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PRIVATE BANK

Irrevocable Trust Administration:

Avoiding risk from Start to Finish



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General Duties and Risk Associated with Administration of Trusts

Duties associated with administering irrevocable trusts as a corporate fiduciary as set forth in the *Office of the Comptroller of the Currency; Asset Management; Personal Fiduciary Activities; Version 1.0, February 2015:*

- *Duty of loyalty*
- *Duty of administration*
- *Duty to control and protect trust property*
- *Duty to keep property separate and maintain adequate records*
- *Duty of impartiality*
- *Duty to enforce and defend claims*
- *Duty to inform and report*
- *Duty of prudent investment*

General Duties and Risk Associated with Administration of Trusts (Continued)

Risks associated with administering irrevocable trusts as a corporate fiduciary as set forth in the *Office of the Comptroller of the Currency; Asset Management; Personal Fiduciary Activities; Version 1.0, February 2015*:

- *Operational Risk*
- *Compliance Risk*
- *Strategic Risk*
- *Reputational Risk*

General Duties and Risk Associated with Administration of Trusts (Continued)

The Four best risk mitigation factors applicable to all stages of trust administration: CEAD

- **Creating Processes & Procedures**
- **Educating all employees regarding Processes & Procedures**
 - *Every employee knows where Processes & Procedures are housed*
 - *Every employee is communicated with as Processes & Procedures change*
- **Adhering to the Processes & Procedures**
 - *Every employee follows the Processes & Procedures every time*
 - *Every employee has access to the Processes & Procedures*
- **Documenting the actions taken to show that the processes & Procedures were followed**

Mitigating Risk - New Irrevocable Trust Accounts

How to mitigate risk during the new account process:

- ***New Account Review***
 - ***Document Language***
 - ***Assets***
 - ***Types***
 - ***Concentrations***
 - ***Situs/Tax Consequences***
 - ***Need for Accounting***
 - ***KYC/Risk Factoring***

Mitigating Risk - New Irrevocable Trust Accounts (Continued)

How to mitigate risk during the new account process:

- **Account Onboarding**
 - **Funding**
 - *Initial Inventory*
 - *Process of asset collection*
 - *Cost Basis Review*
 - *Deeds Rerecorded*
 - *Mandate/IPS determination*
 - *Vault*
 - **60 Day Reg 9 Review**
 - *Admin and Investment*
 - *Keeping track of outstanding Items*
 - **Notice Requirements (Various State Statues)**
 - *Fees*
 - *Notice of Trustee*

Mitigating Risk – Ongoing Irrevocable Trust Account Administration

How to mitigate risk during ongoing administration:

- ***Annual Administration and Investment Reviews***

- *Managed Accounts*
- *Directed Accounts*
- *Assets Held Elsewhere/Unique Assets*
- *Fees*
- *Distributions*

- ***Discretionary Actions***

- *Review, Approval, and Duration*
- *Interpretation of Standards*
- *Documentation Required and Recording of Decision*
- *Wasting Trusts*

Mitigating Risk – Ongoing Irrevocable Trust Account Administration (Continued)

How to mitigate risk during ongoing administration (Continued):

- ***Legal Issues/Attorney-Client Privilege Issues***

- *Trust Pay v Bank Pay*
- *Work Product/Attorney-Client Privilege*

- ***Fraud/Loss***

- *Huge Risk*
- *Dual Control and Dollar Limits*
- *Authentication v. Authority*
- *Callbacks*
- *Recorded Lines*

Mitigating Risk –Irrevocable Trust Account Closing

How to mitigate risk during the account closing process:

- ***Legal Review***

- *Terms of the Trust*
- *RRR&I Agreement Determination*

- ***Assets***

- *Selling of Assets/Transfer in Kind*
- *Vault*
- *Cost Basis Transfer*
- *Trailing Income*
- *Escheated Funds*

- ***Tax Returns***

- *Who prepares*

Knowledge of State Laws Required

Here are but a few of the areas for which knowledge of different state laws is a must:

- *Affiliated Products and Services*
- *Compensation of Trustee*
- *Definition of Beneficiaries*
- *Account Statements (including electronic delivery rules)*
- *Notice Requirements*
- *Delegation of Investment Functions to co-trustees*
- *Directed Trusts*
- *Decanting*
- **Non-Judicial Settlement Agreements/Material Purpose**
- **Trust Modification**
- **Virtual Representation**

Knowledge of State Laws Required (Continued)

Here are but a few of the areas for which knowledge of different state laws is a must (continued):

- *Principal and Income Act*
- *Total Return*
- *Power to Adjust*
- *Small Trust Termination*
- *Change of Situs/Transfer of Principal Place of Business*
- *Trust Registration Requirements*
- *Court Accountings*

Key risks

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