

Key Wealth Institute

Is a Delaware Trust Right for You?

Delaware Trusts offer a modern approach to estate planning, providing the flexibility, control and privacy you may need in these unpredictable times. Delaware is recognized for its tradition of progressive, advantageous personal trust laws. Those laws allow individuals, business owners, and those in high-risk professions to preserve wealth for themselves and future generations.

Delaware also offers a favorable climate for asset protection, wealth transfer, and state income tax savings for individuals and business owners.

But what exactly is a Delaware Trust? Should you consider putting your money in a state where you don't live? We'll answer those questions and others.



Who benefits from creating a Delaware Trust?



Business owners who want to shield their assets — including their interests in a family business — from tax depletion and creditor claims.



Individuals or families, especially those with a family business, who want to minimize federal wealth transfer taxes at death, which can be as high as 40%.



Doctors and others in high-risk professions who are worried about professional liability.



Individuals who are getting married and who are uncomfortable with prenuptial agreements.



Individuals who establish a trust for their own benefit — for example, through a charitable remainder trust or a personal injury award — and want to protect trust assets from future creditors.



Nonprofit organizations that want to protect and preserve assets and self-designated endowments from disastrous lawsuits.

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Why now?

Currently, any individual with an estate that exceeds the federal estate tax exemption of \$13.61 million (\$27.22 million for a married couple) would be subject to this tax.

Recent congressional proposals to reduce those amounts are unlikely to pass in today's political climate. However, the exemption that went into effect under the 2017 Tax Cuts and Jobs Act (TCJA) will be reduced to about \$7 million per individual (indexed for inflation) for anyone who dies in 2026 or beyond.

What advantages does Delaware offer?

Delaware law allows you to divide fiduciary and nonfiduciary responsibilities among various officeholders with names other than "trustee." Suppose a trust is going to hold an interest in a family company, real estate, or an unusual asset. In that case, it may be better for someone other than a corporate trustee to have fiduciary responsibility. A trust protector or other trust advisor with the power to direct the trustee on investments and/or distributions and modify an irrevocable trust can help adapt to changed circumstances.

A Delaware Trust can be a viable solution for owners of closely held businesses who want the income and wealth transfer tax savings and asset protection benefits of an irrevocable trust, while retaining control over their family enterprise. This is especially true if they want to sell to a third party.

Delaware law also offers a high level of confidentiality. Since the trustee is not required to file court accountings, there doesn't need to be any public record of the trust and its assets. Also, unlike the requirements of most other states, Delaware law permits the grantor — the person who creates the trust — the power to restrict a beneficiary's right to receive trust information.

That feature may be attractive to a parent who may not wish the trustee to inform the young adult beneficiary about the trust because such knowledge could reduce the motivation to pursue higher education or business opportunities.

What are the most commonly used Delaware trusts?

Delaware boasts a variety of trust structures tailored to meet diverse needs. Among the most popular are:

- **Dynasty trusts**

These enduring vehicles are favored by those seeking to pass down wealth across generations, shielding assets from taxes and the beneficiaries' creditors, even ex-spouses, while maintaining flexibility and control. Funding a dynasty trust with lifetime gifts can reduce estate tax below the level where the federal tax is imposed. Also, most states limit the lifetime of a trust but Delaware law allows trusts to last forever.

- **Asset protection trusts**

A fortress for assets, these trusts safeguard wealth from lawsuits, potential creditors and even divorces. Business owners, professionals, and high-net-worth individuals often use them as part of a comprehensive financial strategy. A self-settled asset protection trust in Delaware also allows the creator to retain a beneficial interest in the trust.

- **Tax-advantaged trusts**

These trusts offer the potential for saving or even eliminating state income tax on capital gains from the sale of closely held businesses and accumulated income.

- **Directed trusts**

These trusts offer unparalleled customization and flexibility, allowing grantors to appoint advisors who oversee investments and asset distribution, ensuring their vision is carried out effectively without losing control of the estate.

Each of these Delaware Trust types presents unique advantages for specific financial goals and priorities. Understanding the nuances of each is essential when selecting the right trust to protect and grow your wealth.

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How do you establish a Delaware Trust if you live elsewhere?

A Delaware Trust can be created by anyone anywhere, even if you are not a U.S. resident. A trust simply must name a Delaware trustee. The state's directed trusts laws allow the trust creator the flexibility to appoint additional trusted advisors and/or family members to play important roles for the trust.

That strategy can limit the Delaware trustee to an administrative role. An administrative trustee would give the trust a situs, or home, in Delaware while performing the functions outlined in the trust agreement, taking direction from the other trust advisors, and filing annual tax returns.

The Key National Trust Company of Delaware, based in Wilmington, provides situs and administrative presence for Delaware Trusts. Your advisory team can partner with the Key National Trust Company of Delaware and our knowledgeable, experienced Delaware Trust specialists to design a Delaware Trust strategy that meets your current and long-term goals and objectives.

For more information, please contact your advisor.

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