

Purpose Trusts for Business Succession

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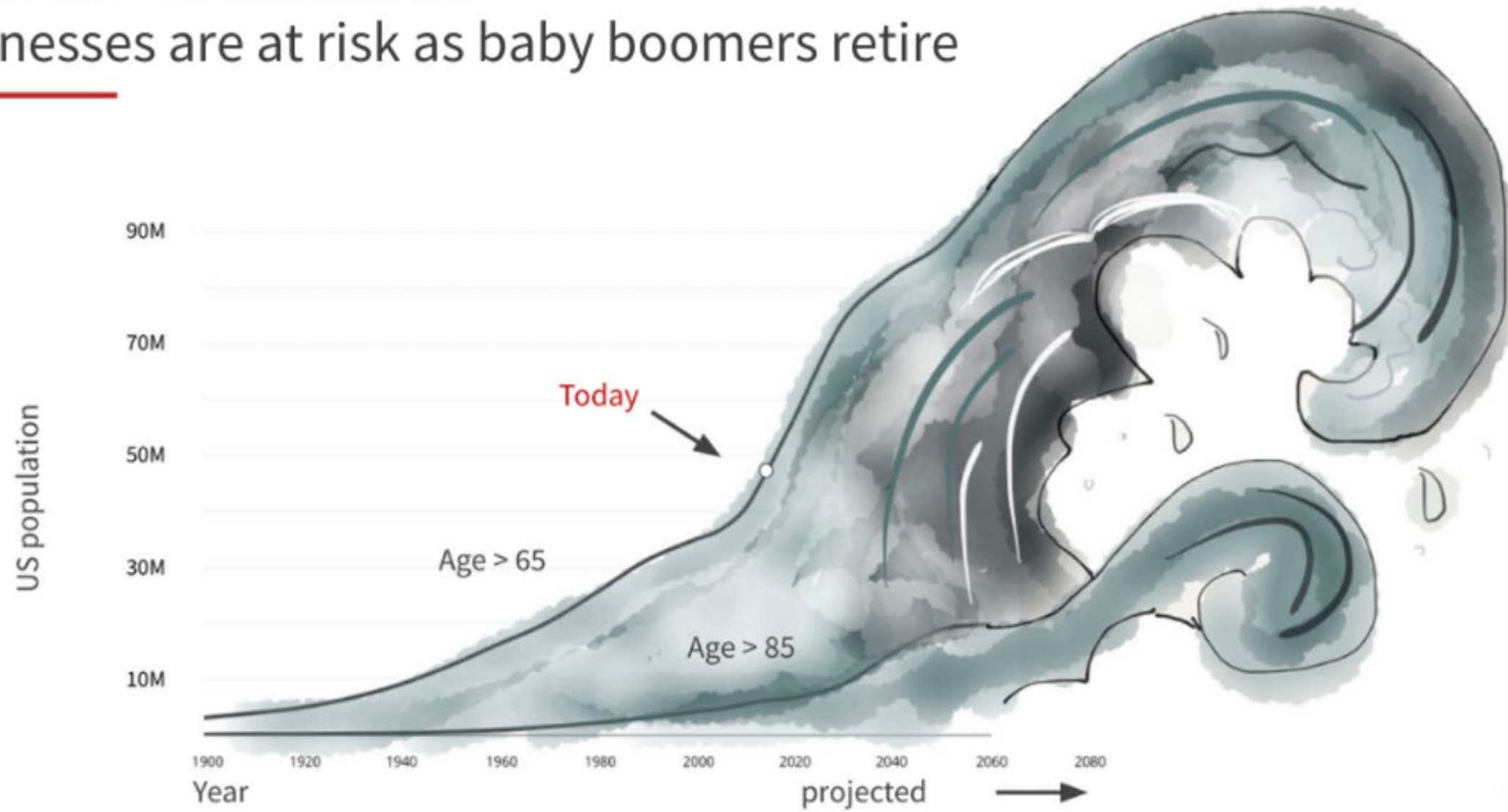
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Business Succession Challenges

- No children to take over the business
- Business may be difficult to sell as an on-going business
- Sale of the business may result in changes in the way the founder or owner has run the business
 - Focus on employee welfare
 - Operation with concern for environmental impacts
 - Community located and community focused
- If business is sold, buyer might move the business or shut it down

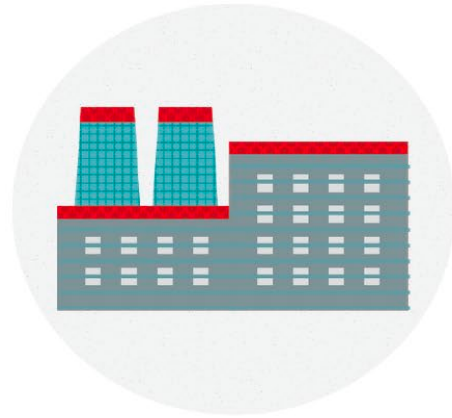
Silver tsunami

Businesses are at risk as baby boomers retire



6 out of 10 business owners plan to sell in the next decade.

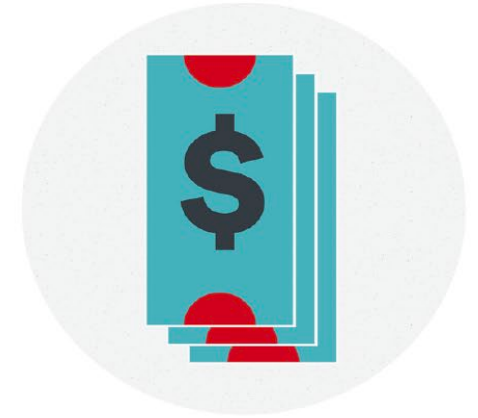
Baby boomers own over half of all privately held firms in the United States



2.9 million
firms



32 million
employees



\$6.5 trillion
in revenue

By selling to their employees, owners can keep their legacy alive by keeping these businesses and jobs in the community.

Why a Purpose Trust Structure Might Help

- Keep the business going
- Keep jobs in the community
- Continue operation of the business in line with the founder's values
- Provide money from a sale for the founder's retirement or to provide an on-going income stream for descendants

What Is a Purpose Trust?

- No definitely ascertainable beneficiaries
- Created to serve a purpose
 - we will focus on purpose trusts created to own a business, with stewards rather than shareholders or partners making decisions for the business
- Not charitable, but trust can permit distributions to charity
 - can be combined with a 501(c)(4) social welfare organization
- Perpetual – established in a state that permits it to exist in perpetuity or for a long time
 - these trusts are often called “Perpetual Purpose Trusts”
- No tax advantages (and no tax-related regulations)
- Uncertain tax classification
- Transfer by gift or by sale

Profits Serve Purpose - What Is the Purpose?

- **Protect the values and principles for the way the business is run**
 - Allow innovations and developments in products or services over time
- **Employee welfare**
 - Good salary, employee benefits, good working conditions, profit sharing
- **Environmental concerns**
 - Operating in an environmentally responsible manner
- **Location in a particular community**
 - Keeping the business local, engaging with the community
- **Support for the community**
 - Good quality jobs
 - Charitable giving
 - Resources for the community

Statute Required – Not Authorized under Common Law

- Preference for a state with no Rule against Perpetuities or an extended Rule
- Preference for a state that does not authorize the court to reduce the amount held in trust (as Uniform Trust Code § 409 provides)
- Delaware
 - Any purpose
 - Court can apply *cy pres* to modify a purpose trust
- Oregon – Stewardship Trust
 - Business purpose
 - Requires a stewardship committee with at least three members
 - Members of stewardship committee plus enforcers can modify (if unanimous)
- South Dakota
 - Any purpose
 - Court can modify if purpose becomes “inexpedient”

Governance Structure

- **No beneficiaries to enforce the trust**
- **A trustee**
 - Can be a corporate trustee or an individual trustee or trustees
 - Directed by the management committee (directed trust)
- **A management committee (stewardship committee)**
 - Can include former owner's family, investors, employees (but if transfer is by gift, need to be careful about estate tax concerns)
 - Can be representatives of stakeholder groups
- **A trust enforcer**
 - Should be independent of trustee

Options for Funding Sale

- **Earnings**

- The business may have retained earnings that can cover part of the purchase price.
- With an installment sale, future earnings can be used to pay the installments.

- **Loan**

- If the business has a social or environmental mission, the business may be able to obtain a social impact loan from a social finance company or from a private foundation looking for impact investments.
- The business may also be able to obtain a conventional loan.

- **Issuance of nonvoting stock**

- The company can sell nonvoting stock to investors.
- The owners might take nonvoting stock as part of the value owed for the owner's common stock. The owner could then give the nonvoting stock to descendants or others.

Where Does Company Revenue/Profit Go?

- **Operations** – in line with values set out in trust document
- **Debt service** – if loan needed to cover costs of transition
- **Operational reserves** – research and development
- **Dividend for nonvoting stock**
- **Profit-sharing for employees**
- **Charitable giving** and distributions to other stakeholders
- **Distribution to trust** to cover administrative costs

Conventional Ownership Structure



Ownership flow

Financial flow



Perpetual Purpose Trust

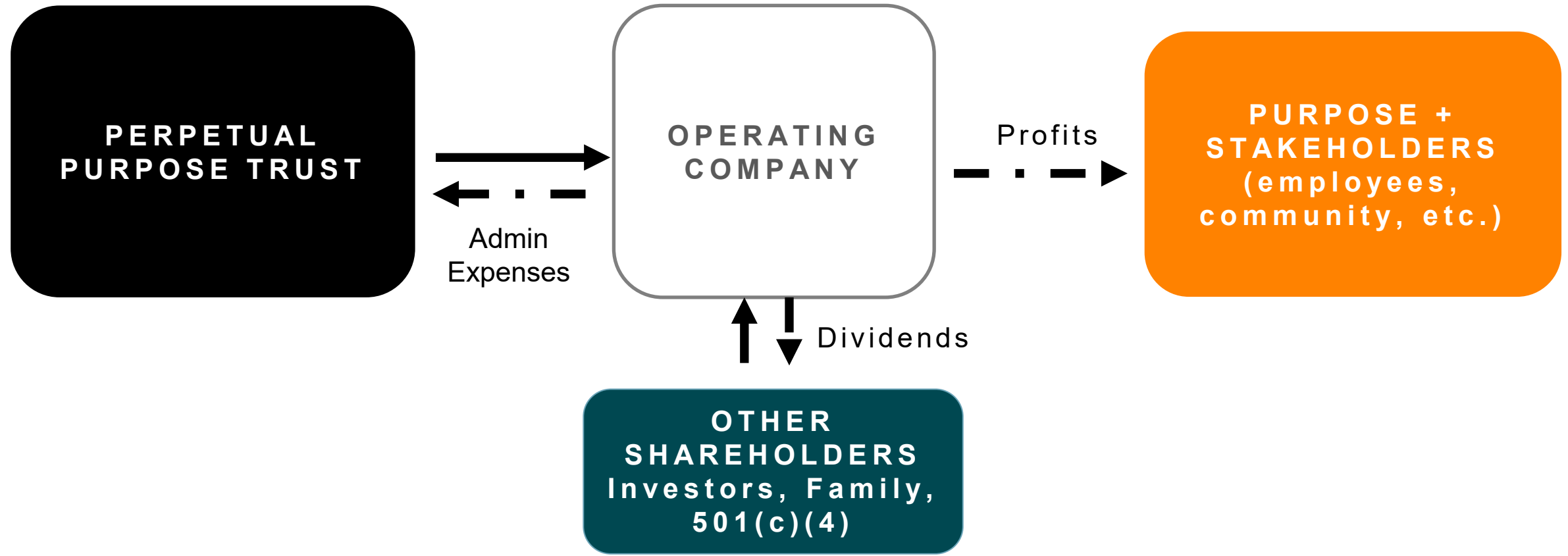


Ownership flow

Financial flow



Financial Flows



Ownership flow



Financial flow

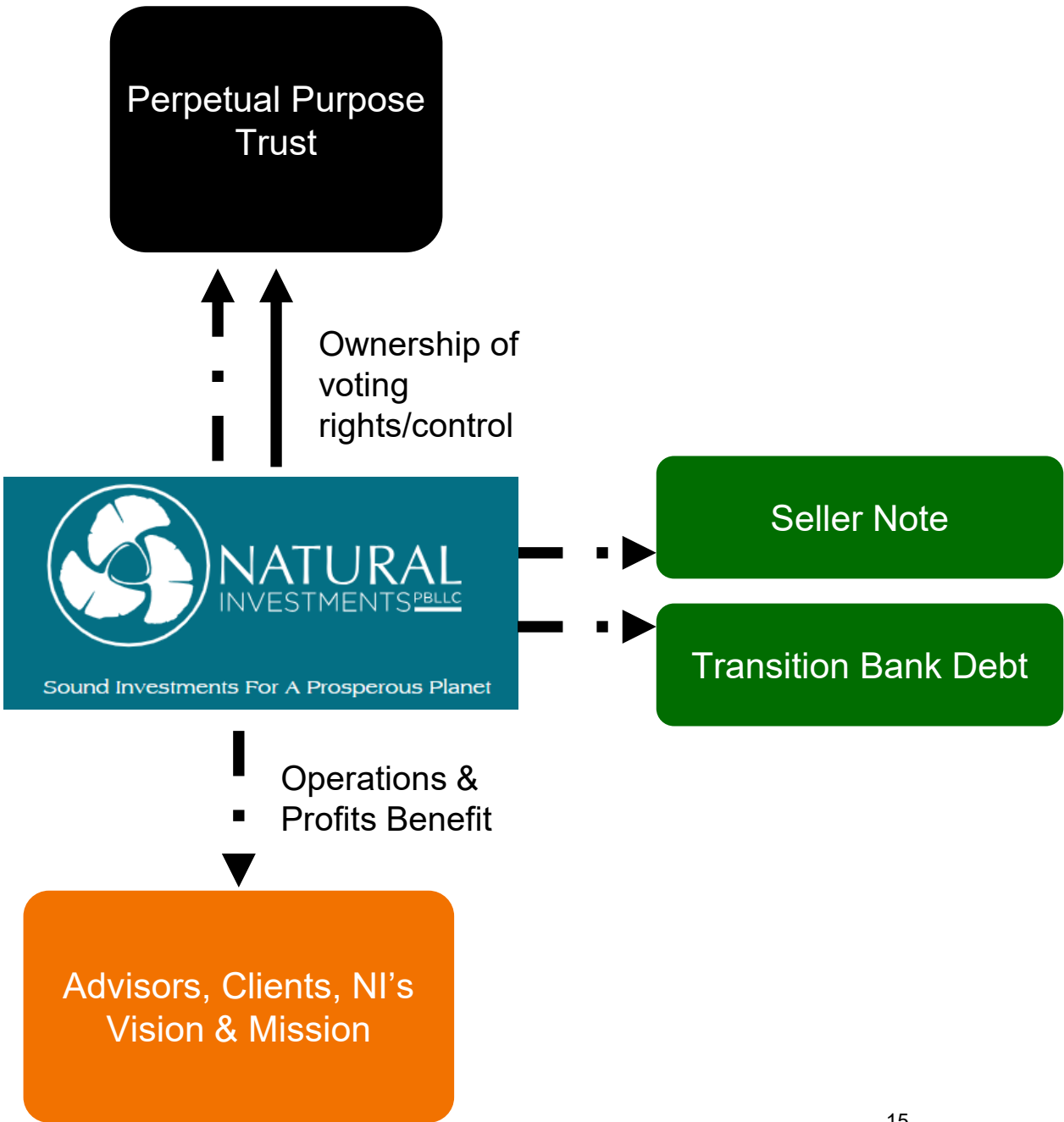


Natural Investments

100% Trust Owned (2023)

- Founded 1985
- Sector: Investment Advisory Services
- 25 Advisors, 1,300 clients, \$1.5B in assets

“Preserve and enhance the viability of the firm to support advisors in carrying out Natural Investments’ vision and mission.”



Organically Grown Co.

100% Trust Owned + Investors

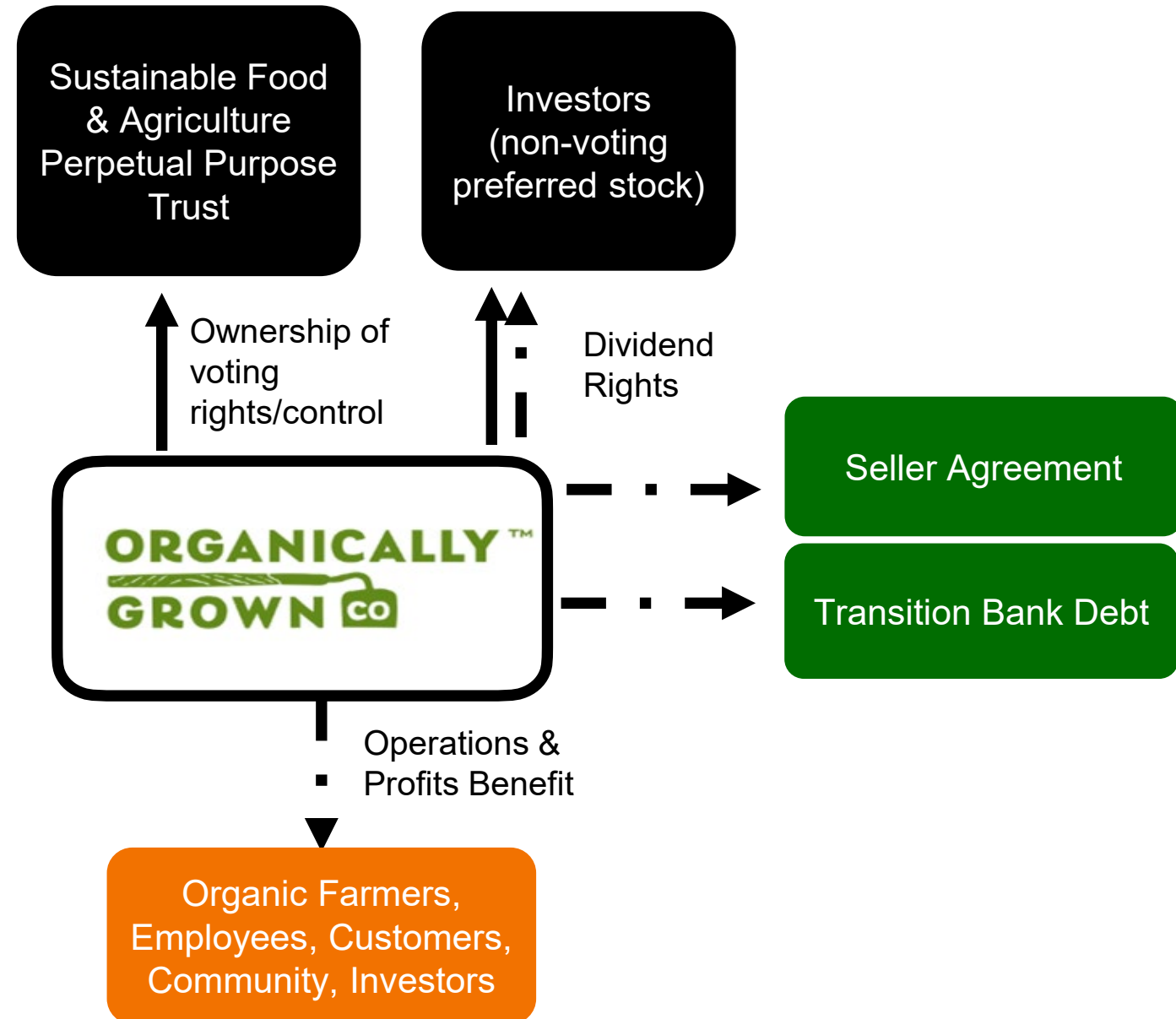
- Founded 1978
- Sector: Wholesale Distribution; fresh produce
- 300 employees in Pacific Northwest
- >\$100M revenue

“Support the efforts of independent, values-aligned organizations that advance sustainable agriculture”



Ownership flow

Financial flow



Patagonia

Trust + 5014 Charitable Org

- Founded 1973
- Sector: Manufacturing & Retail; outdoor clothing
- 3,000 employees
- >\$1B revenue

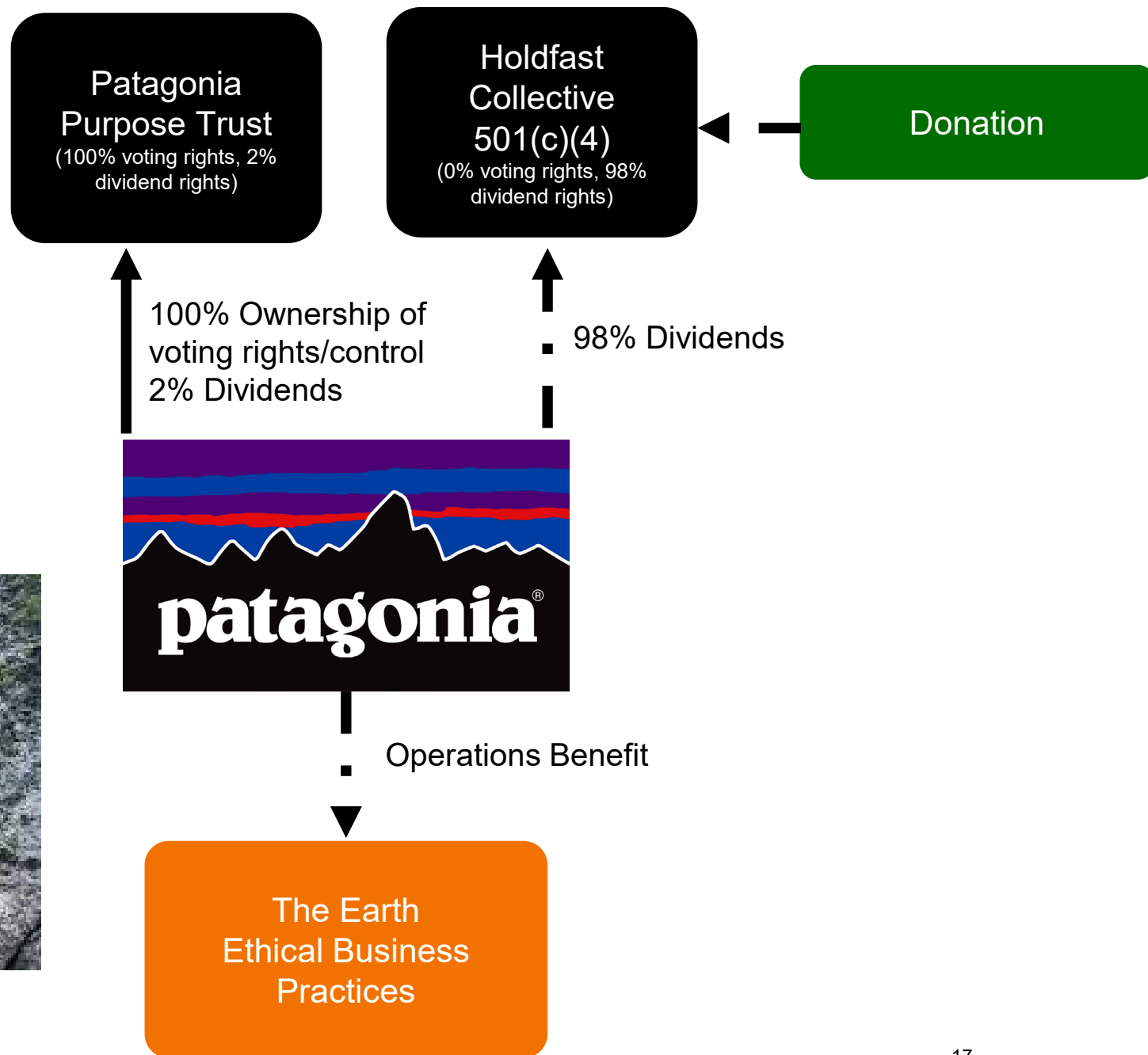
“Be in business to save our home planet.”

“Earth is our only shareholder.”



Ownership flow

Financial flow



Zingerman's

100% Trust Owned Brand + affiliate companies independently owned

- Founded 1982
- Sector: Retail and Manufacturing; restaurants, food products, training
- 800 employees
- >\$50M revenue

“The purpose of the Trust is to ensure Zingerman's principles are followed, remains rooted in Ann Arbor, benefits the employees and community.”



Ownership flow

Financial flow

Zingerman's Perpetual Purpose Trust

Ownership of voting rights/control

Zingerman's
Brand/IP

Royalties/License

Profit Sharing

Ann Arbor, MI
Employees
of Zingerman's businesses



Independently owned by partners

Advising Clients on PPTs

Define the purpose & objectives you want the trust to benefit

Decide if the trust will be a 100% owner or partial owner

Design the Governance roles—Trust Stewardship Committee, Trust Enforcer, Trustee, Company Board

Financial modeling for the seller and the company to ensure the viability of the transaction. Decide if sale at full value, gift, partial gift, timeline.

Considerations for the Trustee – Purpose Trust Statute

- The trustee needs to have confidence that the trust complies with the purpose trust statute of the state whose laws govern the purpose trust, and that the applicable law is appropriate to the accomplishment of the trust's purposes.
- There are important variations in purpose trust statutes, with some being more appropriate for owning a business.

Considerations for the Trustee – Directed Trust Statute

- There are **various standards of liability among directed trust statutes** of various states.
- The trustee may have a duty to determine that the action is not manifestly contrary to the terms of the trust or that an action that would not constitute a serious breach of a fiduciary duty.
- The directed trust statute may have a willful misconduct standard.
- The directed trust statute may provide that a directed trustee is not liable in any instance, e.g., the Nevada directed trust statute.
- The statute may create an excluded trustee.
- The trustee needs to understand the directed trust statute of the given state and be willing to operate under that statute's standard of liability.
- Even with a willful misconduct standard, there are instances when a directed trustee might become uncertain and petition the court for guidance or other action.

Considerations for the Trustee – The Viability of the Purpose Over a Long Period of Time

- In a purpose trust the trustee needs to understand the fact pattern and potential scenarios that could develop over time before accepting the role of trustee.
- This is important given the fact that the trustee will likely be directed by other parties and therefore have no ability to change course if the trustee does not agree with the scenario at a later time.
- By definition the trust is established and structured to own the company for a long period of time. If designed as described with the safeguards, there will be representation by the various stakeholders who are impacted by the business, and the committee will have the flexibility to make changes as needed.

Considerations for the Trustee – The Viability of the Purpose Over a Long Period of Time

- However, one could conceive of a fact pattern that could lead to a trustee's uncertainty, even in a purpose trust that was structured well at the inception.
- For example, what if the company held in the purpose trust decreases significantly in value, is in an industry that no longer exists, is located in a community that no longer is appropriate for the business activity, or the trustee feels that the committee directing the trustee is not objective because the members are entrenched in the company?
- **The purpose trust should address these possibilities by providing a procedure to modify the trust purpose if it becomes impossible or impractical to achieve.**

Considerations for the Trustee – The Viability of the Purpose Over a Long Period of Time

- The structure should appoint an **enforcer who is unrelated to the trustee or any advisors or members of the committee that directs the trustee.**
- If the enforcer is independent, it is more likely that the enforcer will act as an effective check on the trustee, advisors or the committee in appropriate circumstances.
- Note that §409 of the UTC, on which most state purpose trust laws are based, does not require that the enforcer be independent.
- Oregon's stewardship trust statute is an outlier – it does require independence.
- Similarly, South Dakota does not permit the enforcer to be the trustee.

Considerations for the Trustee – The Viability of the Purpose Over a Long Period of Time

- However, **even if the enforcer is independent . . .**
 - Who oversees the enforcer?
 - What incentive does the enforcer have to monitor the trust?
 - Who has standing to object if the enforcer is lax in enforcing the trust?
 - Even if the enforcer is a fiduciary, to whom is the fiduciary duty owed?
- One way to incentivize the enforcer may be to establish in the purpose trust a grievance procedure that allows any “interested person” the right to challenge the operations of the purpose trust.
- The trust will need to provide a definition of “interested person.” This definition might include employees, suppliers, customers, elected officers in the community where the business operates and/or a family member of the founder of the business.
- For this grievance procedure to be effective, interested persons must have a right to obtain information necessary to prosecute their case and the right to direct the trustee or enforcer to follow the decisions reached as the result of the grievance procedure.

Considerations for the Trustee – The Viability of the Purpose Over a Long Period of Time

- These policies and procedures are an important element to ensure that:
 - The trust remains true to the purpose;
 - The purpose remains relevant; and
 - The parties responsible for carrying out the purpose are fulfilling their duties faithfully.
- The trustee should fully understand the terms of the trust and the related policies to ensure that it has a high likelihood of remaining comfortable in its role of trustee of the purpose trust for the long term.

Considerations for the Trustee – There May be Other Stakeholders to Whom the Trustee Answers

- **The transfer of the company to the purpose trust could result in some shares of the company being held in one or more trusts for family members.**
- As the controlling owner of the voting stock, the trustee of the purpose trust might have some responsibilities to operate the business to protect the interests of non-controlling owners (perhaps a trust for family members).
- If the same person or corporation is trustee of the purpose trust and the family trust, that trustee could find itself in a difficult situation if the beneficiaries of the family trust become disenchanted with the overall structure. What starts out as the trustee providing services to the broader family, which is common, may lead to a conflict of interest in which the trustee will need to resign from one or both trusts.
- **Over time the beneficiaries of the family trust may want the business to operate for maximum profit,** rather than be required by the purpose trust structure to take into account factors that were important to the business owner when the company was transferred into the purpose trust.
- **Future generations may not fully understand, or appreciate, the desires of the business owner when the purpose trust was established.** The situation could be even more significant if the company has decreased in value over time and the beneficiaries of the family trust are upset because payment of their dividends is at risk.

Considerations for the Trustee – There May be Other Stakeholders to Whom the Trustee Answers

- From a client relationship point of view, this could leave the trustee in a difficult position if the trustee serves both the purpose trust and the family trust, and the beneficiaries of the family trust insist that the trustee has a duty to take some type of action.
- The purpose trust structure can address this situation. It may be advisable to recognize the family members as stakeholders and include in the committee a representative of the family members who hold non-controlling shares, thus giving those family members a voice in the operation of the company.
- Nonetheless, there is nothing that will completely eliminate the possibility of disputes.

Trustee Considerations - Family Members and Employees of the Company

- In any business succession there is the potential for discord among family members.
- Perhaps one of the business owner's children works in the business and the other children do not.
- The child working in the business may feel it is more important to reinvest in the business than to make distributions from the business to the shareholders, whereas the children who are not working in the business but depend on distributions from the business may feel exactly the opposite.
- If the business is managed by family members and non-family members, conflicts could arise between these two groups when the original business owner is no longer in the picture. This is not particular to a purpose trust, and there are methods to address this concern, such as a formal management transition plan, retention bonuses for non-family member managers of the company, and other techniques.
- **These issues can become more pressing over time, which makes addressing them particularly important for a purpose trust.**

The Purpose Trust Structure Can Address These Various Potential Issues

- **Stewardship Committee.**
- The purpose trust structure can address the potential for discord by having representatives from various stakeholder groups on the stewardship committee.
- For example, members could be elected by any combination of the following:
 - Investors
 - Employees
 - Suppliers / customers
 - Representatives of the community where the business is located
 - Family members of the founder
- Although not guaranteed, it is likely that representation and a sense of responsibility for the company will help reduce the likelihood that these issues will disrupt the business in the future.

The Purpose Trust Structure Can Address These Various Potential Issues

- **Stewardship Committee.**
- If employees control the stewardship committee, then the structure should protect against the following:
 - Any incentive for current employees to cash out at a premium and deprive future employees of the opportunity to benefit from the operation of the business.
 - Members of the committee seeking disproportionate benefits for themselves.
 - Payment of excessive compensation, particularly to highly paid employees, perhaps by having a rule that the highest paid employee may not earn more than some multiple of the lowest paid employees.
 - To avoid an incentive for employees to cash out, the structure could provide that employees would not be entitled to profit from the sale of the business and such profits would be paid to a designated nonprofit, or could provide a voting procedure that made approval of a sale less likely.

CONCLUSION: Potential Benefits of a Purpose Trust

- Provides a method of business succession for business owner.
- May include providing benefits to family members.
- At the same time may provide any of the following:
 - No shareholder exit problem.
 - No hostile takeover.
 - Business won't leave the community.
 - Vision and values perpetuated.

Resources

Purpose Trust Ownership Network (PTON)

- Education and resources being developed
- Lawyers, consultants, business owners, lenders, other organizations
- <https://trustownership.org/>

Purpose Owned, LLC

- Consultancy for ownership and leadership succession planning using purpose trusts
- Founded by Natalie Reitman-White, a pioneer in the use of purpose trusts in the U.S.
- <https://www.purposeowned.com>

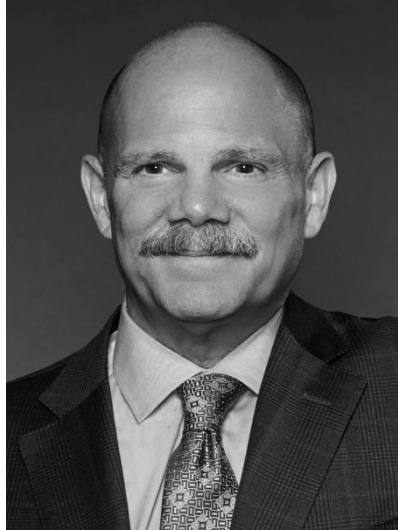
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ssrn: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=557612

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Thank You

BIOGRAPHY



David A. Diamond
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"Trust laws are always evolving, and I help clients and their advisors use these flexible laws in trust and estate planning."

EXPERIENCE

Dave is the President of The Northern Trust Company of Delaware, a Delaware limited purpose trust company in Wilmington, Delaware. Prior to managing Northern's Delaware office, he served as the National Trust Specialist for Northern, developing client solutions involving Northern's Nevada and Delaware trust capabilities. He is Chair of the Board of Directors for The Northern Trust Company of Delaware and on the Board of Directors for Northern Trust Cayman International and The Northern Trust Company of Nevada.

Prior to joining Northern, Dave was an attorney with Gordon, Fournaris & Mammarella (GF&M), where he focused on the unique aspects of Delaware trust law. Prior to practicing law with GF&M, Dave was with J.P. Morgan for 25 years. There he began his career as a trust officer and ultimately served as Managing Director & President of J.P. Morgan Trust Company of Delaware.

EDUCATION

Dave holds a Juris Doctor degree from The University of North Carolina School of Law and an M.B.A. and B.A. from The University of Miami.

CREDENTIALS

Dave is a Fellow of the American College of Trust and Estate Counsel (ACTEC).

He is a member of the Society of Trusts and Estates Practitioners (STEP), and the Estate Planning Council of Delaware. He has earned a Certified Financial Planning® designation.

He is a member of the New York and Pennsylvania bars, and Associate Member of the Delaware Bar.

EXPERTISE

With over 30 years of experience in the trust, wealth, and estate management industries, Dave works with domestic and international clients who are seeking guidance on ways to leverage various jurisdictions in the United States. He publishes articles and speaks to audiences regularly on these topics. Dave was previously an adjunct professor of estate planning at The University of Delaware.

INTERESTS

He is married to a veterinarian, and he and his wife have many animals including horses and German Shepherds. He enjoys listening to all types of music, whether recorded or at live events.

COMMUNITY INVOLVEMENT

Dave is a past President of the Palm Beach Easter Seals Society, and past member of the Florida Easter Seals Society. He participated in Leadership Delaware, a program administered by the Delaware Community Foundation to connect business leaders with charitable organizations.

3 THINGS PEOPLE ASK ME

- **Why are states like Delaware and Nevada so popular for creating trusts?**
- **Should I include trusts in my overall planning?**
- **How do I provide for my children and grandchildren without spoiling them?**



SUSAN N. GARY, Professor Emerita and formerly Orlando J. and Marian H. Hollis Professor at the University of Oregon School of Law, received her B.A. from Yale University and her J.D. from Columbia University. Before entering academia, she practiced with Mayer, Brown & Platt in Chicago, and with DeBandt, van Hecke & Lagae in Brussels. Professor Gary has taught trusts and estates, estate planning, estate and gift tax, nonprofit organizations, and an undergraduate course on law and families. In 2025, she taught Law and Wealth Management as a visiting professor at the University of Hong Kong. She has written and spoken about the regulation of charities, fiduciary duties including the prudent investor standard, stewardship trusts and purpose trusts as a new form of business ownership, the definition of family for inheritance purposes, donor intent in connection with restricted charitable gifts, and the use of mediation to manage conflict in the estate planning context. She served as a trustee on the University's Board of Trustees.

Professor Gary is an Academic Fellow and former Regent of the American College of Trust and Estate Counsel and served on the Council of the Real Property, Trust and Estate Section of the American Bar Association. She served as the Reporter for three projects of the Uniform Law Commission: the Uniform Electronic Wills Act, the Uniform Prudent Management of Institutional Funds Act, and the Model Protection of Charitable Assets Act. She was a member of the steering committee of the Intentional Endowments Network and continues to serve on its Fiduciary Investment Committee. She has served on the Advisory Board of the NYU National Center on Philanthropy and the Law and has held leadership positions in three sections (trusts and estates, elder law, and nonprofits) of the Association of American Law Schools. She is currently leading a Lawyers Workgroup as part of the Purpose Trust Ownership Network.

In Oregon, Professor helped draft Oregon's stewardship trust statute. She was a member of the Oregon Law Commission, served as Reporter for its Probate Modernization Work Group, and currently serves as Reporter for its Partition of Heirs Property Workgroup. As a member of the Executive Committee of the Nonprofit Organizations Law Section of the Oregon State Bar she led a review of Oregon's nonprofit corporation statutes that resulted in legislation revising the statutes. She served on the Executive Committee of the Estate Planning Section of the Oregon bar for nine years, including serving as its chair, and served as Editor of the Estate Planning Section's newsletter for 15 years. Significant recent articles are "The Changing Landscape of Business Succession: How and Why Purpose Trusts Matter," 18 Ohio State Bus. L. J. 41 (2024), "Best Interests in the Long Term: Fiduciary Duties and ESG Investing," 90 Univ. of Colorado L. Rev. 731 (2019), and "The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business," 88 Univ. of Cincinnati L. Rev. 707 (f2019). They are available on SSRN: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=557612.



Natalie Reitman-White, Principal at Purpose Owned, LLC. Natalie is a leader and change maker, nationally recognized for her work on transformative ownership and investment models. Natalie has over two decades of experience as an executive in the food sector, developing and leading strategic initiatives in sustainable business, trade advocacy, organizational development, governance and human resources. In 2018, she pioneered one of the first-in-the-nation Perpetual Purpose Trust ownership transitions with Organically Grown Company. Following that she co-founded and spent 5 years at Alternative Ownership Advisors, specializing in ownership and governance design. She is a sought-after educator and consultant, helping dozens of companies to explore and implement tailored ownership and finance solutions to help them stay independent and mission-driven into the future.

She is currently the Board President of the Purpose Trust Ownership Network, a not-for-profit organization dedicated to supporting the growth of purpose trust ownership and employee ownership trusts in the United States.



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