

**From:** [Walter M. Shaub](#)  
**To:** (b)(6) private citizen  
**Subject:** discretionary trusts  
**Date:** Friday, December 16, 2016 1:49:07 PM

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(b)(6) private citizen

This newsletter by a law firm that handles trusts raises some concerns about reliance on a trust's status as a discretionary trust:

According to the Restatement (Third), even if the trust grants the trustee complete discretion, a standard of reasonableness or good faith may be imputed based on "the extent of the trustee's discretion, the various beneficial interests created, the beneficiaries' circumstances and relationships to the settlor, and the general purposes of the trust." The Restatement goes on to state that even if the trustee has complete discretion, "it is rare [ ] that the beneficiary's circumstances, the terms of the discretionary power, and the purposes of the trust leave the beneficiary so powerless" that a distribution could not be compelled.

Here's the link: <http://cbmslaw.com/january-2013-nysscpa-newsletter/>

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**From:** [Walter M. Shaub](#)  
**To:** [Dan Koffsky](#) (b)(6) contact info  
**Subject:** time-sensitive  
**Date:** Thursday, December 15, 2016 9:54:26 AM

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Dan,

Could we talk today about a significant time-sensitive issue that has become ripe this week.

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