

Community trusts; required resolutions. Examples are given of resolutions adopted by community trusts with respect to the administration of such trusts or funds that satisfy the requirements of section 1.170A-9(e)(11)(v)(E) and (F) of the regulations.

Advice has been requested whether the resolutions set forth below as examples satisfy certain requirements of the Income Tax Regulations under section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1954 as they apply to community trusts. A community trust that is described in section 170(b)(1)(A)(vi) is not a private foundation by reason of section 509(a)(1).

Section 1.170A-9(e)(11)(v)(E) of the regulations provides, in pertinent part, that the governing body of a community trust shall (by resolution or otherwise) commit itself to exercise, in the best interests of the community trust, the powers described in section 1.170A-9(e)(11)(v)(B), as modified by the transitional rule provided for in section 1.170A-9(e)(11)(v)(C) and/or by inconsistent State law as provided for in section 1.170A-9(e)(11)(v)(D). These powers include the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to any specified organizations, to replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law, and to replace any participating trustee, custodian, or agent for failure to produce a reasonable return of net income over a reasonable period of time.

Section 1.170A-9(e)(11)(v)(F) of the regulations provides, in pertinent part, that the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted trust or fund that is, and with respect to aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income) with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities).

Example 1. Resolution evidencing the commitment under section 1.170A-9(e)(11)(v)(E);

'RESOLVED, that the governing body (Board of Directors or Distribution Committee) hereby commits itself to exercise, in the best interests of the ( ) community trust, the powers described in Treasury Regulations section

1.170A-9(e)(11)(v)(B), (C), and (D), a copy of which is attached hereto.'

Example 2. Resolution evidencing the commitment under section 1.170A-9(e)(11)(v)(F):

'RESOLVED, that the governing body (Board of Directors or Distribution Committee) hereby commits itself to obtain information and to take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent administers each restricted trust or fund and the aggregate of unrestricted trusts or funds of the ( ) community trust in accordance with the provisions of Treasury Regulations section 1.170A-9(e)(11)(v)(F), a copy of which is attached hereto.'

The resolutions set forth in Examples (1) and (2) above commit the governing body (Board of Directors or Distribution Committee) of a community trust to exercise the powers described in section 1.170A-9(e)(11)(v)(B), (C) and (D) of the regulations.

The language of the resolutions set forth in Examples (1) and (2) is not the only language that a community trust may use to satisfy the requirements of sections 1.170A-9(e)(11)(v)(E) and (F) of the regulations; however, if a community trust adopts the resolutions as set forth in Examples (1) and (2) it will satisfy the requirements.