

Determining a Trust Beneficiary's Lifestyle

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Take-Away: It would be best to identify in a Trust instrument exactly *when* a trust beneficiary's lifestyle is to be determined with regard to the direction to a trustee to make discretionary distributions that take into consideration the trust beneficiary's *lifestyle* or other financial resources that may be available to the beneficiary.

Background: Trust instruments often direct the trustee to make discretionary distributions to a beneficiary for the beneficiary's health, education, support and maintenance 'taking into consideration the beneficiary's lifestyle.' Often, however, that discretionary distribution standard does not go on and describe *when* the beneficiary's lifestyle is to be determined by the trustee. When the Trust was drafted? When the Trust became irrevocable, i.e., when the settlor dies? A recent reported decision from Colorado seems to settle on the beneficiary's current lifestyle when the Trust becomes irrevocable.

Reece Trust v. Reece, No. 22CA1393, 2003 Colorado Appeals, 2023 Colo. Appeals LEXIS 1456, September 28, 2023

Facts: A husband created a Trust for his wife. The Trust used a basic health, education, support and maintenance distribution standard that directed the trustee to make distributions "*considering my spouse's other means of support and the standard of living enjoyed by my spouse during our marriage...*" The couple later started divorce proceedings. Before the divorce became final the husband died. The wife argued that the trustee had to consider her lifestyle while she was together and lived with her husband. The widow argued that her standard of living should be determined solely by looking at her finances in the three or four years before she separated from her husband. The widow claimed that everything after her separation from her husband was irrelevant to determine her standard of living or *lifestyle* used to guide the trustee in making discretionary distributions.

Trial Court: The trial court disagreed with the widow and held that the time of the husband's death was the appropriate time for the trustee to determine her lifestyle. The widow appealed.

Appeals Court: The trial judge's decision was sustained at the Colorado Court of Appeals.

The Appeals Court looked to Section 50 of the Restatement (Third) of Trusts. Comment (d)(2) to that Section 50 provides that “*the accustomed manner of living for...purposes of [support and maintenance] is ordinarily that enjoyed by the beneficiary at the time of the settlor's death or at the time an irrevocable trust is created.*”

Because the Trust was not established, and it did not become irrevocable, until the husband's death, the Court concluded that the widow's standard of living was her income and expenses at the time of her husband's death, including the period of their legal separation.

The presumption in the Comment to Section 50 is that up until his death, the settlor always retained the right to amend his Trust instrument and provide a different distribution standard, or add (or delete) what the trustee was to take into consideration when exercising its discretion.

Conclusion: Trust instruments frequently use terms like *lifestyle* or *standard of living* or *taking into consideration other resources available to the beneficiary*. Seldom, however, does the Trust instrument then go on and provide a more detailed definition of when the *lifestyle* or *standard of living* is to be assessed, particularly if the Trust became irrevocable years, if not decades, earlier. Similarly, a Trust instrument that directs the trustee to take into consideration other *resources* still leaves a lot to be desired when guiding the trustee. For example, a trust beneficiary may have a fairly meager cash flow, but they may have hundreds of thousands of dollars tied up in the equity of their home that could be accessed with a home equity line of credit. That home equity is a *resource* but not a *readily accessible resource*. The more guidance a trustee

receives in how to interpret a Trust instrument, the more likely that the settlor's intent can be carried out by the trustee.