HEMS To Live By

While the initial motivation for creating a trust is unique to each grantor (creator of the trust), all grantors share the common goal of wishing to provide appropriately for their beneficiaries. As a grantor, the distribution language you choose for your trust will guide your trustee on how best to use trust assets to provide for your beneficiaries.

Understanding how the trustee will interpret the distribution language is a critical step in estate planning that is often overlooked. To illustrate the importance of early and open communication with your trustee, let’s discuss the distribution standard we see most often in today’s trusts, the HEMS standard, and how seemingly straightforward terms may be interpreted differently by different people.

HEMS stands for “health, education, maintenance, and support.” Each of the individual terms may seem clear at first glance, but they actually may be very imprecise if you do not make your wishes known. For example, it is commonly understood that the term “education” includes costs associated with higher education. But, what if you also wish for the trust to pay the costs of private tuition for high school or a semester abroad? Without additional guidance, your trustee may not interpret “education” to include these things.

Another instance where clarity is needed concerns the terms “maintenance” and “support.” Generally, these are interpreted to include such things as distributions for normal living expenses such as housing, food, insurance, and taxes. However, what if you value a strong work ethic and do not want your beneficiary to rely solely on the trust for support? Without carefully crafted language and open communication with your trustee, will your trustee exercise discretion in such a way that rewards your beneficiary for being self-supporting?

As you can see, even the most commonly used distribution language is subject to interpretation. Whether your trust uses the HEMS standard or other distribution language, understanding how your trustee will interpret your chosen language is critical to ensure that your trust assets will provide for your beneficiaries as you intended both now and in the future.

At Trust Company of Oklahoma, we practice open communication with grantors and beneficiaries and welcome the opportunity to discuss the terms of your trust, whether you are currently working with your attorney to establish a trust or are reviewing the terms of your existing trust.

Joanna K. Murphy
Senior Vice President