



Delaware Trust Planning

Wondering which out-of-state trust jurisdiction to choose?

Three reasons why Delaware may be the best jurisdiction for you

Delaware is known as the First State. Of course, this nickname refers to its position in line to ratify the U.S. Constitution. However, Delaware has also been at the forefront of trust law since the beginning of the twentieth century. Many states, including Alaska, Nevada, and South Dakota, have followed in Delaware's footsteps to create flexible and useful environments for trust grantors. Still, the original value proposition created by Delaware offers three distinct advantages over states that have followed suit.

1) Court system

Delaware trust administration and trust interpretation cases are within the jurisdiction of the Delaware Court of Chancery and the Delaware Supreme Court. These highly trained and specialized judges address trust matters promptly and efficiently, without any jury involvement. Unlike states relatively new to the trust world, many issues have already been interpreted by Delaware's court system, including:

- Delaware Domestic Asset Protection Trusts (DAPT) have been upheld by Delaware courts; however, the Alaska DAPT statute has been set aside by two bankruptcy courts
- Delaware Directed Trust Statute, which allows trustee duties to be bifurcated between fiduciaries, has been upheld by Delaware courts. Other states have directed trust statutes, but they are relatively new and untested in the courts.

2) Trust laws and legislative environment

Delaware began building its trust infrastructure in the early twentieth century, and its state legislature continues to update and adjust trust laws to adapt to a variety of new challenges. This approach is evidenced in the following:

- Ongoing cooperation among the state legislature, governor, banking institutions and legal community to propose and pass new trust legislation that ensures Delaware maintains its status as a leading trust jurisdiction
- Offering more flexible and comprehensive statutes, as compared to other states, for trust modifications, decanting, quiet trusts and directed trusts

3) State income tax

Delaware does not tax the portion of income and capital gains accumulated in a trust that is set aside for nonresident beneficiaries. This has several potential benefits, including:

- The trust pays no Delaware state income tax and is not even required to file a Delaware state income tax return if all of the trust beneficiaries are nonresidents
- The "Delaware Tax Trap" potentially allows for a step-up in the basis of the trust's assets for income tax purposes

While selecting a trust jurisdiction is not a one-size-fits-all decision, as a pioneer in trust law, Delaware offers a variety of unique advantages over competing states. **For more information about why Delaware may be the right jurisdiction for your trust, visit our [Delaware Trust Planning](#) resource page.**

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