

Greenway Capital Advisors, LLC

WEALTH ADVISORY – 3rd Quarter 2012

Private Trust Companies and Heavily Concentrated Assets

It is quite common for wealthy families to have a significant portion of their wealth invested in assets such as family businesses, real estate, or in stock of publicly traded companies. This creates a dilemma for wealthy families because most corporate trustees have a propensity to diversify trust assets. Then again, private trust companies tend to be less risk averse and better attuned to family assets and the special position they hold within the context of the family.

Most states have adopted the Uniform Prudent Investor Act, which arguably lends support to families who desire to invest in and retain heavily concentrated assets. In particular, the Act provides that diversification does not have to occur if the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversification. In addition, the Act provides a list of circumstances that a trustee shall consider in investing and managing trust assets as are relevant to the trust or its beneficiaries. One such circumstance is an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

It should be noted that commercial corporate trustees may find it difficult to evaluate and act on such special circumstances contained in the Act. On the other hand, family members and trusted advisors serving on the Investment Committee of a private trust company will likely be more in tune with the special relationship or special value that a particular asset has to the overall purpose of the trust or to certain family members.

It should be noted that the Investment Committee of a private trust company 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. As members of the Investment Committee, family members can have a voice in the investment in and retention of heavily concentrated assets in family trusts.



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