

Complex Organizational Structures/Hybrids

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Agenda and objectives

Current trends, opportunities and challenges

- Impact-oriented entities
- Tandem structures



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Impact-oriented entities

- Donor-advised funds (DAFs)
- Private foundations (PFs)
- Public charities (PCs)
- Social welfare organizations (SWs)
- Limited liability companies (LLCs)



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Donor-advised funds IRC 501(c)(3)

- Governance and liability
 - Bookkeeping entry or segregated account held by a sponsoring organization (i.e., not an entity)
 - Only advisory rights, no legal control
 - No ability to conduct activities other than making grants and investments
- Taxation
 - Exempt from income taxes (other than unrelated business taxable income (UBTI))
 - Contributions to DAF may generate income tax deductions
 - No gift taxes on contributions/potential estate tax deductions
 - Can hold illiquid assets, but limited ability to hold interests in operating businesses
- Disclosure
 - Identity of contributors redacted (although some states seek disclosure)
 - Grants and investments disclosed on sponsoring organization's Form 990 (intermingled with all other DAFs administered by the sponsoring organization)
- Permissible activities
 - Must be used for charitable purposes (no lobbying/political activity)
 - Not suitable for operational activity
- Regulatory oversight
 - Excise tax rules prevent donor benefits (no de minimis exceptions)
 - Uniform Prudent Management of Institutional Funds Act (UPMIFA) may limit investment flexibility



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Private foundations IRC 501(c)(3)

- Governance and liability
 - Separate legal entity
 - No equity ownership
 - Designed to survive into perpetuity with endowment
- Taxation
 - Subject to 1.39% investment income tax (plus tax on UBTI)
 - Contributions to PF may generate income tax deductions (less generous than DAF and PC)
 - No gift taxes on contributions/potential estate tax deductions
 - Can hold illiquid assets, but limited ability to hold interests in operating businesses
- Disclosure
 - Contributors disclosed on Form 990-PF
 - Grants and investments disclosed on Form 990-PF
- Permissible activities
 - Must be used for charitable purposes (no lobbying/political activity)
 - May conduct operations
- Regulatory oversight
 - Complex excise tax rules limit self-dealing, investments, business ownership, grants, etc.
 - Compensation limits
 - State law generally subjects assets to perpetual charitable trust (i.e., assets must forever be used for charitable purposes)
 - UPMIFA may limit investment flexibility



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