



Special Purpose Entities (SPEs) May Now Serve as Trust Advisors in Tennessee

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Public Chapter 340, recently signed into law by Governor Bill Lee, represents a significant evolution of Tennessee trust law by permitting the creation of special purpose entities (“SPEs”), as defined in Tenn. Code Ann. § 35-15-1301(a)(6), to serve as Trust Advisors for trusts for which a Tennessee corporate fiduciary is serving as Trustee.

Directed Trust Structure

Traditionally, a trust was subject to the control and oversight of a Trustee, who was charged with all facets of trust administration. A new Tennessee law, however, authorizes the separation of the traditional trustee roles by allowing for the appointment of a Trust Advisor (also called a Trust Protector) who has the authority to “direct” an exercise of a power held by the Trustee, including investment and distribution decisions. The Trust Advisor can either be an individual or structured as a committee with multiple serving committee members. Given the power of a Trust Advisor to direct the Trustee, the trust is referred to as a “directed trust.” The ability to reserve certain authority over the management of trust assets to a Trust Advisor provides significant planning opportunities.

For example, while a grantor may wish to utilize a corporate trustee, the grantor may prefer investment decisions be controlled by a trusted advisor. Additionally, a grantor may wish for all administrative functions to be the responsibility of a corporate trustee while granting a specific individual(s) the power to make or veto distributions. Similarly, carving out responsibility for the administration of the family lake house to a family member with a separate trustee responsible for all other matters can be attractive.

An extremely powerful use of the directed trust structure is that it permits an owner of a closely held business to specifically identify a Trust Advisor who is to have sole power to vote the equity interests thereof, and thus indirectly control the business. For business owners concerned with succession planning, the opportunity to select trusted advisors to oversee the management of the business is invaluable. Moreover, this also provides a structure to continue the business for several successive generations.

Potential Relief from State Taxation

A significant benefit of the new law is its potential to provide relief from taxation in states which tax a trust based on the residency of the Trustee or other fiduciary. In these states, the fact a Trust Advisor is a resident could be the sole justification for the state subjecting the trust to tax. The Tennessee SPE, however, will be a resident of Tennessee and – provided all the SPE’s activities occur solely in Tennessee – it could be possible to avoid subjecting a trust to a state’s income taxes which are imposed based solely on the residency of a fiduciary.

As a result, an individual resident of one these states could have a role in the SPE without subjecting the trust to the state's income tax.

In addition to the foreign state tax savings, so long as the beneficiaries are not Tennessee residents, the trust would not be subject to Tennessee tax. Consequently, for those trusts, the use of a Tennessee SPE could provide significant tax savings.

Liability Protection for Trust Advisors

Another benefit of Public Chapter 340 is the ability to provide liability protection for Trust Advisors, something which might have hindered the use of Trust Advisors previously. Specifically, prior to the passage of the new law, it appeared that under state law, when a Trust Advisor was to act in a fiduciary capacity, only individuals or corporate trustees who were authorized to act as a fiduciary were permitted to serve. Given that the typical grantor often desires for other individuals, rather than corporate trustees, to serve as the Trust Advisor, a common impediment to fully utilizing a directed trust structure was that these individuals serving as Trust Advisors often faced concerns of liability protection. Public Chapter 340 provides a solution. Specifically, Tenn. Code Ann. § 35-15-1301 permits the creation of an SPE (which will likely be organized as a limited liability company (LLC)) to serve as Trust Advisor.

The law now permits the SPE to serve as Trust Advisor of a trust of which a Tennessee corporate fiduciary (or a national bank with a physical presence in Tennessee) is otherwise serving as Trustee. Therefore, a grantor could establish a trust with a Tennessee corporate trustee and appoint an SPE to serve as Trust Advisor. In addition, one SPE could serve as a Trust Advisor for all trusts benefiting members of an extended family. So long as a Tennessee corporate trustee is serving, the SPE may exercise fiduciary duties with respect to trusts without being subject to the Tennessee laws applicable to trust companies. Since the SPE can be organized as either an LLC or a corporation, the owners and officers of the SPE will be afforded the same general liability protection as is otherwise the case with LLCs and corporations.

For these reasons, Public Chapter 340 represents a significant enhancement of the directed trust structure and furthers Tennessee's status as one of the preeminent jurisdictions to situs a trust.



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