



**ARDEN TRUST**  
COMPANY

# Delaware Trust Overview

YOUR LEGACY. OUR DUTY.



# ARDEN TRUST COMPANY

Arden Trust Company is a Delaware state chartered trust company based in Wilmington, DE. Arden Trust provides clients access to the numerous benefits Delaware provides. Delaware is the leading trust jurisdiction in the United States offering advantages that include attractive tax laws, investment control and flexibility, asset protection, modification/decanting provisions and confidentiality.

The next page highlights some of the key reasons professionals and clients choose Arden Trust Company as their Delaware provider of trust administrative services.

# Delaware Trust Advantage



## MAXIMUM CONSIDERATION TO THE WISHES OF THE TRUSTOR.

Delaware law holds that the creator of a trust has the legal right to control the investment, management and trust distribution decisions of trusts he or she creates. Trustors can define the rights of beneficiaries and determine the duties, powers and standards of a fiduciary. Delaware law allows the trustor to determine which trust functions will be performed by a trustee and which will be performed by other trust advisors, to make trust administration more effective, efficient and economical.



## EXCELLENT COURT SYSTEM.

The Delaware Court of Chancery is comprised of well-educated, highly trained and specialized judges who are responsive to the needs of trustees and beneficiaries. Further, there is no jury participation. Proceedings in the Court of Chancery (and upon appeal to the Delaware Supreme Court) are handled in a timely and efficient manner.



## STRONG, TRUST-FRIENDLY LEGISLATIVE PROCESS.

An excellent relationship exists between the Delaware Bar Association and the Delaware State Legislature. Both continually work together to update and improve Delaware trust laws.



## HIGH AVAILABILITY.

Any U.S. or non-U.S. citizen can take advantage of a Delaware Trust, regardless of the state he or she lives in.



# Key Benefits of a Delaware Trust

## GENEROUS TRUST DURATIONS

Unlike many states that limit the duration of a trust, Delaware allows most trusts to continue in perpetuity. Delaware eliminated the Rule Against Perpetuities for assets other than real estate held directly by a trust. With this rule abolished, Delaware permits the creation of dynasty trusts which can last indefinitely. Assets can therefore benefit succeeding generations of beneficiaries without incurring additional gift, estate or generation-skipping taxes.

In addition, Delaware's total return unitrust statute allows trustors to provide regular distributions to current beneficiaries while still preserving trust assets for future beneficiaries. This statute allows trustees to invest in assets that may not produce current income, but instead have the potential to appreciate. It also provides a trustee with the unparalleled ability to adjust the unitrust rate periodically based on market conditions and the beneficiaries' circumstances.

## ATTRACTIVE TAX LAWS

A key objective in establishing a trust is to minimize the impact of taxes on trust assets. In addition to protecting trust assets from gift, estate or generation-skipping taxes, Delaware does not impose state income tax on income and capital gains earned by an irrevocable trust (provided that no beneficiary lives in Delaware). Delaware does not tax the trust income that is actually distributed to nonresident beneficiaries. This means that beneficiaries living in states with high state and local tax rates will not face state or city taxes when selling trust assets.

Furthermore, Delaware does not assess any tax on the value of intangible personal property held in a trust, such as public and private securities, bonds, units or shares of a mutual fund, copyrights, patents, royalties, life insurance and annuity contracts, partnership interests and personal service contracts. Tax savings can be significant with Delaware's favorable tax laws and can allow for greater growth potential of the trust assets over time.

## GREATER ASSET PROTECTION FROM CREDITORS

Effective estate planning should include considerations for preserving and shielding assets from creditors' claims. To this end, Delaware enacted a self-settled asset protection trust law - The Qualified Dispositions in Trust Act - in 1997. The Act allows individuals to create "self-settled" trusts that offer asset protection benefits for investors who require additional protection for personal financial assets.

Assets assigned to an asset protection trust are safe from creditors after a four-year "tail period." During the tail period, assets remain protected unless a creditor proves that the transfer of assets was a fraudulent transfer. Once the tail period expires, the Delaware Act does not permit any challenge to a trust (with the exception of claims of certain "exempt" creditors).

Delaware asset protection trusts have become increasingly popular. Many out-of-state trusts have migrated to Delaware to take advantage of the Act. These trusts are ideal for doctors, lawyers, other professionals and individuals in high-risk occupations. In addition, individuals have been establishing asset protection trusts as a substitute for prenuptial agreements in order to protect the premarital estate without the awkwardness that accompanies the request for a prenuptial agreement.

Individuals have also been establishing trusts under the Act to avoid state income taxes, including state income taxes on substantial capital gains, for which avoidance of grantor trust treatment (and not asset protection) are the client's primary objective. A Delaware asset protection trust also offers an alternative to the asset protection of an offshore trust, but without the expense, complexity and tax compliance obligations an offshore trust presents.

For non-trustor beneficiaries, Delaware provides strong asset protection against creditors. A creditor of a beneficiary of the trust only has rights against the beneficiary's interest in the trust that are permitted by the terms of the trust instrument. Delaware trust law may afford asset and creditor protection opportunities that other states do not, making it attractive to clients with considerable wealth and those for whom personal liability is a concern.



## Why Establish a Delaware Trust with Arden Trust?



Arden Trust has succeeded by cultivating strong, lasting partnerships with our clients. We are committed to providing best-in-class personal trust and estate-planning services. We bring that same expertise and commitment to helping clients establish and benefit from a Delaware trust.

Working with our team of seasoned trust professionals, Arden Trust clients can expect the same personal service, customized investment options and expert administration they have enjoyed for more than 30 years.

# Key Benefits of a Delaware Trust

## CONTROL & FLEXIBILITY IN MANAGING TRUST INVESTMENTS

Delaware law allows trustees to determine the most appropriate and prudent mix of investments while taking into account such factors as the current economy, tax consequences, risks, expenses, time horizon, beneficiaries' ages, cash flow and other needs of current and future beneficiaries. Trusts established in Delaware also accommodate investors who prefer to enlist the services of outside advisors, consultants or committees to select investment managers and utilize a broad offering of investment instruments.

The trustee's investment performance is judged based upon the performance of the entire portfolio of the trust as opposed to specific trust assets. This permits the trustee to hold closely held business interests and overly concentrated positions in the stock of family businesses gone public without fear of liability.

Delaware law also authorizes a trustee to "pour over" trust assets from a "first trust" into a new trust which has the same beneficiaries but different administrative provisions. In addition, the trustee creating a new trust (the second trust) may bestow upon a beneficiary of the old trust a limited or general power of appointment. In all, these provisions provide for the maximum amount of flexibility in managing trust investments.

## CONFIDENTIALITY

Delaware law places great emphasis on the confidentiality of matters relating to Delaware trusts. Trust agreements are not required to be filed in court or registered, unless the trust instrument or will, or a court order, expressly requires a legal accounting. A trustor may direct the trustee (for a period of time) not to inform the beneficiary of the beneficiary's interest in the trust. Delaware courts do not supervise the administration of trusts unless called upon by an interested party to do so.

When issues of confidentiality and privacy are paramount to the parties, it is possible to obtain a court order to seal the record thereby keeping the trust agreement, the parties and their dispute private. Likewise, routine trust petitions are filed in the Court of Chancery as "civil miscellaneous" matters and are not generally open to the public, even absent a court order sealing the record. By allowing for a greater level of confidentiality, Delaware trusts become even more favorable over other states.

## DECANTING & MODIFICATION

The ability to modify an irrevocable trust is critical for many reasons. Delaware gives a living grantor or a beneficiary(s) the ability to modify these irrevocable trusts. Whether the goal is to deal with unanticipated circumstances, correct errors, improve the efficiency of a trust's administration or take advantage of Delaware's sophisticated trust laws, having several statutes available for trust modification can allow for many issues to be clarified or resolved.



# Delaware Trust Options

## PERPETUAL TRUSTS (ALSO KNOWN AS DYNASTY TRUSTS)

Delaware abolished the common law rule against perpetuities applicable to trusts in 1986 and enacted legislation allowing perpetual trusts in 1995.

## TOTAL RETURN TRUST

Delaware was the first state to adopt a total return unitrust statute. A total return unitrust strategy enables trustees to satisfy the competing goals of providing for regular distributions to current beneficiaries and preserving trust assets for future beneficiaries. This method frees Delaware trustees to invest in assets that may not produce significant current income but instead have the potential to appreciate. Delaware's total return unitrust statute provides the trustee with an unparalleled ability to adjust the unitrust rate from time to time based on market conditions and the circumstances of the beneficiaries.

## CHARITABLE TRUST

Delaware law prohibits a court from changing the purposes of a trust created for religious, charitable, scientific, literary or educational purposes unless "the purposes of the trust have become unlawful" under the Constitution of the State of Delaware or the Constitution of the United States, or if the trust no longer serves a charitable purpose. This statutory standard for court intervention in a charitable trust matter compares favorably with the traditional standard applicable in most jurisdictions that allows a court to intervene when the charitable trust purposes become "impractical, impossible to achieve or wasteful." Further, the Attorney General's Office of the State of Delaware is charged with protecting the interest of the people relative to charitable trusts.

## PURPOSE TRUST

Delaware law permits the creation of a perpetual, noncharitable purpose trust. A purpose trust is one that is valid even though it may not have an individual as one of its beneficiaries. Purpose trusts are often used for the care of pets, the preservation of collections, such as antique cars or trains, and the preservation and maintenance of a family compound. Delaware provides the same protection to a trustor of a noncharitable purpose trust that it gives to the trustee of a charitable trust, providing standing to the trustor and the trustor's designee to enforce the purposes of the trust.

## DIRECTED TRUSTS

One of the most important reasons for trusts moving to Delaware is the Delaware directed trust statute. Delaware recognizes directed trusts and limits the liability of a trustee who acts upon the direction of an advisor appointed in the trust agreement to make an investment or distribution decision.





# ARDEN TRUST COMPANY

*For more information about Arden Trust Company and how  
our personal trust services can help you and your clients,*

## **CONNECT WITH OUR SALES TEAM**

**[www.ArdenTrust.com/Sales-Team](http://www.ArdenTrust.com/Sales-Team)**

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**[info@ardentrust.com](mailto:info@ardentrust.com)**

**[www.ardentrust.com](http://www.ardentrust.com)**

*Delaware Trust Advantage - Your Legacy. Our Duty.  
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Arden Trust Company does not provide legal or tax advice.  
Please consult a legal or tax professional for advice specific to your circumstances.