Delaware Tax Trap Planning — How to Take Advantage of a Step-Up in Income Tax Basis in a World of Increased Estate Tax Exemptions

By: Cynthia D.M. Brown, President, Commonwealth Trust Company

The reunification of the gift, estate and generation-skipping transfer tax and the increased applicable exemption amounts (combined with the portability of unused exemption) have opened up an entirely new world of tax planning opportunity for modest estates (less than $10,000,000) in the past year. Found at what many sophisticated planners are referring to as the intersection of estate and income tax, many experts are finding their new focus to be tax basis management and overall tax avoidance. It is in this climate, that the Delaware Tax Trap (“Trap”) has found its starring role as it is able to offer many individuals significant flexibility in estate and income tax planning. While the Trap has always been accessible to drafters of more modern trusts (which can be drafted with special language allowing for its intentional triggering), Delaware Trust Act 2014 has clarified that the Trap is also available to certain older and carefully drafted trusts, which may have previously been thought unable to take advantage of the Trap.

History of the Trap.
The Trap originally arose with respect to Delaware trusts when the State legislature repealed the rule against perpetuities statute, allowing individuals to place and retain assets in a trust for an indefinite period of time. By allowing Delaware trusts to continue in perpetuity, the statute had the effect of allowing an individual who possessed a limited (non-general) power of appointment1 (“Limited Power”) to appoint the property of an existing irrevocable trust into a second trust, either of unlimited duration2 or, more frequently, which includes a second power of appointment which, under applicable local law,3 can be validly exercised to postpone the vesting of the trust corpus for a period ascertainable without regard to the date of creation of the original power.4

The Trap was originally seen as a negative event - a statutory anomaly which had the potential to, often inadvertently, cause estate, gift and/or generation-skipping transfer tax inclusion for the holder of a power of appointment under Internal Revenue Code Sections 2041(a)(3)5 or 2514.6 Over time, however, with the steady increase in the unified credit amount, practitioners began to see the Trap as an opportunity to claim a basis step up in assets originally intended to be excluded from the estate of a decedent/grantor, without incurring a (or incurring minimal) federal estate tax.

(Continued on Page 3)
Delaware Asset Protection Trusts as an Alternative to Foreign Asset Protection Trusts

By: Alex J. Lyden-Horn, Trust Counsel, Commonwealth Trust Company

An “asset protection trust” is a self-settled spendthrift trust, that is, a trust in which the settlor retains a beneficial interest, but, under the governing law, is protected from the claims of the settlor’s creditors. Traditionally, U.S. law did not permit the creation of such trusts. U.S. individuals who sought to establish such trusts were forced to seek out an amenable foreign jurisdiction. However, in 1997, Delaware introduced the Qualified Dispositions in Trust Act1 (the “Act”), which expressly authorized persons, including those not resident in Delaware, to establish asset protection trusts in Delaware.

Requirements of Delaware Asset Protection Trusts

The Act allows a person to establish a trust with his or her own assets and to name him or herself as a beneficiary thereof (and to retain certain limited powers over the trust, if desired). The Act requires that the trust be irrevocable, be governed by Delaware law, include a spendthrift clause, and appoint at least one “qualified trustee,” which is defined as an individual Delaware resident other than the transferor or a Delaware trust company that materially participates in the administration of the trust. In addition, to avoid a fraudulent transfer, the settlor must be solvent when funding the trust (and immediately thereafter).

Benefits of Delaware Asset Protection Trusts

In addition to protecting the transferred assets from future claims of creditors, a properly structured Delaware asset protection trust can take advantage of the many other benefits available to Delaware trusts in general, including state income tax benefits, recognition of directed trusts, confidentiality with regard to trust matters, permissibility of silent trusts, a state decanting statute, perpetual terms for trusts, liberal trust investment rules, nonjudicial settlement agreements, a nationally recognized court system and a proactive state legislature.

Disadvantages of Foreign Asset Protection Trusts

There are general concerns associated with establishing a trust in a foreign jurisdiction, including questions about the economic or political stability of the jurisdiction and a reluctance to transfer control over assets to a foreign trustee that is, for better or worse, beyond the scope of the U.S. court system.

There are also specific drawbacks to establishing a trust in a foreign jurisdiction, including the ineligibility of a foreign trust to serve as a shareholder of an S corporation and a prohibition on foreign trusts from participating in certain investments.

The Internal Revenue Service also imposes substantial reporting requirements on foreign trusts with U.S. beneficiaries and may impose significant penalties on the settlor and/or the beneficiaries for failing to comply (or for failing to comply in a timely manner).

1 See 12 Del. C. §§ 3570-3576.
Delaware Tax Trap Planning (Continued from Page 1)

Springing the Trap.
Typically, the Trap is sprung through the exercise of a Limited Power, either testamentary or inter vivos in nature. Most modern planners would agree that the use of a testamentary Limited Power of appointment creates the least risk of accidental estate tax inclusion for the grantor, while still affording the grantor and planner the flexibility to spring the Trap. Having the powerholder exercise the power of appointment testamentarily preserves the creditor protection afforded by the trust structure, and causes inclusion in the powerholder’s (typically the grantor’s) estate. However an inter vivos exercise of the Limited Power might instead be used if one wanted to trigger a retransfer of assets for GST or other similar purposes, or if inclusion in the estate of the new power holder (say, a child with no appreciable estate of his or her own) is economically preferable to inclusion in the estate of the original powerholder, since the new power holder can better absorb the federal estate tax impact of the appointed assets.

When considering the utilization of the Trap, it is important to consider the importance of local law in determining whether the exercise of a power of appointment is effective in springing the Trap. In many states, the exercise of a Limited Power or the exercise of a Limited Power to grant a subsequent Limited Power is not sufficient to spring the Trap, since in those states the exercise of a Limited Power will not trigger a new perpetuities period because the new power’s perpetuities period is deemed to relate back to the date of the creation of the original irrevocable trust rather than the date of the exercise of the Limited Power by the original powerholder. In such a case, to ensure that the Trap is sprung, the original powerholder would have to use the power to grant a presently exercisable general power of appointment to the second powerholder. Unfortunately, the granting of a general power of appointment vests the asset protection features of the appointed-to trust, and gives the subsequent power holder unfettered access to the trust assets, creating a number of difficult choices for the would-be estate advisor.

Modern Day Application of the Trap.
In order to avoid the loss of creditor protection (and automatic inclusion in the estate of the powerholder) associated with the granting of a general power of appointment, but still maximize the flexibility of a trust with respect to basis management and estate inclusion decisions, modern estate planners will typically choose to provide (i) a limited power of appointment for the grantor, and (ii) that an independent third party has the discretion to grant an individual beneficiary a general power of appointment over the trust assets.

This structure allows the independent third party the authority to adjust, and react to, the then current state of tax planning, and local law regarding the type of subsequent power which will spring the Trap. When estate, gift and generation-skipping tax exemption amounts are high, it may be more advantageous to the family’s overall tax plan to elect to grant a beneficiary the general power of appointment, causing inclusion in the estate of the beneficiary whose gross estate is below the current current tax exemption levels, thus allowing all or a portion of the trust’s property to be transferred without estate tax application. In other situations, where income and capital gains tax rates are high, or when the trust holds assets that have significant built in losses, it may be more advantageous to opt not to grant the beneficiary the general power of appointment, allowing the original planning to stand.

Conclusion.
Springing the Trap has proven to be a valuable tool to planners seeking to maximize the coordination of basis management and estate tax minimization. With advance planning – including flexible and simple trigger provisions in the trust instrument - and the accommodating local law of Delaware, sophisticated planners can ensure that their clients are fully equipped to implement the most effective estate and income tax planning in response to changing tax climates.

1 For example, assume a grantor set up a trust in 2006, when the annual exclusion amount was $2,000,000 per person and there was no available portability of unused exemption. Assume further that those assets grew in value to $5,000,000 in 2014, when the unified credit had risen to $5,500,000. When the trust was established in 2006, it appeared that this structure would save the grantor around $1,150,000 ($5,000,000 (date of death value of assets) – $2,000,000 (applied exclusion)) x .46 (applicable maximum federal estate tax rate) = $1,380,000 (not taking into account the progressive rate table). With a $5,000,000 exemption currently available, there would be no estate tax savings as a result of the trust structure were the grantor to die in 2014, and moreover the lack of a basis step up could cost the trust, upon sale 15-20% in capital gains taxes, an average of 5% in state capital gains taxes, and potentially 3.8% NIIT. Including the assets in the estate of the decedent by triggering the Trap during the life of the grantor would give the included assets a Section 1031 basis step up – avoiding between 18.2% - 28.8% (or more, depending on your state’s capital gains tax rate) in future tax liability, while still generating no federal estate tax.

2 Note that in this case in Delaware, where the Trap can be sprung via the exercise of a Limited Power granting a subsequent Limited Power

3 This will allow the Trap to be sprung in such a way as to trigger inclusion in the grantor’s estate (via testamentary exercise) or the estate of the subsequent powerholder (via inter vivos exercise).

4 This allows for the assets to be included in the estate of such beneficiary, without requiring an exercise of the grantor’s Limited Power, and can even be used after the death of the grantor, should the economics warrant a retransfer or basis step up during the lifetime of that beneficiary.

5 In older trusts, this type of flexibility had often not been planned for. A trust document from the 1950s, 1960s, or 1970s would often simply grant an individual a Limited Power or a general power of appointment, with no further elaboration on the extent to which the power could be used with respect to appointing in further trust versus outright, or whether the exercise of the power had practical restrictions (such as not being able to be exercised in such a manner that would extend the original perpetuities period or to grant the subsequent powerholder a more expansive power of appointment than that held by the original powerholder, or whether the power of appointment could be used to appoint in further trust). In these matters, in 2014, the legislature revised the Delaware Code to describe, in detail, a number of fairly expansive ways that a “bare” power might be exercised, and also provided that if a power is general in nature, anything that can be done under any of the illustrative sections of Title 25 of the Delaware Code, Section 505 can be done by the holder of the general power. See 25 Del. C. §505(a)-(d).

Cynthia D.M. Brown, J.D., President
Transferring Fine Art to a Trust Can Raise Thorny Issues

By: Jonathan E. Becker, Trust Counsel, Commonwealth Trust Company

The past several years have seen an increasing number of art collectors with an interest in funding trusts with art, for the purpose of keeping family collections intact in perpetuity, removing future appreciation in the value of the art from the collector's estate, or diversifying a typical trust portfolio. Among the myriad issues that must be addressed when considering such an arrangement are:

• **Valuation:** Art is particularly difficult to value, and often a “true” value is not discovered until an actual sale of the work. A grantor should be sure to obtain at least one (and perhaps more than one) qualified appraisal from an experienced and reputable firm specializing in the medium of the work to support the declared date of transfer value of the work. Periodic re-appraisals will likely be required to ensure that insurance coverage is adequate to cover any accretion to value.

• **Ownership and Provenance:** It is important to ensure that legal title to the artwork is actually transferred from the name of the grantor into the name of the trust. It is also important to confirm that the appropriate steps have been taken to verify the provenance of each piece – that the artwork is authentic, not listed as stolen or missing, and that the grantor’s ownership can be traced back through a legitimate chain of acquisition.

• **Custody and Display:** Careful consideration should be given to where the art will be stored or displayed and who will benefit from it. If the artwork will remain in the grantor’s home, there may be an impermissible level of use and enjoyment retained by the grantor from an estate planning perspective (which could have severe and unexpected tax consequences) unless the grantor pays appropriate rent to the trust.

• **Exhibitions and Loans:** If a collection or a work of exceptional value is being transferred into trust, it is possible that it may be on loan to a museum, exhibit or related (or unrelated) third parties. If this is the case, there are some important questions which will need to be addressed, such as: (i) has the trust instrument been drafted in such a way as to permit the arrangement, and does the arrangement itself raise additional issues? For example, if the loan is to a museum, it is likely that there is a written agreement in place describing the conditions of the loan (insurance, security, transportation, and storage, duration, etc.), but this may not be the case if the work is currently with a related party, and (ii) what arrangements have been, or should be, made for future storage and transport of the work at the end of the loan? If the artwork is not on loan, but the trust arrangement contemplates loans of the work, does (or should) it permit use of the artwork by beneficiaries? Is the Trustee required to charge rent to (even nonprofit) borrowers, and how should the costs to protect, maintain, insure and transport the work be allocated?

• **Loss Mitigation:** Depending on where the work will be housed, there may be additional risk mitigation required (e.g., for areas that are prone to weather-related events, such as wind or flooding). It may be important to establish a disaster preparation plan in the event that the artwork needs to be evacuated in advance of a storm event, such as a hurricane, or other severe weather.

• **Insurance:** Particular attention should be paid to whether there is adequate insurance in place and the strength of the company providing the insurance. Consideration should be given to the specific terms, requirements and exclusions of the policy, as well as how often a work should be re-appraised to adjust the level and the nature of insurance coverage required. Also, care should be taken that there is no gap in coverage created upon the transfer of the art by the grantor to the trust (or the ownership shell, as the case may be).

• **Trust Agreement:** When funding a trust with art, it is important that the trust agreement be drafted by an attorney familiar with those the unique issues raised by such ownership. The agreement should typically contain language specifically waiving the prudent investor standard, diversification of the trust’s assets or addressing indefinite retention of the artwork, and perhaps precatory language regarding any conditions applicable to the future disposition of the artwork. It is also advisable to include language whereby the parties acknowledge that artwork is typically a wasting asset, with the potential to deteriorate over time.

Many of the administrative difficulties raised above can be resolved, or their impact minimized, by (i) transferring the art to an entity - typically a single member limited liability company (“LLC”) - and funding the trust with the interests in the LLC, rather than transferring art directly to the trust, and (ii) utilizing a Delaware directed trust structure. The use of the LLC as, essentially, an ownership shell, removes the responsibility for day-to-day care, maintenance, and storage (and, to a large extent, many of the insurance, appraisal and lending issues) from the trustee, placing them instead in the hands of a manager who is familiar with the artwork, its maintenance and safekeeping, and who should have specific experience in this area. Similarly, the use of a directed trust structure is typically preferable to a traditional trust structure from both the trustee’s and the grantor’s perspectives, since the directed trust relies on the appointment of an investment advisor vested with the sole authority to direct the trust with regard to any and all decisions relating to the trust’s investments which in this case would include the artwork. Importantly, under Delaware law, the grantor or a member of the grantor’s family can serve as the manager of the LLC and/or the art/investment advisor for the trust, and thus maintain a strong involvement in the decision making with respect to the contributed art.

Clearly, the administration of a trust holding artwork as one of its principal assets can be far more complex than the administration of a trust owning solely conventional investments. Employing a Delaware directed trust, which allows for the wide range of responsibilities to be spread among a number of qualified parties, may be the most flexible and effective way to address those unique concerns while advancing the collector’s overall estate planning goals.

Jonathan E. Becker, J.D., LL.M.

Jonathan E. Becker, J.D., LL.M. is the author of the article “Transferring Fine Art to a Trust Can Raise Thorny Issues”. Jonathan is Trust Counsel for Commonwealth. His responsibilities include overseeing the administration of various types of trusts to ensure that Commonwealth’s fiduciary duties are being properly discharged, finding solutions to complex trust administration issues, advising Commonwealth’s staff on legal matters, and reviewing trusts to determine whether they meet Commonwealth’s criteria for acceptance when Commonwealth is being considered to serve as Trustee.

Prior to joining Commonwealth, Jonathan maintained his own practice in the Philadelphia area, concentrating on sophisticated estate and trust planning and administration, fiduciary accounting, and personal, fiduciary and entity tax matters. Jonathan also previously worked as an associate with two prestigious Philadelphia based law firms.

In law school, Jonathan was an Associate Editor of the Law Review, a Member of the Moot Court Board of Advocates, Advocate of the Year (1993/94) and was inducted into the Willis Society, the highest academic honor offered by Ohio Northern University.
The Latest Advantage of Delaware Law:
Fiduciary Access to Digital Assets and Digital Accounts Act

By: Peter J. Bietz, Trust Counsel, Commonwealth Trust Company

In today’s day and age more and more people are taking advantage of the ever growing number of technologies that make our lives easier. People have eschewed the use of regular mail, safety deposit boxes and photo albums for the more convenient email, online, cloud-based storage and digital photography. Almost everyone has some assets that are not in tangible form but are in the form of data that must be accessed via the internet. Examples include, but are by no means limited to, emails, text messages, digital photographs, digital audio recordings, personal records, software source code, online bank accounts, social media accounts, and Bitcoin or PayPal accounts. Several surveys have indicated that the average person places a value of approximately $55,000 on their digital assets and has 25 user names and passwords.

Unfortunately, these technologies that have made life easier for individuals while they are alive, present a myriad of problems for fiduciaries, who are the people who have been entrusted by individuals to deal with their affairs. Privacy laws, corporate policies and end user license agreements have established roadblocks that make it difficult, if not impossible, for a fiduciary to gain access to the digital assets of an individual. Because of this, items having sentimental value such as personal photographs or emails, and items having financial value such as digital art or literary manuscripts are often lost or remain permanently stuck in a “digital limbo.”

Several states have addressed this concern via legislation, but until now, any such legislation was limited in scope. That changed in August of 2014, when Delaware enacted the nation’s first comprehensive law addressing access to digital assets. The Fiduciary Access to Digital Assets and Digital Accounts Act (the “Act”) grants fiduciaries broad powers over digital assets that allow them to obtain access to all of the digital assets of an individual who has entrusted them to manage their affairs. The Act intentionally defines “fiduciary” and “digital asset” broadly so that the statute will apply both during and after an individual’s lifetime. This means that under the Act individuals will have the same rights in their digital assets as they do in their tangible assets, allowing them to freely dispose of them as they deem fit.

It should also be noted that the Act does not apply to only those individuals who reside in Delaware, but rather to documents establishing the fiduciary relationship that are governed by Delaware law. This means that any person, wherever they reside, may now take advantage of the Act so long as their trust, will, power of attorney or similar instrument is governed by Delaware law. This presents a new opportunity for persons owning valuable digital assets to take advantage of Delaware’s trust laws and plan for the future ownership of their digital assets and make those digital assets part of their overall estate plan.

Peter J. Bietz, J.D., LL.M.

Peter J. Bietz, J.D., LL.M. is the author of the article “The latest advantage of Delaware Law: Fiduciary Access to Digital Assets and Digital Accounts Act”. Peter is Trust Counsel for Commonwealth. His responsibilities include overseeing the administration of various types of trusts to ensure that Commonwealth’s fiduciary duties are being properly discharged, finding solutions to complex trust administration issues, advising Commonwealth’s staff on legal matters, and reviewing trusts to determine whether they meet Commonwealth’s criteria for acceptance when Commonwealth is being considered to serve as Trustee.

Prior to joining Commonwealth, Peter worked as an associate at several law firms in the Philadelphia area, concentrating on estate and tax planning, estate and trust administration, fiduciary litigation, personal and fiduciary tax matters, and business transactions.
CASE LAW UPDATE:
IMO Daniel Kloiber Trust U/A/D December 20, 2012, C.A. No. 9685-ML, V.C. Laster (Del Ch. Aug. 6, 2014) in which the court stated that while the Delaware Chancery Court does have primary jurisdiction over administrative issues relating to Delaware trusts, other states may exercise jurisdiction where they have jurisdiction over the trustee or over trust assets and it does not constitute undue interference with the Chancery Court’s primary jurisdiction. Hardy v. Hardy, et. al., C.A. No. 7531-VCP (July 29, 2014), in which the court found that the trustees’ “utter disregard for the purpose of the trust” so egregious that it awarded the beneficiary his attorneys’ fees and costs under the bad faith exception to the American Rule. In addition, the court found the trustees’ actions in depleting the trust funds in only five months, in a manner that was self-interested, was grossly negligent and in violation of their fiduciary duty of loyalty to the beneficiary.

Mennen v. Wilmington Trust Company, George Jeffrey Mennen and Owen J. Roberts as Trustees, C.A. No. 8432, M. LeGrow (Del Ch. Jan. 17, 2014)(draft report) in which the court confirmed the protections afforded to beneficiaries of a third-party spendthrift trust under Title 12 of the Delaware Code, Section 3536 by refusing to create a public policy exception for a tort claimant who was a family member of the plaintiffs who breached his fiduciary duties causing the plaintiffs millions of dollars in damages, confirming that the beneficiaries were “creditors” under Section 3536.

KEY TRUST ACT ADDITIONS:
12 Del. C. §3528: Clarifying that an appointment in further trust may be made to a trust for the benefit of an open class of beneficiaries, even if the class remains open beyond the time when the initial class would have closed under the initial trust.

12 Del. C. §3536: Clarifying existing law regarding when a trust is considered self-settled for purposes of determining creditor rights by (i) narrowing the instances in which the settlor will be deemed a beneficiary by excluding those trusts in which the settlor may be named as a beneficiary by someone else; and (ii) confirming that a creditor does not have an enforceable right against certain contingent interests retained by a settlor.

25 Del. C. §501, et seq.: Was modified to clarify that the donee of a general power of appointment may be treated as having two separate powers of appointment – one being a general power of appointment and one being a nongeneral power of appointment. This has the effect of allowing the holder of a nongeneral power the option to exercise the power in a manner which would trigger the Delaware Tax Trap under Section 2041 of the Internal Revenue Code.

**COMMPARISON OF TOP TRUST JURISDICTIONS**

<table>
<thead>
<tr>
<th>ATTRIBUTE</th>
<th>ALASKA</th>
<th>DELAWARE</th>
<th>NEVADA</th>
<th>SOUTH DAKOTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial and Legislative Environment</td>
<td>Smallest number of trust companies and fewer attorneys specializing in trust and estates</td>
<td>Recognized as the leader, Delaware has (i) the longest history and most trust friendly case law; (ii) the Chancery Court; and (iii) the recent Peerels decisions which provide a comprehensive road map for conflict of laws issues</td>
<td>Focus on flexible trust laws and has the distinction of having received several PLR’s confirming the application of their statutes</td>
<td>“Governor’s Task Force” has been created to promote flexible trust statutes</td>
</tr>
<tr>
<td>Long Term or Perpetual Trusts</td>
<td>Perpetual</td>
<td>Perpetual (real estate is 110 year, but, by placing the same in an LLC or other entity, the term can instead be perpetual)</td>
<td>365 years</td>
<td>Perpetual</td>
</tr>
<tr>
<td>Directed Trusts</td>
<td>Directed trust statute does not fully relieve the trustee of liability for following the direction of a trust protector or an advisor</td>
<td>Effective statute (most protective statute which is supported by case law - Duemler v. Wilmington Trust Co.)</td>
<td>Effective statute</td>
<td>Effective statute</td>
</tr>
<tr>
<td>Self-Settled Asset Protection Trusts</td>
<td>Four year look back period - No exception creditors</td>
<td>Four year look back period - Exceptions for child support, marital claims and tort claims that arose before the funding of the trust</td>
<td>Two year look back period - No exception creditors</td>
<td>Two year look back period - Exceptions for marital claims that arose before the funding of the trust</td>
</tr>
<tr>
<td>Third Party Asset Protection Trusts</td>
<td>Statute specifies discretionary interest is not a “property interest” owned by the beneficiary, and thus not property that a creditor can attach</td>
<td>Statute provides no creditor can receive distributions from a trust unless the creditor is a beneficiary named in the trust</td>
<td>Standard spendthrift provisions</td>
<td>Statute specifies discretionary interest is not a “property interest” owned by the beneficiary, and thus not property that a creditor can attach</td>
</tr>
<tr>
<td>Decanting</td>
<td>Less flexible statute</td>
<td>Flexible statute</td>
<td>Flexible statute</td>
<td>Flexible statute - Especially as to who can be named as a beneficiary of the second trust</td>
</tr>
<tr>
<td>Merger</td>
<td>No merger statute</td>
<td>Cannot result in a material change in the beneficial interest of beneficiaries - Court approval is not required - Notice is not required</td>
<td>No merger statute</td>
<td>Cannot impair rights of a beneficiary or substantially affect the accomplishment of trust purpose - Court approval is not required - Silent regarding notice</td>
</tr>
<tr>
<td>Non-Judicial Settlement Agreement OR Non-Judicial Trust Modification</td>
<td>Neither</td>
<td>Non-Judicial Settlement Agreement Statute</td>
<td>Neither</td>
<td>Non-Judicial Trust Modification Statute</td>
</tr>
<tr>
<td>State Income Tax on Trusts</td>
<td>No state income tax</td>
<td>No state income tax (if no Delaware beneficiaries)</td>
<td>No state income tax</td>
<td>No state income tax</td>
</tr>
<tr>
<td>Beneficiary Notification “Silent Trusts”</td>
<td>Beneficiary notice not required - Notice can be restricted either within the trust document or by a separate writing of the settlor</td>
<td>Beneficiary notice is not required - Notice can be restricted “for a period of time”</td>
<td>Beneficiary notice is not required (unless requested)</td>
<td>Beneficiary notice is not required -Notice can be restricted within the trust document or by a separate writing of the settlor</td>
</tr>
<tr>
<td>Privacy – Court Actions Under Seal</td>
<td>Limited privacy</td>
<td>Allowed in civil actions</td>
<td>Court has the option to keep an action under seal</td>
<td>Can be under seal indefinitely</td>
</tr>
<tr>
<td>Statutory Insurable Interest in the Trustee of an ILIT</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-charitable Purpose Trusts</td>
<td>Permitted (limited duration of 21 years)</td>
<td>Permitted</td>
<td>Permitted (for the lives of animals only)</td>
<td>Permitted</td>
</tr>
</tbody>
</table>
Can’t come to Delaware? We can always come to you. Below is a map which outlines the national locations we will be exhibiting, presenting, speaking and visiting in 2015. Please contact a member of our Business Development Group with regard to our International endeavors.
## Delaware: The Trust Friendly State

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Early 20th century</td>
<td>Residents only</td>
<td>Yes (since 1986)</td>
<td>Yes (since 2008)</td>
<td>Yes (since 1997)</td>
<td>Yes (since 1995)*</td>
<td>Yes (since 2003)**</td>
<td>Yes (since 2003)</td>
</tr>
<tr>
<td>Yes (since 2007)</td>
<td>Modified Prudent Investor Rule (1986)</td>
<td>Directions in governing instrument or from IA not to diversified respected</td>
<td>Yes (since 1998)</td>
<td>Trust income and principal not subject to voluntary or involuntary transfer1</td>
<td>No (since 2007)</td>
<td>Yes (since 2003)</td>
<td>1</td>
</tr>
</tbody>
</table>

*possible without statute since 1933  
**restricted by trust instrument only  
1 except that, by case law, income may be reached for separate maintenance of a spouse.  
2 based upon data from the U.S. Chamber of Commerce survey (June 19, 2012).