# Delaware Trust Administration: The Delaware Advantage

The State of Delaware has a long-standing tradition of creating and maintaining sophisticated, cutting-edge laws that govern trusts. Its trust law is intentionally different from the laws of many other states, providing unique opportunities to families and individuals with goals of protecting their wealth. In order to help facilitate these trusts, Comerica has a physical presence with a team of excellent advisors in Delaware. Clients do not have to be Delaware residents to establish a Delaware trust in order to take advantage of the state's favorable trust statutes and Delaware's Chancery Court System, which oversees Trust and Estate matters.

## Asset Protection Trusts

Delaware continues to maintain its position as a favored jurisdiction in the nation for the creation and administration of "Asset Protection Trusts." An Asset Protection Trust is an Irrevocable Trust that shields the assets transferred to the Trust from the claims of most creditors, yet it allows the individual creating the trust to receive benefits from the Trust and to exercise a degree of control over how the Trust assets are managed. Asset Protection Trusts can be particularly attractive to individuals in certain high-risk professions, such as doctors, lawyers, financial advisors, corporate officers, and directors.

With a national charter and offices located in Delaware, Comerica is fully capable of administering Delaware Asset Protection Trusts. There are several benefits to an Asset Protection Trust in addition to the decision-making power that the Grantor can retain that include:

- Assets are protected from potential creditors
- The Grantor may act as the Director Investment Advisor to direct the Trustee on the investments inside of the trust
- Interest can be held in an entity, such as an LLC or FLP while the Grantor retains control of the assets
- The Grantor can receive distributions from the trust
- Spendthrift protection of beneficiaries from their own financial imprudence under Delaware law.

**Example:** During discovery conversations, we uncovered that our client, a 40 year-old with a net worth of approximately $2.5 million just made partner at her law firm. She was concerned that a future malpractice suit could put her wealth at risk. With our guidance, she created a Delaware Asset Protection Trust and transferred $1 million in assets to that trust. She named her father as the "distribution advisor" of the trust, giving him discretion to make distributions from the trust to herself and her children. The client also named herself as the "Investment Advisor" of the trust, which enables her to retain a significant amount of control over the manner in which the trust assets are managed. This Asset Protection Trust is beyond the reach of any future creditors even though she is receiving distributions from the trust.



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## Directed Trustee Statute

One of the most popular and desired advantages of Delaware trust law is Delaware's "directed trustee" statute. The statute authorizes clients to name advisors for their trusts who have the authority to direct certain actions of the trustee, such as investment and distribution decisions. The trustee must fulfill these directions without having to monitor or exercise any discretion over the decisions and directions of the advisor. Some of the benefits of these "directed trusts" include full control over the assets in the trust, potentially lower trustee fees, and increased control over the manner in which the trust is administered.

Example: One excellent use of a Directed Trust came to light with a highly regarded politician who was considering a run for higher office. He has tremendous family wealth and does not want the perception that he has been born into privilege without having a healthy work ethic. Once he understood the benefits, and with our guidance and approval by the U.S. Senate, he created a Delaware blind trust.

This trust reduces the wealth in his name as it removes the assets from his estate, however he remains the beneficiary and grantor of the trust. He has the benefit of privacy from the public since blind trusts have no statements, but a full accounting is submitted periodically to the trust director and to the US senate. In addition, he is confident that his children will not be disincentivized by this wealth and will continue to strive for success.

## Additional Delaware Trust Benefits

As these examples have shown, Delaware has taken great strides in creating modern, flexible trust laws that are designed to meet the needs of individuals and families wanting to create trusts, protect assets and transfer wealth to future generations. Other examples of Delaware Trust Benefits include:

- Repeal of the "Rule Against Perpetuities" which allows the creation of "Dynasty Trust" that can avoid federal and state transfer taxes for many, many generations.
- Delaware law allows for a traditional income trust to be converted to a trust where payouts to current (income) beneficiaries can be adjusted to an amount between 3% and 5% of the value of the Trust; which is known as a Total Return Trust. This type of trust allows for more flexibility and can help minimize conflicts between current and future beneficiaries.
- Typically, a trustee has the duty to inform beneficiaries of their interest in a discretionary trust but grantors may not always want their beneficiaries to know about the extent or nature of the Trust. Quiet or Silent Trusts are options under Delaware Trust law that allow a delay in notifying certain beneficiaries until a triggering event occurs.
- Enactment of a "Decanting" Statute permitting a trustee to transfer the assets of an existing trust to one or more new trusts with slightly different administrative provisions to meet the changing needs and circumstances of families or tax regulations.
- Increasing investment flexibility allowing a trustee to establish an investment policy most suited for a particular trust and relieves the trustee from liability for its reliance on the investment objectives set forth in the trust agreement.
- Not requiring trust agreements to be filed or recorded with a court or recorder (while not specifically unique to Delaware as some other states have repealed mandatory reporting, this is a benefit worth noting for anyone concerned with privacy) Delaware does not impose state fiduciary income tax on irrevocable trusts that accumulate income and capital gains for beneficiaries that do not reside in Delaware. Other state income tax may apply.

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Delaware law is designed to provide maximum flexibility to individuals wanting to create a trust to ensure maximum effect is given to their wishes as expressed in the trust document. These are but a few of the advantages Delaware trust law has to offer. To learn more about the "Delaware Advantage," please reach out to your Financial Advisor or your dedicated Comerica Fiduciary Strategist. Comerica has a full service trust office in Wilmington, Delaware, that is ready to meet your Delaware trust needs with our experienced and knowledgeable staff.

## Want to know more?

Comerica welcomes the opportunity to help. If you would like to know more about Delaware Trust Administration or any other trust consideration, contact your Comerica Fiduciary Strategist or contact Comerica Trust comerica.com/trust.