

national trust closely held business association

—NTCHBA—



Board Governance

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Patrick Alyward Biography

Patrick is the Founder and CEO of TRUSTworthy Consultants, Inc. where he serves on two trust company boards and provides fiduciary consulting services, fiduciary audits/risk assessments, and training to banks, credit unions, and trust companies. He also serves in roles *for the: a) Fiduciary Education Foundation b) National Trust Closely Held Business Association, and c) National Trust Real Estate Association.*

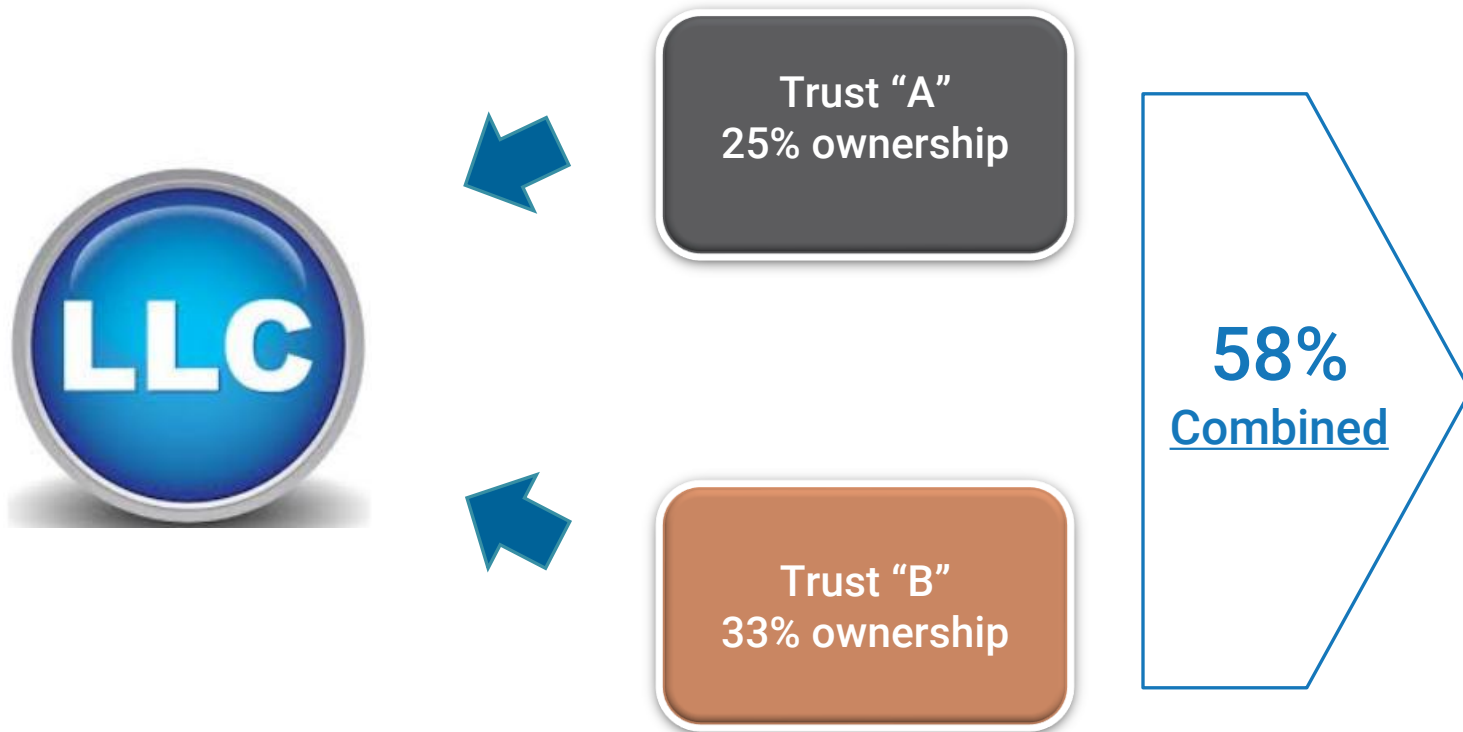
Previously, Patrick was the President & CEO for RIC and has 35+ years experience in the fiduciary & wealth management industry including:

- CEO at RIC (Unique Assets) partnering with over 200 trust clients
- CCH (Wolters Kluwer) where he founded and managed a fiduciary tax preparation service for trust organizations
- EVP and Chief Fiduciary Officer for National City/PNC Bank overseeing all fiduciary staff and functions (18 years in banking)
- Big 4 accounting experience in fiduciary taxation (EY/KPMG)

Patrick is a frequent speaker and author at wealth management & fiduciary compliance conferences across the nation. www.trustworthyconsultants.com



Trustee Situation



Few Questions?

- *What authority does Trustee have to make decisions?*
- *Is Trustee responsible for entity oversight - owner, manager.. or both?*
- *What information should the Trustee require?*
- *Are there any conflicts?*
- *How are decisions made & documented?*
- *Is the beneficiary involved?*
- *Does combined majority ownership matter?*

Disclaimer

IMPORTANT:

This summary is for discussion purposes only. It does not contain legal, tax, investment, or other advice and cannot be relied upon for implementation and/or protection from penalties. Always consult with your independent attorney and tax advisor for legal and tax advice.

Today's Agenda

Introduction

Fiduciary Responsibilities

Entity Governance

Ownership vs. Management

Governance Process

Board Effectiveness

Questions

Governance Factors



Productive



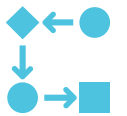
Oversight



Accountability



Decision-
making



Effective
Controls

How does a Trustee get confirmation that entity is properly managed and operating effectively?



Information & Reporting -
Document, document, document.....

Fiduciary Responsibilities

- Trustee role - Authority / Capacity; Co-responsibilities? Timeline (estate?)
- Fiduciary Duties – Loyalty, Care, etc.
- Conflicts of Interest - Examples
- Trust Agreement / Powers
- Governing laws
- Investments
 - Productive
 - Income
 - Diversification
 - Valuation



Entity PreAcceptance Best Practices

- Confirming and understanding ownership; Asset composition and condition
- Approximate value
- Any conflicts of interest?
- Understand “management” responsibilities and approvals
- Review ownership liabilities and restrictions
- Withdrawal and termination rights
- Investment and compliance risks
- Is information readily available? Any red flags

Strive to get as much information as possible before accepting!

Entity Governance / Due Diligence

- Entity documents/agreements – operating and partnership agreements, by-laws, etc.
- Governance structure - Entity management & decision making;
 - Roles and committees; Appointment process – It depends!
 - Approvals/decisions – who has the authority?
 - Meetings – General, special, etc.
- Rights and restrictions; Provisions
- Tax returns and other supporting documentation
- Information – content and source

Entity Type Ownership

Entity Type	What is owned?	Management
Corporations (C and S Corp.)	Stock shares	Appointed Officers/ Elected Board of Directors
General Partnerships	Partnership Interest	General Partners or appointee
Limited Partnerships	Partnership Interest (GP and LP)	General Partner or appointee
Limited Liability Companies (LLC)	Membership Interest	Members or appointed manager(s)

Corporation Roles

Shareholders

**Board
Members /
Directors**

**Committee
Members**

**Management
/ Leadership**

Officers

**Directors –
Independent**

Things to consider

- Committee examples
- Advisory Board Members
- Approval levels
- Voting vs. Non-voting

LLC Roles

Members

Manager

**Member
Manager**

**Other
Roles**

Operating agreement should outline authority, decision making, and approvals. What rights do I have?

Partnership Roles

***General
Partner (GP)***

**Limited
Partner (LP)**

**Managing
Partner or
Manager**

**Committee
Members**

**Independent
Roles**

Other “Oversight” Roles

*Trust
Advisors /
Protectors*

**Special or
Directed
Trustee**

**Independent
Managers /
Directors**

**Committee
Members**

Provisions and Rights

Voting

Management / Authority

Distributions

Capital calls/contributions

Transfer / Succession / Termination

Dissolution

Amendments

Disclosures



→ Do you have a *policy or procedure (guidelines)?*

Ownership

Vs.

Management

What does the Trust own?

Who has authority?



Governance – Things to “Think About”

- What is specific Trustee role/responsibility for this entity?
- What is management structure? Strategic oversight and effectiveness
- How are decisions and approvals made?
- Fiduciary and compliance
- Conflicts of interest
- Meetings
- Information and reporting

“Do we need to be more involved with management or oversight of company?”

“Is there a conflict since the beneficiary is involved with the business?”

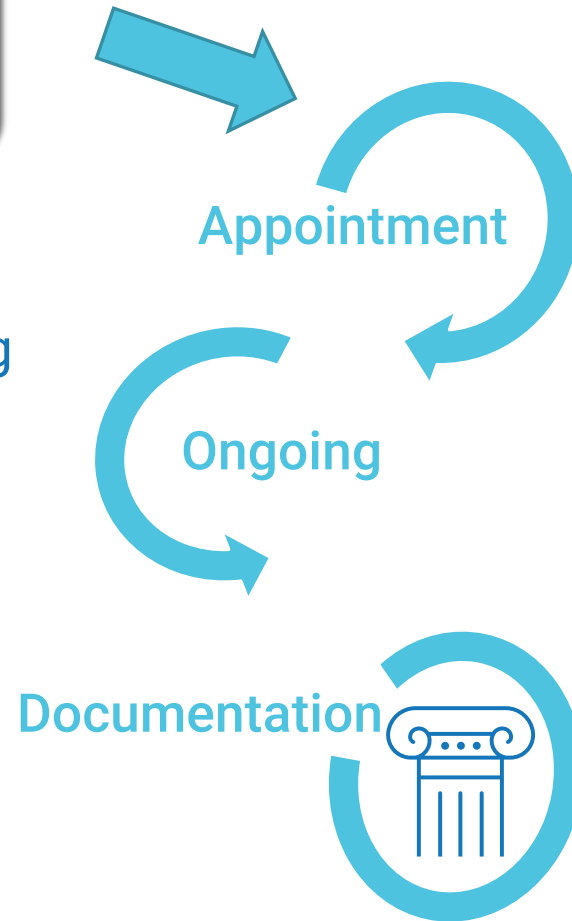
“What information do we need and how often?”

“Do WE have to participate in decisions?”

Governance Process Example (Corp.)

Assumption: Trustee has sufficient ownership and needs direct insight or “Board representation”

- Execute plan – communicate
- Introduce controls and reporting
- Have meetings as needed
- Gather information



- Can “you” serve on a Board or become Director? Who should serve?
- Internal vs. external (factors)
- What is appointment process? Get approval
- Participate in decisions as appropriate
- Ensure internal approvals happen first
- Present documentation for ongoing processes (reg 9 review, etc.)
- Stakeholder communication

External “Director” Guidelines

Qualifications and experience – Managing business, governance, understand fiduciary or estate process? Are they insured?

Responsibilities and project objectives (scope); How is entity or board representation impacted?

Reasonable rate – quarterly vs. hourly (what is the difference?); Who pays – entity, trust? Does fee schedule allow it?

Communication

Agreement – objectives, confidentiality, rate, term, etc.

Reporting requirements and Information

Can depend on many factors
- complexity and prioritization



Scope Examples



- Determine role – Manager, Director, President, Secretary, Board Member, etc.

Duties should follow:

- Entity administration – filings
- Tax reporting and financials
- Handle business transactions and advisory services; Engage specialists
- Conduct and participate in meetings
- Provide reporting
- Invoices and billing detail

Information – How much is enough?



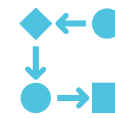
Financial statements
and tax returns



Board and Committee
minutes and emails
(approval)



Management
reports and
business plans



Supporting
documents
(leases, etc.)



Valuations and
appraisals

Information amount and detail level will depend on several factors - capacity, policies, and other risks. **Confirm source(s)**

Monitoring Boards

Effectiveness of a Board - Examples

<u>Impactful</u>	<u>Weak</u>	<u>Trustee Considerations</u>
• Accountable • Right composition • Engaged and organized • Recurring meetings • Paramount communication • Effective delegation and committee structures • Access to insightful reporting • Escalation processes	• Missing core competencies • Unaware and disconnected • Approvals unclear • Non-recurring meetings • Lack of follow up • No strategic direction • Inadequate information and controls	• Review governing documents and structure – clear...any gaps? • Attend a board and/or committee meetings • Access and review information – agenda, minutes, members, charters (objectives) • Analyze reports, tax returns, and other supporting information • Be engaged ... As much as needed! <i>Determine what you need as Trustee to properly assess business</i>

***Questions?
THANK YOU***

***Let's stay in touch ->
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www.trustworthyconsultants.com

Building trusted partnerships through Reliable Fiduciary Expertise

