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**Chapter 3**  
*Lloyd Leva Plaine Distinguished Lecture*  
**Taking Care of Business:  
New Approaches to  
Business Succession Planning**

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*Business and Financial Assets  
Charitable Giving and Philanthropy  
Planning with Trusts*

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Natalie Reitman-White, Founder and Principal at Purpose Owned. She is a sought-after educator and consultant, helping dozens of companies to explore and implement purpose-ownership and regenerative finance solutions. Prior to that she was a leading executive in the food sector, specializing in sustainable business, trade advocacy, governance, organizational development, and human resources. Natalie is nationally recognized for her work on transformative ownership and investment models. In 2017, she pioneered one of the first-in-the-nation Perpetual Purpose Trust ownership transitions with Organically Grown Company, the largest distributor of organic produce in the US. In 2018, she launched Alternative Ownership Advisors, to help founders of mission-driven companies with ownership and capitalization strategies that match with their values. In 2023, she launched Purpose Owned, a consultancy for ownership & leadership succession planning using Purpose Trusts.

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**Taking Care of Business: New Approaches to Business Succession Planning**

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Purpose trusts are different from ordinary common law trusts because they have no ascertainable beneficiaries who have standing to enforce the fiduciary obligations of the trustee. Instead of beneficiaries, purpose trusts exist to serve a purpose and appoint an enforcer or protector to enforce the fiduciary obligations of the trustee to serve the stated purpose of the purpose trust. Purpose trusts are authorized by statute in most states; almost all of them are modeled on the Uniform Trust Code (UTC). Without an authorizing statute, noncharitable purpose trusts may not be valid.<sup>1</sup>

Purpose trusts have gained attention recently due in part to a gift to a purpose trust made by Yvon Chouinard, the founder of Patagonia, in September 2022. Chouinard gifted the voting stock of his \$3 billion company, Patagonia, representing 2 percent of the equity, to a purpose trust (and paid \$17.5 million in gift tax).<sup>2</sup> He gifted the nonvoting stock, representing 98 percent of the equity, to Holdfast Collective, a [section 501\(c\)\(4\)](#) organization. The family will no longer receive any income from ownership of Patagonia. The goal was to gift control to trusted advisers to continue the company’s mission of promoting employee welfare and “sustainable practices.” The Patagonia trust has a Delaware trustee, an enforcer, and a “trust committee” that directs the trustee. The trust committee is composed of representatives from stakeholder groups, and members of the founder’s family have an advisory role.

Patagonia is not the first,<sup>3</sup> though likely the largest, U.S. company converting to steward ownership by using a purpose trust. Although the use of steward ownership in the United States is fairly recent and still uncommon, it is more prevalent in Europe — more than 100 European companies are owned in this manner, including large well-known companies such as Bosch and Ikea.<sup>4</sup> Steward ownership is being promoted by a number of U.S. nonprofits.<sup>5</sup> As a result of these efforts, steward ownership may become more common in the United States.

Steward ownership may, but need not, involve the use of purpose trusts. Many such arrangements, particularly in continental Europe (where trusts usually are not part of the legal system), are owned by foundations. OpenAI Inc. is an example of steward ownership that does not involve a purpose trust — control is vested in a section 501(c)(3) organization, OpenAI Inc., a majority of whose directors are independent of the business. The business is operated through a partnership with OpenAI Global LLC, which owns the economic interests.<sup>6</sup> Thus, stewardship may not necessarily involve purpose trusts. Also, purpose trusts may be used for purposes other than stewardship.

This article addresses the background of purpose trusts, the different types of purpose trusts, variations in state laws authorizing purpose trusts, drafting challenges, tax-related concerns,

funding strategies, and alternative structures to achieve purposes (such as foundations and nonstock corporations).

### **Background of Purpose Trusts**

1. At common law, a trust is an arrangement (not an entity) in which legal and beneficial ownership is divided. Legal title is held by a person (trustee) for the benefit of one or more other persons (the beneficiary or beneficiaries) who own a beneficial interest. The holder of legal title owes fiduciary obligations to the beneficial owner. There could be no trust without an identifiable beneficiary to whom fiduciary obligations were owed and who had standing to enforce the trustee's duties. This "beneficiary principle" is violated by a purpose trust because it has no ascertainable beneficiary. In purpose trusts, the beneficiary is replaced by a purpose that defines the fiduciary duties of the trustee and an "enforcer" or "protector" who has standing to enforce the trust.<sup>7</sup> The beneficiary principle may conflict with the purpose of a purpose trust because accomplishment of the trust purpose may interfere with maximizing financial benefits to one or more members of a class of trust beneficiaries.
2. Charitable trusts can be viewed as a type of purpose trust, but in the case of charitable trusts the "beneficiary principle" is replaced by charitable purposes, and the enforcer role is performed by state attorneys general.<sup>8</sup> Additional protection of the charitable purposes is provided by tax laws such as the private foundation rules in IRC [sections 4941-4946](#), the excess benefit rules in IRC [section 4958](#), and excessive executive compensation rules in IRC [section 4960](#). There is no comparable government oversight of noncharitable purpose trusts.
3. Noncharitable purpose trusts did not exist under common law, although courts sometimes permitted a trustee to carry out the purposes of the purported trust for a term that did not exceed the perpetuities limits. These were referred to as "honorary trusts" because the trustee had the right but not the obligation to carry out the purposes of the trust. The settlor or the settlor's successors had a reversionary interest, which they could enforce by seeking to terminate the trust. This concept was adopted in section 124 of the first Restatement of the Law of Trusts in 1935 and by section 2-907 of the Uniform Probate Code in 1990, which is now effectively superseded by the UTC.
4. Purpose trusts are now recognized by statute in many states. Many state statutes recognizing purpose trusts are modeled on the UTC and have different requirements for different types of purpose trusts, such as charitable trusts, pet trusts, cemetery trusts, stewardship trusts, general noncharitable purpose trusts, and hybrid trusts, which have beneficiaries but also a purpose. State laws are not uniform, as discussed below, although many are modeled on UTC sections 405 (charitable trusts), 408 (pet trusts), and 409 (general noncharitable purpose trusts). Only one state — Oregon — has a separate statute applicable to stewardship trusts — ORS 130.193.<sup>9</sup>
5. Most state laws contain few requirements and few "default rules" to apply in the absence of direction in the trust instrument, which makes drafting more difficult. One exception is Oregon's stewardship trust law which could serve as a useful model for other states.

### **Some Uses of Noncharitable 'General' Purpose Trusts**

General noncharitable purpose trusts,<sup>10</sup> the focus of this article, may serve a variety of purposes, including:

1. Stewardship of a business to preserve the founder’s mission, avoid a sale and liquidation of the business, give voting control to trusted advisers or “stewards”<sup>11</sup> who may have no or only a limited economic interest in the business and are directed to protect the interests of all “stakeholders” — employees, customers, suppliers, investors, the community, and the environment — rather than maximize shareholder returns.
2. An employee ownership trust (EOT) is a type of stewardship trust that primarily benefits employees but may limit their economic interests to sharing in business profits, impose restrictions on the sale of the company and disincentivize sales by depriving employees of the right to receive a share of proceeds from the sale of the company.<sup>12</sup>
3. Ownership of a family office to provide continuity, allow tax efficiencies by, for example, avoiding [section 2701](#) if a preferred interest in a family-controlled company is used to fund the family office.<sup>13</sup>
4. Maintenance of a collection such as automobiles, guns, manuscripts, or memorabilia.
5. Promotion of a cause that may not be within the definition of charitable, such as promoting investigative journalism, promotion of sports or games, maintaining a community park, continuing festivals.
6. Maintenance of gravesites.
7. Publication of manuscripts.
8. Preservation of property for persons engaged in cryogenics.
9. Ownership of off-balance sheet assets of a business enterprise to maintain independence from management or avoid ownership restrictions on the business enterprise.<sup>14</sup>

## Important State Law Variations

State laws authorizing the creation of purpose trusts, although based on the UTC, have important differences, including the following.

### Term Limits

In some states, such as Delaware, South Dakota, Wyoming, New Hampshire, Maryland, and Maine, “general” noncharitable purpose trusts may be perpetual; in other states, general noncharitable purpose trusts may last for an extended period, such as 300 years (Texas), 360 years (Tennessee), or 1,000 years (Florida), but section 409 of the UTC and most of the other 36 states adopting section 409 limit such noncharitable purpose trusts to a term of 21 years. Oregon has a separate statute for stewardship trusts that has no term limits.<sup>15</sup> Illinois is considering a statute similar to Oregon’s stewardship trust law that is called a “virtuous trust.”<sup>16</sup>

### Excessive Funding

In almost all states, a court may reduce the funding of the trust if it is deemed to be excessive for the accomplishment of the purpose. Delaware is an exception (except for pet trusts). Oregon’s

stewardship trust law is also an exception. Unless the trust provides otherwise, excess funds revert to the settlor or the settlor's successors.

## **Ability to Modify Purpose**

Delaware allows cy pres for both charitable and noncharitable trusts.<sup>17</sup> In other states, it is not clear whether the purpose of noncharitable trusts may be modified, although a trust may be drafted to provide for modification of purpose.

## **Enforcer Rules**

Some states require that there be an enforcer or protector, and others allow a court to either appoint such a person or act to enforce a trust on the petition of any "interested person" (interested person is not defined). And some states have rules to avoid conflicts of interest by, for example, saying that a trustee cannot also serve as enforcer. Only a few states have rules regarding succession, resignation, removal, compensation, liability, and voting rights of enforcers.

## **Reporting**

Most states give enforcers the same rights that a qualified beneficiary has to receive reports and information about the administration of the trust. It usually is not clear whether other interested persons have similar rights.

## **Directed Trustee**

In some states, there are directed trustee provisions that allow advisers/protectors or different classes of trustees to control management of a trust without liability for the trustee/excluded trustee.<sup>18</sup> This provides flexibility in selecting governing law.

## **Drafting Considerations**

### **Select Appropriate State Law**

Comply with selected state law because a noncharitable purpose trust that does not meet state law requirements for noncharitable purpose trusts may be void because it violates term limits or for other reasons.<sup>19</sup> Delaware is usually a good choice because it has no term limits, does not give courts authority to reduce funding, provides for cy pres to modify purpose, and allows for a directed trustee so that persons who are not resident in Delaware may materially participate in the management of the purpose trust as co-trustees or advisers serving with a Delaware trustee.

However, unlike the Oregon stewardship trust, Delaware provides limited guidance regarding the rules applicable to enforcers. Careful drafting can fill this gap, and drafters might benefit from using the Oregon stewardship trust for guidance. Alternatively, Oregon may be a good choice of situs for a stewardship trust.



## Define Purpose

When a trust has identifiable beneficiaries, the beneficiaries have an incentive to see that the trust functions in an efficient and useful manner. The “beneficiary principle” provides a built-in mechanism to correct mismanagement and, where appropriate, amend or terminate a trust that no longer serves a useful purpose. If a purpose trust has no beneficiaries who have the right to enforce the duties of the trustee, the purpose trust must rely on the due diligence and goodwill of persons who may have no economic incentive to enforce the purpose for which the trust is created. The separation of control and economic ownership is a two-edged sword: it curbs the abuses of market capitalism but invites the weaknesses inherent in collective mission-driven decision-making. Such weaknesses may include disincentivizing innovation and efficiency.

The mission of the enforcers (and the court) is made more difficult if the purposes of the trust are not clearly stated or become unworkable. State law provides broad latitude in defining the purpose of a trust.

Section 105(b)(3) of the UTC requires only that a trust have a purpose that is lawful, not contrary to public policy, and possible to achieve. However, if the purpose of the trust is to prevent the sale of a company, does this violate public policy as an unreasonable restraint on alienation?<sup>20</sup> Should there be a requirement that the purpose not be “capricious” — a criterion used by courts in deciding whether common law purpose trusts would be void?<sup>21</sup>

## Enforcement of Purpose

State law provides that purpose trusts are enforceable by an enforcer or protector or by a court, but — except for the Oregon stewardship statute — there is not much state law guidance as to the succession, resignation, removal, compensation, liability, and voting rights of enforcers, trustees, advisory committee members, and other persons involved in the administration of the trust. Thus, the purpose trust should be drafted to cover the following topics by:

1. Requiring that more than one person have an enforcement role to assure that purposes are served.
2. Providing checks and balances, such as the appointment of one or more committees (in addition to an enforcer) that are responsible for different functions of the trust operations and that might represent different constituencies of interested persons. For example, in the case of a purpose trust that owns a business (a stewardship trust), one member of a committee may be represented by each of the following stakeholders: employees, managers, investors, community representatives, customers, and so forth. Oregon’s stewardship trust statute is a good model.
3. Including rules for the succession, resignation, removal, compensation, liability, and voting rights of enforcers, trustees, advisory committee members, and other persons involved in the administration of the trust.
4. Clarifying the rights of enforcers, committees, and interested persons to obtain information about the trust.

Because there is no government oversight of purpose trusts or sanctions for mismanagement of noncharitable purpose trusts similar to those imposed by tax law on charitable trusts for conflicts

of interests — such as self-dealing, excess benefit transactions and jeopardy investments, no beneficiaries who have standing to sue to protect the purpose and there also may be no person who has an economic incentive to enforce the purpose — drafters could consider giving a nonprofit organization enforcement rights and provision for a contingent reversion if there is “mission drift” or gross mismanagement. Although the enforcer or protector has a fiduciary duty to enforce the purpose, it is not clear whether they have an economic incentive to act or to whom the fiduciary duty is owed.

Another alternative might be to require that purpose trusts provide annual or other periodic accountings to all interested parties.

## **Income Tax Issues**

There is some uncertainty whether a purpose trust is a trust for income tax purposes. This is a question of federal law.<sup>22</sup> Reg. [section 301.7701-4\(a\)](#) defines an ordinary trust as an arrangement whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Although this regulation seems to require that there be a beneficiary for a trust to be treated as a trust for tax purposes, there are at least three authorities indicating that this may not be the view of the IRS:

1. Rev. Rul. 76-486, 1976-2 C.B. 192: A pet trust is a trust described in IRC [section 641](#) provided that the trust is valid under applicable state law, but distributions on behalf of the pet are not deductible under IRC [section 661](#) because a pet is not a beneficiary as defined for tax purposes; a beneficiary must be a “person,” which does not include an animal;
2. Rev. Rul. 58-190, 1958-1 C.B. 15 (cemetery trust); and
3. INFO 2015-0039 (gun trust).

If a purpose trust is not a trust, it is a “business entity” eligible to elect whether to be taxed as an association taxable as a corporation, a disregarded entity, or a partnership.<sup>23</sup> If a purpose trust is a business entity, it should be classified as an association taxable as a corporation because the purpose trust has no beneficiaries to whom income could be taxed if it were classified as a disregarded entity or as a partnership.

As a practical matter, this issue is of concern only to those purpose trusts that have income, and many purpose trusts have little or no income. For example, a stewardship arrangement or EOT may be designed to spend most or all profits on corporate expenditures to provide for employees, research and development, or other business purposes, as well as donations to charity or the community.

Pending clarification of this tax question, a purpose trust could be drafted to primarily serve a stated purpose but also to include unnamed discretionary beneficiaries. This would not only help to classify the purpose trust as a trust for income tax purposes (because it in fact has beneficiaries) but also allow income tax deductions for distributions to such beneficiaries.

1. However, it is advisable that the discretionary beneficiaries are not limited to charities to avoid any risk that the purpose trust will be deemed to be wholly charitable and therefore subject to the private foundation rules under IRC [section 4947](#).<sup>24</sup>

2. In the case of a purpose trust that is formed for the primary purpose of owning a family office, beneficiaries must be limited to make sure that the family office will qualify for the family office exemption from SEC registration as an investment adviser under 17 CFR 275.202(a)(11)(G)-1.

A purpose trust – assuming that it is classified as a “trust” for federal income tax purposes - may be either a grantor trust or a non-grantor trust depending on how it is drafted. For example, the purpose trust may be a grantor trust under IRC [section 674\(c\)](#) unless “independent trustees” control distributions without the consent of another person (such as a distribution adviser). In some circumstances, grantor trust status may be desired, at least for some period of time, for example, to avoid tax on a sale of assets to a purpose trust<sup>25</sup> or to allow the trust to grow in value by having the grantor pay tax on its income.<sup>26</sup> However, even if the trust is intentionally structured to be a grantor trust, it is advisable to authorize a person to amend the trust to terminate grantor trust status if it is no longer desirable.

A purpose trust should be drafted to avoid unintentionally becoming a foreign trust.<sup>27</sup> Generally, this may be accomplished by requiring that U.S. persons control all trust decisions and administer the trust in the United States.

Trust classification may not be desired. Consider the benefits/detriments of using a nonstock corporation rather than a purpose trust to own shares of a corporation. Some advantages are: IRC [section 243](#) (dividends received deduction for affiliated corporations); lower income tax rate; no risk of grantor trust classification; no need for appointing a trustee in the chosen jurisdiction or risk of other state law applying; and clear classification as a corporation under Treas. reg. [section 301.7701-2\(b\)\(1\)](#). However, some disadvantages are a limited charitable deduction<sup>28</sup> and no [section 661](#) deduction for distributions to discretionary beneficiaries.

## Gift and Estate Tax Considerations

A gratuitous transfer to a noncharitable purpose trust is a gift. The typical tools used to manage gift tax can be applied: installment sales; grantor retained annuity trust; preferred partnerships; carried interests; gifts of interests that may qualify for lack of control and/or lack of marketability discounts; grantor trusts; and loans.

In the case of a purpose trust set up for stewardship of a business, the purpose trust may be structured to own equity having voting rights but no economic rights to minimize value and gift tax. Nonvoting equity with dividend or other distribution rights could be granted to a [section 501\(c\)\(4\)](#) organization to avoid gift tax.<sup>29</sup> This was the strategy used in the Patagonia case. However, if a donor makes a gratuitous transfer to a purpose trust or a [section 501\(c\)\(4\)](#) organization and retains the right alone or with others to control beneficial enjoyment, the assets of the trust or [section 501\(c\)\(4\)](#) organization may be included in the donor’s gross estate.<sup>30</sup> This is a problem because, although a lifetime transfer to a [section 501\(c\)\(4\)](#) organization is not subject to gift tax, a transfer at death is subject to estate tax. This problem could be avoided by giving the nonvoting equity to a charity, but due to excess business holdings limitations on private foundations and donor-advised funds,<sup>31</sup> ownership of the nonvoting equity by a charitable private foundation or DAF may not be feasible. A contingent

gift to a charity if the property is includable in the donor's gross estate may not be effective to avoid estate tax.

The problem of retained control causing inclusion in the estate under [section 2036](#) can be avoided by retaining indirect control via proxies — such as by a donor retaining the right to remove and appoint independent trustees.<sup>32</sup> [Section 2036](#) also is avoided if there is no gratuitous transfer; if the assets are sold for full value to the purpose trust, the retention of control does not cause assets to be included in the transferor's estate.

## Stewardship — Preventing Sales

In the case of a purpose trust set up for stewardship of a business, the purpose trust may be structured to own equity having voting rights but no economic rights to minimize value and gift tax. Nonvoting equity with dividend or other distribution rights could be granted to a [section 501\(c\)\(4\)](#) organization to avoid a gift. However, this structure is not sufficient by itself to prevent a sale in violation of the grantor's wishes. Although a buyer might not want only voting or only nonvoting shares, a buyer might be able to purchase both voting and nonvoting shares.

A typical purpose of a steward ownership is to avoid a sale of the business and preserve the business mission of the founder. Unless the business owned by the stewardship trust is organized under state law as a “benefit” or “B” corporation, a shareholder may have enforceable rights under applicable state law to require the company or the controlling owner to maximize shareholder value, which could include an obligation to accept an above-market purchase offer from a strategic buyer. The managers of regular corporations have a duty to maximize value, but corporations organized as benefit corporations are explicitly allowed to consider the interests of other stakeholders, not only shareholders, and the public in managing the business of the corporation.

To avoid a sale, one potential remedy is to issue a special class of stock — sometimes referred to as a “golden share” — if state law permits this. A “golden share” (also known as a “veto share”) is a share that has no dividend rights and no voting rights other than the right to veto either sales of the business or a modification of the articles of organization to undermine the stewardship mission. The golden share may be held by a purpose steward, such as an independent nonprofit dedicated to promoting steward ownership. The Purpose Foundation, a nonprofit, offers to serve as the owner of golden shares.<sup>33</sup> Under this approach, a purpose trust might own voting stock with no dividend rights, investors may own nonvoting preferred stock with dividend rights and limited rights to increases in shareholder value, and the Purpose Foundation (or another person) may own a share that has only veto rights to certain decisions.<sup>34</sup> If investors have a “capped” right of return on their shares, they would not necessarily benefit from an above-market value price offered by a strategic buyer.

In the case of an EOT, one strategy for avoiding a sale is to provide that the proceeds of sale be distributed to an unnamed nonprofit organization rather than to current employees who might otherwise benefit from the strategic sale of the business. No person would have a claim to be injured by the failure to take advantage of an above-market value sale. This is one significant way that an EOT differs from an employee stock ownership plan.

## **Transition of Ownership to a Purpose Trust and Raising Capital for a Company Owned by a Stewardship Trust**

Current owners may wish to recover some or all of the value of their equity in the business or may need to raise working capital for the business. These goals may be achieved without jeopardizing the objectives of steward ownership — that is, vesting voting control in “stewards” and eliminating the economic incentive to maximize shareholder value — by use of all or a combination of the following: salary continuation plans, installment redemptions, leveraged buyouts, subordinated debt, or preferred equity with a limited upside. For example, if the company has the right to redeem the shares held by investors after investors have recovered some stated multiple of their investment, investors cannot benefit from a purchase offer at a price higher than their redemption value and therefore have no (or at least less) incentive to complain if the stewards reject a purchase offer.

### **Alternatives to a Purpose Trust**

1. Foundations (domestic — New Hampshire and Wyoming have statutes for the formation of noncharitable foundations — or foreign) may serve charitable and/or private purposes. Foundations that do not serve commercial purposes may be classified and taxed as trusts even though under applicable law they may not have ascertainable beneficiaries who have the right to enforce the duties that foundation managers owe to the foundation (and typically do not owe to beneficiaries). Foundations frequently are used in civil law countries for steward ownership since most civil law countries do not recognize trusts and, where they are functioning like ordinary trusts, are treated as such for U.S. income tax purposes.<sup>35</sup> Typically, there is government oversight of foundations in Europe which is comparable to the oversight of charities by state attorneys general in the United States.
2. Nonstock corporations, for example, Del. Code tit. 8, section 101 et seq., do not have shareholders and are controlled by members, if any, or if there are no members, by directors.
3. Cooperatives.
4. “Golden share” holds certain veto rights and is owned by a “purpose steward.”<sup>36</sup>
5. Decentralized autonomous organization — blockchain.<sup>37</sup>

### **Conclusions**

Purpose trusts, and in particular stewardship trusts, represent an experiment that abandons some traditional property law concepts:

1. the foundational “beneficiary principle” of trusts which may interfere with the accomplishment of trust purposes;
2. the duty of companies to maximize shareholder value rather than serve other stakeholder interests; and
3. perpetual restraints on the alienation of property.

Whether this experiment succeeds will depend on diligent, fair, and wise collective decision-making by persons who may have no or only a limited stake in the results of their decisions; care and skill in drafting is necessary to avoid abuses, misallocation of resources, and inefficiencies.<sup>38</sup> Although foundations and steward ownership have been used in Europe for decades, there is some government oversight of these structures in Europe, which is lacking in the United States.

Survey of State Law Term Limits for Noncharitable Purpose Trusts

State	Adopted UTC	Purpose Trust Limited to 21 Years?	Time Frame Limit of Purpose Trusts	Statutory Section
Alabama	Yes	Yes	21 years	Ala. Code 1975 section 19-3B-409
Alaska	No	Yes	21 years	A.S section 13.12.907
Arizona	Yes	No	90 years	Ariz. Rev. Stat. section 14-10409
Arkansas	Yes	Yes	21 years	Ark. Code Ann. section 28-73-409
California	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
Colorado	Yes	Yes	21 years	Colo. Rev. Stat. Ann. section 15-5-409
Connecticut	Yes	No	90 years	Conn. Gen. Stat. Ann. section 45a-499cc
Delaware	No	No	Perpetual	Del. Code Title 12 section 3556
District of Columbia	Yes	Yes	21 years	D.C. Code section 19-1304.09
Florida	Yes	No	1,000 years	Fla. Stat. Ann. section 736.0409

Survey of State Law Term Limits for Noncharitable Purpose Trusts

<b>State</b>	<b>Adopted UTC</b>	<b>Purpose Trust Limited to 21 Years?</b>	<b>Time Frame Limit of Purpose Trusts</b>	<b>Statutory Section</b>
Georgia	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
Hawaii	Yes	No	None specified; Statutory Rule Against Perpetuities Applies	Haw. Rev. Stat. section 554D-409
Idaho	No	No	None specified; Idaho law forbids limitations on the absolute power of alienation of property for a longer period than the continuance of lives of persons in being at creation plus 25 years. Idaho Stat. section 55-111A.	Idaho Stat. section 15-7-601
Illinois	Yes	Yes	21 years	760 Ill. Comp. Stat. section 3/409
Indiana	No	Yes	21 years	IN Code section 30-4-2-19
Iowa	No	Yes	21 years	Iowa Code section 633A.2105
Kansas	Yes	Yes	21 years	Kan. Stat. Ann. section 58a-409
Kentucky	Yes	No	None specified; Kentucky law forbids limitations on the power of alienation of property for a longer period than 21 years after the death of a life or lives in being at	Ky. Rev. Stat. section 386B.4-090



Survey of State Law Term Limits for Noncharitable Purpose Trusts

State	Adopted UTC	Purpose Trust Limited to 21 Years?	Time Frame Limit of Purpose Trusts	Statutory Section
			creation. Ky. Rev. Stat. section 381.225.	
Louisiana	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
Maine	Yes	No	Perpetual	Me. Rev. Stat. Ann. tit. 18-B, section 409
Maryland	Yes	Yes, unless settlor elects otherwise	Settlor selects timeframe	Md. Code, Est. & Trusts section 14.5-408
Massachusetts	Yes	No	Common Law Rule Against Perpetuities Applies	Mass. Gen. Laws Ann. ch. 203E, section 409
Michigan	Yes	No	25 years	Mich. Comp. Laws Ann. section 700.7409
Minnesota	Yes	Yes	21 years	Minn. Stat. Ann. section 501C.0409
Mississippi	Yes	Yes	21 years	Miss. Code Ann. section 91-8-409
Missouri	Yes	Yes	21 years	Mo. Rev. Stat. section 456.4-409
Montana	Yes	Yes	21 years	Mont. Code Ann. section 72-38-409
Nebraska	Yes	Yes	21 years	Neb. Rev. Stat. section 30-3835

Survey of State Law Term Limits for Noncharitable Purpose Trusts

State	Adopted UTC	Purpose Trust Limited to 21 Years?	Time Frame Limit of Purpose Trusts	Statutory Section
Nevada	No	No	365 years; NRS section 111.1031	NV Rev. Stat. section 163.5505; 163.551
New Hampshire	Yes	No	Perpetual	N.H. Rev. Stat. section 564-B:4-409
New Jersey	Yes	No	None Specified; New Jersey law forbids limitations on the power of alienation of property for a longer period than 21 years after the death of a life or lives in being at creation. N.J. Stat. Ann. Section 46:2F-10.	N.J. Stat. Ann. section 3B:31-25
New Mexico	Yes	Yes	21 years	N.M. Stat. Ann. section 46A-4-409 (1978)
New York	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
North Carolina	Yes	Yes	21 years	N.C. Gen. Stat. Ann. section 36C-4-409
North Dakota	Yes	No	None Specified; Statutory Rule Against Perpetuities Applies. N.D. Cent. Code section 47-02-27.1.	N.D. Cent. Code section 59-12-09
Ohio	Yes	Yes	21 years	Ohio Rev. Code section 5804.09

Survey of State Law Term Limits for Noncharitable Purpose Trusts

<b>State</b>	<b>Adopted UTC</b>	<b>Purpose Trust Limited to 21 Years?</b>	<b>Time Frame Limit of Purpose Trusts</b>	<b>Statutory Section</b>
Oklahoma	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
Oregon	Yes	No	90 years	Or. Rev. Stat. section 130.190
Pennsylvania	Yes	Yes	21 years	20 Pa. Cons. Stat. Ann. section 7739
Rhode Island	No	Does not expressly authorize noncharitable purpose trusts	Does not expressly authorize noncharitable purpose trusts	NA
South Carolina	Yes	No	Common Law Rule Against Perpetuities Applies	S.C. Code section 62-7-409 (1976)
South Dakota	No	No	Perpetual	S.D.C.L. 55-1-20
Tennessee	Yes	No	360 years	Tenn. Code Ann. section 35-15-409
Texas	No	No	300 years; Tex. Prop. Code section 112.036.	Tex. Property section 112.121
Utah	Yes	Yes	21 years	Utah Code Ann. sections 75-7-409, 75-2-1001 (1953)
Vermont	Yes	Yes	21 years	Vt. Stat. Ann. tit. 14A, section 409

Survey of State Law Term Limits for Noncharitable Purpose Trusts

State	Adopted UTC	Purpose Trust Limited to 21 Years?	Time Frame Limit of Purpose Trusts	Statutory Section
Virginia	Yes	Yes	21 years	Va. Code Ann. section 64.2-727
Washington	No	No	150 years; RCWA section 11.98.130	RCWA section 11.98.015
West Virginia	Yes	No	Statutory Rule Against Perpetuities Applies	W.Va. Code . section 44D-4-409
Wisconsin	Yes	No	None Specified; Statutory Rule Against Perpetuities Applies , Wis. Stat. Ann. Section 700.16	Wis. Stat. Ann. section 701.0409
Wyoming	Yes	No	Perpetual	Wyo. Stat. section 4-10-410 (1977)

**FOOTNOTES**

<sup>1</sup> For a history of noncharitable purpose trusts, see Richard C. Ausness, “Non-Charitable Purpose Trusts: Past, Present and Future,” 51 *Real Prop. Prob. & Tr. J.* 2 (2016).

<sup>2</sup> David Gelles, “Billionaire No More: Patagonia Founder Gives Away the Company,” *The New York Times*, Sept. 14, 2022; Beck Groff and Susan N. Gary, “Patagonia, Purpose Trusts, and Stewardship Trusts — Business With a Purpose,” 37 *Prob. & Prop.* 1 (2023).

<sup>3</sup> One of the first was Organically Grown Co. (OGC). OGC converted to purpose trust ownership in 2018. Unlike Chouinard, the owners of OGC received compensation for at least a portion of their equity in the business. OGC is widely used as a model for steward ownership.

<sup>4</sup> A description of companies using some form of steward ownership may be found at the Purpose website, [www.Purpose-us.com](http://www.Purpose-us.com); [Purpose-economy.org/en](http://Purpose-economy.org/en).

<sup>5</sup> Purpose Trust Ownership Network <https://trustownership.org/>; Harvard Advanced Leadership Initiative "Rethinking Ownership: Putting Purpose at the Center" <https://www.sir.advancedleadership.harvard.edu/articles/rethinking-ownership-putting-purpose-at-center> Purpose Foundation, "About Us"; National Center for Employee Ownership, "An Introduction to Employee Ownership Trusts" (Mar. 2023). [www.nceo.org/article/introduction-employee-ownership-trusts](http://www.nceo.org/article/introduction-employee-ownership-trusts)

<sup>6</sup> For a description of the organizational structure of OpenAI, see OpenAI, "Our Structure" (updated June 28, 2023).

<sup>7</sup> For a history of noncharitable purpose trusts, see Ausness, *supra* note 1. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2881319](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2881319)

<sup>8</sup> See A.J. Hirsch, "Delaware Unifies the Law of Charitable and Noncharitable Purpose Trusts," 36 *Est. Plan.* 13 (Nov. 2009).

<sup>9</sup> Susan N. Gary, "The Oregon Stewardship Trust: A New Type of Purpose Trust That Enables Steward-Ownership of a Business," 88 *U. Cin. L. Rev.* 3 (2020).

<sup>10</sup> In this article, "general" noncharitable purpose trusts means those trusts described in section 409 of the UTC and excludes pet trusts and cemetery trusts.

<sup>11</sup> The stewards may be a self-perpetuating group or may be elected representatives of stakeholder groups.

<sup>12</sup> An EOT is different from an employee stock ownership plan, which is primarily a retirement plan governed by ERISA. An ESOP has many tax advantages that do not apply to EOTs, but an ESOP is heavily regulated and may create an obstacle for business continuity because trustees of an ESOP in some cases may have a fiduciary duty to accept an attractive purchase offer. An EOT may be viewed as a hybrid trust because it has beneficiaries as well as a purpose. For more information about EOTs, see NCEO, "An Introduction to Employee Ownership Trusts" (Mar. 2023) note 5 *supra*; Christopher Michael, "Employee Ownership Trusts: A New Model of Employee Ownership?" EOT Advisors (2017).

<sup>13</sup> IRC section 2701 will value a preferred interest at zero for purposes of determining the amount of a gift of a common interest in a family-controlled entity unless certain exceptions apply.

<sup>14</sup> Meta (formerly Facebook) is using a Delaware purpose trust called the Oversight Board Trust to own an independent company operating a media content review "oversight board." The purpose is "to facilitate the creation, funding, management and oversight of a structure that will permit and protect the operation of an Oversight Board for Content Decisions . . . whose purpose is to protect free expression by making principled, independent decisions about important pieces of content and by issuing policy advisory opinions on . . . content policies." Facebook, "Oversight Board Charter" (2019); Oversight Board, "Who We Are."

<sup>15</sup> ORS 130.193(14).

<sup>16</sup> Ill. Gen. Assemb., H.B. 4594 proposing new section 409.5 to Illinois’s version of the UTC. *See infra*, Survey of State Law Term Limits for Noncharitable Purpose Trusts, for further information.

<sup>17</sup> 12 Del. Code Ann. section 3541 (*unless the trust agreement provides otherwise*, if a particular charitable or noncharitable purpose becomes unlawful or would otherwise no longer serve any charitable or noncharitable purpose the Court of Chancery may modify or terminate the trust and direct that the assets be distributed in a manner consistent with the trustor’s purposes). UTC section 412 allows modification of administrative and dispositive terms of a trust *to accomplish the settlor’s purposes* but does not appear to reach modification of the purposes (although comments to section 412 seem to equate this section to section 413(a) — *cy pres*).

<sup>18</sup> For example, 12 Del. Code Ann. section 3313 and section 3313A provide that a fiduciary is not liable for following directions of a person who is given authority in the trust instrument to direct investment, distributions, or other fiduciary decisions and has no duty to monitor, advise, or communicate with such advisers.

<sup>19</sup> For example, in Oregon, only a stewardship trust is allowed to continue in perpetuity; other noncharitable purpose trusts are subject to term limits.

<sup>20</sup> *See 61 Am. Jur. 2d Perpetuities, Etc. III A Refs.* section 88. Generally, perpetual restraints on alienation are void as contrary to public policy.

<sup>21</sup> Ausness, *supra* note 1.

<sup>22</sup> Reg. section 301.7701-1(a) (federal law prescribes the classification of organizations for tax purposes).

<sup>23</sup> Treas. reg. section 301.7701-3(a).

<sup>24</sup> IRC section 4947 imposes private foundation rules on certain wholly charitable trusts and certain split interest trusts.

<sup>25</sup> Rev. Rul. 85-13, 1985-1 C.B. 184.

<sup>26</sup> To avoid inclusion in the grantor’s estate, the grantor may not retain the right to be reimbursed for taxes attributable to trust income. Rev. Rul. 2004-64, 2004-2 C.B. 7.

<sup>27</sup> IRC section 7701(a)(30) and (31) define “foreign trust” and “domestic trust.” IRC section 684 imposes gain on transfers to foreign non-grantor trusts; IRC section 679 causes a foreign trust to be a grantor trust if there is a U.S. beneficiary; and IRC section 6048 imposes information reporting requirements for transfers to and from foreign trusts and on persons who are deemed owners of foreign trusts.

<sup>28</sup> IRC section 170(b)(2) (A) limits corporations' charitable contribution deductions to 10 percent of taxable income. A trust is allowed an unlimited deduction for charities if made pursuant to the governing instrument and paid from gross income. IRC section 642(c).

<sup>29</sup> IRC section 2501(a)(6) does not impose gift tax on transfers of money or property to organizations described in paragraphs (4), (5), or (6) of section 501(c) and exempt from tax under section 501(a) for the use of such organization.

<sup>30</sup> IRC section 2036. IRC section 2038 may cause the same result if the donor did not retain powers but later acquired them.

<sup>31</sup> IRC section 4943. Paragraph (e) extends the section to donor-advised funds.

<sup>32</sup> Rev. Rul. 95-58, 1995-2 C.B. 191.

<sup>33</sup> Purpose-economy .org/en/purpose-veto-share-foundation.

<sup>34</sup> Purpose-economy.org/content/uploads/purposebooklet\_en.pdf

<sup>35</sup> Office of Chief Counsel Internal Revenue Service Memorandum, AM 2009-012 (10/16/2009) addressing entity classification of Liechtenstein Anstalts and Stiftungs.

<sup>36</sup> Purpose Foundation, *supra* note 34.

<sup>37</sup> Nick Oberheiden, "5 Things to Consider When Creating a DAO," *JDSupra*, Feb. 8, 2022. <https://www.jdsupra.com/legalnews/5-things-to-consider-when-creating-a-dao-5888423/#:~:text=Most%20DAOs%20do%20not%20protect,in%20a%20DAO%20is%20unlimited>

<sup>38</sup> See Lucian A. Bebchuk and Roberto Tallarita, "The Illusory Promise of Stakeholder Governance," 106 *Cornell L. Rev.* 91, 91-178 (2020) (a contrary view of stewardship or stakeholder governance). For an entertaining debate on this subject, see *Other People's Money*, a film starring Danny DeVito as a corporate raider and Gregory Peck as the owner of the target company depicting a shareholder meeting to decide whether to approve a hostile takeover of a company whose net asset value exceeded its going concern value.

## END FOOTNOTES

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