

# How a Trust May Impact Your Divorce Case

BY JONATHAN W. WOLFE

**M**atrimonial attorneys who handle high-asset cases are confronted with a variety of complex legal and factual questions when either their client or the client's spouse is a beneficiary of a trust.

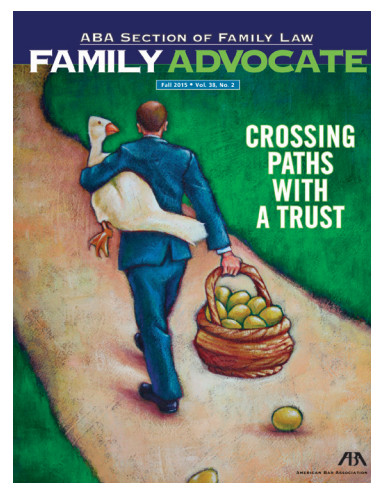
- Does such an interest constitute property?
- If yes, is such an interest a marital asset or an asset subject to distribution?
- If not, can the increase in value of the spouse's interest nevertheless be subject to distribution?
- Can a spouse's interest as a beneficiary be taken into account when fixing alimony and child support obligations?
- Can the nonbeneficiary spouse compel alimony and child support payments directly from the trust?
- How is the beneficiary spouse's interest in a trust valued in the division of marital property and/or support obligations?

The answers to these questions vary widely from jurisdiction to jurisdiction and can dramatically impact your client's high-asset case. Some states, such as Colorado, have a breadth of precedent on these issues; whereas, other states have little to no reported decisions. Some states, such as Oregon, have an expansive concept of whether a beneficiary's interest constitutes property (regardless of whether such an interest is possessory, vested, or contingent). Others, such as New Jersey, Pennsylvania, Wisconsin, Missouri, and Texas, require a spouse to have a present right to receive trust assets for a spouse's interest to be considered acquired property. Finally, some states, such as Colorado and Massachusetts, have adopted more flexible approaches based on an examination of the types of interest held by the beneficiary spouse in the trust. (For specific case law citations, see "Case Law on Trusts," page 19.)

## Look first to the terms of the trust

Regardless of the jurisdiction in which you practice, your first step is to examine the specific terms of the trust. Although attorneys unfamiliar with the terms and mechanics of trusts may require assistance from a trusts-and-estates expert, answers to the following questions are essential in evaluating your client's case and can be ascertained through a review of the trust instrument.

- **Is the trust a "revocable" or "irrevocable" instrument?** A "revocable" trust can be revoked by the "grantor"—i.e., the person who created the trust—at any time. As such, a spouse's interest as a beneficiary of a revocable trust is not dissimilar to being named in a parent's will. It is an interest that can be lost at any time. To the contrary, an "irrevocable" trust cannot be revoked by the grantor and, therefore, (depending on other terms of the trust) can provide the beneficiary with a more concrete right to receive trust assets.
- **Who (if anyone) is vested with the "power of appointment"?** The power of appointment is the right to devise by will (or otherwise) assets held in the trust. Does the grantor of the trust maintain the power of appointment? If yes, the grantor can effectively revoke the terms of the trust upon his or her death (or even before) by exercising the power of appointment and dictating the distribution of trust assets. Does the beneficiary have a lifetime power of



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appointment or a testamentary power of appointment? A lifetime power of appointment would allow the beneficiary to distribute trust assets during his or her lifetime, arguably providing effective control over trust assets. A beneficiary with a testamentary power of appointment is limited to exercising control upon his or her death.

- **Who are the beneficiaries of the trust?** Is the spouse the sole beneficiary of the trust? If not, who are the other beneficiaries? What are the other beneficiaries' relationships to the divorcing spouse? Is the trust for the benefit of future generations? Are all beneficiaries treated equally under the trust? If not, does the divorcing spouse have more or less interest in trust assets than other beneficiaries?
- **How and to whom does the trust provide for distributions?** What does the trust provide for with respect to distributions of income and trust corpus to beneficiaries? It is essential to closely examine the class of beneficiaries to whom distributions can be made and the types of distributions that are permissible. Are distributions to the beneficiary spouse restricted in any way? Are there any fixed distributions to either the beneficiary spouse or any other beneficiary of the trust? Does the beneficiary spouse have a right to receive distributions of either trust corpus or income?
- **Is the trust a "discretionary" trust?** A "discretionary" trust vests a trustee with sole discretion over what distributions will be made to beneficiaries—including the beneficiary spouse. Typically, a beneficiary of a discretionary trust has no right to compel distributions, absent a demonstration that the independent trustee has abused his or her discretion or acted in bad faith.
- **Is the trust a "support" trust?** A "support" trust typically indicates that the trustee shall (or may) apply trust assets for the care, maintenance, support, and education of a beneficiary. Courts have found support trusts to have certain ascertainable standards, thereby providing a beneficiary with slightly more ability to compel a distribution based on a demonstration of need.
- **Is the trust a "nondiscretionary" trust?** A "nondiscretionary" trust vests a beneficiary with certain rights to receive distributions from the trust. As such, distributions are not controlled by an independent trustee and can be compelled by a beneficiary pursuant to the terms of the trust. An example of a nondiscretionary trust is one that provides a beneficiary with the right to receive trust assets upon reaching age 25. Upon turning 25, the beneficiary has the *right* to receive distributions of trust assets unfettered by any powers vested in the trustee.
- **Does the trust provide for both nondiscretionary and discretionary distributions?** Many trusts will provide for certain limited nondiscretionary distributions and vest a trustee with discretion over any additional distributions. For example, a trust may vest a beneficiary with an annual right to receive 5% of trust assets and vest all other distributions at the discretion of a trustee. Typically, such a right is waived if the beneficiary does not exercise it in any given year.

### **Beneficiary spouse's property interest**

After evaluating the terms of the trust—and identifying what present and future rights the beneficiary spouse possesses—the next issue is whether the spouse's status as a beneficiary constitutes an asset pursuant to state law. The significance of this issue will be most apparent to any attorney practicing in a state in which gifts and inheritances are *not* excluded from distribution upon divorce. In these states, if the interest is considered a property right, it may be considered a marital asset in the divorce.

Even in states that exclude inheritance and gifts from the definition of marital assets, the importance of whether an interest in a trust is considered a property right can be equally important. Why? Because in many of these states, either the *increase* in value of separate property or the *income* from separate property during marriage can be deemed marital property. That said, if a beneficiary is not considered to have acquired any asset merely by being named a beneficiary of a trust, *i.e.*, because the assets are owned by the trust and the beneficiary has no right to receive them, claims otherwise available to be made against separate property may not be available. As a Pennsylvania court explained, “only the increase in value of property *actually acquired* can be deemed to be marital property.” *Solomon v. Solomon*, 531 Pa. 113, 122 (1992) (emphasis added). See also *In re Marriage of Balanson*, 25 P.3d 28, 42 (Colo. 2001) (“[S]uch appreciation is to be calculated by determining the extent to which the property’s present value at the time of the decree exceeds its value at the time of *acquisition*.”) (emphasis added).

## Opposing views

As detailed above, the answer to the fundamental question of whether a beneficiary’s interest constitutes an asset will vary widely from state to state. Although some states consider any interest in a trust to constitute property, most states either (i) require a beneficiary spouse to have a present possessory interest or a right to withdraw trust assets before such an interest constitutes an asset or resource, and (ii) focus on the specific rights vested in the beneficiary spouse, with a particular focus on the distinction between discretionary and nondiscretionary trusts.

- **Requirement that beneficiary spouse have present possessory interest or right to withdraw trust assets**

The following states are among those in which an interest in a trust is not deemed an asset acquired by a beneficiary spouse unless the spouse has a present possessory right to receive trust assets.

## FINDING TRUST-WORTHY ASSETS

### Will/trust agreement

- Determine what the document says, how the inheritance is structured, and what percentage or specific gifts the client is to receive.

### Statements

- For existing trusts, determine the value of trust assets.

### Probate inventory

- For an estate, determine what assets will ultimately be divided up.

### Life insurance policy

- What is the death benefit and who is designated beneficiary?

### Retirement account

- What is the value and who is designated beneficiary?

### Real estate

- Deeds: get property description.
- County tax assessment: get rough estimated value of property.

### Bank account/ investment account information

- Get transfer on death forms.
- Get statements on any joint accounts.

### Tangible personal property memoranda

- Some jurisdictions allow binding legal lists for disposition of art, vehicles, and other tangible personal property.

By Michael H. Barker

**New Jersey:** In 1979, the Supreme Court of New Jersey held that a beneficiary spouse's interest in a trust does not constitute property "legally and beneficially" acquired unless the beneficiary has acquired "unimpaired control and totally free use and enjoyment" of the trust assets. See *Mey*, 79 N.J. at 125. This holding was reaffirmed by the New Jersey Supreme Court in *Tannen v. Tannen*, 416 N.J. Super. 248 (App. Div. 2010), *aff'd Tannen v. Tannen*, 208 N.J. 409 (2011).

**Pennsylvania:** The Supreme Court of Pennsylvania similarly held that a beneficiary spouse does not "actually acquire" assets in the trust until obtaining the "right to withdraw the principal of the trust." See *Solomon*, 531 Pa. at 122.

**Wisconsin:** A beneficiary spouse does not "acquire" an interest in a trust during marriage unless she has the right to receive the corpus of the trust. See *Friebel v. Friebel*, 181 Wis. 2d 285, 293 (Wis. App. 1993).

**Missouri:** A beneficiary spouse only "acquired" an interest in a trust upon attaining the right to demand receipt of trust assets. See *Moore v. Moore*, 111 S.W.3d 530 (S.D. Mo. 2003).

**Texas:** A beneficiary spouse does not acquire an asset unless he or she has a right to compel distributions. See *Lipsey v. Lipsey*, 983 S.W.2d 345, 351 (Tex. Ct. App. 1998).

In these jurisdictions, courts focus on whether the beneficiary spouse has a present enforceable right to trust assets. The New Jersey case of *Mey v. Mey* illustrates the significance of the definition as to when an interest is deemed an asset for purposes of equitable distribution. In *Mey*, the husband was a beneficiary of a nondiscretionary trust. Under the terms of the trust established by his grandfather, husband had a right to receive the trust principal at age 25—meaning all that was required for his right to receive these assets was for him to live four years to age 25. The husband's mother was named as a trustee and had the power to invade the corpus for the care, support, maintenance, and education of the beneficiaries, including herself, her son (the husband in *Mey*), and his siblings. *Id.* at 123.

The trust became irrevocable upon the death of the husband's grandfather, which occurred prior to the parties' marriage. The parties were married shortly after the husband turned 21, and they remained married until the husband was age 27, at which time his wife filed for divorce and claimed that trust assets were part of the marital estate. *Id.* at 123.

Since *Mey* was decided prior to the 1980 Amendment to the New Jersey Equitable Distribution Statute, which excluded gifts from distribution, trust assets would only have been excluded from distribution if they were "legally and beneficially" acquired prior to marriage. The husband argued that he had acquired an interest prior to the marriage, because his right to receive trust assets became irrevocable upon the death of his grandfather prior to the marriage. The Supreme Court unanimously rejected the husband's argument and held that husband had not "legally and beneficially acquired" an interest until reaching age 25—at which time his interest was transformed from a "mere expectancy" with no present right of enjoyment to complete "unimpaired control and totally free use and enjoyment." *Mey*, 79 N.J. at 125.

• ***Discretionary v. nondiscretionary trusts and an examination of the rights of the beneficiary spouse.***

Unlike those states detailed above that require a beneficiary spouse to have a

*present* possessory interest in a trust for it to constitute an asset, some states (such as Colorado and Massachusetts) evaluate a beneficiary's specific interests to determine whether such an interest constitutes property and focus on distinctions between discretionary and nondiscretionary trusts. For non-discretionary trusts, these courts have ruled that a remainder interest—*i.e.*, an enforceable right that will accrue in the future subject only to their survival—can be considered an asset of the spouse.

**Colorado:** In 2001, the Colorado Supreme Court addressed whether a beneficiary spouse's remainder interest in a trust constituted property. See *In re Marriage of Balanson*, 25 P.3d at 41. The beneficiary spouse of the "family trust" at issue in *Balanson* (similar to *Mey, supra*) had a remainder interest subject only to her survival—*i.e.*, she would receive trust assets provided she did not predecease her father. During her father's lifetime, however, all income was required to be paid to her father, and he had the discretion to invade the corpus for his support, care, and maintenance.

The court held that a beneficiary spouse's interest in a trust need not be subject to *present* enjoyment to constitute property acquired during marriage, provided that the beneficiary has "an enforceable contractual right" to receive trust assets in the future. *Id.* The court concluded that such remainder interests "are distinguishable from interests in discretionary trusts because although the value of such interests may be uncertain at the time of the dissolution of marriage, they nonetheless constitute property because they are certain, fixed interests subject only to the condition of survivorship." *Id.*

Accordingly, the court found that unlike an interest in a discretionary trust, which would constitute a "mere expectancy," a remainder interest constituted "property" because it was "not within the discretion of the trustee to withhold." *Id.* at 41.

Unlike the "nondiscretionary" remainder interest in *Balanson*, *In re Marriage of Jones*, 812 P.2d 1152 (Colo. 1991), addressed whether a spouse's status as a discretionary beneficiary constituted "property" under Colorado law. The trust in *Jones* was a discretionary "support trust"—*i.e.*, it provided for distributions at the discretion of a trustee for the wife's support. The Colorado Supreme Court concluded that the "fact that the trustees are limited to disbursing funds to the wife for only her support, if they decide to disburse funds at all, does not deprive the trust of its discretionary character." *Id.* at 1156. Accordingly, the court concluded that unlike "nondiscretionary" trusts, which provide the beneficiary with a "vested benefit not within the discretion of the trustee to withhold," the wife's interest in a discretionary trust amounted to nothing more than a "mere expectancy" and cannot be considered the separate property of a beneficiary for purposes of equitable distribution. *Id.*

**Massachusetts:** The Massachusetts Supreme Court has similarly held that when a spouse's "rights in the trust property are present, enforceable, and valuable... (his or her) beneficial interest in the trust property is subject to equitable assignment...." *Lauricella v. Lauricella*, 565 N.E.2d 439, 440 (1991).

In *Lauricella*, the beneficiary spouse had an interest in a trust "subject to divestment only if [the husband did] not survive until the trust terminate[d] according to its terms." Based on the husband's young age, the court concluded that the "likelihood is that he will survive to receive his share...." *Id.* The court concluded that the fact that "valuation of the interest may be difficult does not alter its character as a divisible asset." *Id.*

Massachusetts courts similarly recognize the fundamental distinction between discretionary and nondiscretionary trusts. See *D.L. v. G.L.*, 61 Mass. App. Ct. 488, 811 N.E.2d 1013 (Mass. App. Ct. 2004). In *D.L.*, the court cautioned the following with respect to discretionary trusts:

[W]hile a judge is not necessarily precluded from including within the marital estate... a party's beneficial interest in a discretionary trust... because of the

peculiar nature of such a trust, the trust instrument and other relevant evidence must be examined closely to determine whether that party's interest is too remote or speculative to be so included.

The *D.L.* court further analyzed certain other "non-discretionary" remainder trusts, which it similarly concluded were "too remote or speculative" to constitute property. *Id.* at 500–01.

The issue of when a trust beneficiary has acquired an interest sufficient to constitute property is an evolving one, and matrimonial attorneys in jurisdictions without precedent—or those seeking to evolve the law in their jurisdiction—can utilize these decisions to support their client's cause. Matrimonial attorneys may further find support for their position by examining the line drawn between property and "mere expectancies" in other contexts, such as pension plans and stock options.

### **Distributions as income available for support**

When a spouse in a divorce case receives trust distributions during the course of the marriage upon which the family relied for support, an increasingly common dispute arises as to whether that income may be utilized by a court in effectuating awards of alimony and child support. Once again, the first step in this analysis is to examine the beneficiary's control over distributions from the trust. If the party receiving income from a trust has the right to compel distributions at his or her discretion, most courts will treat trust income as income available for support.

For example, courts in New York have ruled that distributions from a trust to a beneficiary can be considered when fixing the obligations to pay spousal support and child support. In *Alvares-Correa v. Alvares-Correa*, 285 A.D.2d 123, 126 (1st Dep't 2001), the appellate division rejected the husband's contention that assets held in trust for his benefit were beyond his control and therefore not available to him for support purposes. In finding no basis to ignore his substantial trust interests, the court concluded he "not only effectively oversees the trust funds but, pursuant to trust documents, has complete and unfettered access to those funds." Interestingly, the court ruled that whether a spouse has control over the trust assets is a matter of credibility committed to the discretion of the lower court.

The issue becomes increasingly complex for discretionary or support trusts when the beneficiary receives distributions at the discretion of a nonparty to the divorce. In these cases, matrimonial courts struggle to reach a fair result while weighing the intentions of the trust's settlor, the rights of the spouse to receive distributions, and the needs of a spouse or child for financial support.

The Iowa Supreme Court addressed this issue in *In re Marriage of Rhinehart*, 704 N.W.2d 677, 681 (Iowa 2005), and concluded that when a beneficiary has no right to compel a distribution "it would not be appropriate to treat the undistributed income from the trust as a current source of financial support that would alleviate the need for alimony." See also 91 A.L.R.2d 262 (American Law Report 2d 1963) ("The interest of a beneficiary in a true discretionary trust is not subject to claims for alimony, maintenance, or child support where neither the wife nor the child of the beneficiary is a beneficiary of the trust.").

The New Jersey Supreme Court arrived at the same conclusion in *Tannen v. Tannen*, 208 N.J. 409 (2011), after focusing on the intent of the settlor and the inability of the beneficiary to compel a distribution. The trust at issue in *Tannen* specifically instructed the trustees to make distributions "after taking into account the other financial resources available to the beneficiary." In other words, the settlor of the trust required trustees to consider, prior to issuing a distribution, the possibility that the beneficiary might receive alimony and/or child support. It further contained no right for the beneficiary to compel a distribution. Under the circumstances, the

court ruled that the beneficiary's interest in the trust could not be used to reduce her entitlement to receive alimony and child support. That said, as the court noted in *Tannen*, "the decisions from our sister states *do not* reflect unanimity." See, e.g., *Ventura County Dep't of Child Support Serv v. Brown*, 117 Cal. App. 4th 144 (compelling trustee to exercise discretion to make distributions to provide for the support of the beneficiary's children and holding that failure to do so constituted bad faith and an abuse of the trustee's discretion).

Matrimonial practitioners litigating cases of this nature must look carefully to trust instruments at issue in a specific case—paying particular attention to the settlor's instructions to the trustees, the history of distributions, and the degree of control a beneficiary spouse enjoys in compelling distributions. This is an area of law that will likely continue to evolve as courts confront different fact patterns, types of trusts, and the many variations in the nature of beneficial interests.

### Valuation of a spouse's interest

Once an interest in a trust is deemed an asset, courts will be confronted with the difficult task of valuing the beneficiary spouse's interest. This can be quite difficult, depending on the terms of the trust, including, *inter alia*, the number of beneficiaries, the right of other beneficiaries to receive trust income or principal, the power of appointment, and the possibility of complete divestment of the spouse's interest. See generally Chorney, Marc, *Interests in Trusts as Property in Dissolution of Marriage: Identification and Valuation*, 40 REAL PROP. PROB. & TR. J. 1, at \*22–23 (2005).

When a spouse has a remainder interest subject only to survival, courts frequently rely on actuarial testimony to ascertain life expectancy and the likelihood of obtaining trust assets. The following guidelines, identified by Colorado courts, provide broad discretion to determine appropriate valuation methods. A trial court may:

- value beneficial interests in trusts in the same actuarial manner utilized for federal transfer tax purposes (see *Jones*, 812 P.2d at 1160 (Quinn, J. dissenting));
- order that a percentage of trust distributions received by the beneficiary's spouse subsequent to a legal separation or dissolution of the marriage be paid to the nonbeneficiary spouse (see *Balanson*, 25 P.3d at 42);
- utilize other unspecified valuation methods based on the court's "experience insight and knowledge" (see *Jones*, 812 P.2d at 1160); and
- consider a variety of circumstances, including actuarial information as to the life expectancy of other trust beneficiaries and the extent to which other beneficiaries eligible for distribution may require principal distributions (see *Jones*, 812 P.2d at 1160).

The overwhelming authority further provides that regardless of whether the beneficiary is entitled to mandatory income distributions or discretionary distributions, the trial court must consider whether the interest in the trust should be discounted to its present value until the interest becomes possessory. See, e.g., *In re Marriage of Mohrlang*, 85 P.3d 561, 563 (Colo. Ct. App. 2003) (holding that trial court "should have considered actuarial information concerning the life expectancy of husband's parents and... the likelihood that the trustee would invade the trust corpus in the future.").

Courts also can look to pension plan and stock option cases for guidance concerning the appropriate manner in which to value a beneficiary's interest in a trust. See, e.g., *Chilkott v. Chilkott*, 607 A.2d 883, 885 (Vt. 1992) ("The difficulties in valuing husband's interest in the trust are similar to those encountered in valuing a pension because the value of the pension is contingent on the worker reaching retirement."). See, e.g., *Davidson v. Davidson*, 474 N.E.2d 1137, 1145 (Mass. Ct. App. 1985) (the court noted that where there is "no spendthrift or other limitation and actuarial

evidence as to valuation is available, guidance in crafting creative judgments may be found in cases dealing with pension interests”).

## **Conclusion**

Because of the scarcity in some jurisdictions of any relevant precedent and the widely divergent decisions from courts across the country that have addressed these issues, disputes concerning a spouse’s interest in a trust can complicate divorce proceeding. Moreover, because such disputes can be the most substantial issue in a case, the outcome of the type of questions detailed here will be of utmost importance to your client. As such, it is essential that these issues be addressed and analyzed at the outset of any case in which either spouse is a beneficiary of a trust. Finally, unlike many other areas of family law, many of these issues can be resolved as a matter of law, and practitioners should not hesitate to seek such rulings from the court as early as is feasible in the litigation. **FA**

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**Jonathan W. Wolfe** is Principal and Managing Partner of Skoloff & Wolfe in Livingston, N.J.



# CASE LAW ON TRUSTS

## **Beneficiary Spouse Must Have a Present Enforceable Right to Trust Assets**

**Colorado:** *In re Marriage of Balanson*, 25 P.3d 28, 42 (Colo. 2001); *In re Marriage of Jones*, 812 P.2d 1152 (Colo. 1991).

**Missouri:** *Moore v. Moore*, 111 S.W. 3d 530 (S.D. Mo. 2003).

**New Jersey:** *See Mey v. Mey*, 79 N.J. 121, 125 (1979).

**Oregon:** *In re Marriage of Taylor*, 856 P.2d 325, 328 (Or. App. 1993); *In re Marriage of Benston*, 656 P.2d 395, 396 (Or. App. 1983).

**Pennsylvania:** *Solomon v. Solomon*, 531 Pa. 113, 122 (1992).

**Texas:** *Lipsey v. Lipsey*, 983 S.W.2d 345, 351 (Tex. Ct. App. 1998).

**Wisconsin:** *Friebel v. Friebel*, 181 Wis. 2d 285, 293 (Wis. App. 1993).

## **Beneficiary Spouse's Interest Is a Property Interest**

*See, e.g., In re Marriage of Taylor*, 856 P.2d at 328; O.R.S. § 107.105.

*See Balanson*, 25 P.3d at 42.

*See D.L.*, 61 Mass. App. Ct. at 488.

*See Solomon*, 531 Pa. at 122.

*See Lipsey*, 983 S.W.2d at 351.

*See* N.J.S.A. 2A:3-23 (property that is “legally or beneficially acquired during marriage by either party by way of gift, devise, or intestate succession” is excluded from equitable distribution).

## **Beneficiary Spouse's Interest Is an Asset or Resource**

### **Distributions as Income Available for Support**

**Iowa:** *In re Marriage of Rhinehart*, 704 N.W. 2d 677, 681 (Iowa 2005) (holding that where beneficiary has no current right to distribution from trust, “it would not be appropriate to treat the undistributed income from the trust as a current source of financial support that would alleviate the need for alimony). *See also In re Marriage of Rhinehart*, 704 N.W.2d 677, 680–82 (Iowa 2005) (holding spouse’s interest in a discretionary trust was not a financial resource for purposes of determining amount of alimony to which she was entitled); *Read Testamentary Trust v. US*, 169 F.3d 243 (5th Cir. 1999) (holding beneficiary’s interest in a discretionary trust could not be reached to satisfy an alimony claim, even though applicable law provided that the alimony claim could be satisfied by a “beneficiary’s interest in the trust income and principal”).

**Alabama:** *Howard v. Spragins*, 350 So. 2d 318 (Ala. 1977) (“In a true ‘discretionary trust,’ the general rule is that the

beneficiary’s interest is not subject to a claim for child support”).

**California:** *Ventura County Dep’t of Child Support Serv. v. Brown*, 117 Cal. App. 4th 144 (Cal. App. 2004) (compelling trustee to exercise discretion to make distributions to provide for the support of the beneficiary’s children and holding that failure to do so constituted bad faith).

### **Exclude Gifts and Inheritance from Marital Distribution**

*See* N.J.S.A. 2A:3-23 (property that is “legally or beneficially acquired during marriage by either party by way of gift, devise, or intestate succession” is excluded from equitable distribution).

### **Courts Distinguish Between Discretionary and Nondiscretionary Trust**

**Colorado:** *See In re Marriage of Balanson*, 25 P.3d at 41; *In re Marriage of Jones*, 812 P.2d 1152 (Colo. 1991).

**Massachusetts:** *D.L. v. G.L.*, 61 Mass. App. Ct. 488, 811 N.E.2d 1013 (Mass. App. Ct. 2004).

*Lauricella v. Lauricella*, 565 N.E.2d 439, 440 (1991).

### **Beneficiary Spouse Must Have Possessory Interest**

**New Jersey:** *Mey*, 79 N.J. at 125; *Tannen v. Tannen*, 416 N.J. Super. 248 (App. Div. 2010), *aff’d Tannen v. Tannen*, 208 N.J. 409 (2011).

— J. W.W.