



Example Wording of a Discretionary Trust for a Disabled Beneficiary

This example assumes the testator is making provision for his daughter, Mary Jane, for her life time, and is contemplating a charitable donation at the time of the death of Mary Jane, provided she has no children or other issue. This example contemplates the funds being used primarily for Mary Jane's benefit, even to the exhaustion of the trust fund while considering other benefits available to her, and provides for funeral expenses to be paid, prior to the residue being distributed. Not all clauses need to be used, however this will give a flavour of the nature of the wording possible for a discretionary trust.

- (1) *To hold (one of these shares; xx% of the residue; the sum of \$) hereinafter referred to as "Mary Jane's Fund", on the following trusts:*
- (a) *To pay so much of the income and capital of Mary Jane's Fund as my Trustee in his absolute and uncontrolled discretion considers advisable for the care, maintenance, education and benefit of my daughter, Mary Jane;*
 - (b) *When exercising such discretion, my Trustee shall not be bound to maintain an even hand between Mary Jane as life tenant and the ultimate beneficiaries and shall not be liable for any consequences arising from the depletion or exhaustion of the fund during Mary Jane's lifetime;*
 - (c) *I further declare that Mary Jane's trust shall not vest in Mary Jane, and the only interest she shall have therein shall be the payments actually made to or for her benefit. Without in any way binding the discretion of my Trustee, I further wish that in exercising their discretion under clause (a) herein, my Trustees shall take such steps as will maximize the benefits which Mary Jane receives or would receive from other sources if payments from the net income and capital of the trust were not paid to her, or limited as to amount or time.*
 - (d) *To add any income not paid in any year to the capital of Mary Jane's Fund;*
 - (e) *My Trustee may, at any time, make payments to Mary Jane's guardian, representative, attorney or committee for Mary Jane's benefit, and when that guardian, representative, attorney or committee receives that payment, the Trustee is discharged for that payment and need not inquire about how it is used;*
 - (f) *On the death of Mary Jane, my Trustee shall pay such funeral and burial or cremation expenses for Mary Jane as my Trustee shall consider appropriate; and then*
 - (g) *My Trustee shall to divide and pay what remains of Mary Jane's Fund among Mary Jane's issue, in equal shares per stirpes.*
 - (h) *If Mary Jane leaves no issue her surviving , to pay Mary Jane's Fund to Mind Foundation of BC, and the receipt of the treasurer or other authorized officer shall be a sufficient receipt and discharge to my Trustee.*

For further information and assistance please contact:

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