

Choosing the Best State for Your Trust

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A careful and realistic evaluation of what will be most impactful over the life of the trust.

Whether you are creating a new trust or taking a fresh look at a trust that has been around for decades, one of the first questions you should ask is: Where should the trust be located and what law should govern its administration?

The state of administration and governing law of a trust—also known as the trust “situs”—is an important decision that requires careful consideration. The laws of each particular state impact many aspects of how the trust can be structured and how it will function over time. State laws determine how your trust is taxed, how much control you and your advisors can have over investments, distributions and other important decisions trustees are required to make, what tools and techniques can be applied to make changes to your trust in the future to ensure its flexibility in adapting to your family’s needs, and many other concerns.

With so much at stake, the choice of a trust’s situs should always be deliberate.

What is most important for your trust?

In evaluating the state that makes the most sense for your trust, you should start by identifying the legal and tax concerns that are most crucial for the trust to achieve its goals.

For most, an essential priority will be a state that does not tax trust income. For many others, a similarly important concern will be the ability to create a “directed” trust, which allocates fiduciary responsibilities (such as investing trust assets, distributing trust income and principal to beneficiaries, and addressing other trust administration matters) among multiple parties with different expertise. Other high priorities may be the ability for the trust to continue in perpetuity, or to limit the information disclosed to certain beneficiaries, or to invest in a socially responsible manner without restrictions.

Don’t ignore practical concerns

While trust laws are often top-of-mind, it’s also important to consider the more practical concerns associated with your choice of a trust’s situs.

- *Legal Community:* In most cases, creating or moving a trust to a particular state involves engaging a local attorney (who specializes in trusts and estates law) to draft the necessary documents and

advise on the state's trust laws.

- *Court System:* When creating a new trust or changing an existing trust's situs, it may or may not be necessary to obtain court approval initially. However, depending on your particular circumstances, the necessity of a court filing is always a possibility down the road. It is important to recognize that the court system is ultimately responsible for interpreting the trust laws you may be relying upon.
- *Industry Presence:* The trust industry's presence in a state can be impactful in several regards. In addition to the options it offers consumers, synergies among the industry, court system, legal community and legislature are critical in maintaining a state's trust laws and ensuring continuity and development of those laws during the life of a trust.

Why we choose Delaware

Fiduciary Trust is licensed to serve as a trustee, investment manager and agent for a trustee in many states around the country, but Delaware is our preferred jurisdiction whenever appropriate. Beginning in the first half of the twentieth century, Delaware emerged as a pioneer, ushering in the current era of modern trust law and developing a trust infrastructure that has served as a template for many other states to follow.

These laws reflect the consistent focus Delaware's legislature has given to the evolving field of trust law, and the contributions of an unparalleled local community of trust and estate attorneys. Delaware has more ACTEC Fellows [\[1\]](#) than Nevada and South Dakota combined—and an industry presence unrivaled by any other state.

Finally, the Delaware Court of Chancery, which is charged with interpreting and upholding trust laws enacted by the legislature, is unlike any other court in the country. It is solely dedicated to corporate and trust matters and has the level of sophistication necessary to handle the legal proceedings involving Fortune 500 companies, more than 60% of which are incorporated in Delaware.

Delaware: A Trust-Friendly Environment	
Tax advantages	<ul style="list-style-type: none">• No tax on trust income if none of the beneficiaries are Delaware residents• No gift tax on contributions to trusts• No estate tax on inherited trusts
Directed trusts	<ul style="list-style-type: none">• Allowed since 1986

	<ul style="list-style-type: none"> • Supported by case law
Dynasty trusts	<ul style="list-style-type: none"> • Trusts can exist in perpetuity • 110 years for directly held real estate
Flexibility	<ul style="list-style-type: none"> • Freedom to modify the trust • Includes laws on decanting, trust protectors and non-judicial settlement agreements
Privacy	<ul style="list-style-type: none"> • “Quiet” trust provisions • Three-year privacy seal for court filings
Protection	<ul style="list-style-type: none"> • Spendthrift trusts • Self-settled trusts that name you (the grantor) as beneficiary

Which state is best for you?

Deciding where your trust should be administered requires consideration of multiple factors. However, any decision you make regarding your trust should always rest heavily on your unique goals –whether that means reducing taxes, perpetuating the trust over multiple generations, or any other goals your trust is designed to accomplish.

Whatever your circumstances, Fiduciary Trust’s experienced tax specialists and trust advisors can help. With their guidance, you can identify the highest priorities on your list of desirable trust features, compare the pros and cons of your options, and make your choice with confidence.

[\[i\]](#) Members of the American College of Trust and Estate Counsel

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