

Directed Trusts

What Are They and Do You Need One?

By Carolyn Ohlsen and Oliver Rolfe

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Often times clients ask about incorporating Directed Trusts in estate plans. On a fundamental level, a directed trust is one in which a separate advisor, rather than the Trustee, makes investment decisions and, usually, distribution decisions.

With a Directed Trust, the typical duties are split between a Directed Trustee and a Trust Advisor, who is put in place to determine the trustee's actions. Under this arrangement, the appointed Trust Advisor makes investment decisions, manages the trust assets, and can arrange for distributions to be made through the Directed Trustee. The effect of appointing a Trust Advisor is that the Directed Trustee is absolved from significant liability stemming from the Trust Advisor's actions or directions. Therefore, the trust can be written to alleviate any fiduciary standard for those appointed to serve on behalf of the trust. Some Trust Companies require the trust to be structured this way, which may be a consideration in your situation.

The Trust Advisor you appoint may be your financial advisor or investment professional. The largest benefit of creating a Directed Trust is that these advisors can continue managing the assets without taking on the additional duties of being a Trustee. However, caution must be taken when navigating this type of trust due to the inherent lack of oversight. Whereas a Trustee is required to act in your best interest and to protect the trust assets, a Trust Advisor is only required to avoid bad faith and reckless indifference. This is an important difference as it holds the administration of your trust to an inherently low standard.

Because of the risk involved with forming a trust with no fiduciary accountability, you should carefully consider who you would feel comfortable serving as a Trust Advisor. The ultimate responsibility of a Trustee is protecting the beneficiary, so you may consider these appointments to ensure the beneficiary is in a position to be protected if a Directed Trust is created.

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