CHRISTIAN PURPOSE TRUSTS

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Noncharitable purpose trusts are recognized under the Uniform Trust Code and the non-uniform laws of many jurisdictions. In 2019, Oregon enacted a stewardship trust statutory scheme. A stewardship trust is a purpose trust which is designed to hold and preserve corporate stock. Properly drafted, a stewardship trust can soften the indefatigable pursuit of profits that drive corporate entities. A stewardship trust can substitute ethical ideals – at least in part – for shareholder return. The purpose trust statutes of other jurisdictions could also partially permit ambitions similar to those which motivated the Oregon legislation to be realized. The concept of a stewardship trust might be pursued even in jurisdictions which do not specifically contemplate purpose trusts being utilized for the prudent but compassionate stewardship of a closely-held business enterprise.

I. INTRODUCTION

This Article contextualizes noncharitable purpose trusts, outlines and critiques the Uniform Trust Code provisions governing purpose trusts, and proposes a corporate purpose trust format which preserves a business founder’s core Christian values modeled on a recent statutory enactment in Oregon. With careful drafting, a corporate purpose trust could ensure a form of dead hand control with particularly inspirational outcomes. A corporate purpose trust embedded with Christian precepts could preserve those precepts by stitching them into the fabric of a trust as the primary, or even the sole, shareholder of company stock.

A purpose trust, for example, might insist that a closely-held business close on Sundays, distribute excess profits to local churches, and prohibit the company from marketing or producing pornography, alcohol, contraception, caffeinated drinks, cannabis/tobacco products, or weapons.1 It might prohibit investing in abortions, contraception, human cloning, embryonic stem-cell research, or for-profit health care industries that provide or pay for any of the same. It might pursue

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1. See Kim Bhasin & Melanie Hicken, 17 Big Companies that are Intensely Religious, Business Insider (Jan. 19, 2012, 10:29 AM), https://www.businessinsider.com/17-big-companies-that-are-intensely-religious-2012-1 (describing “faith-friendly” companies which insist, inter alia, upon provision of pastoral care to employees, citation to Bible passages on its products or packaging, or insist on high levels of corporate responsibility regarding their workers and vendors).
board diversity, fair wages, and generous family leave time policies for company employees. It might require a retail store’s background music to include songs from a hymnal.\(^2\) It might ban investments in fossil fuels. It might even seek, as Pope Francis does, to overturn an “idolatrous economic model that feels the need to sacrifice human lives on the altar of speculation and profit alone, considering only immediate advantage to the detriment of protecting the poor, the environment and its resources.”\(^3\) It might seek to topple the single-minded pursuit of profits with which corporations are otherwise traditionally endowed.\(^4\) Or – if not topple – perhaps tweak.

II. ANALYSIS

In the sections which follow, I will first introduce the concept of “res purpose trusts” – purpose trusts which are oriented towards a particular purpose or property, while owning that property as a component of the trust estate. For a purpose trust to best achieve its objectives in preserving the mission of its original founder, it will be advisable for the trust to maintain status as a shareholder of the company. A res purpose trust would permit this sort of structure. Second, I will explore “hybrid purpose trusts” which permit distributions of any dividends issued by the company to beneficiaries (e.g., to the business founder’s descendants). A successful “Christian Purpose Trust” will combine the concepts of res purpose trusts and hybrid purpose trusts. Third, I will consider the recent legislative innovation in Oregon authorizing stewardship trusts. Finally, I will discuss how this new model of corporate ownership could reorient the profits-only path of closely held corporations.

A. RES PURPOSE TRUSTS

I begin with the concept of res purpose trusts and how they benefit from structural efficiencies by virtue of owning the property toward

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2. Hobby Lobby stores, for example, pipe in gospel music: “There’s an awful lot of gospel. It’s not all gospel music but an awful lot of gospel. We put together our own song (lists) and our own music in our own stores. People ask for the CDs and so we sell the CDs of music that we are playing in our stores.” David Green: Chapter 2, Picking Cotton, VOICES OF OKLAHOMA (May 14, 2011), http://www.voicesofoklahoma.com/interview/green-david/.


which their noncharitable purpose is oriented. Because “pet trusts” are the most familiar and easy to conceptualize variety of noncharitable purpose trusts, they can be readily utilized to illustrate these concepts.

Pet trusts are the most common type of noncharitable purpose trusts. While many pet owners consider their pets to be quasi-members of their families, pets are merely chattels (tellingly, from the French/Latin word for cattle under the law. Legally speaking, pets are not much different from toasters, melons, or shares of stock. Pets are merely a form of personality. Ordinarily, trusts are constructed for the benefit of either individual human beings or charitable enterprises. It would be unusual for a trust to be designed for the benefit of a chattel, but this is precisely what purpose trusts are often designed to do. A pet purpose trust is oriented toward the preservation and care of a particular animal; a particular family pet or pets.

Pets are alienable. Therefore, a pet could form a part of the res or corpus of a trust. A pet might be conveyed to the trustee of a pet trust by inter vivos or testamentary transfer. There may be advantages for a purpose trust to hold, as part of the trust estate, the very chattel which the trust is designed to supervise and protect. Consider, for example, a testamentary trust designed to care for a tabby cat named “Fluffy,” with the remainder of the trust corpus to be distributed at Fluffy’s death to the settlor’s children. The trust might be funded with a reasonable amount of cash or other property which the trustee can invest and distribute in order to ensure that Fluffy’s welfare is maintained. Fluffy might be placed with a caregiver and the trustee will likely develop a punch list for monitoring Fluffy’s well-being from time to time. The trustee might check on the health of Fluffy, for example. Typically, a purpose trust will also name an enforcer to monitor the trustee with standing to object, or even correct, a wayward or lax trustee. The enforcer is a sort of guardian ad litem for the pet in connection with the administration of a pet trust. The enforcer can oversee distributions to benefit a pet much like a minor’s conservator can monitor a trustee’s distributions to benefit a child. In our hypo-

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5. See Breahn Vokolek, Comment, America Gets What It Wants: Pet Trusts and a Future for Its Companion Animals, 76 UMKC L. Rev. 1109, 1128 (2008) (estimating that a quarter or more “of pet owners include their pets in their estate planning”).


7. There are, however, laws which prohibit cruelty to animals. E.g., Neb. Rev. Stat. § 28-1009. But there are no prohibitions on cruelty to toasters. Thus, pets-as-chattels and other chattels do have this important difference.

8. See, e.g., id. § 30-3834(b) (providing that a pet trust “may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court”); see also id. § 30-3835(2) (authorizing enforcers for other varieties of non-charitable purpose trusts).
thetical, the enforcer might be a friend of the settlor or a fellow pet lover.

Perhaps, after some period of time, the enforcer alerts the trustee to some concerns. After investigating, the trustee becomes concerned as well. Fluffy appears to be malnourished. The trustee might demand an independent veterinarian examination of Fluffy and might even conclude that Fluffy’s caregivers need to be replaced. If the caregivers resist the idea of an examination, the trustee announces that it will suspend distributions. The enforcer intervenes, noting – correctly – that suspending distributions for Fluffy’s grooming, care, and food could harm Fluffy. So, the trustee decides to simply place Fluffy with more suitable caregivers. The current caregivers dig in their heels and refuse to relinquish Fluffy. The trustee suspects their resistance is motivated by a desire to maintain trust distributions, but the trustee lacks any readily available legal mechanism to force the caregivers to release the cat. What’s a trustee to do?

No easy solution for the trustee readily presents itself. With any pet trust, periodic assessments of the pet are required, and the ability to remove and replace a caregiver is critical – but these responsibilities prove difficult, especially if the caregiver of the pet has an ownership interest in the animal. Contractual rights could have been negotiated with the caregiver ahead of time, but if they were not, the trustee’s options are few. The trustees of pet trusts occasionally even become suspicious that the pet in question seems to be enjoying a remarkable life span. Could the pet have died and been replaced by a similar-looking animal to trick the trustee into continuing distributions to the caregiver? The trustee’s duties to the remainder beneficiaries are clearly implicated. Woe to the trustee who is determined to have continued trust distributions for the pet long after the natural end of the pet’s life.

One straightforward way for the trustee to minimize some of the potential risks with administering a pet trust is to maintain title to the pet itself; to include the pet-as-chattel as part of the trust.

9. The trustee may have negotiated a contract with the caregivers whereby the caregivers covenant to relinquish possession of Fluffy periodically for independent examinations. The contract could also articulate events of default under which the caregivers must transfer title and/or possession of Fluffy to successor caregivers.

10. See Restatement (Second) of Trusts § 226 cmt. b (Am. Law Inst. 1959) (imposing trustee liability for mistakenly delivering property to an ineligible person); see also Neb. Rev. Stat. § 30-3896 (allowing trustees to escape liability by requiring trustees to “exercise[] reasonable care to ascertain the happening of the event”).

11. See, e.g., Nat’l Acad. of Sci. v. Cambridge Tr. Co., 346 N.E.2d 879, 885 (Mass. 1976) (trustee liable to remainderman for continuing trust distributions to the settlor’s widow long after she remarried where her trust distributions were to have terminated upon her death or remarriage).
Elsewhere, I’ve termed a purpose trust which owns the property to which its purpose is oriented as a *res* purpose trust. The Cayman Islands STAR Trust legislation specifically authorizes this concept. It is rare that a jurisdiction’s statutes specifically endorse the idea of a *res* purpose trust. But there are generally few if any limitations on what property may form a part of the trust estate. If the trustee holds title to Fluffy, then the trustee can more easily insist that the animal be delivered to it for periodic examinations and arrange for alternative caregiving if the current caregiver is determined to be unsuitable. A *res* purpose trust better equips the trustee to accomplish the trust’s aims by making the property in question more accessible to the trustee.

### B. Hybrid Purpose Trusts

While pet trusts are commonly thought of as having a singular focus – the care and oversight of a beloved animal – there may also be advantages from combining a purpose trust with a trust for one or more ascertainable beneficiaries. Consider again the settlor who funded the trust for Fluffy’s care. If the settlor had two young children, she might have created a testamentary trust for her children. She could have combined this testamentary trust for her children with

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12. If the pet in question represents a high risk of liability (e.g., a dangerous pit bull or a particularly aggressive and venomous snake), the benefits of a *res* purpose trust might be offset by personal injury liability concerns.

13. Thomas E. Simmons, *A Will for Willa Cather*, 83 Mo. L. REV. 641, 693 (2018); see also S.D. CODIFIED LAWS § 55-1-20 (2020) (“Any property may form a part or all of the trust estate, including some, all, or an interest in some or all of the property that is the subject or purpose of a purpose trust.”).

14. CAYMAN I. TRUSTS LAW § 99 et seq. (2011). See also, e.g., The Use of Jersey Special Purpose Vehicles in Structured Finance Transactions, CAYE OLSN (June 1, 2013), [https://www.cayeolsn.com/briefings/the-use-of-jersey-special-purpose-vehicles-in-structured-finance-transactio](https://www.cayeolsn.com/briefings/the-use-of-jersey-special-purpose-vehicles-in-structured-finance-transactio) (noting that under the trust law of Jersey, “it is possible to establish a noncharitable purpose trust, i.e. where the share capital of [a special purpose vehicle] is held by the trustee on trust to carry out specified purposes which do not qualify as charitable purposes”). The Cayman Islands legislation, however, excludes the ability of a purpose trust from owning real property situated in the Cayman Islands when the purpose of the trust was to preserve, maintain, or otherwise benefit that same property.

15. But see S.D. CODIFIED LAWS § 55-1-20 (“Any property may form a part or all of the trust estate, including some, all, or an interest in some or all of the property that is the subject or purpose of a purpose trust.”).

16. See Restatement (Third) of Trusts § 40 (2003) (providing that “a trustee may hold in trust any interest in any type of property”).

17. Even with a *res* purpose trust (wherein the trustee retains title to the property toward which the purpose of the trust is oriented), the trustee may be advised to utilize contracts to discharge the trustee’s obligations. Where the *res* in question is real property, prudent lease agreements may be recommended. With a pet *res*, a comprehensive caregiver agreement would be advisable.
a purpose trust to care for Fluffy, directing the trustee to support the children as well as the cat.

The trust might read in relevant part:

The trustee shall distribute for the health, education, maintenance and support of my children. During the term of the trust, the trustee is also directed to maintain and preserve any household pets owned by me at my death which survive me including, by way of example, reasonable costs in connection with a respectful disposal of the remains of any deceased pet.

When my youngest child attains twenty-five (25) years of age, the trustee shall distribute the remaining corpus to my then-living children in equal shares. In carrying out final distributions, the trustee shall distribute any living pets held by the trust in such a manner as to maximize the likelihood that such pets will be well cared for; the trustee may, but is not required to, distribute such pets to one or more of my children. The trust shall then terminate and the trustee shall be discharged.

Presumably, the settlor would desire to preserve and care for Fluffy but would also desire that her children would find comfort and companionship from Fluffy, especially in view of the fact that the trust would only be funded in the event of their mother’s premature demise. The support of Fluffy might, in other words, be ancillary to but connected with the welfare of the testator’s children. The settlor might therefore stipulate that the aspect of the trust which benefits Fluffy continue only so long as Fluffy continues to provide comfort and companionship to her children. Or she might prefer to simply ensure that Fluffy’s welfare is ensured independent of any benefits to her children in preserving Fluffy. She might, in that instance, insist that the trustee maintain Fluffy’s proper care without regard to whether her children benefit from Fluffy’s companionship.

Commonly, a purpose trust will identify remainder beneficiaries (individuals or charities) following the accomplishment of the trust’s purpose (e.g., upon the death of the pet). With holographic instruments or poorly drafted trusts, remaindermen might not be named. In that case, the settlor’s estate or residuary clause will typically supply

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18. See, e.g., In re Copland, 988 N.Y.S.2d 458, 459 (N.Y. Sur. Ct. 2014) (describing a trust for two cats until the death of the last cat whereupon “the home and its contents were to be sold, and the remainder distributed to 33 animal oriented charities in the percentages set forth in the instrument plus a $50,000 bonus to [the caregiver]”); In re Renner’s Estate, 57 A.2d 836, 837 (Pa. 1948) (considering a trust “for the maintenance of my pets . . . and for their interment upon their respective deaths in the Francisvale Cemetery” with the remainder to one Mary Faiss Riesing).
the identity of the final distributees.\textsuperscript{19} Thus, prior to the enactment of validating legislation, one of the recurring complaints of those persons challenging pet trusts – that the trust lacked ascertainable beneficiaries – was not entirely accurate.\textsuperscript{20} Pet trusts would always have ascertainable remaindermen, even if only by default.\textsuperscript{21} But they would commonly lack concurrent ascertainable life tenants. And they would lack any mechanism by which insufficient distributions for pet care could be challenged.

In a typical pet trust, the trustee would be accountable to the post-pet remaindermen, who could complain, for example, that the trustee’s distributions for Fluffy’s benefit were overly generous, thus representing the duty of loyalty tension present in any trust – the tension between the trustee’s duty of loyalty to the current beneficiaries of the trust versus the duty of loyalty to the remainder beneficiaries.\textsuperscript{22} What a pet trust would typically lack would be ascertainable current beneficiaries with any motivation to complain that the trustee’s distributions for Fluffy’s benefit were insufficient. No one would have standing to complain on behalf of Fluffy. If the trustee owes no fiduciary duties to a distributee, it seems that the trustee is not really a trustee at all. This key omission was remedied with the office of an “enforcer” endowed with the authority to essentially speak on Fluffy’s behalf and to hold the trustee accountable vis-à-vis the trustee’s duty of loyalty to Fluffy’s welfare.\textsuperscript{23}

In the trust sketched above, Fluffy and the settlor’s children will enjoy trustee support payments simultaneously. (One suspects that in the tragic circumstances of a trust supporting orphaned children that the trustee would see the wisdom in reasonable distributions relating to the expense of a pet – whether the pet was a part of the family before the parent’s death or not – and whether the trust expressly insisted upon distributions for the purpose of a pet’s welfare. Distribu-

\textsuperscript{19} See Neb. Rev. Stat. § 30-3834(c) (2020) (providing that excess or remaining property in a pet trust may be “distributed to the settlor, if then living, otherwise to the settlor’s successors in interest” unless otherwise provided in the trust instrument).


\textsuperscript{21} Neb. Rev. Stat. § 30-3834(c).

\textsuperscript{22} Unif. Trust Code § 803 (2000); see also id. § 105(b) (insisting that a trustee’s duty “to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries” cannot be modified by the terms of the trust).

\textsuperscript{23} With charitable trusts lacking ascertainable beneficiaries, the standing problem is remedied by vesting the attorney general with standing to monitor and enforce the trustee’s duties. See, e.g., Neb. Rev. Stat. § 30-3810(d).
tions for pet-related expenses would provide welfare-enhancing benefits to the orphaned children and likely be approved as readily as babysitter costs, toys, clothing, medical expenses, tuition, and music lessons). In a purpose trust where the trustee is directed to both carry out distributions to ascertainable beneficiaries as well as support an articulated noncharitable purpose such as preserving Fluffy, those two aims might overlap and even coincide. Still, this sort of a purpose trust – a hybrid purpose trust we’ll call it – is a unique configuration: beneficial interests which are concurrent with a noncharitable purpose.24

The Uniform Trust Code (“UTC”) does validate purpose trusts, although it contains several restrictions that limit their effectiveness.25 The primary stumbling block is the trust duration limitation of twenty-one years.26 A secondary problem is the potential of a court to defund an over-funded trust.27 A third problem with UTC section 409 is that it disallows hybrid purpose trusts.28 UTC section 409 permits trusts “for a noncharitable purpose without a[n] . . . ascertainable beneficiary.”29 Because this provision relates to the creation of a purpose

26. Id. § 409(1) (2000). Compare Neb. Rev. Stat. § 30-3835(1) (“The trust may not be enforced for more than twenty-one years.”), with Or. Rev. Stat. § 130.190 (2019) (Oregon’s version of UTC 409(1) allowing purpose trusts (other than pet trusts or stewardship trusts, discussed infra Subsection D) to “be enforced for [not] more than 90 years”).
27. See UNIF. TRUST CODE § 409(3) (2000) (“Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.”); Neb. Rev. Stat. § 30-3825(3) (same).
28. Thomas E. Simmons, Purpose Trust Cy Pres, 45 ACTEC J. 67, 70 (2019) (hereinafter, Simmons, Purpose Trust). Alternatively, one could also read section 409(1) to permit trusts for a noncharitable purpose notwithstanding a lack of ascertainable beneficiaries. This is probably what was intended since there seems to be no policy objective in disallowing hybrid purpose trusts. Support for reading UTC section 409(1) in this way can be found in the historical evolution of noncharitable purpose trusts – absent authorizing legislation, a purpose trust would often fail for lack of any ascertainable beneficiaries; the existence of ascertainable beneficiaries was a required element of any noncharitable trust. See, e.g., Fosdick v. Town of Hempstead, 26 N.E. 801, 805 (N.Y. 1891) (concluding “that [a] gift to [a] town was not an absolute one, but in trust, for purposes which were not corporate or administrative, and that the town could not take it for that reason; and the trust itself is void because of a lack of any ascertainable or ascertainable beneficiaries to enforce the same”). UTC section 409 cured that common law defect, one might argue, by permitting noncharitable purpose trusts even when there are no ascertainable beneficiaries to enforce the trustee’s duties. See UNIF. TRUST CODE § 409 cmt. (noting that at common law, a trust for a noncharitable purpose “was honorary only and did not create a trust [but that u]nder this section, however, the disposition is enforceable as a trust . . . ”).
29. UNIF. TRUST CODE § 409(1) (emphasis added). Arguably, even a non-hybrid purpose trust with ascertainable remainder beneficiaries may violate section 409(1).
trust, it appears to represent a mandatory rule; a rule which the attorney cannot simply draft around. Under this reading, only purpose trusts which lack ascertainable beneficiaries are authorized. Strangely, purpose trusts in which the trustee herself selects the purpose of the trust do not contain this same flaw.

On the positive side, the text of the UTC suggests that purpose trusts are permissible. And any sort of noncharitable purpose is allowed, so long as the purpose is not illegal, impossible, or offensive to public policy.

C. Oregon’s Stewardship Trust Legislation

A statute enacted by the Oregon legislature in 2019 allows a new variety of succession planning for family-owned businesses. Professor Susan Gary, who was instrumental in the legislative process, explains that Oregon’s legislation “creates a structure for a stewardship trust that protects the mission of the company using this structure, provides adequate mechanisms for enforcement of the purposes, and creates enough flexibility so that the managers of the business can adapt to changes over time.” Because there are really no such things as irrevocable bylaws or articles of incorporation, the mission and values of a corporation are subject to the evolving whims and preferences of the managers.

For example, a trust to preserve and maintain an artist’s creative works, with remainder to the settlor’s children would have ascertainable beneficiaries as remaindermen. And section 409 only recognizes purpose trusts “without a[n] . . . ascertainable beneficiary.” Id.

30. Compare id. § 409(1) (permitting trusts to “be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary”) (emphasis added), with id. § 105(b)(1) (providing that “the requirements for creating a trust” as set forth in the code supersede the terms of the trust itself).

31. Id. § 409(1) (2000); see also id. § 409(3) (“Property of a trust authorized by this section may be applied only to its intended use.”) (emphasis added).

32. See id. § 409(1) (“A trust may be created for a noncharitable . . . but otherwise valid purpose to be selected by the trustee.”).

33. See id. § 409. Nothing in the text of UTC section 409 suggests that a purpose trust could not own the property to which its purpose is oriented. See also id. § 103(12) (“‘Property’ means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.”). The UTC comments explain:

The definition of “property” (paragraph (12)) is intended to be as expansive as possible and to encompass anything that may be the subject of ownership. Included are choses in action, claims, and interests created by beneficiary designations under policies of insurance, financial instruments, and deferred compensation and other retirement arrangements, whether revocable or irrevocable. Any such property interest is sufficient to support creation of a trust.

Id. § 103 cmt.

34. Id. § 409(1) (2000) (allowing trusts for any “noncharitable . . . but otherwise valid purpose”); see also id. § 404 (allowing a trust “only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve”).


erences of future stakeholders. The Oregon legislation allows for the basic ideas contained within a pet trust to be applied to a trust oriented toward the care and oversight of a corporation. For the small business owner who treats her business with as much care and concern as some pet owners treat their pets, the stewardship trust creates a mechanism by which these concerns can be expressed.37

If a sole or majority shareholder imprints her values into her corporation’s bylaws (requiring, for example, the business to close on Sundays), nothing prohibits or even inhibits the next generation’s shareholders from electing members of the board of directors who would repeal the requirement.38 The profit-orientation of the corporation might almost guarantee the shedding of any precepts which tended to diminish returns. Indeed, when the shareholder is a fiduciary such as a trustee, there is an even greater incentive for the fiduciary to prioritize wealth preservation and growth of share value over objectives which might run counter to profit.39 With a res purpose trust holding all of a corporation’s voting shares, however, those values can be imprinted upon an irrevocable and potentially perpetual mechanism – a stewardship trust – a single shareholder endowed with the original shareholder’s values, ideally, in perpetuity.40

Alongside the typical parties to a purpose trust – the trustee who administers the trust and an enforcer with beneficiary-like enforcement powers – the Oregon legislation introduces a third party: a stewardship committee vested with the powers to manage the business owned by the trust.41 A stewardship committee must have at least three members.42 It has the power to remove and replace a trustee.43 It has the power to vote the shares held by the trust and thereby elect the corporation’s board of directors.44 It also has the power to determine whether dividends should be issued, but because a hybrid stew-

37. But see Susan N. Gary, The Need for a New Type of Purpose Trust, the Stewardship Trust, 45 ACTEC J. 37, 39 (2019) (noting two special concerns unique to stewardship trusts – “that the purposes of a business and not profit should drive decision-making and that people close to the business should control its management”).
38. See 18 C.J.S. Corporations § 174 (2020) (amending bylaws is typically vested in the stockholders or board of directors).
39. See, e.g., William Sanders, Resolving the Conflict Between Fiduciary Duties and Socially Responsible Investing, 35 Pace L. Rev. 535, 567 (2014) (observing that absent “a statute specifically allowing or mandating [socially responsible investing or] SRI, legal scholars had generally been of the view that SRI violates a fiduciary’s duties”).
40. See Gary, The Oregon Stewardship Trust, supra note 35 (noting that a stewardship trust will own all of a corporation’s voting stock but that the corporation could “issue non-voting redeemable preferred stock to investors, who may include family members in a family business or stakeholders in a mission-driven business”).
42. Id.
43. Id. § (7)(a).
44. Id. § 7(f).
ardship is not permitted and given the compressed income tax rates applicable to non-grantor trusts, it is contemplated that few dividends will typically be issued by a business held in an Oregon Stewardship Trust. The composition of the stewardship committee will vary according to the needs and circumstances of the particular trust. The stewardship committee fills a role comparable to a trust director of a directed trust.

As Professor Gary explains:

The committee will depend on the type of business and the reasons behind transferring the business into a stewardship trust. If the business is owned by a family, the committee might include family members, key employees, and non-family, non-employee members. Election to the committee could be by existing members, specified family members could elect all members, or some combination of family and employees could elect members. The specifics will depend on the business and should be drafted into the trust instrument.

Thus, administration and decision-making involving the trust will be trifurcated into three offices: the trustee, the enforcer, and the stewardship committee. The precise interlockings and staffing of these offices – and delineating their respective duties and responsibilities – requires careful forethought and drafting.

Although Oregon is governed generally by a ninety-year Rule Against Perpetuities, stewardship trusts are exempt from the rule. The term of a stewardship trust may be – like a typical corporation’s – indefinite. Since the “life span” of a corporation may be indefinite it

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45. Gary, The Oregon Stewardship Trust, supra note 35. Typically, Gary explains, earnings will be retained and reinvested at the corporate level. Id. The accumulated earnings tax (or a state income tax law equivalent) could undermine this strategy. See 26 C.F.R. § 1.532-1 (2019). LLCs and S corporations – whose profits are taxable to their shareholders – might also prove poor candidates for an Oregon Stewardship Trust.

46. UNIF. DIRECTED TRUST ACT § 6 (2019). See also Or. Rev. Stat. §§ 130.193(7)(a), (b), (e) (granting the stewardship committee the power to remove and replace trustees and direct trust distributions). A stewardship committee, however, is also granted default powers equal to that of the trustee. See id. § 130.193(7) (providing: “Unless the terms of the trust provide otherwise, the trust stewardship committee has the power to . . . to . . . (f) exercise all rights belonging to the trustee”) (emphasis supplied). Thus, although formally structured as a kind of directed trust, the trustee seems to have powers coextensive with a committee overseeing it unless the governing instrument pares down the stewardship committee’s powers. Compare UNIF. DIRECTED TRUST ACT Prefatory Note (“In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust’s administration.”) (emphasis supplied).

47. Gary, The Oregon Stewardship Trust, supra note 35.


49. Id. Cf. 18 C.J.S. Corporations § 67 (noting that “if the period of [a corporation’s] existence is not limited by its charter, a corporation will exist indefinitely and until it is legally dissolved”). The potential lifetime of corporations took time to evolve. Initially, some states capped their term at even a shorter span than the Rule Against Perpetuities. See, e.g., DuVall v. Moore, 276 F. Supp. 674, 685 (N.D. Iowa 1967) (“Iowa
is especially sensible for the life span of the trust-shareholder to also be indefinite. The particular framing of the purpose of a stewardship trust must be oriented toward “a business purpose” but that aim “may seek economic and non-economic benefits.”\textsuperscript{50} A stewardship trust might, for example, be oriented toward developing products or services which improve the quality of life of its customers. Professor Gray again: “The specific purposes depend on the business, but the overall idea behind steward-ownership is that the purposes guide business decisions and profits are merely the means to attain the mission.”\textsuperscript{51}

D. Christian Purpose Trusts

Nebraska’s Uniform Trust Code provisions authorize noncharitable purpose trusts so long as the term of the trust does not exceed twenty-one years.\textsuperscript{52} The same authorization can be found in most of the other Uniform Trust Code jurisdictions – of which there are currently thirty-five.\textsuperscript{53} The Uniform Trust Code seems to suggest that hybrid purpose trusts are unauthorized.\textsuperscript{54} And although \textit{res} purpose trusts are not specifically endorsed, nothing in the text of the Uniform Trust Code implies that a purpose trust could not own the property toward which the purpose of the trust is oriented. With these limitations and possible uncertainties in mind, a Christian Purpose Trust can be sketched.

The prototypical Christian Purpose Trust would be structured as a hybrid \textit{res} purpose trust. It would be funded with all or the majority of shares in the settlor’s closely held business enterprise and provide for discretionary distributions of income and principal to the settlor’s descendants (or other beneficiaries that the settlor wants to name). The trust might also address how the trustee and enforcer should con-
sider any future sale, distribution, or encumbrance of the shares held in trust.55

The trust would name a trustee and an enforcer. It would address whether the enforcer or trustee could elect themselves to any positions on the corporation's board of directors and whether there were any circumstances in which the trustee or enforcer could also serve as employees of or consultants to the business. To avoid conflicts of interest, the trust might ban the trustee or enforcer from serving in any role within the business enterprise.

The trustee would be directed by the terms of the trust instrument to carry out the noncharitable purposes of the trust indirectly by means of the prudent exercise of shareholder rights.56 The trustee, as a shareholder, would not make day-to-day business decisions or set company policy, but would determine how to exercise the primary right of a shareholder — voting for members of the board of directors — based upon how those vote allocations could best advance the settlor's articulated objectives.57 Here, it is helpful to recall once more our trust for Fluffy. The trustee of Fluffy's trust did not care for Fluffy, but the trustee did select a caregiver, instruct the caregiver, and monitor the caregiver's performance.58 In much the same way, the trustee of a Christian Purpose Trust would oversee the performance of the enterprise's board of directors.

The owner of a closely-held business enterprise can exercise her will and autonomy by imprinting her own Christian values on the way her business operates. The stewardship trust concept allows the settlor to endow an irrevocable trust with those same values, and ensure that the trustee will best be able to ensure these values are recognized by the business enterprise by funding the trust with a res of those

55. The settlor of any res purpose trust — whether a pet trust, a stewardship trust, or otherwise — may not infrequently desire to flatly prohibit any sale, encumbrance, or distribution of the purpose-res. Any attempted prohibitions going to the alienability of any part of the trust estate should take account of the common law’s view of restraints on alienation as repugnant and unenforceable. See generally, John Chipman Gray, Re-straints on the Alienation of Property (2d ed. 1895). The repugnancy is preserved by statute in some jurisdictions. See, e.g., Okla. Stat. tit. 60 § 175.47(A) (2020) (insisting that “the absolute power of alienation of real and personal property, or either of them, shall not be suspended by any limitations or conditions whatever for a longer period than during the continuance of a life or lives of the beneficiaries in being at the creation of the estate and twenty-one (21) years thereafter”).

56. Alternatively, the trustee could be directed by a trust director with those responsibilities by means of a directed trust structure. See Neb. Rev. Stat. § 30-4301 et seq. (codifying the Nebraska Uniform Directed Trust Act).

57. Id. § 21-270.

58. Cf. Unif. Trust Code § 703 cmt. (noting that “trustees should be encouraged to delegate functions they are not competent to perform”); see also id. § 807(a)(1)-(3) (providing that when trustees delegate, they must “exercise reasonable care, skill, and caution in” selecting, monitoring, and instructing the person to whom they delegated).
shares. As suggested above, a Christian Purpose Trust might include restrictions or requirements such as those often found in socially responsible investing mandates. For example, the trust might direct the trustee to exercise its shareholder powers to ensure that the corporation does not participate in purchase, shipment, or marketing of weapons. It might direct the trustee to campaign for Sunday business closing policies or generous family leave time. The particular objectives can in large measure mirror the same firmly-held values of the settlor herself. Those values can be endowed with momentum and preservation by the text of the purpose trust instrument.

Renowned purpose trust scholar Alexander Bove notes the following objectives that might be achieved with a purpose trust or “stewardship ownership plan” for a closely-held business:

1. Ensure retention and continuation of the business indefinitely;
2. Allow family members, descendants, and key employees to manage or participate in management of the business;
3. Provide benefits to family members in and out of the business, as well as other parties, such as employees and charities;
4. Consider and develop the favorable impact the company has on the community;
5. Protect against outside disruptions or exposure to loss of business ownership, such as divorce, lawsuits, estate disputes, and the like; and
6. Protect against sale of the business or hostile takeovers by outside investors.

Perhaps the greatest stumbling block to a fully realized Christian Purpose Trust in Nebraska and most other jurisdictions is the Rule Against Perpetuities (“RAP”) or its Uniform Trust Code analogue of twenty-one years for purpose trusts. While the public policy objectives and concerns which reside within RAP are legitimate, they have been largely rejected in the business context insofar as business entities with a perpetual or indefinite term of existence are commonplace. Indeed, insisting that corporate existence terminate within twenty-five years—

59. See Alexander A. Bove, Jr., The Purpose Trust Has a New Purpose, 33 PROB. & PROP. 40, 42 (2019) (asserting “that the steward ownership arrangement produces far better performance results than the typical, closely-owned, for-profit companies, possibly on account of the clear long-term view that the managers must take, as opposed to the typical near-term bottom line results to please shareholders”).
60. Id.
61. See UNIF. TRUST CODE § 409(1). Compare Neb. Rev. Stat. § 30-3835(1) (“The trust may not be enforced for more than twenty years.”), with Or. Rev. Stat. § 130.190 (2019) (Oregon’s version of UTC 409(1) allowing purpose trusts (other than pet trusts or stewardship trusts, discussed infra Subsection D) to “be enforced for [not] more than 90 years”).
one years of lives in being would be roundly rejected by most policymakers today. Since stewardship trusts are joined to corporate shares, relaxing or rejecting RAP’s application to at least one particular variety of purpose trusts ought to be relatively uncontroversial. In Oregon, at least, the legislature perceived that the benefits of eliminating RAP as applied to stewardship trusts outweighed the downsides.

III. CONCLUSION

Unchecked corporate profit-seeking ambitions are making the rich richer and the poor poorer.62 Recently, Robert Cardinal Sarah wrote:

We need a true freedom of enterprise in order to develop a just economy. But his freedom must be imbued with the virtue of justice. Our freedom has a purpose, a meaning; it must flourish in a form of friendship. It cannot give free rein to the appetites for ownership while leaving it up to hypothetical laws of the marketplace to regulate these unbridled desires.63

Stewardship ownership via a Christian Purpose Trust as outlined above could act as a powerful check on corporate greed and accelerating wealth disparities. Moreover, a Christian Purpose Trust would permit an entrepreneur to ensure that her particular values are shared by her successor shareholder, while also providing for a legacy for her family or other loved ones. Business succession planning is a challenging endeavor which must take account of the particular dynamics, circumstances, and objectives of the individual testator/settlor. Christian Purpose Trusts can provide one additional planning option by which to map and achieve those objectives.
