

The “Ascertainable Standard” – Why use it and what does it mean?

February 2016

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We often provide in our trust documents that a trust beneficiary is entitled to “as much of the income and principal of the trust as needed for health, education and support.” This “health, education and support” language (or sometimes “health, education, maintenance and support”) is called the “ascertainable standard.” The ascertainable standard serves a number of functions: one of the most important functions is offering the trustee guidance as to when to make distributions and another is helping ensure that the trust property is not deemed to belong to the trustee or become part of a trustee’s taxable estate for estate tax purposes.

Tax Function. The ascertainable standard is useful because trust property subject to the standard will not be included in the estate of the trustee who holds the power to distribute the trust property or deemed to be owned by the trustee for estate tax purposes. So, for example, a parent may create an irrevocable gifting trust for a child and the child’s descendants and have the child act as trustee of the trust, subject to the ascertainable standard, without fear that the trust property will be included in the child’s estate at death. This is very important if the trust is intended to last beyond the life of the child for the benefit of the child’s descendants. In this case one might not want the trust property to end up in the child’s taxable estate and subjected to estate tax.

Distribution Guidelines. The ascertainable standard also provides useful guidance to the trustee for making distributions to the trust beneficiary. The first prong of the ascertainable standard, “health,” for example, authorizes the trustee to cover or help cover expenses in connection with the beneficiary’s health care, including expenses related to mental health and personal fitness. The second prong of the standard, “education,” empowers the trustee to pay or help pay for educational costs, including schooling at all levels and in any field, including vocational or technical training. The third prong of the standard, “support,” is perhaps the most difficult to define, but clearly authorizes the trustee to pay for all or some portion of the

trust beneficiary's rent, mortgage, lodging expenses, property and income taxes, vacation expenses and food and clothing costs.

While the ascertainable standard is the typical standard used in trust documents, in some situations it may be advisable to permit distributions beyond this standard. In any event, it is important to consider all applicable issues and, with the advice of your attorney, determine the most appropriate trust distribution standard.

To read more about William P. Fuller, click [here](#).