

**THE Delaware Advantage**

- ☑ Delaware law allows the formation of asset protection trusts which shield assets from certain classes of creditors and allow the settlor of the trust to remain a potential beneficiary.
- ☑ There is no Delaware income tax on ordinary income or capital gains accumulated or distributed to non-resident beneficiaries.
- ☑ There are no Delaware intangible personal property taxes.
- ☑ Delaware allows the creation of dynasty trusts which can last indefinitely without imposition of additional estate or gift taxes.
- ☑ Trust accounting rules are streamlined and may be eliminated if the settlor so desires.
- ☑ Delaware law recognizes spendthrift trusts and provides virtually complete protection from claims of creditors for a trust beneficiary, especially if the trustee is a Delaware bank or trust company.
- ☑ Delaware does not require trust agreements to be filed or recorded, and if they are subject to litigation, the Chancery Court has been willing to place the court record under seal.
- ☑ Delaware permits the settlor of a trust to limit the number of beneficiaries who are to receive notice of the trust, both during the settlor's lifetime and after his or her death.
- ☑ Delaware permits the settlor of the trust to establish his or her own investment policy in the trust instrument, and permits the use of investment advisors of their own choice to advise the trustee without breaching the trustee's fiduciary responsibility.
- ☑ The Chancery Court has a history of seeking to determine the settlor's wishes and the settlor's intention, as demonstrated in the trust instrument.
- ☑ Delaware law permits decanting.

**Commonwealth Trust Company**

*An Independent Delaware Trust Company  
Established in 1931*

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**About Commonwealth Trust Company**

Commonwealth Trust Company is a non-depository trust company that serves as Corporate Trustee for various types of Delaware situs trusts including:

- ☑ The Delaware Dynasty Trust
- ☑ The Delaware Asset Protection Trust
- ☑ Life Insurance Trusts
- ☑ GRATS
- ☑ Charitable Trusts

What makes our service unique is that we only perform trust administration, offering you the resource needed to take advantage of Delaware trust law while working with your current trusted advisors and never replacing them.

Since we only perform administrative services and do not provide investment services, our structure permits you to use your existing investment advisor. Delaware law also permits you to use a distribution advisor and a trust protector of your choosing.

We are professional trust administrators with a well trained, responsive staff. Our goal is to provide our clients with the best service experience.

With our staff of highly skilled professionals, Commonwealth Trust Company offers you and your client experience and integrity. We have been engaged in trust services for over 75 years gaining extensive expertise in business and fiduciary matters. You will benefit from our expertise and will find we respond quickly and efficiently to all trust matters.

**Commonwealth Trust Company**

*Engaged In Trust Administration Since 1931*

**Decanting**



**Benefits of Delaware Trust Law**

**How to Take Advantage of Delaware Trust Laws**

**Corporate Versus Individual Trustees**

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**The Typical Trust Structure.** Delaware law permits the appointment of investment advisors (the advisor may even be the settlor of the trust), trust protectors and distribution advisors, none of whom are required to be residents of Delaware, so long as a Delaware trust company is serving as trustee. Commonwealth Trust Company, as your independent trustee, requires only that you utilize an independent investment advisor.

## Decanting and Other Ways to Change Your Trust

Delaware is among only a handful of states that has a “decanting” law. Generally, decanting laws allow a trustee to “amend” a trust by distributing principal of the original trust to a new trust that has the desired provisions. Under Delaware’s decanting statute, the trustee may do this to the extent the original trust granted the trustee the authority to distribute principal to or for the beneficiaries of the original trust.

Decanting a trust pursuant to Delaware’s statute does not require court approval or the consent of any person other than the trustee, although the trustee may want to obtain the consent of the beneficiaries in certain circumstances. Of course, income, estate, gift, and generation-skipping transfer taxes should always be carefully considered when deciding whether to decant a trust.

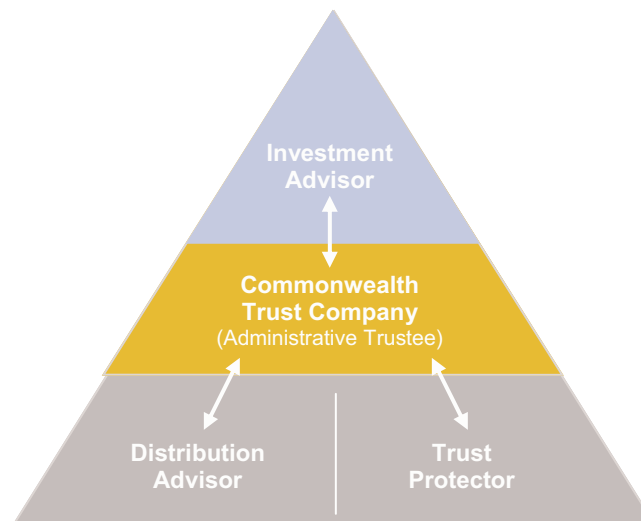
Under Delaware’s decanting statute, the ability of trustees to amend trusts is broad, but not unlimited. For example, under Delaware’s decanting statute:

- If the trustee’s investment powers in the governing instrument are not broad enough, they can be expanded to provide greater flexibility.
- Additional advisory positions (such as investment advisors, distribution advisors, and trust protectors) can be created and filled.
- Changes can be made to (i) the successor trustees appointed in the governing document or (ii) the procedure by which successors are appointed.
- Any administrative provision in the governing instrument can be updated.
- Limited changes to the interests of the beneficiaries can be made.
- The trust’s purposes can be narrowed. For example, a trust that is for the “health, support, and education” of a beneficiary can

be decanted into a trust that is for only one or two of those purposes.

- Differing investment philosophies and distribution needs can be accommodated.
- Flexibility in distributions can be increased.

Delaware’s decanting statute has several distinct advantages over the decanting laws of other states. Certain other states prohibit decanting unless the trustee of the original trust has the absolute discretion to distribute principal. In contrast, decanting in Delaware is possible for more trusts because Delaware permits decanting when the trustee has the authority (but not necessarily the absolute discretion) to invade principal. This allows a trustee to decant even when the trustee’s authority to invade principal is limited to invasions for the beneficiary’s health, maintenance, and/or support (or some other purpose). In addition, Delaware’s decanting statute is more flexible than those states which do not allow trustees to reduce fixed income rights of beneficiaries. Aside from certain marital trusts, Delaware trustees may reduce income interests of beneficiaries if deemed appropriate, thereby giving Delaware trustees greater flexibility. Delaware’s decanting statute also ensures that the donor’s gift tax annual exclusion for gifts to the trust is not jeopardized.



*\*This information is not meant to convey legal or tax advice. You should contact the appropriate advisor on these matters.*

To take advantage of Delaware’s decanting statute, the original trust must first have its situs in Delaware. If the original trust’s situs is not already in Delaware, it can be transferred to Delaware, which is generally an easy process if a Delaware trustee is appointed and the original trust permits a change in situs.

Aside from using the decanting statute or a decanting provision in the governing instrument (if it contains such a provision), there are two other possible ways to accomplish amending a trust in Delaware. First, if the trust contains an “amendment” provision, the trust may be modified in accordance with that provision. Such a provision typically permits only the administrative and technical terms of the trust to be modified, and may or may not require the consent of the beneficiaries or others. Second, a trust may be amended through court order. This requires the filing of a Petition for Reformation with the Delaware Court of Chancery. Such petitions can be submitted as “consent Petitions,” whereby the consent of all interested parties is obtained, which usually eliminates the need for a hearing. If instead the Petition is submitted as a standard Petition, a hearing most likely will be necessary. Whether decanting, amending through a technical amendment provision, or reforming through a Chancery Court Order, Commonwealth Trust Company recommends that you contact an attorney to discuss your options and the best strategy for amending your trust.

Delaware’s decanting statute offers a significant benefit -- the flexibility to adjust to changed circumstances by decanting the original trust’s assets into a new trust with the desired provisions. In those cases where the decanting statute cannot be used, Delaware’s reformation process can serve as an attractive alternative way to amend a trust.

**When Considering a  
Corporate Trustee, Consider  
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