GREENLEAF TRUST®
DELAWARE

Greenleaf Trust Delaware provides clients and their advisors, accountants and attorneys the ability to leverage Delaware's modern trust laws. When creating or moving a trust to Delaware, utilizing a trust-friendly jurisdiction could have a long-lasting impact.

REASONS TO HAVE A TRUST ADMINISTERED IN DELAWARE

I. DELAWARE'S HISTORY

Delaware's Court of Chancery is remarkably experienced in trust administration, having established its infrastructure in 1792. Delaware has well-developed and innovative laws with regard to trusts and their administration, as well as a highly supportive legislature, legal and banking community.

II. SILENT TRUSTS PERMITTED

Delaware law allows grantors to create silent trusts in that the language of the trust may vary or eliminate a beneficiary's right to be informed of the trust for a period of time. The trust instrument must specify to which extent the trust is silent. While Delaware's statute does not require any particular time period after which the silent period should end, examples are provided in the applicable provisions of the Delaware statute. Most practitioners believe a reasonable time period should be used. The trust will include provisions to allow the appointment of a Designated Representative that will represent and bind the beneficiaries during the silent period. Additionally, the trust can provide guidance to the trustee on how to handle disclosures if a beneficiary learns of the trust's existence during the silent period.

III. EASE OF MODIFICATION OF IRREVOCABLE TRUSTS

The most common methods available under Delaware law to modify an irrevocable trust are: (1) nonjudicial settlement agreement, (2) decanting, (3) trust merger (4) administrative or trust protector and (5) consent petition. The circumstances and facts that surround the desire to modify the trust will determine which method is best to accomplish the desired result.

IV. AVOID STATE INCOME TAXES ON ACCUMULATED TRUST INCOME AND CAPITAL GAINS

Delaware allows trustees significant tax savings for irrevocable trusts created by and benefiting non-Delaware residents.

V. DIRECTED TRUSTS PERMITTED

Delaware has a "directed trust" statute, which allows trustees to be directed on investments as well as distributions. A directed trustee on investments permits the trustee to make investment decisions as directed by a third party investment advisor named in the trust. Delaware's directed trust law also covers distributions and other decisions and relieves a directed trustee from the duty to monitor the advisor's conduct.

VI. SPENDTHRIFT TRUSTS PROTECT ASSETS FROM A BENEFICIARY'S CREDITORS

A Delaware trust that contains a spendthrift clause provides its beneficiaries substantial protection from creditor claims. In addition, the trustee may exercise discretion to pay the trust beneficiary's ongoing expenses, even if it is aware there is an existing judgment creditor.

VII. ASSET PROTECTION TRUSTS PERMITTED

Delaware allows a grantor to create a self-settled or asset-protection trust, in which trust assets are protected even if the grantor receives money from the trust they created. A Delaware Asset Protection Trust is the perfect vehicle to shield assets if a grantor either owns substantial assets outright or the grantor is engaged in a high-risk profession or activity.

VIII. TRUST DISTRIBUTION FLEXIBILITY WITHOUT COURT INVOLVEMENT

Over the years, income beneficiaries of irrevocable trusts have seen their distributions decrease primarily due to declining income yields. As a result, Delaware's laws allow trustees to redefine income in trusts to satisfy long-term growth goals and ongoing income needs of beneficiaries.

Delaware has enacted the Total Return Unitrust Statute which gives trustees discretion to convert an income trust to a total return unitrust with proper notice to the current and remainder beneficiaries. If no one objects within 30 days of receipt of the notice, the trustee is permitted to convert the trust to a unitrust without court involvement. Under the law, the trustees invest the assets of the trust for the total return of the portfolio. Rather than distributing the income earned in the trust to the current beneficiary, the statute allows the trustee to pay a percentage of the value of the trust ranging between 3% and 5% as a unitrust payment to the current beneficiary. If desired, the total return unitrust can be converted back to an income trust with no court involvement.

Also, Delaware enacted the "power to adjust" statute that grants a trustee discretion to allocate income to principal, or principal to income, to the extent the trustee considers that allocation necessary to administer the trust. Certain factors enumerated in the statute are relevant to the trust and its beneficiaries that the trustee must consider when it decides whether and to what extent to exercise the power to adjust.

IX. TRUSTS CAN BE PERPETUAL

Delaware allows the creation of trusts funded with personal property to remain in trust in perpetuity. Real property held in trust continues to be governed by a 110-year limitation, but this limitation may be avoided simply by placing real property in a limited liability company or family limited partnership because an interest in one of these entities is personal property under Delaware law.