Greenway Capital Advisors, LLC

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Internal Governance Structure of a Private Trust Company

Most states that authorize private trust companies require them to be formed as a limited liability company or corporation. Whether a limited liability company or a corporation, a private trust company will typically have the following structure:

1. **Board of Directors.** The board of directors is the governing body of a private trust company. The board of directors is responsible for the overall management of a private trust company, regulatory and audit matters, operational matters, the formation and oversight of internal committees, and the initial and annual approval of internal policies and procedures. The board can consist of family members and non-family members.
2. **Investment Committee.** The Investment Committee is responsible for the prudent investment of trust assets for which the private trust company has investment discretion. This includes the selection of investment advisors, monitoring the performance of those advisors, initial and annual investment review of trust assets, and the establishment of an investment policy statement for each trust account. Family members can serve on the Investment Committee, and as a result, they have a forum for actively participating in the investment management of family assets held inside of irrevocable trusts.
3. **Distribution Committee.** Many trust documents will grant the trustee discretion to make distributions to beneficiaries. Requests by beneficiaries for distributions are reviewed by the Distribution Committee, and it makes decisions on whether or not to exercise the discretionary authority granted to the private trust company as trustee of the applicable trust.
4. **Amendment Committee.** The Amendment Committee evolved from IRS Notice 2008-63, which is discussed below. It has the exclusive authority to make changes to the private trust company's governing documents such as its bylaws.

The internal governance structure of a private trust company in its purest form does not take into consideration the possible adverse income tax and transfer tax consequences that can result because of family involvement in certain activities of a private trust company. The good news is that the IRS in Notice 2008-63 provided some helpful guidance. For example, Notice 2008-63 points out some restrictions that can be placed on family involvement in a Distribution Committee in order to avoid adverse income tax and transfer tax consequences. These restrictions include the following: (1) no family member serving on a Distribution Committee can participate in Distribution Committee activities involving any trust of which that family member or his or her spouse is either grantor or beneficiary, or any trust having a beneficiary to whom that family member or his or her spouse has a legal obligation to support, and (2) family members cannot enter into reciprocal agreements, express or implied, regarding discretionary distributions from any trust for which the private trust company is serving as trustee.

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