IN DELAWARE WE TRUST: THE ADVANTAGES OF PARTNERING WITH A DELAWARE CHARTERED TRUST COMPANY

When it comes to trust administration, not all states are created equal.

Trust administration is governed by state law, making certain jurisdictions more trust-friendly and advantageous than others. Delaware, for example, is widely recognized by many financial planning practitioners and industry experts as one of the most favorable situses for establishing and administering trusts – and you don't have to be a Delaware resident to reap the benefits. Below are some of the top trust advantages "The First State" has to offer:

1 Directed Trusts

Delaware was not only the first official state of the United States, but it was also the first state to adopt directed trust legislation back in 1986. With this law, Delaware permits the creation of "directed" trusts in order to enhance investment flexibility, yet still secure the safety that comes with the appointment of a corporate trustee. These trusts explicitly allow the use of third party investment advisors but shield the trustee from liability for investment decisions made by this third party. This Delaware law makes it easy for a trust to use a family member or a family's existing financial advisor as the investment manager for all or a portion of a trust's assets.

2 Perpetual Trusts

Delaware allows the creation of "dynasty" trusts, permitting personal property to remain in trust forever and real estate to remain in trust for 110 years. Not only does this allow for the preservation of wealth for multiple generations, such a trust can also be used to significantly enhance the benefit of federal exemption from the generation-skipping transfer ("GST") tax. By allocating that GST tax exemption to a transfer to a dynasty trust; all subsequent transfers from that trust are exempt from GST tax. This is a particularly valuable planning tool if the trust is funded with rapidly appreciating assets.

3 Asset Protection Laws

Delaware law authorizes asset protection trusts, which allow the trust creator to benefit from the trust assets while shielding them from all types of creditors.

In addition, a Delaware trust that contains a "spendthrift" clause provides significantly greater protection from creditors' claims than is available in other states. Delaware's "spendthrift" provisions can even protect Individual Retirement Accounts ("IRAs") and rollover IRAs from attachment.

4 Efficient Tax Law

When selling highly appreciated assets on retirement or to diversify an investment portfolio with substantial imbedded capital gains, residents of high income tax states often use an irrevocable non-grantor Delaware trust to sell the assets because Delaware eliminates or limits the state income tax liability for its resident trusts.

Delaware irrevocable trusts are exempt from Delaware income tax on accumulated earnings and capital gains so long as no remainder beneficiaries are Delaware residents. In addition to the exemption from these state taxes, intangible assets held in trust are not subject to estate or personal property taxes.

5 Total Return Uni-Trusts

Delaware permits the creation of very flexible total return uni-trusts that align the interests of the income and remainder beneficiaries:

- Asset allocation does not need to be skewed in favor of low appreciation, income-producing assets to provide a reasonable payout to an income beneficiary.
- The trustee can pay current beneficiaries from 3% to 5% of trust principal, regardless of the trust's actual income; either the trust or current beneficiaries can pay capital gains taxes; beneficiary payments can be calculated based on the trust's average value over more than a three year time period, the limit in many other states.

6 Quiet Trusts

Most states require trustees to disclose the existence of a trust to its beneficiaries; however, situations may arise when the grantor is seeking a certain level of privacy or secrecy. Delaware addresses this issue by having a well-established trust framework for "quiet" trusts. A quiet trust – also referred to as a silent trust – is a valuable estate planning tool because it is one in which the trustee may not be required to notify a beneficiary of the existence of a trust for a period of time, including but not limited to, a period of time related to the beneficiary's age, the life of the settlor or settlor's spouse, a term of years, a specific date, or a specific event that is certain to occur.

7 Delaware Court of Chancery

Delaware's Court of Chancery, established in 1792, is exceptionally experienced in trust administration and enjoys an outstanding reputation. Its trust law decisions serve as guideposts for courts throughout the country. Furthermore, because of its specialized role as a commercial and fiduciary court, it does not suffer from the backlogs that plague many other states' civil courts.

Delaware's Chancery Court also permits irrevocable trusts created under the laws of other states to be moved to Delaware by a beneficiary exercising a limited power of appointment if the law of the original jurisdiction does not prevent this result.

8 Decanting Statute

Delaware's decanting statute is a useful alternative for trustees who wish to modify the terms of an irrevocable trust. The decanting process allows the distribution of the assets of an old trust (the distributing trust) into a new one (the receiving trust). The new trust will have different (and typically more favorable) terms than the old trust. Decanting is usually easier to accomplish than traditional reformation, modification, merger, or division processes. It is recognized as a valid estate planning technique by more than 30 states and the IRS.

9 Virtual Representation

Delaware has an expansive virtual representation law which allows a minor, unborn, or incapacitated party (e.g., children and heirs) to be virtually represented by another party (e.g., parents and guardians) as long as both parties hold substantially identical interests and that there is no material conflict of interest. This useful Delaware statute eliminates the need for a court-appointed guardian to represent the interests of any minor or unborn trust beneficiaries that are unable to represent themselves.

10 Access to Delaware by Virtue of Trustee Situs

Clients may gain access to the advantages of Delaware by simply naming a Delaware sitused trustee. After the trust is under administration by a Delaware trustee, this trustee may apply Delaware law to the administration and override the existing laws of the trust's administration. One example that may be incorporated into a trust through some form of a modification would be to incorporate quiet trust language and defer notification to beneficiaries until a later point in time.

Though small in size, Delaware offers big benefits to those looking to establish or administer a trust. For generations, wealthy families and individuals (both nationally and internationally) have benefitted from partnering with a Delaware chartered trust company due to the state's well-established, flexible, and trust-friendly statutes. With its renowned reputation, it's no surprise that Delaware has been the go-to trust option for decades.

To learn more, contact New York Private Trust today.

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