

Assessing the Conduct of Trustees Who Act as Business Managers

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The owner of a successful small business seeks to establish a succession plan. He has high aspirations for his family and great hope that his business will survive for generations. However, he is not yet prepared to leave his business to his children outright in the event of his demise. Perhaps his children are too young or simply not yet ready to actively own or operate a business.

The business owner establishes a trust for the benefit of his family that will hold his business interests. He names a senior executive at his business as trustee: the trustee-manager. Upon the business owner's death, the trustee-manager continues to operate the business. The trustee-manager also controls the voting power of the business through the shares held by the trust. This puts him in a position to maintain his control over the business throughout the trust's term—he can vote the trust's shares to re-elect himself a director or officer of the business.

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