

# J.P. Morgan's Trustee Provisions

We are honored to provide fiduciary services for your client. We know how important this appointment is, and are ready to provide you and your client with the experience, objectivity and continuity needed to safeguard your clients' assets and ensure proper trust administration.

## **OUR TRUSTEE PROVISIONS**

Depending on your client's needs, our U.S. clients are able to name one of the following legal entities as being appointed as trustee:

- JPMorgan Chase Bank, N.A.
- J.P. Morgan Trust Company of Delaware

When naming J.P. Morgan as trustee, the following provisions should be considered for newly drafted trust agreements. Please reach out to your J.P. Morgan partner to consult on drafting a new agreement and to tailor these provisions to your clients' unique needs.

### **Provisions to be considered for trustee appointments:**

- Compensation is based on the published J.P. Morgan fee schedule in effect at the time services are rendered. Proprietary fund fees are allowed.
- If a co-trustee, protector and/or outside advisor is paid, the compensation can be objectively determined and is reasonable.

- If a trust protector or outside advisor is appointed, trustee is held harmless/indemnified for acting at the direction of either.
- Provisions exist to replace the trust protector and/or outside advisor.
- No bond is required of the trustee.
- The trustee is authorized to terminate small or uneconomical trusts and it is clear to whom such trusts should be distributed if terminated.
- There are specific provisions for the resignation or removal of J.P. Morgan as trustee, the appointment of a successor trustee and the failure of all named successor trustees to serve.
- When J.P. Morgan is the successor trustee, where appropriate, it is released and indemnified for the actions or inactions of all prior trustees and directed not to pursue any claim against a prior fiduciary.
- Where applicable, the document completely and clearly addresses the incapacity determination of that party. The determination of incapacity is not the responsibility of the corporate trustee. HIPAA provisions are also in the document.

- Where there are co-trustees, the trust agreement or state statute establishes a complete and clear procedure for resolving disputes between co-trustees.
- Where applicable, trustee's written consent required if an amendment changes its duties and responsibilities.
- The trust agreement contains sufficiently comprehensive investment and administrative powers for administration, clearly states scope of trustee's investment authority and clarifies terms of any shared authority.
- Appropriate exculpatory and/or indemnification language is present when the trustee is directed on investments. The language is enforceable under applicable state law.
- The allocation of receipts and disbursements between income and principal is governed by applicable state law.
- Transfers of assets into a trust are subject to trustee's approval and acceptance.
- Where J.P. Morgan is a co-trustee, all fiduciary assets and records are to be held by or under its control. (Note any third-party provider and handling.)
- Where applicable, the trust agreement authorizes the retention of J.P. Morgan securities and clearly and completely addresses the power to vote the securities.
- Potential conflicts of interest are addressed, such as trustee depositing funds with itself or an affiliate, trustee borrowing or lending money from/to itself or an affiliate, trustee investing in an investment company, mutual fund, common trust fund, as well as "enabling language" which allows transactions of derivative and structured products with affiliates, including payment for such, and includes waiver of conflict of interest and loyalty language.
- Powers to borrow and to guarantee borrowings of others, pledge trust assets to secure trustee's obligations (not limited to securing loans), lend, terminate trust when uneconomical, hire professionals and other agents and to delegate discretionary and other powers to co-trustees and others.
- Special powers relating to specialty assets (if applicable), such as business entities, real property, oil, gas, mineral and timber, property interests (special provisions regarding with potential environmental hazards) and intellectual property.
- Power to make distributions for gifting purposes,
- **Delaware Trusts**—Does the document: **(a)** if directed for investments or distributions, by anyone, protect the trustee per §3313 and the trustee has no duty/discretion whatsoever?; **(b)** protect the trustee under §3302(e) if not abiding by prudent investment standards, or §3302(d) if holding insurance (see DE insurance language)?; **(c)** allow the trustee a court accounting?; **(d)** have the nine ministerial duties when co-trustee?; **(e)** clearly define (if applicable) any "silent period" and provide a DR per §3339?; **(f)** limit trustee liability to willful misconduct if directed?; **(g)** have the requisite asset substitution language (if applicable and directed) for grantor trusts (provide if not); and; **(h)** set the situs and governing law to DE?

The above provisions enable J.P. Morgan to administer trusts effectively and avoid certain situations that require the delay and expense of court intervention. This list is in no way meant to be a comprehensive list of necessary or appropriate trust provisions. This list does not include any tax provisions and includes only certain administrative and related dispositive and personal provisions that, in our experience, have proven to be extremely helpful during the course of trust administration.

**Please reach out to your J.P. Morgan partner for more information about our trustee provisions.**

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#### IMPORTANT INFORMATION

This material is being provided for informational purposes only. These services are provided for U.S. domestic trusts. JPMorgan Chase & Co., its affiliates, and employees do not provide tax, legal or accounting advice. Trust and estate planning requires legal assistance. You should consult with your tax, legal and accounting advisors concerning such matters. Clients' attorneys, and not J.P. Morgan, are responsible for the preparation and effect of any trust agreement based upon the contents of the document. J.P. Morgan assumes no responsibility for the use of any provisions in any particular trust agreement. Clients and their attorneys should independently review and verify the applicability, accuracy and completeness of the provision(s) and conclude that the use of the provision(s) will help the client accomplish their particular objectives, intentions and trust and estate planning needs.

**JPMorgan Chase Bank, N.A.** and its affiliates (collectively "JPMCB") offer investment products, which may include bank-managed accounts and custody, as part of its trust and fiduciary services. Other investment products and services, such as brokerage and advisory accounts, are offered through **J.P. Morgan Securities LLC** ("JPMS"), a member of [FINRA](#) and [SIPC](#). JPMCB and JPMS are affiliated companies under the common control of JPMorgan Chase & Co.