**Directed Trusts: Best Practices for Working with Advisors, Trust Protectors and Excluded Trustees – When to Say No!**

# Directed Distribution Checklist

1. Trust Documents

*Consider including the following:*

|  |  |
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|  | Statement that the Distribution Advisor, Advisors, or Distribution Committee shall be an “Adviser” within the meaning of 12 Del. C. 3313. |
|  | Statement that the Distribution Advisor shall “direct” all distribution decisions. |
|  | Distribution decisions should be defined and correlate exactly with the distribution/dispositive provisions of the trust. |
|  | Specify whether the Distribution Advisor is acting in a fiduciary or non-fiduciary capacity. |
|  | If multiple Advisors or a Distribution Committee confirm whether direction must be received from all, a majority or if one advisor can represent the group. |
|  | A statement regarding the form of direction (such as “in writing” by email, fax, etc.). |
|  | Identify the initial and successor distribution advisors. |
|  | A statement that describes what happens when there is no Distribution Advisor serving. |
|  | Statement confirming that the trustee shall have no duty to monitor the advisor, provide advice to the advisor, communicate or warn third parties concerning actions being directed. |
|  | State that the trustee’s liability for following direction of the Distribution Advisor shall be limited to willful misconduct. |
|  | A statement that the Trustee has no duty to investigate or confirm the authenticity of a direction letter. |
|  | An affirmative acknowledgement of the ongoing duty of all fiduciaries to share information with one another relevant to the performance of their duties under the trust. |
|  | Signature line for Distribution Advisor to accept appointment. |

1. Direction Letters

*Has the following been addressed in the direction letter?*

|  |  |
| --- | --- |
|  | Clearly identify who is providing the direction and that they are acting in their capacity as the Distribution Advisor. |
|  | Utilizes the word “direct” and is in writing. |
|  | Adequately identifies the specific assets being distributed or specific amount of cash. |
|  | Beneficiary(s) receiving the distribution is clearly identified. |
|  | Provides specific delivery instructions for cash and/or assets being distributed. |
|  | Confirmation of the dispositive standard applied to the distribution requested. |
|  | Signed by Distribution Advisor |
|  | Attach appropriate supporting documentation. |

1. Other Concerns with directed trusts

*Has the following been considered?*

|  |  |
| --- | --- |
|  | Confirm distribution requested is not prohibited by the terms of the trust agreement. |
|  | Communicate and coordinate with Investment Advisor to make sure that assets and/or cash being distributed is available and will not cause investment or liquidity problem. |
|  | Use proper distribution coding on the trust accounting system to make sure that the distribution draws out DNI – especially important for non-grantor trusts. |