



## *To Distribute or Not Distribute...*

Did you ever wonder why the trusts in your estate plan for your children mandate a distribution of net income when your children reach a certain age, such as 18 or 21? Most lawyers do not discuss this provision with their clients, although this planning can have significant consequences for your family.

The idea of distributing the income from a trust is rather old fashioned, but has been included for many years for several reasons. Assets in Florida cannot vest in a minor, so starting mandatory distributions or income or principal of a trust before your child reaches age 18 would require those distributions to be held in a guardianship. Until age 18, your child's guardian could use those distributions for your child's benefit *after* obtaining Court approval. Once your child attains the age of majority, he or she can use the guardianship funds for any purpose without any restrictions.

Distributions of income are also mandated in trusts because it is generally viewed as by lawyers and accountants as "tax efficient." At your death, irrevocable trusts created for your children become separate taxpayers. As a result, it is generally necessary for a tax return to be filed for those trusts in any year in which they have income. Under current tax law, if income remains with the trust (i.e., income is not distributed during any year), the trust pays tax on that income. The top income tax bracket for irrevocable trusts retaining income begins at approximately \$12,000. This top tax bracket mirrors the top tax bracket of individuals, which is presently 35%.

If an irrevocable trust distributes its income to a beneficiary in any given year, in many cases the trust is not responsible for the payment of the income tax. Rather, the beneficiary will pay that tax, presumably at a lower tax rate. Accordingly, it is very common for an irrevocable trust to provide that income is distributed mandatorily to a child when he or she reaches the ages of 18 or 21, with the thought that a child would not likely be in the top tax bracket of 35% at such a young age.

Perhaps a better reason to distribute income to a child is that it serves as a "trial run" for larger distributions at later ages. In other words, distributions of relatively small amounts from the trust can be made at a younger age so that a child will have an opportunity to learn and grow prior to the receipt of mandatory distributions of principal, which typically occur at a much later age, such as 40 years old.



Naturally, a child in his or her early twenties is not likely to have much financial savvy, so distributions of income can allow that child to make mistakes, without losing all of the assets of the trust that you worked so hard to save for his or her benefit.

The next time you review your trust agreement, take note of the dispositive provisions for your children and discover whether the trust requires a payment of income at some age, such as 21. Depending upon your family's unique situation, that age may be too young for a child to receive income, especially if your trust assets are significant. In that event, adjusting the age for distribution to a later age, such as 30, or having no mandatory distributions may be more beneficial. Instead, it may be worthwhile to give your children's trustee discretion on making distributions of income and principal to your children.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

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**Questions or comments?**

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