

CultureTrust Greater Philadelphia is a Pennsylvania trust. Generally, trusts are set up by “trust agreement” or “trust instrument,” and administered by trustees, who are in charge of operating the trust in accordance with the trust agreement.

Pennsylvania law limits how much the trustees can delegate. For example, even if a trustee hires an accountant to handle bookkeeping, Pennsylvania requires the trustee use “reasonable care, skill, and attention” to periodically review the accountant’s work to ensure it’s being done correctly. The trustee cannot delegate responsibility for the trust’s financial books and records entirely to the accountant. Further, if there are multiple trustees and one trustee proposes a course of action, the other trustees must usually make their own decision, utilizing their own “reasonable care, skill, and attention” to decide what the trust should do. In most Pennsylvania trusts, trustees are not usually allowed to rely on the judgment of other trustees.

However, CultureTrust has been set up differently than most Pennsylvania trusts. Its trust agreement utilizes 20 Pa. C.S. 7778(b), a Pennsylvania law that says a trust agreement can give certain people the power to “direct” the trustee on specified matters. Section 3.5 of the agreement for CultureTrust says a Project Director is allowed to direct the trustees of CultureTrust to do the following:

- Hire or dismiss an employee, subject to employment policies
- Engage or disengage a nonemployee service provider
- Buy goods or supplies; and
- Incur other expenses to perform the Project’s activities.

This power is subject to restrictions. More specifically:

- If the direction is about hiring or dismissing an employee, it is subject to applicable employment policies (Section 3.5 of the trust agreement).
- The direction is subject to applicable law, provisions of the trust agreement, the User Manual, and the Project’s approved budget (Section 3.5 of the trust agreement).
- The direction must be in good faith and in writing (Pennsylvania law).
- The direction must not be manifestly contrary to the trust agreement (Pennsylvania law and Section 3.6 of the trust agreement).



- The trustees will not follow the direction if it is “manifestly contrary” the Trust Agreement (Pennsylvania law and Section 3.6 of the trust agreement) or applicable law (Section 3.6 of the trust agreement).
- The trustees will not follow the direction if it “would be a breach of the Project Director’s fiduciary duty” (Section 3.6 of the trust agreement).¹

Holding this power means that under 20 Pa. C.S. 7778(d), a Project Director is presumed to be a fiduciary of the trust. Broadly, this means that the Project Director must act for the benefit of the Trust rather than the Project Director’s personal benefit.

To document this, CultureTrust asks Project Directors to sign a fiscal sponsorship agreement that specifically accepts the power to direct CultureWorks as a fiduciary, acknowledges the restrictions, and Trust, and agrees to be personal responsible for budget overruns and directions given in violation of the requirements.

¹ The Trust Agreement imposes a slightly different standard than described by Pennsylvania statute, which says the trustee is not required to follow the direction if the trustee **knows** it is a breach of the direction-giver’s fiduciary duty.