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# President's Letter

## Looking Back and Charging Forward, Finding our Balance



by  
**Karyn Polak**  
President, CEO & Treasurer  
Delaware Bankers Association

*"...we would prefer a common sense regulatory framework with a greater level of stability, predictability, and confidence – for us and our clients – in the laws and regulations that govern our critical industry."*

**N**ext year is Delaware's semiquincentennial – the 250th anniversary of the First State's founding. Not only is that an exceptional spelling bee word, a great party trick for a preschooler to impress a parent's friend group, and a tongue-twister or head-scratcher for the parents themselves, but it's a milestone of epic proportions. It is of course also the United States' semiquincentennial. You may recall that the Delaware Bankers Association ourselves celebrated our 130th anniversary earlier this year, and the American Bankers Association celebrated its 150th (not to mention the ABA Foundation's 100th). If these monumental markers don't prompt you to reflect back and consider all that we've weathered and all that we've accomplished in those decades, I don't know what would.

Never fear: I don't intend to recap 250 years or even 130 years of banking here. Even one-tenth of the State's most recent history, though, offers lessons I might summarize as (1) balanced, consistent guardrails are vital to achievement for providers and recipients alike, and (2) everything in moderation is a wise general rule (with appropriate exceptions) both personally and professionally.

At the start of this millenium, we in the financial industry had the tsunami of laws and regulations that was the Sarbanes-Oxley Act of 2002, arising out of Enron and related financial scandals. There was so much to build, modify, or contemplate that as a law firm associate I created a Jeopardy-like game to teach colleagues and clients about the many categories of impacted areas. By the time we recovered from the onslaught and felt a little bit of comfort in the new structures, the financial crisis of 2007-9 hit – followed by the even wilder tsunami of the Dodd-Frank Act of 2010. Some would say we've been building, modifying, and contemplating its implications ever since then.

In fact, for the most part, our industry has faced additional regulations, prohibitions, constraints and barriers to growth and innovation throughout the 2010's and into the early 2020's. Still, we have also seen the rapid, sometimes breathtaking developments in cybersecurity (and its villains), fraud

protection (and its violators), and artificial intelligence in all its complex forms during that same time.

On the other end of the spectrum, since at least the beginning of this year, we've seen drastic reversals of regulations, shrinking of supervisory staff, stalled progress on industry-informed refreshing of outdated ground rules. Take the Community Reinvestment Act as a good example: there have been valuable conversations for years now on updating this important framework for investment in all our communities, not only the most thriving ones. Regardless of where you would have come out on the end result, most of us in financial services would have liked to see a forward-looking current structure rather than simply leaving in place what we've had since the early part of this millennium.

My guess is we would prefer a common sense regulatory framework with a greater level of stability, predictability, and confidence – for us and our clients – in the laws and regulations that govern our critical industry. Many in the industry and among those we serve are indeed vocally seeking guardrails in the most high-growth of areas like those mentioned above: hold the thieves, the powerful platforms, and the creators accountable for individual and institutional safety; hold the players to a standard of responsible development that doesn't assume all technology is always right or always productive; and work side-by-side with regulators to develop, maintain, or revert to a level playing-field for all actors in the system.

We need the pendulum to stop swinging quite so far in either direction. We're willing and able to be regulated – indeed, to some extent, it is that very regulatory framework that provides reassurance to our clients and communities and provides a competitive advantage over others with less oversight. We all need a better balance, moderation in either direction, in order to achieve progress, positive transformation, and opportunity for all.

A stylized, handwritten signature in black ink, appearing to read 'Karyn Polak'.





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# View from the Chair



**Caroline Harty Dickerson**  
**Chief Executive Officer**  
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*"The state that gave the world its corporate law crown has done the same for trusts."*

In the sometimes staid world of fiduciary services, Delaware trust companies have managed to do something remarkable: stay exciting. That's not to say they're throwing raves in their boardrooms. Rather, Delaware continues to command global attention for the quiet precision, adaptability, and creativity with which it runs its trust industry. The state that gave the world its corporate law crown has done the same for trusts - and its companies are keeping those products the best in the world by evolving faster than the markets they serve.

At the core of Delaware's success is a simple truth: it doesn't rest on reputation alone. Delaware's trust companies operate in a uniquely symbiotic ecosystem of law, regulation, and service culture. The state's Court of Chancery provides the same steady hand to trust interpretation that it does to corporate governance. That consistency means clients and advisors can predict outcomes, structure creatively, and sleep well at night.

Then there's the legislature. Every year, Delaware's General Assembly works with the Delaware State Bar Association to refine trust statutes, ensuring that new wealth management techniques and family office structures have a legal home. The result is a dynamic trust code that blends flexibility with foresight. While other jurisdictions scramble to react to shifting tax laws or global regulatory trends, Delaware's framework already anticipates them.

Delaware trust companies have turned that legal foundation into a marketplace of innovation. They've mastered directed trusts, which allow families to separate investment management, distribution decisions, and administrative functions - reducing conflicts and improving governance. They've built modern dynasty trusts that can last for generations, leveraging Delaware's abolition of the rule against perpetuities. And they've become

experts in asset protection trusts, giving clients both security and legitimate control.

Technology has also become a defining edge. Delaware trustees increasingly invest in digital platforms that integrate compliance, reporting, and communication. Beneficiaries can track portfolios securely online, advisors can collaborate seamlessly, and fiduciary officers can manage complex structures with transparency that would have seemed impossible a decade ago. The best Delaware trust companies now pair their traditional fiduciary wisdom with data analytics, cybersecurity rigor, and digital trust administration that meets the expectations of globally mobile families.

But perhaps Delaware's greatest product is its people. The professionals who populate its trust companies - lawyers, accountants, trust officers, and investment advisors - operate with a shared sense of stewardship. Many have spent decades refining the art of balancing family intent, fiduciary duty, and financial performance. They understand that trusts are not merely tax vehicles or legal containers, but instruments of legacy, tools for families to preserve values as well as wealth.

That same spirit of quiet excellence was on full display at the 2025 Delaware Trust Conference. The conference once again underscored how seamlessly Delaware continues to marry tradition with innovation. What emerged was a portrait of a state that never stops fine-tuning the machinery behind its success. If the trust industry is, at its heart, about reliability, the 2025 Delaware Trust Conference reaffirmed that Delaware's reliability comes from constant renewal. In a world where wealth and regulation move faster than ever, Delaware's trust professionals still lead the pack.

*Caroline*



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## Women Connect

Fifty members and non-members gathered September 19th at the Biden Environmental Training Center in Lewes for the latest Women Connect event. The program kicked off with a five-minute meditation session, introduced by Theresa Hughes, Pinion Individual Trustee and Women Connect Bronze sponsor. Jen Walls, Program Director of Nally Ventures Leadership led an interactive, engaging keynote providing insights on the four Keirsey Temperaments and how self-awareness is the foundation of Leadership. Attendees took a condensed self-assessment identifying their primary temperament and later had the opportunity to break out in small group discussions based off their primary temperament color. Lynn Watson, Vice President and Senior Trust Officer with Brown Brothers Harriman Trust Company of Delaware, closed the program with a panel discussion on Networking for Introverts. The panelists included Dr. Kathy Kennedy-Ratajack, Assistant Vice President, Academic Affairs, Wilmington University, Jereme Heisey, Senior Trust Advisor, Northern Trust Company of Delaware, and Jordan Battee, Wealth Advisor Associate Assistant, Truist Bank. Each speaker represented a different generational perspective and shared insights into how they network effectively and communicate with others.



Women Connect at the Biden Environmental Center

The event was sponsored by Wilmington Trust, Gold sponsor, and Bronze sponsors, Delaware Community Foundation, Pinion, and Wilmington University. Greater Good Events, by Children's Beach House catered the event, a non-profit focused on improving the lives of children, youth, families and communities by helping them identify, understand, and utilize their own strengths, talents, and resources. Every dollar spent on breakfast and lunch fueled their mission.

## CAFE Fintech & DBA Showcase



CAFE Fintech & DBA Showcase

The DBA hosted the CAFÉ Fintech and DBA Showcase, September 30th, at the University of Delaware's Center for Accelerating Financial Equity (CAFE). CAFE is a University of Delaware based organization, it is located on the U of D Star Campus and is a nonprofit organization which advances financial health and wellness for low to moderate income people through fintech innovation, and partnerships.

The fun and informative program included presentations from six fintech startup companies. Business models among these companies ranged from AI powered financial coaching platforms which connect users to a supportive community for shared accountability in financial services, to credit risk intermediaries who support small businesses. All the companies, while small, were established and working with financial services providers and looking to grow.



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# The Rich Tapestry of Delaware Trusts

by  
Kimberly McKinnon  
Daniel Hayward  
Jennifer Kelleher

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When laypersons, or even many of us who work on the trusts and estates field, hear the word “trust”, they likely think of what are often referred to as “common law trusts” that are primarily created estate planning and tax planning purposes and which, broadly speaking, are contractual agreements between Trustees and beneficiaries. However, several types of trusts that go beyond the typical common law trust and purposes have seen their use increase in Delaware and similar jurisdiction over the past several years. Some types of trusts, such as charitable trusts, have evolved naturally from the common law trust structure and are frequently included in estate plans or high net-worth individuals. Other trust structures, such as purpose trusts and statutory trusts, offer novel estate and business planning opportunities that have become increasingly popular. This article will explore the key uses and requirements of Delaware’s many trust options.

## Common Law Trusts

The Delaware common law trust is the most well-known trust structure in Delaware, and its roots can be traced all the way back to Roman law (with respect to testamentary trusts) and later to English common law in the 12th and 13th centuries (with respect to *inter vivos* trusts). A common law trust is born from a settlor’s intent to create a trust relationship where legal title to trust property is transferred to a trustee while equitable title rests with the trust’s beneficiaries. Delaware has codified the concept of the common law trust in Chapter 35 of Title 12 of the Delaware Code, as well as several other statutes.<sup>1</sup>

Delaware common law trusts can be utilized for a variety of modern personal estate and tax planning purposes. Revocable trusts can be used to shield assets from probate and facilitate intergenerational wealth transfer. In addition to those benefits, irrevocable trusts can optimize tax planning and reduce federal wealth transfer taxes, minimize state income taxes, preserve the confidentiality of family assets<sup>2</sup>, and protect assets from creditors of the trustor and the trust beneficiaries<sup>3</sup>. Delaware irrevocable common law trusts also allow for the trustor of a trust to hold beneficial interests in the trust while maintaining creditor protection of the trust’s assets.<sup>4</sup>

A Delaware common law trust must be in writing that is either (i) executed by the trustor and witnessed in the trustor’s presence by at least 1 disinterested person or 2 credible persons; or (ii) executed by a trustee who is a disinterested person without regard to whether the trustor has executed the writing (allowing the trustee to declare the trust instrument on its own).<sup>5</sup> Additionally, in order to ensure nexus with Delaware so that Delaware law will properly govern the administration of the trust, the trust should include a Delaware trustee.<sup>6</sup>

## Charitable Trusts

A charitable trust is a trust created for purposes recognized as charitable in nature – benefiting the public or a segment of it, rather than specific private individuals. Charitable trusts are used to promote the public good and may serve charitable, religious, educational, scientific or literary purposes. Familiar uses include: educational endowments, funding hospitals, churches, or research organizations, advancement of arts, culture, and scientific endeavors, and poverty relief.

Delaware does not have a separate nonprofit statute. Under Delaware law, a charitable trust is a common law or statutory trust having a charitable, religious, educational, scientific or literary purpose that has at least one trustee designated to administer the charitable purpose. Like charitable corporations, charitable trusts are subject to general Delaware Attorney General oversight, but there is no Delaware statute requiring the registration of a charity with the Office of the Attorney General. In the absence of private beneficiaries to hold equitable rights to bring claims against the trustee, it is the Attorney General who ultimately represents the public interest and has authority to enforce charitable trusts. However, Delaware law also uniquely grants the trustor standing to maintain an action to enforce the charitable purposes of the trust and allows the trustor to designate an enforcer, whether or not born at the time of such designation, to enforce the charitable purposes of the trust.<sup>7</sup> Furthermore, because of Internal Revenue Code Section 501(c)(3), charitable trusts are entirely exempt from the rule against perpetuities under Delaware law, and therefore they can have indefinite duration even if they directly hold real estate.<sup>8</sup>

The *cy pres rule*<sup>9</sup> (derived from the French “*cy pres comme possible*,” translated “as near as possible”)<sup>10</sup> is an equitable doctrine which, when the settlor’s original intent becomes impossible, impracticable, or illegal to fulfill, allows a court to modify the trust to effectuate the donor’s intent as nearly as possible. Notably, Delaware’s statutory *cy pres rule* allows the purposes of a charitable trust to be modified only by a modification by consent agreement while the trustor is living or by court order under circumstances where the charitable purpose has become “unlawful” under the Constitution of the State of Delaware or the United States or “would otherwise no longer

serve any charitable . . . purpose.” In the realm of charitable trusts, Delaware’s *cy pres rule* is a tremendous example of Delaware’s commitment to ensuring that a trust can remain faithful to a settlor’s intent. Under Delaware’s statutory *cy pres rule*, the purposes of a charitable trust cannot be changed without the trustor’s consent, even if the purpose becomes impractical, impossible to achieve or wasteful, unless the terms of the trust instrument allow it.

If a Delaware charitable trust is recognized under federal law as exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, it will automatically be recognized as exempt from tax under Delaware law.<sup>11</sup> Tax exempt charitable trusts may also be eligible for other special tax exemptions, such as property tax exemptions and exemptions from obtaining business licenses. There is no annual tax return required to the State of Delaware for tax exempt charitable trusts, although a private foundation should submit a copy of its Form 990-pf to the Delaware Attorney General.

Delaware charitable trusts are a compelling choice if a philanthropic donor wants to leave a lasting charitable legacy, achieve significant tax benefits, and perpetuate his or her chosen specified charitable purpose. A Delaware charitable trust is the strongest tool available to ensure that a donor’s chosen charitable purpose will never be modified or altered.

### Purpose Trusts

A purpose trust is a unique form of trust established to fulfill a non-charitable purpose rather than to benefit specific individuals. Under common law, trusts without identifiable beneficiaries are void for  
*(continued on p. 12)*



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communities thrive!





# Delaware Trusts

(continued from p. 11)

lack of enforcement, with the exception of charitable trusts which are held for the benefit of the public. However, Delaware has enacted statutes that recognize non-charitable purpose trusts as valid trusts.<sup>12</sup>

Delaware purpose trusts are frequently used in sophisticated estate planning and commercial contexts, for lawful, specific purposes that are not impossible of attainment, such as holding private business interests perpetually; holding interests in a family office entity; maintaining family estates, collections or heirlooms; owning and maintaining a family compound; financing and asset securitization; and philanthropic goals that are not strictly charitable, such as social welfare organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code. Delaware law also recognizes the validity of trusts created for the following specified purposes: to hold burial plots, or to care for and maintain any burial lot or cemetery; for the construction or maintenance of any monument, marker or other additions thereto; and for the care of one or more specific animals living at the trustor's death (colloquially known as "pet trusts").<sup>13</sup>

Under Delaware law, a valid purpose trust can be a statutory or common law trust and must have a clearly defined (and lawful) noncharitable purpose that is not impossible of attainment and at least one appointed trustee. It is important to have a Delaware resident trustee, whether corporate or individual, and a strong choice of law provision that prevents the governing law from being inadvertently changed to that of a jurisdiction that does not recognize the validity of purpose trusts.

In some respects, Delaware law treats noncharitable and charitable purpose trusts the same. For example, Delaware's statutory *cy pres* rule has been extended to noncharitable purpose trusts. The purposes of a noncharitable purpose trust can only be modified pursuant to the terms of the trust instrument, by a modification by consent agreement while the trustor is living, or by a court if the purpose has become "unlawful" under the Constitution of the State of Delaware or the United States or "would otherwise no longer serve any . . . noncharitable purpose." The extension of Delaware's *cy pres* rule to noncharitable purpose trusts furthers Delaware's goal of giving maximum effect to the wishes of a settlor expressed in a trust instrument. Delaware law also allows noncharitable purpose trusts to exist in perpetuity, but the Delaware rule that limits the duration for real estate held in trust to 110 years generally applies to purpose trusts (unless the trust is created by an employer as part of a stock bonus, pension or similar plan, is a statutory trust, or is created for the perpetual care of cemeteries).<sup>14</sup>

The enforcer is a critical player for the purpose trust. Delaware law grants the trustor standing to maintain an action to enforce the charitable purposes of the trust and allows the trustor to designate an enforcer, whether or not born at the time of such designation, to enforce the purposes of the trust. However, the terms of the trust instrument may provide that the enforcer or some other person has exclusive standing to enforce the terms of the trust.<sup>15</sup> In addition, the Delaware Court of Chancery may appoint an enforcer in the absence of one, and unless prohibited by the trust instrument, a person that has an interest in the declared purpose of the trust other than a mere general public interest may seek the appointment of an enforcer.<sup>16</sup> An enforcer is deemed to be a "fiduciary" and an "officeholder" for purposes of applying other provisions of Title 12 of the Delaware Code, but may serve in a nonfiduciary capacity if the trust instrument

specifically provides for that. The enforcer is also an "interested person" and can participate in effectuating a nonjudicial settlement agreement for a purpose trust, and its consent is required to effect other modifications by consent during the lifetime of a living trustor.<sup>17</sup>

If a Delaware purpose trust is recognized under federal law as exempt from income tax under Section 501(c) of the Internal Revenue Code, it will automatically be recognized as exempt from tax under Delaware law.<sup>18</sup> Tax exempt purpose trusts may also be eligible for other special tax exemptions, such as property tax exemptions and exemptions from obtaining business licenses. However, if the purpose trust is not recognized as a tax exempt organization, it may be subject to Delaware income tax because it may not be eligible to deduct amounts of income set aside for future distribution to nonresident beneficiaries (known as the "set aside" deduction).<sup>19</sup>

Delaware noncharitable purpose trusts are a compelling choice if a donor wants to perpetuate his or her chosen specified noncharitable purpose. Delaware purpose trusts have been recognized as valid by statute for many years, are difficult to alter if the donor so desires, and are specially protected against claims from non-beneficiary persons who receive disbursements in furtherance of the stated purpose.<sup>20</sup>

## Statutory Trusts

A Delaware statutory trust ("DST") is a business or investment trust formed under the Delaware Statutory Trust Act, which was first enacted in 1988.<sup>21</sup> Unlike common law trusts, DSTs derive their existence and powers entirely from statute, making them separate legal entities capable of owning property, contracting, and suing or being sued in their own name. Though such trusts can be used for business purposes, they may also be used in connection with personal tax or estate planning. Despite the differences between DSTs and Delaware common law trusts, all of the laws that relate to common law trusts under the Delaware Code apply to DSTs, unless otherwise provided in the DST's governing instrument.<sup>22</sup> In addition, like Delaware common law trusts, DSTs can provide significant liability protection for the trustee and the trust beneficiaries.

A key factor of a DST is that it is its own separate legal entity that can take title to property in the name of the DST and carry on any lawful business or activity (regardless of whether such business is for profit). This reason, along with the flexibility to elect to have the DST taxed as a corporation, partnership, association or trust, has made the DST a popular tool for business, investment and financing transactions, in particular those businesses or transactions involving specialized assets, including real estate, since a DST qualifies as an entity that can enter into 1031 like-kind exchanges.

In addition to the requirements for Delaware common law trusts, a DST must file a Certificate of Trust, signed by all of the trustees of the DST, with the Office of the Secretary of State.<sup>23</sup> The DST is deemed to be formed as of the date of the filing of the Certificate of Trust, or at later time specified in the filed Certificate of Trust.<sup>24</sup>

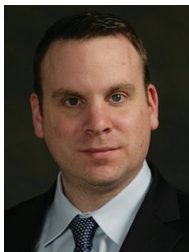
## Conclusion

Delaware continues to be an innovative leader in the trust industry. Delaware's preeminence in the field stems not only from the more widely-recognized revocable and irrevocable common law trusts, but through its modern legal framework that increases the utility of charitable trusts and supports more innovative and alternative trust structures, including increasingly popular purpose trusts and DSTs.



wealth transfer and minimize tax consequences.

*Kimberly Gill McKinnon is an award-winning attorney with decades of experience advising individual and institutional clients on issues surrounding trusts, taxation, estate planning, charitable giving, and non-profit formation and governance in Delaware and at the federal level. Kim advises Delaware and out-of-state clients on complex trust and estate planning that leverages Delaware's advantageous trust laws to maximize*



*Daniel Hayward is a nationally respected trust and estate lawyer who provides sophisticated and valuable advice on complex trust issues and fiduciary litigation. Daniel brings a wealth of experience in Delaware trust law to the individual and corporate clients that he serves. He is well versed in the unique and complex aspects of Delaware trusts and is frequently sought after as an authority in the field.*



*Jennifer Kelleher focuses her practice on trust and estate administration and planning. In addition to her time as an attorney in the litigation departments of several other prominent, national and international law firms, Jennifer was previously an assistant vice president and private client fiduciary advisor for a Delaware trust company.*

#### Notes

- 1- See, e.g., 12 Del. C. § 3301 *et seq.*
- 2- See 12 Del. C. § 3303(a)(1).
- 3- See 12 Del. C. § 3536.
- 4- See 12 Del. C. § 3570 *et seq.*
- 5- 12 Del. C. § 3545(a).
- 6- See 12 Del. C. §§ 3332(a), 3340.
- 7- 12 Del. C. § 3303(b).
- 8- 25 Del. C. §§ 503(a) and (b).
- 9- 12 Del. C. § 3541. See also *In re Mary R. Latimer Trust*, 78 A.3d 875 (Del. Ch. 2013).
- 10- See David Kamer, *Evolve or Dissolve – How Charitable Organizations Address Change*, 42 NAEPJ Est. & Tax Plan. 1,1 (2023); Christopher J. Ryan, Jr., *An Historical and Empirical Analysis of The Cy-Près Doctrine*, 48 ACTEC L.J. 289, 290 (2023); *In re Tr. Under Will of Flint ex rel. Shadek*, 118 A.3d 182, 195-96 (Del. Ch. 2015) (“*Cy pres* is a French phrase meaning ‘as near.’ The Delaware courts first applied common law *cy pres* in 1948. Under that doctrine, ‘where the general charitable purpose of a trust would fail due to a circumstance, unanticipated by the settlor, that renders the literal fulfillment of the trust impossible or impractical, the court may designate an alternative beneficiary — *cy pres* (as near as may be) to the named beneficiary, to facilitate the settlor’s general intent.’”) (note and citation omitted).
- 11- 30 Del. C. § 1633(2).
- 12- See Subchapter IV of Title 12 of the Delaware Code.
- 13- See 12 Del. C. §§ 3551–3555.
- 14- 25 Del. C. §§ 503(a) and (b).
- 15- 12 Del. C. §§ 3303(b) and 3556(3).
- 16- 12 Del. C. § 3556(3).
- 17- See 12 Del. C. §§ 3556(8), 3338 and 3342.
- 18- 30 Del. C. § 1633(2).
- 19- 30 Del. C. § 1636.
- 20- 12 Del. C. § 3536(2).
- 21- 12 Del. C. § 3801 *et seq.*
- 22- 12 Del. C. § 3809.
- 23- 12 Del. C. § 3810(a)(1).
- 24- 12 Del. C. § 3810(a)(2).

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# Debanking Debunked

by  
Erin Busse  
Vice President and Deputy General Counsel  
Compliance Alliance



**O**n August 7, 2025, the Trump Administration (“Administration”) issued the “Guaranteeing Fair Banking for All Americans” Executive Order (“Order” or “EO”). The EO asserts that certain Americans have faced discrimination in banking due to their “political affiliation, religious beliefs, or lawful business activity.” The Order further states that these practices are prohibited under the Equal Credit Opportunity Act (“ECOA”) and constitute “politicized or unlawful debanking,” which must be addressed. The language of the Order has already sparked debate among regulators and lenders about how far its reach extends.

To grasp the rule’s scope, financial institutions must understand the meaning of “politicized or unlawful debanking.” The Order defines the term as:

“[...] an act by a bank, savings association, credit union, or other financial services provider to directly or indirectly adversely restrict access to, or adversely modify the conditions of, accounts, loans, or other banking products or financial services of any customer or potential customer on the basis of the customer’s or potential customer’s political or religious beliefs, or on the basis of the customer’s or potential customer’s lawful business activities that the financial service provider disagrees with or disfavors for political reasons.”

In combatting debanking, the Order places the burden on the Regulators. This refers to all “Federal member agencies of the Financial Stability Oversight Council” (“Council”). The Council includes most financial regulators, namely, the Office of the Comptroller of the Currency (“OCC”), the Federal Reserve Board (“FRB”), the Federal Deposit Insurance Corporation (“FDIC”), the Consumer Financial Protection Bureau (“CFPB”), and the Department of the

Treasury (“Treasury”). Although not part of the Council, the Order includes the Small Business Administration (“SBA”) as a defined “Regulator.” As part of facilitating the Order, the Administration chose to specifically utilize the SBA and the Treasury.

For the prudential regulators, such as the OCC, FDIC, FRB, etc., the Order requires the removal of “reputational risk or equivalent concepts” from any materials that could result in politicized or unlawful debanking within 180 days of the Order. This includes guidance, manuals, and other materials used to evaluate or regulate financial institutions. Further, Regulators must review banks’ policies to determine whether the institution encouraged or facilitated unlawful debanking and issue fines, consent orders, or other disciplinary actions, as appropriate, if the Regulators determined that a bank was in violation of the Order within the 120 days prior to its issuance. Lastly, if the Regulators determine that a bank unlawfully debanked a customer based on religion, then the Regulators should refer the matter to the applicable state’s Attorney General within 180 days of the Order.

Further, the Order requires the SBA to issue notice within 60 days to all SBA lenders regarding the debanking requirements. The Order also requires the Treasury to consult with the Assistant to the President for Economic Policy to develop a comprehensive strategy to “combat” unlawful debanking by the regulators within 180 days of the Order.

In response to the issuance of the EO, the SBA, OCC, and FDIC have issued statements or changes in compliance with the Order. The SBA’s Office of General Counsel issued a letter outlining four steps for lenders to ensure compliance with SBA requirements. First, banks must identify any current policies or practices that furthered

“unlawful debanking.” Next, institutions must make reasonable efforts to reinstate any customers that were denied access to banking due to these policies. Further, the letter requires banks to notify any applicants qualified under the SBA program who were denied access of the option to renew engagement. Lastly, the bank should identify all clients denied access to payment processing services under SBA programs and send notification to each customer, providing them with the option to renew. Lenders must submit the report to the SBA by January 5, 2026, to remain in good standing and avoid punitive damages.

On September 8, 2025, the OCC issued a statement, as well as two bulletins, discussing plans to comply with the EO. Bulletin 2025-22 focuses on the Community Reinvestment Act (“CRA”), stating the OCC will review licensing filings to evaluate whether institutions debanked customers based on Order-defined factors. The OCC will use the evaluation to consider CRA ratings. The second bulletin, Bulletin 2025-23, relates to privacy and suggests that some banks participated in “government-directed surveillance programs” and targeted individuals associated with the January 6, 2021, activities. Additionally, the OCC clarifies within the bulletin that it was issued to “remind” banks of their obligations to protect customers’ financial information under the Right to Financial Privacy Act (“RFPA”). The bulletin further states that there are limited situations in which a bank is required to file a Suspicious Activity Report (“SAR”), suggesting that banks should be careful to avoid improperly disseminating private customer information within a SAR, and requires banks to evaluate their policies and procedures in light of the EO.

Lastly, the FDIC released a very short statement affirming the Order and confirming that the FDIC has plans to comply with it. However, these plans have not yet been released.

As with many Executive Orders and legal actions, there are arguments that the Debanking Executive Order lacks the legal authority to compel action. As of the date of publication, there are no pending lawsuits opposing the Order; however, banks must now wait and see how Regulators enforce the Order, and how Treasury chooses to combat “unlawful debanking.”



*Erin Busse, JD Vice President and Deputy General Counsel for Compliance Alliance, holds degrees in Psychology and English from Loyola University New Orleans and earned her JD from Saint Louis University School of Law.*

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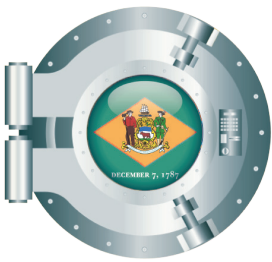
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# The Top Trust Professionals in the Top Trust State

The 20th Annual Delaware Trust Conference convened October 28–29 at the Chase Center on the Riverfront in Wilmington, with a live-stream option for remote attendees. The hybrid event drew close to 500. As one of the most influential gatherings in the trust and wealth-management world, the conference offered a timely and comprehensive agenda. This year's conference drew a full house of trust officers, attorneys, wealth managers, CPAs, and estate planners — all in pursuit of the latest insights in regulation, taxation, and trust innovation. Once again, the sessions reflected an industry that's both traditionally solid and evolving to meet clients' needs.

The hybrid format continued to shine. In-person attendees enjoyed the energy and networking buzz, while virtual participants appreciated the convenience of watching remotely.

As it has for the last 20 years, the 2025 Delaware Trust Conference delivered exactly what attendees came for: authoritative insight, meaningful dialogue, and a reaffirmation that Delaware remains the lodestar of the trust and fiduciary universe. The Delaware Trust Conference continues to blend both substance and sparkle while reaffirming that Delaware's place at the center of the wealth management map isn't going to be dislodged anytime soon.

As Delaware continues to anchor its reputation as a leading trust jurisdiction, the conference reinforced that it's not just about domicile jurisdiction—it's about strategic advantage, professional excellence, and innovative trust design. Thank you to all our sponsors, speakers, exhibitors, and attendees. See you all next year at the 2026 Delaware Trust Conference.



Samuel A. Donaldson, Professor of Law, Georgia State University, kicked off the conference with an entertaining and informative session on "The Best Planning Ideas Worth Stealing."



DBA President Karyn Polak addresses the attendees during Tuesday's luncheon.



"The Cardinal Rule is No Red Herring" when it comes to settlor's intent, as explained by Vincent Thomas, Todd Flubacher, and Beth Gansen Knight.

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## 2025 Delaware Trust Conference



Conference Chair Bob Eaddy, President of Platinum Sponsor, The Bryn Mawr Trust Company of Delaware, is joined by his staff at the company's booth. In addition to dispensing information, delicious ice cream treats were distributed to the conference attendees.



Jennifer A. Cuva, Regional Trust Director, SVP, Citizens Trust Company of Delaware welcomes newcomers as part of the conference's Ambassador Program.



Daniel Hayward, Member, McCollom D'Emilio Smith Uebler LLC, Robert Coppock, VP, The Bryn Mawr Trust Company of Delaware, and Beth Tractenberg, Partner, Steptoe LLP, analyzed the issues associated with trust planning for non-US grantors and beneficiaries.

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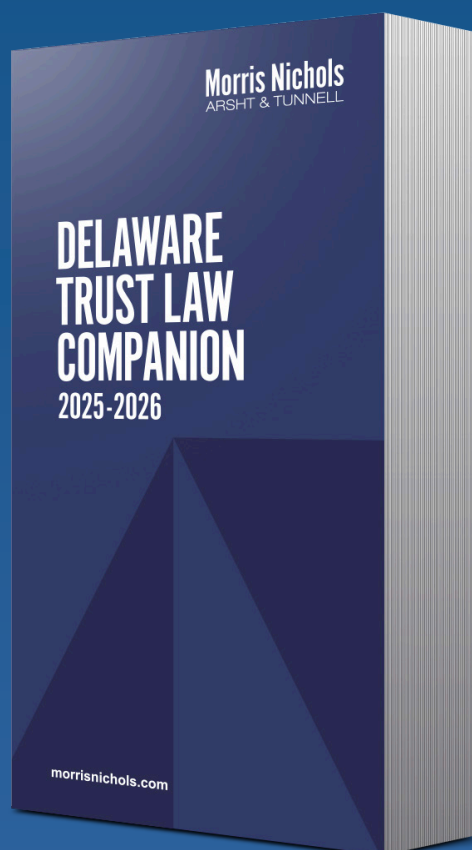
AK Moody, Senior Wealth Strategist, BNY Wealth, and Emily Plocki, Tax and Wealth Planning Partner, Venable LLP, provide a comprehensive overview of 2025 Federal Tax Law Highlights.





How does the First State stack up? Cindy Brown, Director of Special Trust Situs, Wealth Management, Mechanics Bank, moderates a case-study based analysis of the difference between Delaware, Florida, Nevada, and Tennessee trust law. Joining her (l. to r.) are: Matthew Blattmachr, President & CEO, Peak Trust Company; Matthew D'Emilio, Managing Member, McCollom D'Emilio Smith Uebler LLC; Mark Parthemer, Chief Wealth Strategist & Florida Regional Director, Glenmede; and Eddy R. Smith, Kennerly Montgomery & Finley, P.C.

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**Morris Nichols' *Delaware Trust Law Companion* is an invaluable resource for professionals whose practice involves Delaware trusts.**

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Amanda Koplin, LPC, CEO Koplin Consulting, goes into the audience to answer questions during her presentation: "Working With Beneficiaries With Mental Illness," one of the conference's two ethics sessions.



How to tackle fraud in the age of A.I. and digital payments? Patrick Smith, SVP of Fraud Operations Management Optimization, American Bankers Association, explored the challenges and provided practical solutions.



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Wendy Cox, Director of Personal Trust, CFO, Greenleaf Trust Company and Daniel P. Felix, The Professional Trustee attend in person after recording their on-demand session: Navigating Trust Disasters, Lessons Learned from Journeying 60+ Years in the Trustscape.





Elizabeth Luk, Head of Delaware Trust, BNY Wealth, Michael Gordon, Director, Gordon, Fournaris & Mammarella, P.A., and Michaelle Rafferty, Shareholder Attorney, Maupin, Cox & LeGoy, presented solutions to modifying and modernizing irrevocable trusts.

**Trust Professionals of Tomorrow!**  
Students from the University of Delaware's Trust Management Minor, a program built on community, mentorship, and lifelong impact, attended the Wednesday sessions.



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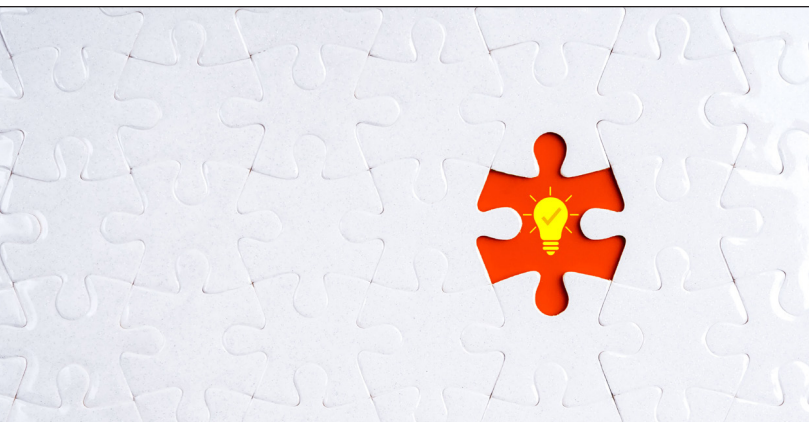
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## Networking and More!

While the Delaware Trust Conference sessions take place in the Wilmington Hall, the exhibitors, the reception and the networking in the Governor's Hall are an integral part of the Delaware Trust Conference. Door prizes also add to the experience. Thank you to all the sponsors and exhibitors who donated prizes: American Bankers Association; Citizens Trust Company of Delaware; Greenleaf Trust Delaware; JTC Group; Koplin Consulting; Pinion Individual Trustee Services; PNC Bank, N.A.; Richards, Layton & Finger, P.A.



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## W. Donald Sparks II Receives Delaware Trust and Wealth Management Lifetime Achievement Award

**W**.Donald Sparks II, Director of Richards Layton & Finger, was the recipient of the 4th Annual Delaware Trust and Wealth Management Lifetime Achievement Award presented by the Delaware Bankers Association at the 2025 Delaware Trust Conference. The award recognizes an individual who has made a significant impact on the Delaware Trust & Estates field. Nominations for the award were made by members of the DBA Trust Committee and reviewed by the Delaware Trust Conference executive committee.

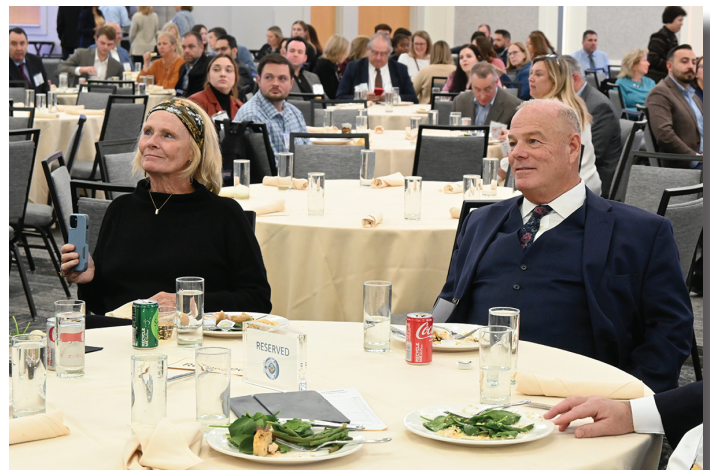
Don has been vital part of the Delaware trust industry for four decades. His vast knowledge of Delaware law and common-sense approach to trust law have made him a stand-out amongst members of the Delaware bar. Representing banks and trust companies on fiduciary matters, as well as high net worth individuals in sophisticated estate planning matters, Don is a go-to expert on Delaware law both within Delaware and outside of Delaware. To many outside of Delaware, he is the face of Delaware trust law.

Don has been recognized as a fellow of the American College of Trust and Estate Counsel, in Chambers HNW, Private Wealth Law, and The Best Lawyers in America. He was Wilmington Tax Law Lawyer of the Year, in 2012, 2015, and 2025; The Trusts & Estates Lawyer of the Year in 2015; a Delaware Today Top Lawyer since 2014; and the top Delaware Today Top Lawyer Vote Getter, 2017, 2015, 2014.

Congratulations, Don, and thank you for your service to the Delaware trust industry!



Mark Purpura, Director, Richard Layton & Finger, and co-chair of the Delaware Trust Conference Committee announces the Lifetime Achievement Award at Wednesday's luncheon.



Don Sparks was joined at the luncheon by his wife, Leigh.





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# Cultivating Trust

## Confronting Generational Gaps in Trust Professionals' Competency with Training and Mentorship

by  
**Ronald Templeton, Vice President**  
**The Bryn Mawr Trust Company of Delaware**  
&  
**Elle Van Dahlgren**  
**Elle Van Dahlgren Law, LLC**



**T**he World's Trust Capital (Delaware, of course) faces a generational crossroads. The recovery from the COVID work-from-home environment has served as an inflection point in our industry. In 2021, the rapid economic recovery, industry shakeups from high-profile mergers and acquisitions, and endless revisions on tax policy proposals meant many in our industry fused themselves to their desk chairs and took the ride. The work came first, as it should, but new problems materialized. The trust industry faces an uncomfortable new reality: the number of experienced service providers with institutional knowledge continues to decline without a pipeline of qualified professionals to take their place.

This crisis is more than a simple labor shortage. It threatens to erode decades of institutional credibility, client confidence, and belief in the Delaware Trust Advantage. While senior trust professionals worked through the COVID professional environment to ensure minimal disruptions to clients and retaining business, we may have neglected to cultivate the next generation of professionals. Within this economic challenge lies an opportunity for intentional leadership, deliberate mentorship, structured training, and strategic long-term client retention.

### Competency Crisis in the Trust Industry

For nearly a century, Delaware's trust industry earned a reputation for deep institutional knowledge. Veteran service providers with decades of fiduciary experience became

the backbone of Delaware's international leadership. By committing time for mentoring and on-the-job training, senior industry professionals transferred their knowledge and experience to younger generations.

An informal survey among our younger colleagues illuminates the magnitude of the issue. Many of them stumbled into the industry. They went to school, sought a job in finance or general fiduciary law, and found a niche in the trust industry. When we asked our younger colleagues what they need to grow and feel confident in their careers, 80% of them responded that they wanted mentorship, to feel purpose in their work, and structured professional growth.

That should give us pause. It seems we face less of a shortage in talent than a shortage of professional development and clarity. Trust planning and administration is different from more generalized financial and legal services. A career in trust planning and administration requires careful reading, attention to detail, broad understanding of multiple aspects of tax and law, and effective communication with clients, counsel, and colleagues. Moreover, it requires meticulous and gradually developed knowledge, often through apprenticeship-like learning, extensive study, and real-world experience.

If we, as senior professionals, fail to define a clear and appealing professional pathway for our younger colleagues, they will seek out others – in other industries – to take our

place. Delaware fiduciaries and attorneys compete not only with each other for top-tier talent but also with other states' and industries' needs and efforts.

### **Mentorship as a Strategic Imperative**

The traditional labor market and collegiate graduate pool cannot produce fully-realized fiduciary experts. While programs like the Trust Management Minor at the University of Delaware are starting to create an industry pipeline, it is one of few such programs. Rather, we must focus on developing knowledgeable and professional trust advisers internally with face-to-face interaction and development. We propose that mentorship is the single most effective way to accomplish this.

When we started our careers, our senior colleagues set aside an hour or more each week to personally teach us. They shared their resources like digital lectures, continuing education materials, and research sources. We listened to lectures on our lunch breaks as a group, and our mentors paused to share personal experiences from their long careers in the industry. They offered innumerable stories and anecdotes that personalized and contextualized the information. Our superiors reviewed all correspondence before we sent it to the clients, and we returned to our offices after every review with papers covered in red-inked corrections. At the time, we were less than enthusiastic to rewrite a Crummey letter for the fourth time, but looking back, their investment of time and energy made us into successful trust professionals.

Today, clients have more access to us than ever before. We host virtual meetings from anywhere in the world. Clients have our cell phone numbers and can (and do) call at all hours, expecting us to respond. Endless emails requiring a reply fly at lightspeed through the ether and provide a constant reminder that someone somewhere needs our attention. Businesses constantly seek new ways to increase revenue efficiency, which often translates into higher and higher client loads. Our up-and-coming team members need to be ready to jump in and share the load when the time arrives.

We can teach laws and mechanics, but we, as experienced professionals, must model personal and subjective discernment – the ability to understand human relationships, navigate family dynamics, calculate risks, instill confidence, and make tough choices. Yes, there are laws, regulations, and best practices that govern our actions. However, the primary driver of our success is our decision-making in the individualized situation. We must consider not just the decision in the specific situation, but also its rationale and the impact it has on similar situations in the future.

Too many organizations assume mentorship will happen organically. It rarely does. Mentorship helps teach the unwritten rules, develop younger colleagues' professionalism, and improve their knowledge base. More specifically, mentorship seeks to achieve several concurrent objectives:

- **Accelerate Knowledge Transfer:** Senior professionals can walk younger colleagues through real-life cases as they happen and with all their nuances. We can explain the decision-making process and give our mentees structured opportunities to engage. We help them build a repertoire of experiential knowledge and increasing confidence in their own abilities, thus dramatically flattening younger colleagues' learning curve.

*(continued on p. 30)*



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(continued from p. 29)

- **Cultural Integration:** Trust companies and advisers are unique in that they are built on reputational stewardship and shared ethical frameworks. Each business has its own personality. Young colleagues must learn to merge the business's personality with their own to project consistency to clients. Mentorship reinforces the best ways to integrate these values more than any policy manual or training seminar ever could.
- **Retention:** Historically, the best way for a trust professional to gain a promotion is to jump to another company. To retain our future experts, we need to develop a workflow that encourages young professionals to offer meaningful contributions to client relationships and work, rewards entrepreneurial attitudes, builds ownership, and lets them know where they are going, what it will take to get there, and who will help them along the way.

Mentoring can take many forms. We are not proposing rigid, proceduralized programmatic policies that pay lip service to mentorship. At The Bryn Mawr Trust Company of Delaware, we have developed a somewhat formalized system that takes new staff through a middle office role before being paired up with a team leader who mentors them into a book of business for themselves. However, mentorship could be structured as a buddy-system or a cohort-based learning system. The key to instituting a successful mentorship program is developing a system that works toward achieving the goal of continuity of expertise in our institutions.

### Training and Professional Development

If mentorship is the backbone of building our professional community, continuing education is the muscle. Training is a key factor to develop confidence in new professionals. We asked the following questions about continuing education in our internal survey:

- Are you inspired and/or desire to learn more about trust administration?  
87.5% responded "YES"
- Do you feel increased knowledge about trust planning and administration correlates to increased personal success?  
100% responded "YES"
- Does increased knowledge correlate to increased responsibility?  
50% responded "YES"
- Would mentorship and training help assuage nervousness in making decisions?  
90% responded "YES"

The fiduciary space has ample opportunities for professional training programs: American Banking Association Wealth and Trust Schools, STEP membership, continuing legal education, specialty certifications, Master of Laws ("LLMs") in trusts,

estates, and tax, and many more. We encourage our younger colleagues to participate in conferences and trade shows and attend relevant webinars or presentations.

In practice, this can mean:

- Structured onboarding curricula focused on Delaware trust law, fiduciary principles, and client interaction standards.
- Regular internal workshops to review documents, case studies, new legislation, and regulatory updates.
- Professional writing workshops.
- Careful review of trust documents with our younger colleagues to familiarize them with common language and provisions.

Trust planning and administration constantly evolves with regulatory changes, new asset classes, and new tax laws. While mentorship focuses on experiential learning, training emphasizes theoretical learning to ensure we all have the knowledge base to succeed. Continuous learning is not a luxury in our industry but a necessity. We, as experienced trust advisers, must lead by example and signal the value of mentorship and education for personal and professional growth.

### Maintaining Client Confidence in Emerging Professionals

None of this training or mentorship matters if clients do not trust the next generation. Client relationships are often personal, with clients developing a deep confidence in their assigned advisers. Transferring a client to an up-and-coming colleague is delicate. Too often, a client receives a form letter notifying them of a new trust officer or adviser leading their "team." This creates a poor start to the client's relationship with the rising colleague.

To successfully bring up the new generation, we need to proceed carefully:

- We must introduce new colleagues gradually and strategically. If we introduce new colleagues to our clients too frequently (often due to high turnover), clients may not even know who is on their team. New advisers can take a supporting role and slowly take responsibility for the client's needs. Ideally, the client will not even notice the shift and will commit to a continued relationship with the business.
- We must coach new advisers on communication style, demeanor, etiquette, and client preferences. In most situations, a new adviser cannot immediately adopt the casual communication style we built with a client. Communication with a client who prefers formality may require guidance for the new adviser as to how to draft professional letters. Perceived deviation from norms and preferences can detrimentally impact the young adviser's relationship from the outset.
- We must ensure the client views the new member of their team as a trained and trusted representative of the organization. If clients feel we are dumping them off on an unqualified underling, we cannot retain the client's loyalty, but when handled well, client transitions can signal stability.

Transfer of a client's trust administration can be an excellent opportunity to solidify the organization's long-term relationship with the client. Improving on this within our businesses only improves our overall success in the industry.

### Delaware Leads the Way

Delaware has long stood at the center of American and global trust law. We can brag about our trust law, judicial system, legislative involvement, and institutional knowledge, but our people are what sets apart the Delaware trust industry. We must pair leadership with knowledge, learning, and development in the Delaware trust industry to set the standard for cultivating excellence in trust, financial, and legal industries. Mentorship and training are not just policy initiatives. They are strategic imperatives to build competence, foster loyalty, and safeguard the confidence clients have in our state's trust management.



*Ron Templeton is a Senior Trust Officer and Team Leader at The Bryn Mawr Trust Company of Delaware. He has 13 years of Delaware Trust experience and provides Delaware Fiduciary Services to a global clientele of Fortune 500 Executives, VC Managers, Family Offices, Sports Icons, and Tech Startup Founders. Ron Graduated from Grove City College in 2012 with a BS in Entrepreneurship and has earned CTFA and AFIM credentials.*

*Outside of the office Ron enjoys a quiet country life with his wife and three children on their little farm raising goats, chickens, and alpacas.*



*As the owner of Elle Van Dahlgren Law, LLC, Elle Van Dahlgren advises clients on matters relating to estate and legacy planning and administration, with an emphasis on wealth transfer, wealth preservation, and tax planning. She also advises clients on probate matters, elder law, and special needs planning. Elle is licensed in Delaware and Pennsylvania. She is a graduate of Drake University and the University of Iowa College of Law and has practiced law in Delaware since 2009.*

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# The Life of a (Newly Betrothed) Showgirl

## Considerations for Couples Preparing to Marry



by  
**Anne Grae Martin**  
**Connolly Gallagher LLP**

If you've turned on the news or watched football or talked to a woman in your life recently, you probably know, but for those who do not: Taylor Swift is getting married to Travis Kelce! As happy a time as this is for Ms. Swift and Mr. Kelce, they (and other engaged couples) should consider many things pending their nuptials. Prenups? Basic planning? These are not questions to which one can simply say, "Shake It Off."<sup>1</sup>

### **Paper Rings: Prenuptial Agreements**

Ms. Swift, Mr. Kelce, or any other engaged couples planning to get married in Delaware may enter into a premarital agreement.

Under Delaware law, a premarital agreement is "an agreement between prospective spouses made in contemplation of marriage, ... which is effective upon marriage."<sup>2</sup> It must be in writing and signed by both parties; no consideration is needed.<sup>3</sup> The parties may focus the agreement on anything they'd like that does not violate public policy or constitute a crime.<sup>4</sup> This may include property rights, occurrences upon a divorce, spousal support or alimony considerations, and estate planning considerations.<sup>5</sup> A child's right to support may not be adversely affected by a premarital agreement.<sup>6</sup>

Premarital agreements may be amended or revoked.<sup>7</sup> They must be voluntary (Contract Law 101).<sup>8</sup> They also would not be enforceable if unconscionable when executed and a party (1) was not given fair and reasonable disclosures of the other party's property or financial obligations, (2) did not, in writing, voluntarily and expressly waive the right to disclosure by the other party of property or financial obligations beyond what was provided, and (3) did not have, or reasonably could

not have had, adequate knowledge of the property or financial obligations of the other party.<sup>9</sup> The courts will determine unconscionability.<sup>10</sup>

### Benefits

- o Discussing whether a couple even wants a premarital agreement can spark important questions about themselves and the future.
- o The requirement for disclosure of property and financial obligations allows a fiancé to share and/or learn about their partner.
- o Parties can lay out how they would want property to be handled while they are (hopefully) happily in love and not during the melee of divorce. This can include real and personal property, as well as finances and debts.

### Drawbacks

- o It is a tough conversation to bring up! As much as a couple loves and trusts each other, the idea that one is already thinking about, “How Did It End?” may put doubts in the other’s mind.<sup>11</sup>
- o A party may already be okay with how property would pass by default upon divorce or other triggering event, so a premarital agreement might unnecessarily complicate.
- o If one or both parties’ financial situations change drastically (for better or worse) and the agreement does not anticipate this, it could become a burden.

### Blank Space: Intestacy

What happens if Ms. Swift tells Mr. Kelce, “I’m immortal now”

and do not need any kind of estate planning?”<sup>12</sup> If she were proven wrong on this point, Ms. Swift would pass away without a will and would have an intestate estate.

This means, if she died a resident of Delaware, her property would pass under Delaware’s intestacy laws. Mr. Kelce, as her surviving spouse, may get an intestate share. If she had no descendants or parents, he would inherit her entire estate.<sup>13</sup> If Scott and Andrea (Ms. Swift’s parents) were alive, or Ms. Swift and Mr. Kelce had children, Mr. Kelce would get \$50,000 of her personal estate (roughly what she made off one ticket to the Eras Tour), one half of the remaining balance of her personal estate, and a life estate in any real property she held (hello, Newport!). Finally, if Ms. Swift had children who are not Mr. Kelce’s, he would then only get half of her personal estate and a life estate in her real property.<sup>14</sup>

Once Mr. Kelce’s share has been settled, the following individuals, in order, would get what is remaining of Ms. Swift’s intestate estate: her descendants, her parents, her parents’ descendants, then Ms. Swift’s next of kin.<sup>15</sup>

Alternatively, if Mr. Kelce wanted an elective share, he also has this right. The elective share allows a surviving spouse to get one-third of the decedent’s elective estate, less transfers by the decedent to the surviving spouse.<sup>16</sup> The elective estate is the decedent’s gross estate less certain deductions and including one-half interest in certain real property. Mr. Kelce, or any Delawarean in his shoes, would want to consult with a professional before determining whether his intestate share or his elective share would be better.<sup>17</sup>

*(continued on p. 34)*



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(continued from p. 33)

Ms. Swift may be okay with this plan; however, it does have some drawbacks of which she (and any other Delaware-based individual thinking of not making a will) should be aware. First, she may want to make bequests to people who are not her intestate heirs; creating a will or revocable trust would give her this power. Next, if Ms. Swift set up a revocable trust and put assets into it during her lifetime, those assets would be protected from the Delaware probate process. Her current net worth is estimated to be roughly \$2.1 billion.<sup>18</sup> If she did no estate planning and had to pay the 2% probate fee that Delaware estates must pay, this would cost her estate roughly \$40 million.<sup>19</sup> A third advantage is privacy, something Ms. Swift seems to prize, as probate administration is publicly accessible. Having assets distributed by trust keeps one's intentions private.

### Love Story: Basic Estate Planning

#### WILLS

Under Delaware law, a person who is above 18 years of age and of sound mind may make a will.<sup>20</sup> If Ms. Swift were to make a Delaware will, it would need to be in writing and signed by her and two credible witnesses.<sup>21</sup> While an interested person can be a witness to a will, it is safer to have two disinterested witnesses.

Ms. Swift could leave items to specific people using a memorandum of tangible personal property (a "TPP Memo"). A TPP Memo gives testators more flexibility because it has less stringent signing requirements (just signed by the testator, no need for witnesses or notaries).<sup>22</sup> This means that Ms. Swift could make a will and execute a TPP Memo giving her cardigan collection to Selena Gomez and then, if they have a falling out, Ms. Swift can execute a new TPP Memo without updating her will. Furthermore, if Ms. Swift gets a new guitar collection after executing her TPP Memo, she could update the TPP Memo to leave it to Tim McGraw, again without having to update her will.

If Ms. Swift and Mr. Kelce decide to have children, they could use their wills (or separate Deeds of Guardianship referenced in their wills) to appoint caretakers for their minor children. The Deed of Guardianship has the same advantage as a TPP Memo, in that it can be updated with less stringent signing requirements than their Wills.

#### REVOCABLE TRUSTS

Ms. Swift may also set up a revocable trust to administer her assets upon her death. A revocable trust, as its name suggests, is a trust that may be revoked (or amended) by the grantor during their lifetime. A common testamentary scheme is to have a will that distributes property to a revocable trust (a "pour-over will") and that trust becomes the means of carrying out the person's intent. There are several advantages to this. First, a trust would be more private than a will, which is filed with the Register of Wills. Another huge advantage is that if a decedent's assets are held in trust, such that they have less than \$30,000 worth of probate assets outside of trust (and there is no real property in their sole name), they can avoid probate in Delaware.<sup>23</sup> Any steps to avoid the 2% probate fee, not to mention the cumbersome probate process, would surely be appreciated by Ms. Swift's loved ones.

#### DURABLE POWERS OF ATTORNEY

Ms. Swift and Mr. Kelce could also set up durable personal powers of attorney (a "DPOA"). A DPOA allows the maker to appoint someone as their agent for financial matters. It must be a writing signed by the maker, dated, notarized, and witnessed by a disinterested witness.<sup>24</sup> For it to be "durable," it must specify that the maker's subsequent incapacity shall not affect its validity.<sup>25</sup> The maker can give the agent the power to do almost anything the maker can do with respect to the maker's finances and property.<sup>26</sup> A DPOA is only in effect when the maker is alive; upon the maker's death, the DPOA expires.

#### ADVANCE HEALTH-CARE DIRECTIVE

Ms. Swift and Mr. Kelce could also add advance health-care directives (an "AHCD") to their estate planning kit. An AHCD allows the maker to make decisions about their healthcare and appoint a person to carry out those decisions.

An AHCD can include whether a person wishes to remain alive through certain life-sustaining measures (including artificial hydration and nutrition), whether they wish to receive certain pain relief measures, and whether they wish to be an organ donor.

As of October 1, 2025, Delaware has a brand-new statute governing AHCDs. Originally passed in 2024, it officially went into effect October 1, 2025. It is based on the Uniform Health-Care Decisions Act of 2023 drafted by the Uniform Law Commission.<sup>27</sup> Delaware was an early adopter; other states are starting to follow.<sup>28</sup>

#### You Belong With Me: Jointly Owned Property

Couples can also change their bank account designations. They could create a joint bank account that both could access during their lifetimes and that the survivor would continue to have access to upon the first to die's passing. If Ms. Swift wanted a solely owned bank account to pass to Mr. Kelce upon her death, she could set it up as a "Transfer on Death" ("TOD") account. Like a joint account, a TOD account has the advantage of passing to the designee upon death while avoiding probate.

If Ms. Swift and Mr. Kelce have real estate in Delaware, they may elect to put both of their names on the deed, ensuring the survivor of them would become the sole owner upon the death of the first to die. But, if Ms. Swift had Delaware real property in only her name that she wanted to go to, for example, Selena Gomez, she has a new method of doing this starting December 4, 2025. This is when Delaware's new Transfer on Death Deed statute goes into place. The new law, House Bill 147, Substitute 1, was signed on September 5, 2025. It allows real property owners to name a beneficiary who will inherit the property upon the owner's death. It must be signed by two witnesses, at least one of whom is not a beneficiary. This gives property holders more flexibility in determining to whom their property should pass upon their death.

#### Teardrops on My Guitar: Separate and Marital Property

Before marrying, parties should be aware of their separate property and what would become marital property. When property is divided in divorce, you don't want teardrops on your guitar over what you thought was separate property.

Separate property belongs solely to one spouse. Generally, this includes property a spouse owned before the marriage. Marital property is property that a couple acquires during the marriage.<sup>29</sup> It can also include jointly-titled real property acquired by the parties before the marriage unless there is an agreement to the contrary.<sup>30</sup> Exceptions to marital property include: gifted property that is kept in the sole name of the spouse who received the gift, gifted property held in trust created by another person for the benefit of a spouse, a gift wherein a gift tax return names one spouse as the recipient, a transfer accompanied by a notarized or validated document explaining the nature of the transfer, or gifted property held in a trust created by the donor spouse where the other spouse is a beneficiary.<sup>31</sup> Other exceptions include property acquired in exchange for property acquired prior to the marriage, property excluded by a valid agreement between the parties, and an increase in value of property acquired before the marriage.<sup>32</sup> So, under Delaware law, Ms. Swift's property from before her marriage to Mr. Kelce, including her tear-stained guitars, would be her separate property.

### **Bad Blood: Divorce**

#### **WILLS**

Under Delaware law, if Ms. Swift marries Mr. Kelce, makes a will, and then gets divorced, all bequests made to Mr. Kelce would be automatically revoked.<sup>33</sup>

*(continued on p. 36)*

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(continued from p. 35)

### DIVIDING PROPERTY

Delaware is an “Equitable Distribution State” rather than a “Community Property State”. There are currently nine Community Property States. They are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. If a couple were to get divorced in one of those states, property acquired during the marriage would typically be split 50/50.

Couples in the remaining 41 states, including Delaware, operate differently. Delaware equitably divides marital property between divorcing spouses. The Court will take factors into consideration that may include the marriage length; a party’s age, income, and employability; and a party’s contribution to marital property.<sup>34</sup>

### Long Story Short: In Conclusion

Ms. Swift and Mr. Kelce are not Delaware residents, and their net worths would likely mean they should engage in more advanced planning (including SLATs, taking advantage of portability, Dynasty Trusts, each of which could be the subject of its own article). However, for couples in Delaware preparing to marry or who are already married and want to engage in estate planning, these tips would be a great jumping off point:

- o Premarital Agreement: this can help couples have (maybe) tough conversations about their finances and the future.

- o Intestacy: if a couple is okay with how their property would pass through the laws of intestacy and they do not mind paying the probate fee, engaging in no planning may be what they decide to do.

- o Basic Estate Planning: couples who want more control over their assets and potentially wish to simplify the administration of their estate once they are gone can engage in basic estate planning that includes Wills, Revocable Trust(s), Advance Health-Care Directives, and Durable Powers of Attorney.



*Anne Grae Martin focuses her practice on trust and estate planning and administration as well as advising individuals, institutional fiduciaries, and their counsel on matters involving Delaware trusts and estates. Anne Grae is a member of the Delaware State Bar Association's Estates and Trusts Section and the Wilmington Tax Group, as well as the Estate Planning Council of Delaware. She previously served as*

*contributor on Delaware law developments to Thomson Reuters' Practical Law guide on Estate Tax. While in law school, Anne Grae served as managing editor of the Federal Communications Law Journal. At law school graduation, she was recognized as a Thurgood Marshall Scholar.*

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- 2- 13 *Del. C.* § 321.
- 3- *Id.* at § 322
- 4- *Id.* at § 323
- 5- *Id.*
- 6- *Id.*
- 7- *Id.* at § 325.
- 8- *Id.* at § 326.
- 9- *Id.*
- 10- *Id.*
- 11- TAYLOR SWIFT, *How Did It End?*, on THE TORTURED POETS DEPARTMENT: THE ANTHOLOGY (Republic Recs. Apr. 19, 2024)
- 12- TAYLOR SWIFT, *The Life of a Showgirl*, on THE LIFE OF A SHOWGIRL (Republic Recs. Oct. 3, 2025)
- 13- 12 *Del. C.* § 502 - § 503.
- 14- *Id.*
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- 16- *Id.* at § 901
- 17- *Id.* at § 902
- 18- Devon Pendleton, *Taylor Swift Has a New Album and Another Billion Dollars*, BLOOMBERG (Oct. 2, 2025), <https://www.bloomberg.com/news/newsletters/2025-10-02/taylor-swift-s-wealth-tops-2-billion-before-life-of-a-showgirl-album-release>.



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20- 12 *Del. C. § 201*  
21- *Id.* at § 202  
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23- *Id.* at § 2306  
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26- *Id.* at § 49A-204 - § 49A-216  
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## A New Partnership Offers Innovative Ways to Look at Charitable Giving



**Rebecca Elzey**  
**Delaware Community Foundation**

*"With the DCF as a partner and resource, advisors are able to help clients identify and implement solutions that can turn their assets into impact in their communities."*

**N**ot long ago a couple visited the Delaware Community Foundation (DCF) carrying an unusual opportunity - not in their hands, but on their balance sheet. After years of collecting antique office machines worth well into the high six figures, Tom and Mary Jo Russo were ready to downsize.

Often, treasures like these end up forgotten, or worse, discarded. In this case, the couple found a buyer for the collection of 3,000 pieces and 60,000 documents. Then the pair used the proceeds from the sale of the collection to create a scholarship for financially disadvantaged students, while also reducing their tax liability with a charitable gift.

The Russos' scholarship fund is designed to alleviate some of the financial burden on college students seeking careers in business. The fund provides a \$5,000 scholarship each year and is designed to be renewable for the full four years of study.

So, what stops a collection of unique treasures from ending up in a landfill? Financial and legal education, and a little creativity to turn them into tuition assistance for college students *in perpetuity*.

### **Making More Possible for Donors and Their Advisors**

Tax-advantaged charitable giving strategies evolve constantly, which is why continuing education is so important for financial and legal advisors. That reality inspired a new strategic partnership between the DCF and the Delaware Institute for Continuing Legal Education (TDI).

"Our goal is to give legal, estate, tax, and investment professionals deeper insight into philanthropy's often-overlooked role in financial planning," said Maribeth Przywara, Director of Advancement at the DCF. "The DCF's goal is to 'make more possible' and one of the many ways we do this is by educating advisors in our community."

On December 17 at 2:00 p.m. at the Delaware Historical Society, the DCF will present "The Community Foundation Advantage: Flexible, Practical Solutions for Charitable Clients." The session will be worth 1.5 continuing legal education (CLE) credits. The DCF plans to host at least two sessions annually, focusing on different aspects of philanthropic planning and charitable giving.

"This partnership with the DCF will provide members of the legal community with compelling, affordable, and accessible education—which is our central mission," said Caroleena Goldman, President of the Delaware Institute. "We're thrilled to highlight how philanthropy intersects with estate, trust, and financial planning."

### **Growing a Culture of Giving in Delaware**

Founded in 1986, the Delaware Community Foundation manages more than \$400 million in charitable assets and ranks among the Top 100 community foundations in the nation. Through advising donors, grantmaking and strategic leadership, the foundation helps Delawareans invest in the state's future and strengthen local communities.

"This collaboration with The Delaware Institute offers an exciting way to explore how philanthropy can be a key financial planning tool," Przywara added. "Whether a client is selling a business, liquidating real property or participating in an IPO - or even donating a lifetime's collection of antique business machines - charitable giving can make a meaningful difference."

By making presentations such as the upcoming program with TDI, participating in professional associations and engaging in one-on-one meetings, the DCF team provides philanthropic education and valuable information to advisors of all disciplines, including estate planning attorneys, accountants, and financial advisors. With the DCF as a partner and resource, advisors are able to help clients

identify and implement solutions that can turn their assets into impact in their communities.

### High Quality Education for Delaware's Legal Community

The Delaware Institute for Continuing Legal Education, founded in 2024 by Goldman and Mark Vavala, provides accessible, high-quality education for Delaware's legal community, including pro bono courses that equip attorneys to assist some of the state's most vulnerable residents. Goldman is the former Assistant Executive Director and CLE Director of the Delaware State Bar Association; Vavala is the former Executive Director of the Delaware Lawyers Assistance Program and the Delaware State Bar Association.

To register for the course, visit The Delaware Institute at: <https://delawarecle.org/>.

To learn more about the Delaware Community Foundation, visit [www.delcf.org](http://www.delcf.org).

### The Community Foundation Advantage: Flexible, Practical Solutions for Charitable Clients

Date: December 17

Time: 2:00 – 3:30 pm

Location: Delaware Historical Society  
(Wilmington)

Instructor: Rebecca Elzey  
Director of Operations  
Delaware Community Foundation

Cost: \$20.00

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Register at: [www.delawarecle.org](http://www.delawarecle.org)

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# Accounting for Success

## Beyond the Ratios: Why a Borrower's Internal Controls Are a Banker's Best Friend



Elizabeth (Liz) Wyjacka, CPA, CFE  
Belfint Lyons & Shuman, P.A.

*"A loan decision based purely on ratios makes a dangerous assumption: that the underlying data is accurate."*

A borrower's application lands on your desk. The balance sheet is solid, the debt-to-equity ratio is healthy, and the income statement shows strong profits. On paper, it's perfect. Loan approved!

Six months later, the borrower defaults. Turns out, their trusted bookkeeper was paying fictitious vendors for inventory that didn't exist. That same non-existent inventory was used to secure your loan. The problem wasn't the business model. The fatal flaw was that the financial ratios you relied on were built on garbage, unreliable financial statements because of non-existent internal controls. No one had bothered to physically count the inventory and compared it to the general ledger.

### Ratios Tell You What, Not How

As a banker, you are in the business of assessing risk. As auditors, we are in the business of verifying. A loan decision based purely on ratios makes a dangerous assumption: that the underlying data is accurate.

Ratios are highly valuable, but they are lagging indicators. They tell you what happened in the past, but they fail to reveal how those numbers were created or if they are reliable. The true story of risk is not in the final numbers; it's in the process that creates them.

### What Are Internal Controls?

Internal controls are the checks and balances inside an organization designed to prevent (or quickly detect) costly errors and fraud.

Think of them like safety features in a car: seat belts, airbags, brakes. You can drive without them, but it's asking for trouble. Lending to a business with weak controls is like giving a loan to a driver with no brakes; the car looks great, but the risk? Huge.

In practice, controls are simple, common-sense procedures:

- **Segregation of Duties:** The person who approves a bill cannot be the same person who cuts the check and reconciles the bank account. This single control prevents the most common types of embezzlement.
- **Physical Controls:** Is the valuable inventory in a locked warehouse, or is it sitting in an open yard? Are the blank check-stocks locked in a cabinet, or are they sitting on the bookkeeper's desk? Does the company keep perpetual inventory records? Having physical controls over valuable assets is key to preventing losses.
- **Reconciliations:** Is someone actually reconciling the bank statement to the general ledger every single month? Is the inventory sub-ledger regularly matched against what's physically on the shelf? This simple act proves the books are correct.
- **Analytical Review:** One of the most powerful, yet often overlooked, controls that an organization can implement is the simple act of management actually reading their financial results on an ongoing basis, not just filing them away. A strong manager that regularly reviews monthly income statements, comparing actual results to budget and prior periods can quickly spot anomalies—whether it's fraudulent spending or emerging business trends—before they escalate into serious issues like default.

### Three Red Flags You Can Spot Easily

The next time you're in a meeting or on a site visit, use these simple techniques to uncover weaknesses in internal control.

- **The "Key Person" Risk:** Ask the owner: "What would happen if your bookkeeper won the lottery and didn't come in tomorrow?"

If the owner laughs and says, "I'd be in trouble for a week, but we'd manage," that is a sign. It implies processes are documented and others can step in. But if the owner's face goes pale and they say, "We would be ruined. I have no idea how our books even work," you have identified a massive control weakness. It means one person has all the keys to the kingdom, and no one is checking their work.

- **The Disorganized Site Visit:** On your next site visit, look beyond the new equipment you are financing. Is the office buried in old paperwork? Is the warehouse a mess? Is the inventory area chaotic and disorganized? A chaotic physical environment almost always mirrors a chaotic back-office. It is a visible sign that management is not focused on process, precision, or the protection of its assets. This Disorganization is a breeding ground for errors, waste, and fraud.

- **Management Letters: The Most Important Document You're Not Asking For.** The management letter is where the real risk is detailed. This is the most valuable takeaway I can give you.

While our final audit opinion on the financial statements is often "clean, we are also required to share significant weaknesses we identified in financial reporting controls to the client's governance in separate, private "management letters."

These letters might say, "The same person who collects checks also prepares the bank deposit and records the revenue," or "We noted there is no formal review of employee expense reports." Ask for the management letter for your loan file. If the company will not share it, that's a red flag. A transparent client who provides it and can speak to how they are fixing the issues is a client who is actively managing their risk.

### **Lend to the Process, Not Just the Ratios**

A good loan isn't just about good numbers; it's about a well-managed business that protects its assets and ensures its reports are accurate by maintaining strong, simple controls.

The next time you review a loan application, look past the finished ratios. Ask the owner how bills are paid and who reconciles the bank account. Most importantly, ask for their auditor's management letter as it could be the most revealing document you read all day.



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## Commercial Real Estate Lending in The Old Line State



**Brent C. Shaffer**  
Young Conaway Stargatt & Taylor, LLP

*"This column briefly summarizes a few of the differences that Delaware bankers should know about when venturing into Maryland."*

**M**any Delaware bankers have real estate lending customers with projects in Maryland. There are many differences between Delaware and Maryland law with respect to commercial mortgage loans; this column briefly summarizes a few of the differences that Delaware bankers should know about when venturing into Maryland.

Delaware is a "mortgage" state, with property owners granting mortgages directly to the bank to secure loans. In contrast, although it is possible to use a mortgage in Maryland, almost all commercial loans are secured by a "deed of trust" instead, which is a conveyance from the owner to trustees for the benefit of the bank. Banks use deeds to trust in Maryland because foreclosures of deeds of trust are supported by better statutory and case law authority than mortgages, and loans secured by deeds of trust are easier to transfer to other lenders. It is customary for bank officers to serve as the trustees, but the trustees can be easily changed at any time without need of borrower consent.

The foreclosure of a deed of trust in Maryland is a very different process than a Delaware mortgage foreclosure. In Maryland, "power of sale" by the trustees themselves is allowed, giving the bank significant control over the sale process including where the foreclosure auction is held. In Delaware, no power of sale is allowed; the only way to foreclose is to file a full civil suit in the Superior Court of the county in which the mortgaged property is located, and the county sheriff's office handles the auction.

Perhaps the most significant difference in closing a real estate loan in the two states is the mortgage recording tax. There is no mortgage recording tax at all in Delaware. In Maryland, there is a very high tax paid to record the deed of trust securing the loan in the land records office. Such tax is based on the amount of the loan and varies by county (it can be as much as \$6.00 for every \$500 increment or portion thereof secured). Several different statutory exemptions and other legal strategies can be used to minimize the recordation tax if circumstances permit. Such techniques, all with very technical limitations as to their effectiveness and when they can be employed, include "purchase money" deeds of trust if tax is paid on a deed recorded at the same time as the deed of trust; "refinance" deeds of trust that pay off existing recorded deeds of trust on which tax was previously paid; "indemnity" deeds of trust that secure a guaranty from the property owner instead of the loan directly (requires setting up another party to serve as the borrower); and "consolidated" deeds of trust, which involve purchasing an existing mortgage, modifying it and increasing the amount secured. The banker should always consult with a Maryland lawyer about this, given the significant impact of recordation tax on loan closing costs.

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