

MARCH 2023 NEWSLETTER

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DIRECTED TRUSTS AS AN ESTATE PLANNING TOOL IN MODERN TIMES

1. AWARDS:

Pozzuolo Rodden Pozzuolo, P.C. are pleased to announce that the law firm has been successful in the Legal Elite Awards 2023 and has been awarded “Best Business Law Firm, 2023-Pennsylvania” as an innovator and trendsetter within the legal community.

DIRECTED TRUSTS AS AN ESTATE PLANNING TOOL IN MODERN TIMES

When considering your estate planning choices, there are a multitude of different options available to create a plan that works best for your specific situation. One of the most common tools used in estate planning is the trust. Generally speaking, under a standard trust,

all of the trustee duties, namely the investment and distribution duties are delegated to the trustee.

As the individual's assets/investments and family dynamics continue to change, transform, and evolve, the more modern approach to trusts has been a move towards "directed" trusts. Directed trusts divide the management and/or control of the assets of the trust between multiple different individuals/fiduciaries instead of leaving that solely to the trustees. These types of trusts are especially beneficial where the grantor has multiple unique assets and investments or unique family situations that require special knowledge of the family members or an objective non-family member. Directed trusts allow someone designated by the grantor/creator to direct the trustee to make certain decisions, such as investment and distributions. In other words, the trustee of directed trust is not responsible for the decisions, actions or inactions of the person having the authority to direct the trustee.

There are three common types of usages of directed trusts: i.) Investment Advisors; ii.) Trust Protector/Trust Committee; and, iii.) Distribution Director.

Investment advisors are most common for directed trusts that involve the administration of non-standard or complicated assets like a family business, cryptocurrency, real estate, and/or LLCs etc. In such an instance, the investment advisor will direct the trustee regarding all investment related actions to be taken on some or all of the assets/investments under management. In other words, no investment action is taken by the trustee without direction from the investment advisor.

Trust protector/trust committee style directed trusts are useful when there are direct distributions to the beneficiaries. The protector/committee can advise the trustee on each beneficiary's needs and help to provide checks and balance as compared to a standard trust with just a trustee. A trust creator may want an unbiased, open-minded, non-family member to assess a beneficiary's needs or may want family members to have a say especially to make decisions about a child with special needs. The trustee is not responsible for determining the appropriateness of any distribution decision of the trust protector/trust committee.

A distribution director style directed trust provides an "in the trenches" director who can review and direct the distributions to the beneficiaries and can be the primary contact for beneficiaries who will meet with them personally.

Old, out of date trusts were never drafted with the foresight that someone other than the trustee would manage and control either the investments and/or distributions. Directed trusts solve many of the problems that come with delegated trusts for the trustee, investment advisors and the beneficiaries.

In drafting a directed trust, it is most important to be very specific and clearly enumerate and distinguish the powers and/or roles and state that certain powers must only be exercised at the direction of the trustee. Further, it is generally recommended that the trust creator/grantor write a statement of intent explaining what he/she wants the roles of the trustee and the advisor are to be. In summary, if there is a choice between a delegated trust over a directed trust, it is almost always more advantageous for all concerned to draft a trust

as directed versus delegated. It is important to note that not all states have currently enacted directed trust statutes.

Please [contact our office](#) to speak with one of our estate/trust planning attorneys to discuss and determine whether a directed trust would be a useful tool for your estate plan.

This newsletter is courtesy of Pozzuolo Rodden Pozzuolo, P.C.

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