

Trust Industry Brief

Modification of Irrevocable Trusts by Consent of the Grantor, the Fiduciaries, and the Beneficiaries



Delaware is now an even better place to create and administer trusts. On Friday, July 29, 2016, Delaware Governor Jack Markell signed Senate Bill Number 248 into law. As a result, a Delaware irrevocable trust may now be modified during the lifetime of the trust creator, or grantor, by written consent and without the blessing of the courts, even if the modification violates a material purpose of the trust. In order for the modification to be valid, the new law requires the written consent or written non-objection of the grantor, all of the trust's then-serving fiduciaries, and all of the trust's beneficiaries. Again, no court proceeding or approval is necessary. The new law is Section 3342 of Title 12 of the Delaware Code. Modifications to beneficial interests and administrative provisions are possible under the new law, which applies to any trust administered under the laws of Delaware. A trust is considered as being administered in Delaware if there is a Delaware corporate Trustee serving and no other entity serving as co-Trustee. The new law is yet another reason why Delaware is a leading jurisdiction for trust creation and administration.

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