



## DIRECTED TRUSTS – FLORIDA JOINS LEADING TRUST-FRIENDLY STATES

**As** the assets and administration of trusts evolve, our statutes must keep pace. For many decades, trusts were typically funded with stocks, bonds, cash and possibly a personal residence. Today, family wealth also consists of interests in closely held businesses, major real estate holdings and alternative investments such as hedge funds and private equity. Trusts include a variety of liquid and illiquid assets. In these cases, it is rare that one person or one organization excels at managing all aspects of each trust asset or investment.

Financial institutions are often selected as trustees for their expertise in fiduciary administration, family governance and/or management of a diversified portfolio of publicly traded securities. These same institutions are hesitant to act as trustee when the trust owns unique assets such as a family business, real estate or large blocks of stock that cannot be easily diversified. Management of these types of assets requires a different skill set, increasing the risk of poor management and liability for institutions more focused on traditional trust administration and portfolio management.

Furthermore, clients typically want family members and/or trusted advisors to handle certain assets and/or functions when knowledge of family, business dynamics or special investments is critical aspects of the family's legacy. Clients may believe such persons are ideal to run a family business or make distribution decisions within the family group. However, these family members or trusted advisors often lack the skills and expertise necessary to handle the full range of trustee duties and manage a large portfolio of investment products. Additionally, individuals are not usually a viable solution as trustees of multi-generational dynasty trusts. For these reasons, families with a mix of assets face a difficult choice in selecting a trustee for long-term management. The ideal trustee may not even exist.

In response to this dilemma, many states are competing to capture

the lucrative family trust business by revamping their trust statutes to encourage the use of multiple trust advisors. Florida recently enacted legislation permitting a grantor to bifurcate responsibilities among co-trustees. Except in cases where an excluded trustee knows of willful misconduct on the part of the directing trustee, the excluded trustee is indemnified for acts for which the other trustee is expressly responsible.

This is in stark contrast to the only prior alternative, whereby a trustee delegated certain investment or other activities, but retained ultimate responsibility and liability for them. Under the new directed trust statute, an excluded trustee is relieved of the duty to oversee and review the actions of the directing trustee. A trustee who is specifically responsible for an activity is directly and solely responsible for it. Thus, Florida clients can now appoint multiple fiduciaries with different areas of expertise and responsibility without having to establish their trusts in other states.

This "directed trust" statute was effective as on July 1, 2008, so it is just now gaining recognition among Florida advisors. Given the proliferation of diverse investments in trusts and the need for combinations of corporate and individual trustees to handle these assets, we expect that this will become a key benefit of Florida Trust Law. <sup>1</sup>



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