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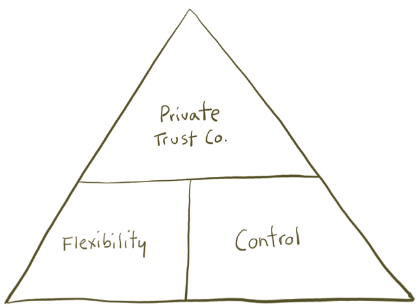
A GUIDE TO *Private Trust Companies* TODAY



Estate plans are generally established to preserve family legacies. Early in my career, tax planning was a focus since estate tax exemptions were notably lower and estate tax rates were notably higher than today. Individuals now focus on broader decisions relating to the extent, timing, and stewardship of family inheritance across many generations.

As estate planning goals have evolved, so have considerations around choosing trustees and investment advisors. Whereas people may previously have named friends and family members as trustees, they are now more likely to hire professionals to preserve their long-term family legacies. Naming corporate trustees for administration is more common than ever, as well as seeking investment advisors who are best suited to attain investment goals that complement family legacies.

How the Corporate Trustee Role Has Evolved

When you consider naming a corporate trustee, you may think of a traditional bank with a corporate trust company. However, the role of a corporate trustee has evolved greatly over the past few decades, and you now have more choices to fill this important role.

Until the late 1980s, corporate trustees followed the traditional "delegated trust" model. This model could easily be referred to as the "non-delegated trust" model, though, because it discouraged trustee delegation of important responsibilities like investment management. For example, the corporate trustee could select and hire an outside investment advisor, but would remain responsible for investment performance that is not otherwise protected under "prudent investor" rules set by individual state law.

For this reason, traditional corporate trustees under the delegated trust model would retain custody of all assets, control beneficiary distributions, and manage all investments in house. This approach often led to a reputation for higher fees, lower beneficiary service continuity, and conservative (lower) investment performance.

Since the late 1980s, state trust laws have evolved, and most allow corporate trustees to follow the modern "directed trust" model. Under the directed trust model, the trust agreement names separate fiduciaries to manage investment, business, or distribution decisions. This model provides the corporate trustee with greater flexibility to focus on trust administration while involving others to take responsibility for their respective roles. This approach often leads to lower fees, increased beneficiary service continuity, and strategic (higher) investment performance. »

The Prevalence and Appeal of Private Trustees

To avoid confusion between these separate trust models, I will refer to the corporate trustee under the directed trust model as a "private trustee." For example, a trust agreement following the directed trust model could name a private trustee to manage trust administration. It then could name and fill additional roles for:

- investment advisors who manage assets based on their respective specialties;
- business advisors who manage private family business interests;
- special asset advisors who manage nontraditional investments, such as oil and gas interests, real estate, or private equity; and
- distribution advisors who manage discretionary beneficiary distribution decisions.

Because family members retain control over the hiring and firing of each respective advisor, they maintain flexibility and control. Since each advisor is treated as a fiduciary, the acts of one advisor do not create additional risk for the others. The evolution of the directed trust model has created a growing industry of private trust companies that focus solely on trust administration—especially in states with the most progressive directed trust statutes, including Alaska, Delaware, Nevada, New Hampshire, South Dakota, and Tennessee.

Private trust companies retain more inclusive and diverse relationships with outside professionals, including investment advisors. Investment advisors value these relationships because they promote continuity in family client relationships over several generations.

Investment advisors also appreciate the flexibility to work with one another regardless of custodian or investment style while supporting common family goals. They enjoy preserving professional relationships with attorneys and accountants who have served alongside them for years.

Selecting a Private Trust Company

There are several questions to consider when naming a private trust company, including:

Does the trustee offer a directed trust option?

Does the trustee offer directed trusts through more progressive states listed above?

Does the family prefer working with one or more outside investment advisors?

Does the trustee work well with outside investment advisors?

Does the trustee work well with family members to make discretionary beneficiary distributions?

Does the family prefer someone other than family members to handle beneficiary distributions?

Does the trustee work well with outside/multiple custodians?

Does the trustee provide consolidated reporting for investment purposes?

Does the trustee provide annual trust accountings to beneficiaries and tax advisors?

Does the trustee prepare annual income tax returns if needed?

Does the trustee accept all trusts, including special needs trusts?

Does the trustee accept trusts with special or business investments? »

If you decide to name a private trust company, plan to take the following steps:

1. Review potential options with your investment advisor.
2. Review relative service options, fee schedules, and state law preferences to meet your needs.
3. Review required trust language to memorialize appointment.
4. Work with a family attorney to update trust documents as needed.

Private trust companies often offer services as a sole trustee, co-trustee, or agent for trustee. These different service levels allow clients to get assistance with items like bill pay while they remain healthy. Private trust companies can then transition to shared or sole trust administration responsibility later. Private trust companies typically charge less for all service levels since they focus on trust administration alone.

The evolution of the directed trust model provides families with greater control and flexibility regarding the professionals they choose to work together for their benefit. Private trust companies have grown to support this. ■