Third) of Trusts §§ 50, 79, 87.

10.F Documentation — Defensible vs. Attackable

Distribution decisions are litigated years after the fact, by beneficiaries (or their counsel) who were not in the room. The trustee’s memorialization is what stands between a good-faith decision and a surcharge order. Two patterns:

Attackable	Defensible
No written record of the request; trustee recalls receiving “a call.”	Written request (or trustee■generated memo of oral request) in the file, dated.
Approval memo limited to amount and beneficiary name.	Memo restates the standard, the facts presented, other-resources consideration
No reference to grantor intent or trust purposes.	Specific reference to instrument language and any letter of wishes.
Denial communicated orally with vague rationale.	Written denial citing the standard, the factor(s) not satisfied, the appeal process
No record of co-fiduciary or protector consultation when document requires it.	Co■fiduciary written concurrence (email sufficient) or protector consent attached
Distribution made before documentation is completed.	Documentation completed and file-stamped before wire is released.

10.G Common Attacks on Distribution Decisions

When a distribution is challenged, the claim usually fits one of a small set of patterns. Each pattern has a recognized doctrinal hook and a defensive posture the trustee should be prepared to articulate.

1. Ascertainable-standard breach. The beneficiary argues that a distribution outside the HEMS prongs (or a denial of one squarely within HEMS) exceeded or violated the standard. Defense: the file memo tying the decision to the prong analysis and the instrument.

2. Imprudent-Investor Act violation. A large principal distribution sells appreciated assets, triggers tax, or impairs the portfolio's ability to support remainder beneficiaries. The challenge sounds in UPIA § 2 prudent-investor failure. Defense: the sustainability analysis, the IPS reflecting current-versus-remainder allocation policy, and the rationale for the particular asset choices made.

3. Self-dealing or duty-of-loyalty breach. The distribution is alleged to have benefited the trustee — directly, through fee enhancement, or indirectly, through family pressure. Defense: contemporaneous disclosure, co-trustee or protector concurrence, recusal when warranted.

4. Impartiality breach. One branch alleges the trustee has favored another. Defense: the impartiality memo, the comparative-need analysis, and the consistent application of the same factors across requests.

5. Failure to inform. The beneficiary argues that the trustee did not communicate the decision or reasoning in a manner the document and UTC § 813 require. Defense: dated written communication and the beneficiary's receipt.

UTC §§ 801–813; UPIA § 2; Restatement (Third) of Trusts §§ 50, 78, 79, 87; In re Estate of Stillman (broad illustrative line on impartiality).

10.H Tax Consequences of Distribution Choices

The income-tax mechanics of a non-grantor trust mean every distribution decision is also a tax decision. Three points compress the doctrine:

DNI — distributable net income (IRC § 643). Trust income carries out to beneficiaries to the extent of DNI in the year distributed. Distributed DNI is taxed to the beneficiary at the beneficiary's marginal rate; undistributed income is taxed inside the trust at the compressed trust schedule (the 37% federal rate hits at roughly $15,650 of taxable income for 2025). A common, defensible trustee discipline: distribute at least enough each year to flush DNI out to beneficiaries in lower brackets, preserving corpus.

Throwback rules (IRC §§ 665–668). The classic throwback regime survives in limited form for foreign trusts and certain pre-1996 trusts. Most domestic trusts since 1996 do not face it. Practitioners should still check before executing large delayed distributions out of an accumulation trust with foreign-grantor history.

Grantor-trust status preservation. Where the trust is intentionally grantor-status (IDGTs, certain SLATs, defective grantor trusts under IRC §§ 671–679), the trustee's distribution choices can inadvertently terminate grantor status. Distributing principal back to the grantor, paying grantor's personal obligations, releasing a swap power — each can move the needle. The trustee should review the specific trigger sections (§ 675(4) swap power; § 677 spousal-distribution power) before any unusual distribution and coordinate with tax counsel.

IRC §§ 643, 661–663, 665–668, 671–679; Treas. Reg. §§ 1.643(a), 1.661(a)-2; 1.671-3 (grantor-trust portions).

10.I Worked Example A — College Tuition with Other Income

Facts. Trust holds $4.1M. Standard: HEMS, with other-resources clause requiring consideration. Beneficiary Anna, age 23, is in her second year of a graduate program. Tuition and fees total $84,000 per year. Anna earns $55,000 annually from a part-time research-assistantship plus stipend and has $190,000 in a separate account from a prior gift. She requests the trust pay $84,000 of tuition.

Analysis. Education prong: graduate tuition is squarely within HEMS. Other-resources clause: the trustee must consider Anna's separate account and earned income. Anna's own resources can comfortably cover the tuition: $55,000 of earnings plus drawdown of the gift account would fund the program. But the trust's purpose, per grantor recital, is specifically to support the grantchildren's education — the grantor stated in the instrument that "my descendants should complete their education without depleting their own savings." The trustee balances: HEMS satisfied, other resources available but grantor intent disfavors making them the first source. Reasonable result: trust pays the tuition and fees ($84,000) directly to the institution; Anna pays books, room, and board from her own resources. Distribution memo records the HEMS analysis, other-resources finding, and grantor-intent reading.

Decision. Approved. Direct payment to the institution qualifies as § 2503(e) tuition exclusion (not a taxable gift to Anna, even though it benefits her). Anna receives no 1099/K-1 attribution for the direct-pay portion. The trust may still have a DNI distribution to allocate based on income; the trustee considers a small additional cash distribution to flush DNI.

10.J Worked Example B — Home Purchase and Estate Inclusion

Facts. Dynasty trust, GST-exempt, with absolute discretion standard. Trustee is independent. Beneficiary Marcus, age 41, is one of four current beneficiaries. Marcus requests that the trust distribute $1.6M to him to buy a primary residence. Trust corpus is $11M. Marcus is married with two children.

Analysis. Two structures: (a) *outright distribution* — the trust pays cash to Marcus, he buys the home in his own name; (b) *trust-held purchase* — the trust buys the home, holds title, and grants Marcus rent-free occupancy. Tax and asset-protection consequences differ sharply. Under (a), the $1.6M leaves GST-exempt shelter and becomes part of Marcus's estate (a taxable asset of his when he dies); his creditors can reach the home; if he divorces, the home is potentially marital property. Under (b), the home remains inside the GST-exempt dynasty structure, outside Marcus's estate, sheltered from his creditors and from a marital claim (subject to state law). Marcus pays nothing for occupancy or pays a market or below-market rent depending on instrument and tax structure. Impartiality: the other three current beneficiaries lose exposure to that $1.6M whichever path is chosen, but path (b) preserves the value within the trust.

Decision. Approve path (b), trust-held. Memo cites grantor intent of multi-generational preservation, the asset-protection advantage to Marcus, the GST-exempt shelter, the impartiality protection for remainder beneficiaries, and the option to revisit the arrangement if Marcus's circumstances change. The trustee documents that Marcus consented to path (b) on advice of his own counsel.

10.K Worked Example C — Emergency Medical, Multiple Claims

Facts. Sprinkle trust, four current beneficiaries (three siblings and one sibling's child), HEMS standard, other-resources consideration required. In the same month, the trustee receives three requests: (1) Sibling 1 requests $45,000 for an out-of-network cancer-treatment center; (2) Sibling 2 requests $22,000 for the grandchild's in-patient rehabilitation; (3) Sibling 3 requests $18,000 for a parent (the grantor's surviving spouse, not a trust beneficiary) to cover unreimbursed long-term-care expenses.

Analysis. Requests 1 and 2 are health-prong squarely. Trustee evaluates other resources: Sibling 1 has employer health insurance covering 60% of the center's cost; the $45,000 represents the out-of-pocket gap. Sibling 2's child is covered by parental insurance; the $22,000 represents the deductible plus uncovered services. Request 3 is more problematic: the surviving spouse is not a trust beneficiary under this instrument. The instrument does not authorize distributions for the welfare of non-beneficiaries. The trustee cannot make request 3 directly. The trustee can, however, evaluate whether Sibling 3 has a HEMS-cognizable claim of their own: if Sibling 3 has been personally paying for the parent's care out of resources that ought to be available for Sibling 3's own health/support, request 3 may be reframable.

Decision. Approve request 1 ($45,000, direct-pay to treatment center). Approve request 2 ($22,000, direct-pay to rehabilitation facility). Decline request 3 as framed; offer written explanation that the spouse is not a beneficiary and invite Sibling 3 to submit a HEMS-cognizable request for their own support, with documentation. Distribution memo records the impartiality analysis: each sibling received the same standard treatment under HEMS, and the differential outcome reflects differential eligibility under the instrument, not preferential treatment.

10.L Decision Framework — Trustee Working Checklist

The discretionary-distribution working checklist.

- ■ Distribution request received in writing (or trustee-generated memo confirming oral request) and date-stamped to the file.
- ■ Instrument language for the relevant distribution provision quoted into the analysis memo.
- ■ HEMS prong (or equivalent standard term) under which the request is being evaluated identified explicitly.
- ■ Other-resources clause checked; beneficiary's other resources documented to the extent the instrument requires or permits.
- ■ Grantor intent (recitals, preamble, letter of wishes) reviewed and reflected in the analysis.
- ■ Impartiality cross-check against all current and remainder beneficiaries completed and documented.
- ■ Portfolio sustainability and tax effects considered; investment advisor consulted if material.
- ■ Co-trustee, distribution advisor, or trust-protector concurrence obtained as the instrument requires.
- ■ Decision documented in a dated memo — standard, facts, analysis, conclusion — and filed before funds move.
- ■ Written communication to the beneficiary (approval letter or denial letter with reasons) sent within a reasonable period (industry practice: 30 days of decision).
- ■ If approval involves principal: appropriate sale discipline applied to asset selection; tax impact modeled.
- ■ Annual review of distribution patterns across beneficiaries to confirm impartiality and grantor-intent fidelity.

10.M Form Letters — Approval and Denial

The two letters below are the working baselines. Substitute facts, the precise instrument language, and any jurisdiction-specific reporting requirements. Both letters are intentionally short — the analytical depth lives in the trustee's memo to file, not in the letter to the beneficiary.

Approval Letter — Form A-1

[Date]

Dear [Beneficiary],

I have considered your written request of [date] for a distribution of $[amount] for [purpose]. After reviewing your request, the trust instrument, and the supporting information you provided, I am approving the requested distribution. The basis for the decision is that the request falls within the [health / education / maintenance / support] component of the distribution standard at Article [§] of the trust, and the trustee's review of your other resources, the trust's overall purposes, and the interests of all beneficiaries supports the distribution at this time.

Funds will be released [on receipt of the invoice from [institution] / by wire to your account ending in [xxxx] on [date]]. A statement reflecting the distribution will appear on your next quarterly trust report.

Please contact me if any element of this approval is unclear or if circumstances change. I am required to evaluate each request on its own facts and will not treat this approval as a precedent for future requests without a renewed showing.

Sincerely,

[Trustee] | [Date]

Denial Letter — Form D-1

[Date]

Dear [Beneficiary],

I have considered your written request of [date] for a distribution of $[amount] for [purpose]. After reviewing the request against the distribution standard at Article [§] of the trust and the information available to me, I am unable to approve the request at this time. The specific reason is that [the request does not fall within the health / education / maintenance / support standard because … / your other resources are sufficient to fund the requested purpose and the instrument requires me to consider those resources / the request, while within the standard, would impair the trust's ability to meet its obligations to other beneficiaries].

I want to be clear that this is a decision on the request as presented. If circumstances change — different facts, additional documentation, a revised request — I will evaluate a renewed request on the same standard. [If the instrument provides an internal appeal procedure: you have the right to request reconsideration by [the co-trustee / the trust protector] under Article [§].]

I am available to discuss the reasoning by phone or in person if a conversation would be useful.

Sincerely,

[Trustee] | [Date]

10.N Cross-References and Recurring Pitfalls

Distribution decisions never live alone. The discretionary act engages investment doctrine (Ch 6), accounting and reporting (Ch 7), beneficiary communications (Ch 8), and — when contested — disputes and red-flag protocols (Ch 13, Ch 15). A trustee who builds a clean distribution file is simultaneously building the record that defends investment decisions, accounting choices, and communications under any later scrutiny. The same memo serves multiple disciplines.

Recurring distribution-decision pitfalls.

- Treating HEMS as a checkbox rather than as four distinct prongs each requiring independent analysis.
- Allowing oral requests and oral approvals to substitute for written ones — "I told her yes on the phone" is not a defensible record.
- Failing to coordinate distribution timing with income-tax year-end planning — distributions in December carry out current-year DNI; January distributions do not without a 65-day election (IRC § 663(b)).
- Releasing funds before the documentation packet is complete; treat the documentation as a precondition to the wire, not as a post-hoc paper exercise.
- Distributing through the beneficiary rather than directly to a third-party payee where direct payment is available — direct payment qualifies for the § 2503(e) tuition and medical-expense gift exclusions.
- Forgetting the impartiality lens when an unusual request comes from the "easy" beneficiary the trustee naturally favors.
- Letting one large distribution become the new normal — every request is decided on its own facts, and prior approvals are not precedent.

Treas. Reg. § 20.2041■1(c)(2); UTC §§ 802–814; Restatement (Third) of Trusts §§ 50, 78, 79, 87; UPIA § 2; IRC §§ 643, 663(b), 671–679, 2503(e); 12 Del. C. §§ 3303, 3313; Heckerling Institute on Estate Planning (distribution-discretion sessions).

CHAPTER-END · AI PROMPT CALLOUT

AI Prompts — Distribution Decision Framework

Three prompts for the hardest decisions a trustee makes.

Prompt 1

HEMS analysis

Walk through HEMS-standard distribution analysis. Trust: [DESCRIBE]. Beneficiary: [DESCRIBE]. Request: $[X] for [PURPOSE]. Output: (1) health/education/maintenance/support test, (2) other-resources requirement, (3) standard-of-living anchor, (4) trustor-intent reading, (5) decision documentation.

Prompt 2

Sprinkle-trust allocation

Allocate distributions across this sprinkle trust's beneficiary group. Beneficiaries: [LIST]. Available: $[X]. Output: (1) need-based weighting, (2) trustor-intent vs. equal-treatment, (3) family-dynamics consideration, (4) documentation discipline, (5) family-meeting communication.

Prompt 3

Distribution-denial conversation

Draft conversation declining this distribution request. Trust: [DESCRIBE]. Beneficiary: [DESCRIBE]. Request: [DESCRIBE]. Reason: [DESCRIBE]. Output: (1) warm framing, (2) specific reasoning under trust standard, (3) alternative path if any, (4) appeal process if document provides, (5) written-decision documentation.

END OF FREE PREVIEW

Decide. Act. Now.

What you just read is one chapter of sixteen. The full guide takes the same level of care into what a trust is and why families use them (Ch 1), the five-role player taxonomy (Ch 2), the working trust-type taxonomy including SLATs, DAPTs, GRATs, SNTs, and directed trusts (Ch 3), the jurisdiction-selection framework (SD/NV/DE/AK/WY -- Ch 4), the fiduciary standard and UTC §§801-814 (Ch 5), the Prudent Investor Rule and IPS architecture (Ch 6), Administration Mechanics including Form 1041, K-1, DNI, FAI, and the §645 election (Ch 7), trust funding mechanics (Ch 9), decanting, reformation, and NJSA (Ch 11), termination and transition (Ch 12), the dispute-escalation ladder (Ch 13), when to fire a trustee (Ch 14), the fiduciary-liability red-flags dashboard (Ch 15), and four trustee worked examples (Ch 16), plus the 2026 Rockefeller deep-dive.

The companion Excel workbook operationalizes the frameworks -- the trustee-acceptance checklist, the IPS template, the DNI/K-1 calculator, the discretionary-distribution log, the trust-tax compression-rate model, and the year-one checklist.

If you sit in any of the trustee, family-office, RIA, CPA, or litigator chairs around a trust, this is the single-volume reference for the operational and fiduciary work. The Uniform Trust Code is the law; this guide is how you actually administer to its standard.

Companion (free): Decide. Act. Now.

Decide. Act. Now. is our free companion guide on how Baratelli Institute readers convert a reference into a calendar item -- the execution and habit-building layer that sits under every guide in the series. Free at baratelliinstitute.com.