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Many families use trusts to pass both wealth and family values to future generations. Traditionally, most trusts appoint a single trustee to manage all aspects of the trust, including accounting, investment management and distributions. A directed trust allows the grantor to separate the management responsibilities of a trust. This article highlights five common directed trust roles that can be utilized to provide greater specialization by allowing trusted professionals, family members, and in some circumstances, the grantor, to maintain responsibility for certain aspects of a trust.

## **TRUSTEE**

A trustee handles all the administrative duties of the trust. The role of trustee includes custody of trust assets, maintaining trust records and coordinating completion of tax returns. A trustee may perform responsibilities that a Trust Protector, Investment Direction Advisor, Special Holdings Advisor or Distribution Direction Advisor would otherwise perform in the event the trust does not delegate such roles. Although a trustee may provide excellent custody and account statement services, the grantor may prefer a separate individual or entity with a greater depth of family or business knowledge to make trust investment or distribution decisions.

Friends, family members, a family governance entity, professional advisor or trust company may serve as trustee. In certain circumstances, the grantor or a beneficiary may also

serve as trustee. However, in certain situations, tax issues may arise if a grantor or grantor's related or subordinate party<sup>1</sup> serves as trustee.

Careful consideration should be used when selecting a trustee, particularly if other advisory roles discussed below are not utilized. Moreover, if a certain state is preferred for the jurisdiction of the trust, the trustee may need to be a resident of or authorized to do business in that state.

## **INVESTMENT DIRECTION ADVISOR**

An Investment Direction Advisor manages the assets of the trust. Trust investments may be comprised of common investments such as marketable securities but may also include unique assets or investments such as closely-held businesses, family limited partnerships/LLCs, alternative investments, real estate, highly concentrated stocks, artwork or other collections.

A grantor, beneficiary, friend, family member, family governance entity or professional advisor may serve as an Investment Direction Advisor. The selected Investment Direction Advisor should have expertise in directing the type of assets the trust holds. If the trust holds assets such as a substantial interest in concentrated stock or the family business, the grantor or a trusted friend or family member may be best suited to serve given their familiarity and expertise related to the investment or business.

If the grantor is serving as the Investment Direction Advisor and the trust contains certain assets that could be includable in the



grantor's estate for Federal Estate Tax purposes, a separate Special Holdings Advisor should be appointed to manage those assets.

### **SPECIAL HOLDINGS ADVISOR**

A Special Holdings Advisor manages specific holdings or a subset of certain assets of the trust. A Special Holdings Advisor may be appointed when the grantor elects to serve as Investment Direction Advisor but the trust also has holdings such as life insurance on the grantor's life, voting stock of a grantor-controlled corporation or other assets that could cause estate tax inclusion for the grantor or beneficiaries if they manage the assets. A Special Holdings Advisor may also serve when the grantor desires to bifurcate investment responsibilities. For example, a trust may hold publicly traded stock, mutual funds and a family business. The grantor may appoint a financial advisor to serve as the Investment Direction Advisor, and the grantor, a family member or a business partner may serve as the Special Holdings Advisor to manage the family business.

If the nature of the special holding is an asset which could be included in the grantor's estate, neither the grantor nor a person related to or subordinate to the grantor can serve as Special Holdings Advisor. Moreover, special consideration should be given if a family governance entity is being considered to serve as Special Holdings Advisor because of the limitations on involvement of the grantor and related or subordinate parties.





### **DISTRIBUTION DIRECTION ADVISOR**

A Distribution Direction Advisor reviews and approves distributions to beneficiaries based on the standard set forth in the trust document. Such standard may be limited to health, education, maintenance or support (HEMS) or may be very broad with guidance provided in the grantor's statement of intent. The trust may also provide distributions for age attainment or life milestones such as completion of education, marriage or purchase of a home.

Although family members may be in the best position to understand the specific needs and goals of the beneficiaries, they may be reluctant to communicate and carry out the most appropriate decisions. An independent party who has a relationship and rapport with the family may be better positioned to communicate distribution decisions and appropriately assess the impact of distributions. Therefore, a family member and an independent party together may provide the best insight, flexibility and structure for distribution decisions.

A beneficiary should only serve as a Distribution Direction Advisor if the trust provides for an ascertainable standard for distribution, such as a HEMS standard. A Family Governance LLC may also be limited in its ability to serve as Distribution Direction Advisor because of the potential for active participation of the grantor, certain beneficiaries or related or subordinate parties.

### **TRUST PROTECTOR**

A Trust Protector provides strong oversight to the above directed trust roles and the overall management of a trust. Moreover, the Trust Protector can help ensure the trust is being administered according to the wishes of the grantor long after his or her passing. A Trust Protector's powers are explicitly granted in the trust document. Such powers may include the authority to change trust situs and administrative law; modify provisions to comply with tax or legal considerations; remove or replace other advisors; enter into fee arrangements with advisors; engage other advisors; change the income tax status of the trust; divide trust along family lines or amongst beneficiaries; appoint or add to a class of notice recipients; and under some circumstances, add or remove beneficiaries or change powers of appointment.

Neither grantors nor beneficiaries may serve as Trust Protector. Although friends or family members who are not related or subordinate to the grantor may serve as Trust Protector, an independent party such as a corporate or professional advisor is best suited for the role. A corporate or professional advisor likely has greater depth of knowledge to understand and incorporate the impact of trust and tax laws (including changes to those laws), as well as weigh the implications of certain actions such as a trust division or changes to dispositive provisions, beneficiaries or powers of appointment.



## CONCLUSION

Each client's assets and family circumstances are unique. Your Oxford team of advisors can assist in determining the trust roles most suited to help protect your trust and administer it in alignment with your wishes and values for years to come.

<sup>1</sup> A "related or subordinate party" may include the grantor's spouse, parent, sibling, child or employee. Additionally, a corporation where the grantor and trust hold significant voting control, or a subordinate employee of a corporation in which the grantor is an executive, may also be considered a related or subordinate party. See 26 C.F.R § 1.672(c)-1.

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