

The Delaware Advantage



Daniel Lindley has extensive Delaware trust experience and practiced law in Delaware for nearly 25 years. He was the principal author of Delaware's legislation repealing the Rule Against Perpetuities and permitting self-settled asset protection trusts.

Each year, wealthy families from across the country establish trusts in Delaware to take advantage of the many benefits not found elsewhere. Daniel F. Lindley, President of The Northern Trust Company of Delaware, explains why you, too, may want to consider a Delaware trust.

Why is Delaware considered such a good state for establishing trusts?

People wanting to establish a trust often are looking to find the most efficient way to minimize the effect of taxes on their trust, maximize the amount they are able to pass on to their heirs, and to do so with the least intrusion into their privacy. Delaware is the pre-eminent jurisdiction for establishing a trust because its trust-friendly environment and laws make achieving these goals much easier. No matter where you live, by establishing an irrevocable trust in Delaware you can enjoy several strategic advantages that may not be available in your home state: longevity, favorable taxation, flexibility, asset protection and privacy.

How can establishing a perpetual trust benefit my family?

Assets passed along outside of a trust are subject to gift or estate taxes (and possibly generation-skipping taxes) each time the asset changes hands. Without a trust, by the time your assets are passed to your grandchildren, the value of your estate may have been reduced significantly.

Unlike many states that limit the duration of a trust (typically to less than 100 years), Delaware allows a properly structured trust to continue in perpetuity. So while a typical trust may allow you to minimize the effects of taxes for your children and grandchildren, assets transferred to a dynasty trust in Delaware can benefit countless generations of your descendants without incurring additional gift, estate or generation-skipping taxes.

What type of tax advantages do trusts in Delaware enjoy?

In addition to the extended gift, estate and generation-skipping tax advantages offered by a dynasty trust, Delaware has eliminated its income and capital gains taxes on trusts for beneficiaries who aren't Delaware residents.

This can be particularly advantageous if your beneficiaries live somewhere with high state or even city income tax rates. In normal circumstances, these beneficiaries may face substantial costs, on top of the federal taxes they'll owe, when they sell a large holding of appreciated stock or equity in a closely held business. As a result, the tax cost can significantly reduce the amount left

from the sale. With a properly structured trust in Delaware, however, your beneficiaries won't face state or city taxes when selling trust assets, which could reduce their tax burden greatly.

I would like a trust that will allow me to provide some income for my children now, but also preserve its value for their children and grandchildren. Is this possible?

Delaware's total return unitrust statute can allow you to satisfy the competing goals of providing regular distributions to current beneficiaries while still preserving trust assets for future beneficiaries. This statute allows trustees to invest in assets that may not produce current income, but instead have the potential to appreciate. It also provides a trustee with the unparalleled ability to adjust the unitrust rate periodically based on market conditions and the beneficiaries' circumstances.

What type of asset protection do trusts in Delaware offer?

Delaware law allows you to create a "self-settled" trust that offers asset protection benefits for your personal financial assets. You create the trust with your own assets and name yourself as the beneficiary. These assets then are safe from creditors after a four-year period, during which creditors can make a claim against the trust.

Even during this four-year period, if a creditor asserts a claim against assets in the trust, it also must say that funding the trust amounted to a fraudulent transfer. This is a heavy burden to prove. As a result, these trusts offer an alternative to the asset protection of an offshore trust, but without the expense, complexity and tax compliance obligations.

My family's privacy is very important to me. Is it possible to protect our financial information when establishing the trust?

For many families, privacy and discretion are of great importance in their financial dealings. Delaware law respects this need, and does not require trust agreements to be filed in court or trusts to be registered. Delaware also does not require court accountings for living or testamentary trusts unless the trust instrument, will or a court order expressly requires accountings. These laws and a court that is generally sympathetic to requests for sealing records of any litigation combine to give you the privacy your family requires.

Do you see any other benefits to establishing a trust in Delaware?

Delaware's advantages go beyond just the law itself to the total environment. Delaware has a storied tradition of being a trust-friendly jurisdiction, with a court system that is highly responsive to the needs of trustees and beneficiaries, and a legislature that is continually refining and updating trust laws. ■



Learn More With Northern Trust's New Delaware Trusts Publication

Northern Trust has recently published *Delaware Trusts: Safeguarding Personal Wealth*, the first paper in its Wealth Management Strategies series. This paper provides an in-depth discussion of the favorable trust environment provided by the State of Delaware, as well as the benefits that may result from selecting a Delaware trustee. In particular, the paper examines the innovative Delaware judicial structure, administrative or direction trusts, savings on fiduciary income taxes, dynasty trusts, Delaware asset protection trusts, total return unitrusts and the power to adjust, and confidentiality and nondisclosure.

To order a copy of *Delaware Trusts: Safeguarding Personal Wealth*, contact your Relationship Manager, call 866.296.1526 or send a request by e-mail to wealthmagazine@ntrs.com. You also can preview a copy of this publication on our Web site at northerntrust.com/wealth.