

## Appendix A

### Checklist for when to consider a Non-Judicial Settlement Agreement/Consent and Release Agreement

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#### General Issues:

- Any failure of the governing document to protect and/or provide clear direction to the trustee
- Dispositive provisions do not align with the documents of the underlying entity
- Change of circumstances that makes the asset difficult to administer
- Is there a direction and indemnification to Trustee for a concentration in closely held assets?
- Is the Trustee responsible for valuation?
  - No
    - If not, is the language specific and does it provide protection to the Trustee for not valuing?
    - If not responsible for valuation, who has that responsibility?
    - If not responsible for valuation, is the Trustee also exempt from review?
  - Yes
    - The beneficiaries do not wish to value the asset (due to cost, etc)
- Is the document clear about duty to review?

#### Beneficiary Issues:

- Is there a process to address conflicts or differences among beneficiaries as to an asset?
  - Do certain beneficiaries operate the company and others are simply beneficial owners?
  - Are there unequal distributions of assets to beneficiaries, for instance where a closely held entity is distributing to only some of the beneficiaries
- Is there a clear process within the document where there is a desire of the beneficiaries to retain an asset when the trustee believes that a sale is preferred?
- Desire to direct the trustee as to an asset, for instance when a family wishes to maintain complete control of the asset after transferring the asset into a trust for estate planning purposes?
- The trust document provides that the trustee can be directed by a beneficiary or an advisory committee for valuation, review, and sale, but the document does not provide clear authority to the advisory committee.

#### Other Issues:

- Changes in the Law not contemplated at drafting.