

# Texas Newcomer: Purpose Trust

Non-Charitable Purpose Trust  
Without Ascertainable Beneficiary



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#### DESIGNATIONS

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#### MEMBERSHIPS

Board of Governors, Dallas Estate Planning Council (2022-2024)  
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Chairperson, Emerging Professionals of the Dallas Estate Planning Council (2020-2022)  
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Member, Texas Bar College  
Member, Dallas Bar Association - Probate, Trust and Estates Section  
Member, Dallas Bar Association - Dallas Association of Young Lawyers

#### PRIOR EXPERIENCE

Jackson Walker, LLP, Dallas, TX, *Associate Attorney* (February 2023-May 2024)  
Loveland & Hurley, PLLC, Frisco, TX, *Associate Attorney* (June 2022-February 2023)  
Sharpe Law Group, Dallas, TX, *Associate Attorney* (November 2019-June 2022)  
Tolleson Wealth Management, Dallas, TX, *Trust Officer* (June 2018-November 2019)  
Hallman & Associates, P.C., Dallas, TX, *Associate Attorney* (November 2016-June 2018)

#### EDUCATION

University of Oklahoma College of Law, Norman, OK (August 2013-May 2016)  
Doctor of Jurisprudence  
AMERICAN INDIAN LAW REVIEW (2014-2016)  
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Southern Methodist University, Dallas, TX (August 2006-December 2009)  
Bachelor of Arts, International Studies and Spanish Literature  
Minors, Psychology and Human Rights

# Agenda

- ◇ Stage Setting
  - ◇ Traditional Trusts
  - ◇ Charitable Trusts
  - ◇ Non-Charitable Purpose Trusts
- ◇ History
- ◇ HB 2333 and the 2023 Texas Legislature
- ◇ Modern Examples
  - ◇ Organically Grown Company
  - ◇ Facebook, Inc.
  - ◇ Patagonia
  - ◇ Bloomberg, Inc.



# Traditional Trusts

- ◇ **Traditional trusts** benefit identifiable individuals or entities.
- ◇ **Beneficiaries:** Named individuals or entities.
- ◇ **Governance:** Managed by trustees with clear beneficiary rights.

# Charitable Trusts

- ◇ **Charitable trusts** serve specific charitable objectives and are regarded as charitable under the law. Trusts for charitable purposes are also technically purpose trusts, but they are usually referred to simply as charitable trusts.
- ◇ **Beneficiaries:** Specific organizations.
- ◇ **Governance:** Typically overseen by trustees and subject to state attorney general oversight.



# Non-Charitable Purpose Trusts

- ◆ A **non-charitable purpose trust** exists to fulfill a specific objective without necessarily benefiting an individual or identifiable beneficiaries.
- ◆ **Beneficiaries:** Non-human entities or specific purposes.
- ◆ **Governance:** Managed by trustee(s) with a separate “trust enforcer” enforcing the trust’s purpose.

# A History Lesson

- ◇ Offshore jurisdictions for “off-balance sheet” financing and other business purposes
  - ◇ British Virgin Islands
  - ◇ Bermuda
  - ◇ Cayman Islands
  - ◇ Cook Islands
  
- ◇ England during the 19<sup>th</sup> and early 20<sup>th</sup> centuries
  - ◇ Maintenance of tombs
  - ◇ Maintenance of monuments and gravesites
  - ◇ Performance of religious services
  - ◇ Saying of masses
  - ◇ Care of animals



# Leona Helmsley



# Betty White





# Oprah Winfrey



# Taylor Swift





# A History Lesson

- ◇ Doctrinal Issues
  - ◇ Perpetuity Issues
    - ◇ Rule Against Perpetuities
  - ◇ Beneficiary Principle Rule
    - ◇ Lack of ascertainable beneficiary contrary to origins of equity, meaning no one enforce (beneficiary or court)
  - ◇ Certainty Principle Rule
    - ◇ Intended purpose must be reasonably attainable, legal, not frivolous and not against public policy
  - ◇ Funding Issues
    - ◇ Need to be sufficiently funded
    - ◇ If over funded, courts would reduce and return excess

# A History Lesson

- ◇ Uniform Trust Code (2000)
  - ◇ Section 408 – authorizes trusts created for the care of a designated domestic or pet animal
  - ◇ Section 409 – authorizes non-charitable trusts without ascertainable beneficiaries (other than trusts for the care of animals)
    - ◇ Limited to 21 years, but purpose appears to be wide open.



# HB 2333 and the 2023 Legislature

## HB 2333

### ◇ Part 1

- ◇ Authorized the creation of a non-charitable purpose trust.
- ◇ Similar to Section 409 of the UTC
  - ◇ Included the concept of a trust enforcer to replace the quintessential trust beneficiary.
  - ◇ While the UTC version limits the duration of such trusts to twenty-one (21) years, HB 2333 contained no such restriction.

### ◇ Part 2

- ◇ Proposed permitting a “commercial legacy trust” for a commercial purpose, including seeking economic and noneconomic benefits.
- ◇ Also provided that a commercial legacy trust may have a business committee, which would act more or less like the board of directors of the trust.

# HB 2333 and the 2023 Legislature

## ◇ Part 2

◇ Never made it out of the House Committee

### ◇ Concerns:

- ◇ the ability of the “business committee” to remove and replace the trust enforcer and in doing so effectively provide unchecked authority to the business committee
- ◇ the proposed statute would inadvertently create a new business entity
- ◇ the proposed trust language left the planner without design control
- ◇ the requirement of funding the controlling interest in the applicable entity would stunt the settlor’s interest in funding the trust with non-controlling interests
- ◇ the fiduciary duties stated in the statute caused confusion for the trust’s stakeholders

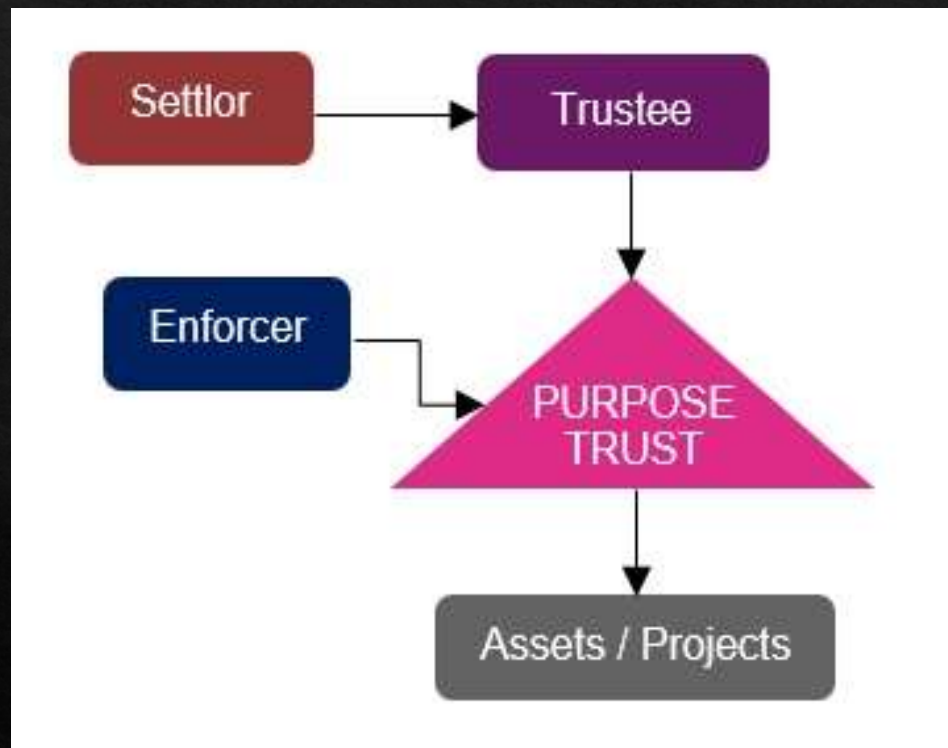


# NEW STATUTE – KEY FEATURES

- ◇ Instead of a beneficiary, the trust needs a “trust enforcer” who has the same rights as a beneficiary and must act as a fiduciary to carry out the terms of the trust;
- ◇ If the settlor appoints more than one trust enforcer, a majority is needed to act with the trustee serving as tie breaker in instances where there is an even number of enforcers;
- ◇ Trust enforcers are entitled to reasonable compensation;
- ◇ The settlor may provide for how the successor trust enforcers are determined;
- ◇ If there is a vacancy in the office of trust enforcer and the document does not provide for a successor enforcer, the court must appoint one;
- ◇ Trust property may be used only for the intended purpose; and
- ◇ If a court determines the amount is excessive, the excess passes under the terms of the trust, or if there are none, back to the settlor if the settlor is then living (otherwise to the settlor’s successors in interest).

Source: Dr. Gerry W. Beyer *Summary of Changes to Estate Planning Law Made By the 2023 Texas Legislature*, 4 (2023).

# DIAGRAM OF A PURPOSE TRUST



Source: Kensington Trust Group ([kensington-trust.com](http://kensington-trust.com))



# BENEFITS OF PURPOSE TRUSTS

- ◆ Useful solution where assets need to be held and for specific purposes without giving any person or class of persons an interest in those assets.
- ◆ Flexible structure which can be used for a whole range of purposes.
- ◆ Comfort to the settlor that the Trustee is responsible to ensuring that his original wishes and purposes for setting up the trust are adhered to.

# COMMON USES OF PURPOSE TRUSTS

- ◇ Communities
- ◇ Non-profit leaders
- ◇ Retiring founders
- ◇ Startup founders
- ◇ Municipalities
- ◇ Investors and Fund Managers



# THE TRUST AGREEMENT

In drafting a purpose trust, thorough consideration must be given to:

- ◇ Clearly defining the settlor's specific objective;
- ◇ How much property should be retained in trust;
- ◇ The duration of the trust;
- ◇ Who shall serve as trustee;
- ◇ Who shall serve as trust enforcers; and
- ◇ What happens to the trust property after termination.

# Modern Examples

Several companies have embraced perpetual purpose trusts as a way to align their business goals with long-term social impact.

Organically Grown Company

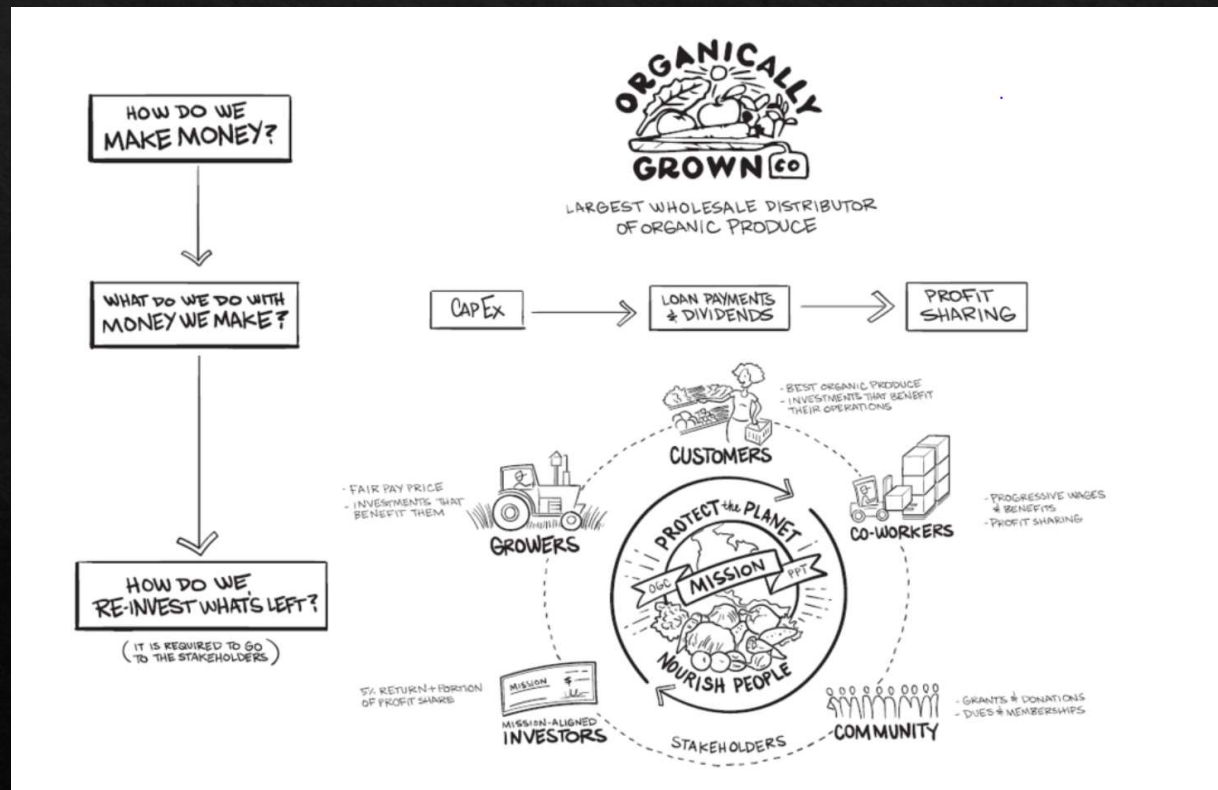
Facebook, Inc.

Patagonia

Bloomberg LP



# Organically Grown Company (OGC)



Facebook, Inc.





# Facebook, Inc.



Patagonia





Bloomberg, LP

