



INDEPENDENT
THINKING

A NEW FIDUCIARY PERSPECTIVE

EVERCORE
evercorewealthandtrust.com

Second Edition

**EVERCORE TRUST COMPANY, N.A.—
WHY DELAWARE?**

Evercore Trust Company, N.A.— Why Delaware?

Establishing an irrevocable trust in Delaware may reduce the tax burden on trust assets and could offer a number of additional benefits. As the rules and regulations for administering trusts with complex assets become increasingly complicated, **are you working with an experienced, nimble, and cost-efficient modern fiduciary to address the issues that can—and do—arise?**

DELAWARE BENEFIT	BRIEF SUMMARY
Long History of Beneficial Trust Laws	Beneficial laws for trust administration have existed in Delaware since the early 1900s. Delaware regularly updates and modernizes its trust laws thanks to a supportive legislature, executive branch, and legal and banking community. Delaware also has one of the top court systems in the country in the Delaware Court of Chancery.
No Rule Against Perpetuities (i.e., trusts do not expire)	Many states still prohibit perpetual trusts, generally requiring that a trust terminate no more than 21 years after the death of a person alive when the trust was created. Delaware enacted a perpetual trust statute in 1995, meaning that Delaware trusts can continue for multiple generations in perpetuity. Delaware does have a 110-year limit for real property owned directly by a trust, but there are planning techniques to increase the holding period by having the trust own the property through an LLC.
Asset Protection	Since 1997, Delaware has permitted self-settled asset protection trusts (known as “APTs”), which allow the settlor to name themselves as a beneficiary while still maintaining creditor protection, provided certain requirements are met. Delaware laws are also specifically designed to protect trust assets from a beneficiaries’ creditors. For example, a Delaware trustee may pay a beneficiary’s personal expenses, even if there is knowledge of an existing creditor. A trustee also cannot be compelled to make a distribution.
Silent Trusts	Most states require that trust beneficiaries receive certain notices about the trust and the trust’s assets. Delaware has special “silent trust” rules, which allow the settlor to keep that information private for a period of time. This is a big draw for settlors who may be concerned about the impact that knowledge of the trust funds may have on their children, grandchildren or other beneficial interests.
Ease of Modification	Delaware allows an “irrevocable” trust to be modified with the consent of all fiduciaries and beneficiaries while the settlor is living. In addition, the trustee—if desired—can decant the trust without the consent of beneficiaries.

DELAWARE BENEFIT	BRIEF SUMMARY
Directed Trusts	Delaware has, for over a century, allowed the traditional trustee role to be divided. For example, one trustee can be responsible for the day-to-day trust administration and tax returns, and a different trustee or advisor can be responsible for the investment management or distribution decisions. This is especially important for families that desire control over a trust's unique investments, such as a family company, family limited partnership or closely-held corporation.
State Income Taxation	Delaware does not subject the net taxable income of trusts to state income taxes—so long as there are no trust beneficiaries living in Delaware. With other state tax rates as high as 13.3%, Delaware non-grantor trusts could save significant state income taxes.

Evercore is a national trust company with the ability to serve as a fiduciary in all states. While the focus of this piece is Delaware, please also see the below chart comparing additional key locations of our firm and let us know if you would like further information on these or other jurisdictions.

	NEW YORK	DELAWARE	FLORIDA	MINNESOTA	CALIFORNIA
State Income Tax	8.82% maximum rate	No state income tax on income accumulated for non-resident beneficiaries	No state income tax	9.85% maximum rate	13.3% maximum rate
Maximum Trust Term	21 years after death of individual then alive at the time the trust is created	No limit – perpetual trusts are permitted	21 years after death of individual then alive at the time the trust is created, or 360 years	21 years after death of individual then alive at the time the trust is created, or 90 years	21 years after death of individual then alive at the time the trust is created, or 90 years
Asset Protection Trusts	No	Yes	No	No	No
Decanting	Yes	Yes	Yes	Yes	Yes
Nonjudicial Modification	Yes	Yes	Yes	Yes	Yes
Directed Trusts	No	Yes	Yes	Yes	No
Silent Trusts	No	Yes	No	Yes	No

To learn about how we can help you serve your clients, please visit us at evercorewealthandtrust.com or contact any of our Wealth and Fiduciary Advisors. We look forward to speaking with you.

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