



WHY COMMONWEALTH TRUST COMPANY?

Delaware's independent, privately-held boutique trust Company partnering with your existing advisers to provide sophisticated, professional trust administration solutions.

Objective: It is our intention to complement, not compete with, a team of trust professionals to develop and implement a specialized plan in order to meet a client's particular planning goals, through:

- the predictability of the Delaware Court of Chancery;
- the benefits of Delaware's proactive trust legislation;
- the advantages of the Delaware "Directed Trustee Statute;" and
- our knowledge and expertise in business, trust administration, and fiduciary matters.

Independent:

- Commonwealth Trust Company has been privately owned since 1931, more than 80 years.
- The owners and officers of Commonwealth Trust Company have long-time ties to the Delaware community, particularly to the Delaware trust community.
- We do not have an investment division. Therefore, we do not have any conflicts of interest regarding investment decisions, distribution decisions or trust administration.
- Grantor may continue to work with his or her own advisers, developed over his or her lifetime, while allowing us, as trustee, to carry out the terms of the trust in the most expeditious manner.

Experience:

- We have decades of experience administering and dealing with trusts of all types that have; local, state, federal and international planning issues along with diverse tax issues and family dynamics.
- We have developed a systematic and thorough approach to reviewing trusts documents in conjunction with ascertaining the grantor's intent so that we are able to identify and address tax and administrative issues at the outset to avoid complications during the life of the trust.
- We have a team of highly qualified professionals actively participating both in the trust intake process and in the trust's on-going administration.

Financially Stability:

- Trust accounts representing more than **\$16 billion in assets under administration.**
- Our trust asset values range from slightly **under \$1 million to over \$1 billion.**
- We work with more than **eleven of the 400 Wealthiest Americans** per Forbes magazine.
- We work with **eight of the World's 400 Top Billionaires** per Forbes magazine.

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WHY DELAWARE?

Delaware's independent, privately-held boutique trust Company partnering with your existing advisers to provide sophisticated, professional trust administration solutions.

- ❖ The ***Delaware Court of Chancery*** is widely recognized as the nation's preeminent forum for the determination of disputes involving trusts. It is a court of equity with over 250 years of case law to draw upon and has exclusive jurisdiction over all matters of Delaware trust administration and trust interpretation. Judges are appointed not elected. No juries are involved so this provides a stable legal platform.
- ❖ ***Trust legislation*** is both proactive and forward thinking, keeping as its primary goal the enforcement of the grantor's intent. Historically, Delaware has been one of the first states to pass innovative trust legislation such as the repeal of the rule against perpetuities allowing dynasty trusts, asset protection legislation, directed trust legislation, virtual representation, total return trusts and most recently the recognition of tenancy by the entirety property in trust.
- ❖ The ***Directed trust statute*** allows the complete bifurcation of trustee duties so that separate advisers are able to direct the investment and/or distribution of trust assets under 12 Del. C. §3313, thus allowing a grantor to utilize existing advisers in their trust planning.
- ❖ The ***Tax advantages*** offered by Delaware trusts include no state income tax on ordinary income or capital gains accumulated within a Delaware resident trust per 30 Del. C. §1636(a). This is particularly useful to grantors in saving state-level capital gains tax when selling a closely held business owned by a DING trust.
- ❖ ***Confidentiality*** is permitted with regard to trust matters as there is no requirement that trusts be registered in Delaware nor that periodic accountings be filed with the court for supervision per 12 Del. C. §§3303, 3522. Where a Delaware trust does become involved in litigation or otherwise utilize the court system, the matter may be filed under seal so as to ensure continued privacy.
- ❖ ***Creditor protection*** can be accomplished through the Delaware Qualified Dispositions in Trust Act under 12 Del. C. §3570, et al. These trusts can also be used for ***prenuptial planning*** so long as the trust is created and funded prior to the date of marriage.
- ❖ ***Dynasty Trusts*** are possible in Delaware as the rule against perpetuities was repealed by Delaware in 1995 per 25 Del. C. §503
- ❖ ***Silent trusts*** are possible in Delaware as beneficiary notification can be eliminated for a period of time per 12 Del. C. §3303(a).
- ❖ Delaware's ***decanting statute*** allows the simplified transfer and modernization of trusts through the use of a trustee's distribution powers pursuant to 12 Del. C. §3528.
- ❖ Delaware allows for the creation of non-charitable ***purpose trusts*** per 12 Del. C. §3556.
- ❖ ***Tenancy by the entirety property*** can be contributed to a Delaware trust without losing its character per 12 Del. C. §3334, thus affording the grantors a second layer of asset protection.

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WHY DIRECTED TRUSTS?

Delaware's independent, privately-held boutique trust Company partnering with your existing advisers to provide sophisticated, professional trust administration solutions.

Delaware has statutes that not only acknowledge the concept of directed trustee but make clear the duties, responsibilities and liabilities of the directed trustee. The use of trust advisers allows many grantors to utilize trustees in states with beneficial trust laws, relying solely on their efficient administration of the trust in a desirable jurisdiction, while allowing investment and distribution decisions to remain with their trusted local advisers. It also allows the grantors to rely on each of the trustees and various advisers to remain focused on their specific area of expertise. In this way, a trustee can maintain the power and authority to act with regard to the trust document, but, execute such powers solely at the direction of an adviser.

ADVANTAGES TO BIFURCATING TRUSTEE DUTIES

1. Advantages to a grantor:
 - To accomplish specific investment strategies
 - To Execute unique tax objectives
 - To achieve goals which conflict with traditional fiduciary limitations
 - To carry out other objectives which may pose; unacceptable risks, obligations and duties on fiduciaries
2. Advantages to a fiduciary regarding “Investment direction”:
 - Shift of liability standard allows trustee to take direction without fear of vicarious liability
 - Grantor's unique investment strategies will not cause the trustee to run afoul of the Prudent Investor Rules
 - Allows higher risk investment responsibility to reside with someone more able to advise the trustee, without causing the trustee additional risk (i.e. running a family business)
 - (Enables) the trustee to take direction from multiple parties, where the grantor wishes to employ more than one investment strategy, without concern for additional risk
3. Advantages to a fiduciary regarding “Distribution direction”:
 - Grantor can leave distribution decisions in the hands of individuals who are close to the family and have personal knowledge of the beneficiary's needs
 - Particularly useful with beneficiaries who have dependency issues, or where there are other conditions which require personal knowledge of the beneficiary's daily lives which a trustee may not be able to devote sufficient time or resources to on a regular basis
4. Other options for bifurcating responsibility:
 - Can be used to allow someone close to the family to determine when it is appropriate to inform a beneficiary of the existence of the trust (particularly useful where beneficiaries are either young or irresponsible)
 - Amendment of the trust can reside with a neutral person, which is particularly useful in situations where there is a change in trustee requiring changes to administrative terms of the trust instrument
 - Change of situs and governing law is another area of concern for a trustee who would not want to be responsible for on-going research regarding the benefits of multiple trust jurisdictions

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