



Late Fees After Maturity or Acceleration



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President's Letter



by
Karyn Polak
President, CEO & Treasurer
Delaware Bankers Association

"The pace of change is not letting up; there is still so much more ahead."

No one can credibly dispute that our industry's regulatory environment has been shifting at a sprinter's pace in the last 18 months. Given all the directions from which changes are coming at us – not to mention all the important ways in which we ourselves are driving the change – I'd call it something like a transformational kaleidoscope. What will it look like when the inputs stop changing? When will that future picture even begin to crystallize?

I had a chance to gain some clarity around the edges at the Federal Reserve Bank (FRB) of Philadelphia's 2026 Banking Outlook in early April. Among other sessions, we heard from leaders in the FRB Supervisory, Consumer Compliance, and Community Development teams. The panel of community bankers that our main FRB contact, Joe Budash, facilitated reinforced that foggy crystal ball feeling. As Jeane Vidoni, CEO of Penn Community Bank, noted, it's difficult to strategically plan for two years, much less three, five, or 10. Not to mention that even getting to a level state today is challenging when nearly a third of front line staff's time is spent on fraud management and mitigation, according to Ms. Vidoni. This latter issue of fighting fraud in all its ever-changing forms came up over and over throughout the day.

The community banker panel was a great counterpoint to the closing conversation between Vice Chair for Supervision Michelle W. Bowman and FRB of Philadelphia President and CEO Anna Paulson. Starting with that fraud topic, Bowman encouraged the audience to attend one of Treasury's many non-public roundtables including all the federal regulators and agencies who touch on fraud, so that the Administration can "think and act as a whole-of-government" in addressing the issues. She also mentioned several areas undergoing analysis for rationalizing and streamlining opportunities, including mergers and acquisitions (seeking to avoid the disincentive to retain branches, especially in banking-light communities); Regulation O; third party risk management and model risk management (considering the elimination of current expected credit

loss (CECL)); and the CAMELs rating framework (creating a mathematical formula for computing each letter so that the analysis is more objective and clear, and separating Bank Secrecy Act and Information Technology analysis from CAMELs analysis).

It wasn't all about modifying existing frameworks, though. The FRB and the FDIC are apparently considering whether a public-private partnership that would certify fintech providers who can support digital assets for banks might be worthwhile. And Bowman stressed she is still looking for ideas: where to rightsize, how to gain greater efficiency, what areas need greater clarity or common sense in their application.

Bowman's description of the Fed's approach overall? "We're not easier on you, we're just making it easier to understand what we're asking you to do." These were all frank, forthright discussions that provided both direction and food for thought. One unifying caution they all left us with? The pace of change is not letting up; there is still so much more ahead.

Advocacy and education in all these areas and the others in which our industry is involved, and collaboration within the industry and among all the players with whom we work, are our primary roles at the Delaware Bankers Association and Delaware Financial Education Alliance. Both because of the changing regulatory environment and given the need to ensure continued vitality, versatility, and value, the DBA/DFEA too is in the midst of a transformation: in our case, in the form of our next strategic plan, a refreshed brand, and improved technology to serve our members. We call this "Fortifying for the Future" because it is a kaleidoscope comprised of all the exceptional value and contributions we've offered in our 130 years as well as all that is in motion and all that's yet to come. Every one of you, our Magazine readers, is a part of that mosaic. I encourage you to be an active participant in its development.

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



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View from the Chair



Caroline Harty Dickerson
Chief Executive Officer
Commonwealth Trust Company

Chair
Delaware Bankers Association

"Thoughtful, proactive advocacy will help ensure that Delaware remains not only responsive to change, but a leader in defining the future of banking..."

In Delaware, banking has long been more than an industry, it is a cornerstone of the state's economy and identity. From community institutions on Main Street to global financial firms, banks support businesses, fuel growth, and provide the financial infrastructure that keeps the economy moving. Today, as policymakers consider sweeping updates to financial laws and new regulatory proposals, the importance of strong, consistent advocacy has never been greater.

Recent legislative efforts represent one of the most significant updates to Delaware's banking framework in decades. These proposals aim to address the rapid rise of digital assets, expand regulatory authority, and position the state as a leader in financial technology. At the same time, new discussions around payment systems, consumer protections, data security, and emerging financial products signal a broader shift toward tighter oversight—paired with innovation.

This evolving landscape creates both opportunity and risk. On one hand, thoughtful modernization can reinforce Delaware's competitive edge, attract new institutions, and ensure that banks can safely engage with emerging technologies. On the other, even well-intentioned regulations can produce unintended consequences—raising costs, limiting access to credit, or complicating services that customers rely on every day.

Consider the ongoing debate over interchange fees on credit card transactions. What may seem like a narrow policy adjustment can ripple outward, affecting bank revenue models, small business margins, and ultimately consumer pricing and access. These interconnected effects are not always visible at the outset, which is precisely why informed industry engagement is so critical.

Advocacy ensures that policymakers understand how proposals will function in practice—not just in theory. It brings real-world data to the table, highlights

operational realities, and helps strike the right balance between consumer protection and economic vitality. Importantly, it amplifies the voices of community banks, which often operate with deep local knowledge and a firsthand understanding of how regulatory changes affect families and small businesses.

Just as vital, advocacy helps build relationships. Effective engagement fosters ongoing dialogue between the banking industry and policymakers, creating opportunities to refine ideas before they become mandates. It also reinforces Delaware's reputation as a state where collaboration—not confrontation—drives smart policy.

Advocacy is not about resisting change; it is about shaping it responsibly. Delaware's banking sector has succeeded for generations by adapting to new challenges while maintaining stability, trust, and a strong commitment to customers. That tradition must continue in an era of rapid financial transformation.

As new regulations take shape, sustained engagement between lawmakers and the banking community will be essential. Thoughtful, proactive advocacy will help ensure that Delaware remains not only responsive to change, but a leader in defining the future of banking—one where innovation and stability move forward together. In that effort, the Delaware Bankers Association plays a central role—serving as a trusted, consistent voice for institutions of all sizes, convening stakeholders, and translating complex policy proposals into practical insight. By fostering collaboration, elevating member perspectives, and engaging constructively with policymakers, the Association helps ensure that Delaware's banking framework evolves in ways that are both forward-looking and firmly grounded in the needs of the communities banks serve.

A handwritten signature in black ink that reads "Caroline".

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DBA Events

Delaware Fraud Working Group Summit



DBA President Karyn Polak delivers the keynote address to the Delaware Fraud Working Group Summit

The Delaware Fraud Working Group hosted a full-day summit April 2 bringing together professionals from banks, law enforcement, and government agencies for collaboration, training, and networking focused on combating financial fraud. The program featured expert presentations on emerging fraud threats, investigative strategies, and regulatory developments, with keynote remarks delivered by DBA President Karyn Polak.

Established in 2015, the Delaware Fraud Working Group unites more than 50 representatives from the financial sector, consumer protection agencies, and state and federal law enforcement to share trends, coordinate investigations, and strengthen fraud prevention efforts across Delaware and the surrounding region

Women Connect

The Spring Women Connect event drew nearly 100 professionals from Delaware's banking, trust, legal, and nonprofit communities for an engaging and impactful program on April 24. The program offered a thoughtful blend of professional development and meaningful conversation. Attendees gained practical insights on wellness and estate planning while also participating



Jennifer Zelvin McCloskey (l) and Dawn Getty Sutphin conduct a lively discussion at the April Women Connect event

in a compelling fireside discussion focused on leadership transitions and emerging trends in Delaware's financial sector. The conversation featured two leaders connected to the University of Delaware's Trust Minor program, highlighting the importance of cultivating the next generation of industry talent.

A special highlight of the event was the recognition of Lisa Collison, Delaware's first female Bank Commissioner, through the Women Leaders in Delaware initiative. Her leadership, accessibility, and influence reflect the expanding role women continue to play in Delaware's regulatory, financial, and economic landscape.

Special thanks to all our sponsors: Brown Brothers Harriman; The Bryn Mawr Trust Company of Delaware; Citizens Trust Company of Delaware; AKA Advisory; Delaware Community Foundation; and Pinion for their generous support. Appreciation is also extended to speakers Abigail Quinn, Anna Fournaris, Renee Villano, Allison Oberembt, Dawn Getty Sutphin, and Jennifer Zelvin McCloskey for sharing their expertise, insight, and leadership throughout the program.

28th Annual Teach Children to Save Day

Delaware bankers once again brought financial literacy directly into classrooms this spring through the 2026 Teach Children to Save program, reaching more than 6,300 third-, fourth-, and fifth-grade students across the state.

A total of 140 volunteer bankers visited 269 classrooms, teaching students the fundamentals of saving, budgeting, goal-setting, and smart financial decision-making. The program gave students an engaging introduction to money management while strengthening connections between Delaware schools and the banking community.



Governor Meyer presents the Teach Children to Save Week proclamation to a student at Jones Elementary School

The statewide initiative also received recognition from Delaware Governor Matt Meyer, who officiall proclaimed Teach Children to Save Week during a special assembly at Jones Elementary School on April 29. The event highlighted the importance of financial literacy education and celebrated the partnership between Delaware schools and the banking industry.

A highlight of this year’s initiative was the return of the original Teach Children to Save comic book starring the Great Investo, Penny, and Saveroo the Savings Genie. Developed in partnership

with the University of Delaware's Center for Economic Education and Entrepreneurship, the comic focused on five essential tools to saving and reinforced lessons through games, puzzles, and interactive activities that students and educators alike embraced.

The comic book was made possible through the generous support of sponsors: Barclays; Wells Fargo; WSFS Bank; TD Bank; Artisans' Bank; Bank of America; Fulton Bank; M&T Bank; Sallie Mae; SmartyPig; Comenity Bank; County Bank; First Citizens Community Bank; Shore United Bank; and Taylor Bank.



Employees of County Bank recreate The Magic Tool Kit for students at Love Creek School in Lewes



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Late Fees After Maturity or Acceleration

A Lawyer's Musings



by
Tony Roustopoulos
Director
Richards, Layton & Finger, P.A.

Most commercial borrowers don't blink at late fee provisions in loan documents. But when a loan hits maturity with a large balloon still unpaid, or when the lender accelerates after a default, late fees become far more consequential. In those moments, one line in the promissory note can swing six or seven figures. This article offers a practical tour through the basics of late fees; the controversies over late fees after maturity or acceleration, including how courts have treated them across several jurisdictions;¹ and pragmatic guidance to avoid borrower blowback and litigation risk.

Late fees and default interest do different jobs and should be documented and administered accordingly. In typical mortgage loan transactions, lenders customarily charge a late fee, often five percent of the unpaid installment,² to defray administrative costs and the temporary loss of use of funds, and default interest to account for higher risk, opportunity cost, and the additional cost of administering a defaulted loan. Late fees and default interest can both serve a secondary function as deterrents, or, perhaps more directly, as

tools to...persuade...borrowers to comply with the loan's requirements.

Two foundational points drive the enforceability of late fees. First, a lender's right to a late fee is purely contractual. No contractual term, no fee. Second, courts across jurisdictions tend to analyze late fees as liquidated damages intended to compensate for the extra work and short-term loss of use caused by a borrower's tardiness; if the purpose or amount is deemed punitive or excessive, it may be ruled an unenforceable penalty. Delaware courts apply this same framework and have held that fees as a penalty are unenforceable as against public policy.³

Default interest is its own lane. Courts are generally more comfortable enforcing a default rate (subject to usury and penalty concerns) than stretching a late fee beyond its traditional purpose of addressing a missed periodic installment. Delaware courts are comfortable enforcing default interest provisions in the commercial context, in particular where the loan exceeds \$100,000 or where the borrower is not a natural person.⁴

A curious example from another jurisdiction: In New York, a court upheld a default interest provision as an agreement to pay interest rather than a penalty but found criminal usury where the lender attempted to collect both of the ordinary interest of 7.25% and a 24% default rate simultaneously for the same period, resulting in an aggregate interest rate of 31.25%.⁵ The lesson from this case is to draft with precision, apply charges consistent with their purpose, and avoid stacking duplicative remedies to avoid double compensation for the same harm.

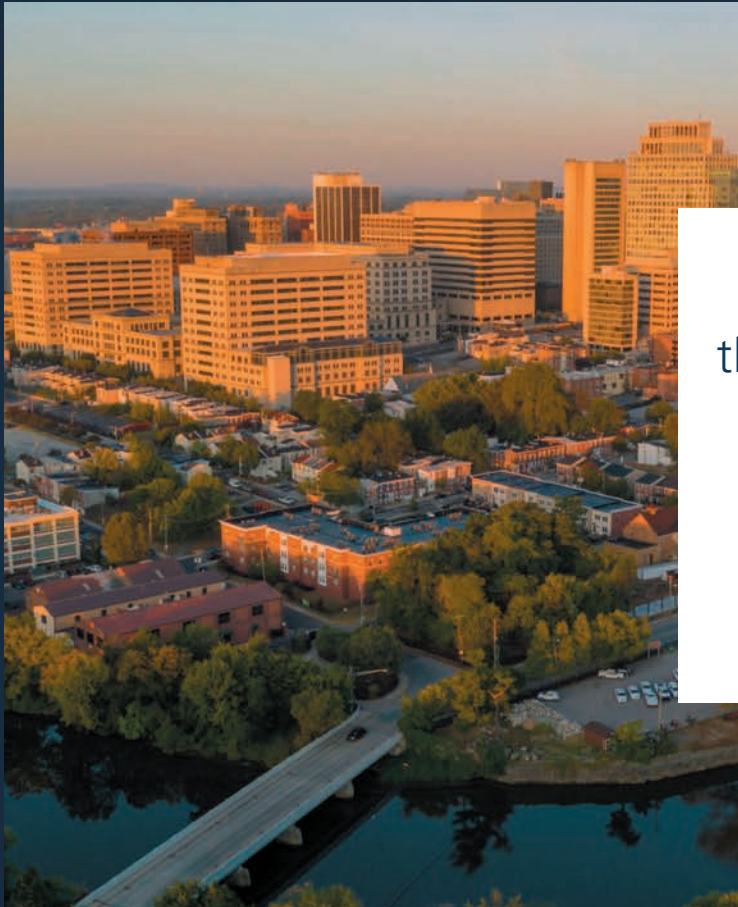
Regarding late fees specifically, when loan payments are no longer paid at a monthly clip, the "late fee on an installment" framework strains. Two recurring fact patterns drive disputes across jurisdictions.

Once a lender accelerates, the entire indebtedness becomes immediately due. A vague late fee provision, or one that expressly only applies to debt service payments, could be defeated if applied to an accelerated balance. Courts in various jurisdictions have repeatedly held that a borrower no longer owes monthly installments post-acceleration. So, there is no "late installment" on which to levy a fee. Federal cases applying Pennsylvania law, for example, reflect this view: acceleration terminates the borrower's duty to make periodic payments, and lenders may not assess or collect late fees for missed post-acceleration installments.⁶ Practically, continuing to send monthly invoices after acceleration invites trouble. It mixes legal positions—demanding the full balance now while invoicing as if nothing

changed—and can look like fee manufacturing. Some courts also worry about double recovery where a default rate already compensates the lender for the default period.

Jurisdictions are split when it comes to late fees charged on a balloon payment at maturity, and outcomes turn on drafting and public policy. For lenders, this is where a five percent number can turn into a six- or seven-figure windfall. For borrowers, it can destroy any built-up equity and severely frustrate a refinance. In New York, language matters. A New York trial court held that late fees may not be assessed on a balloon payment due at the end of a mortgage term, but a later New York appellate decision enforced a late fee where the mortgage stated the charge applied to "any payment," construing that phrasing to include a matured balloon. Recent federal decisions applying New York law have also accepted late fees on balloon payments where the language in the loan documents was clear. A Florida federal court applying New York law granted summary judgment to a lender, enforcing a five percent late fee on the unpaid balloon after maturity under a clause covering "any amount due," concluding New York law did not prohibit such a fee and it was not an improper penalty.⁷ Connecticut courts are more skeptical. The Connecticut Superior Court has held that a four percent late fee on a balloon payment was "exorbitant" and unenforceable as a penalty where the charge bore no reasonable relationship to actual damages and where the lender was already compensated by default interest.⁸

(continued on p. 12)



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(continued from p. 11)

On the penalty question, several courts emphasize the need to tie the fee to compensatory aims. It cannot be a penalty or a means to coerce payment or compliance by the borrower.⁹ For example, the Arizona Supreme Court reversed a trial court that allowed a \$1.4 million maturity late charge, holding the assessment a penalty under liquidated damages principles.¹⁰

While Delaware's courts famously and reliably defer to reasonable, bargained-for terms between sophisticated parties, in the event of a challenge to a late fee, expect courts to examine how the note defines the late fee trigger—"installment," "payment," or "any amount due"—and whether the fee on a balloon reasonably approximates anticipated administrative or other compensable costs. Where documents are specific and the fee is characterized and supported as compensatory, lenders tend to fare better. Where language is installment-centric or the fee looks coercive or duplicative of default interest, courts—at least in several jurisdictions—tend to push back.

Bankers tend to be practical. They want a smooth closing, a clean payoff letter, a cooperative borrower, and no surprises to the credit committee or the bank's general counsel, so here are some suggestions from a humble commercial real estate and finance attorney to reduce the likelihood of friction and surprises:

Draft for clarity. Avoid ambiguous or vague language. If you intend balloon payments to be subject to late fees, say so. Use "any amount due" rather than "installment" language if the intent is to capture the balloon. Add a separate sentence expressly stating that the late fee applies to the entire unpaid principal due at maturity if not paid when due. This formulation reduces ambiguity. This approach may marginally increase time and expense in loan document negotiations, but clarity is key.¹¹

Keep late fees and default interest in their own lanes. Avoid charging both a maturity late fee and default interest for the same period on the same principal without strong contractual and policy support. Even if technically permissible, it can read like a "double dip". Courts analyzing post-acceleration late fees have flagged the risk of double compensation where default interest already compensates for default, rejecting continued late charges after acceleration. If you do assess both, be prepared to articulate separate and distinct harms, and ensure the math and timing do not overlap in a compounding fashion.

Do not send monthly "late notices" after acceleration. Once you accelerate, stop installment billing. Send a single, clear demand with the accelerated amount and applicable default interest. If you must track per diem, label it precisely as default interest and avoid "late fee" line items accruing month-to-month thereafter.

Front-load certainty with respect to a default interest trigger. Make default interest begin upon any event of default, not merely upon acceleration. This reduces pressure to stretch late fees to cover the default period.

Avoid compounding or pyramiding late fees. Do not calculate a late fee on top of unpaid prior late fees or roll unpaid late fees into "principal" for further charges. Compounding reads punitive and invites challenges. Courts have deemed compounding of late charges disproportionate and indicative of a penalty rather than reasonable compensation.

Tone and timing matter. Communicate early before maturity. Highlight the consequences of a missed balloon payment in plain terms. Borrowers dislike surprises just as much as they dislike the fee itself. Where the law is gray, choose consistency over brinksmanship. A settlement discount on a disputed late fee likely saves more than it costs, in both legal and relationship capital.

Consider the forum and governing law. If your platform lends nationally, standardize late fee language but tailor governing law and venue selections to jurisdictions with clear enforcement for your preferred approach. For example, Delaware's strong freedom of contract principles lend themselves nicely to bargained-for contractual terms between sophisticated and represented parties, and New York courts have enforced balloon late fees under broad "any amount due" language, while Connecticut courts have deemed a four percent balloon late fee an unenforceable penalty in at least one instance. For cross-border loans, train closing teams to recognize when a local counsel tweak is needed to mitigate penalty risk.

Audit loan templates early and often. Refreshing late fee and default interest provisions before the next origination cycle can pay dividends later.

Preserve the administrative-cost rationale. Where you intend to charge a maturity late fee, bake in recital-style language that the fee is a reasonable estimate of incremental administrative and opportunity costs of handling delinquency of the final payoff, distinguishing it from ongoing default interest. That framing might not win every case, but it equips you for the liquidated-damages debate.

Late fees are simple until they are not. The moment a loan accelerates or reaches maturity, the simple "five percent on the missed installment" model might collide with the realities of a single lump-sum obligation, and courts, even in Delaware, can be wary of fees that look punitive, coercive or duplicative of default interest. Markets evolve but these principles remain steadfast: precision in paper, discipline in administration, and proportionality in remedies. Lenders who align those three will minimize disputes, preserve yield, and keep their borrower relationships (and reputations in the market) intact when the calendar turns and big numbers come due.





Tony Roustopoulos focuses his practice on matters related to commercial real estate—from simple real estate transactions and financings to complex business matters related to real and personal property. He represents developers, lending institutions, borrowers, landlords, tenants, and other holders of commercial property, whether institutional or family owned, in a broad array of real estate and business matters. Tony's experience

includes extensive business, contract, and real property matters, including acquisition, sale, lease, finance, and development of commercial property; asset sales and acquisitions; and numerous different types of property-owning vehicles, from single-purpose entities and operating businesses to complex joint ventures.

Notes:

1- As there is relatively little Delaware jurisprudence directly addressing the enforceability of late fees in commercial loans, this article looks to other jurisdictions for guidance.

2- In fact, Delaware licensed banks extending non-revolving credit to borrowers may not charge more than five percent of the amount owed as a late fee. 5 Del. C. §2231(2).

3- Several Delaware cases in different contexts note the liquidated damages versus penalty framework. See, e.g., *Delaware Bay Surgical Services, P.C. v. Swier*; 900 A.2d 646, 650 (Del. 2006) (in the employment context, "the distinction between a penalty and a liquidated damages clause is significant if a provision is considered a penalty, it is void as against public policy . . ."); *Brazen v. Bell Atlantic Corp.*, 695 A.2d 43 (Del. 1997) (in the merger context, finding that a termination fee was a valid expression of liquidated damages and not a penalty or coercive); *Ingram v. 1101 Stone Associates,*

LLC, 2004 WL 691770 (Del. Super. 2004) (rejecting a borrower's claim that default interest and late fees were void as a penalty and granting summary judgment to the lender).

4- See, *Ingram supra*. Relatively long-standing statutes bar certain borrowers from claiming usury as a defense. Section 2301(c) of Title 6 of the Delaware Code bars the defense of usury where the loan amount exceeds \$100,000 and a mortgage against the borrower's principal residence does not secure the loan. Likewise, no corporation, limited partnership, statutory trust, business trust or limited liability company may claim usury in any action. 6 Del. C. § 2306.

5- *Trustco Bank NY v. 37 Clark St., Inc.*, 599 N.Y.S.2d 404 (N.Y. 1993).

6- See, e.g., *Security Mut. Life Ins. Co. of NY v. Contemporary Real Estate Assoc.*, 979 F.2d 329 (3d Cir. 1992); *In re Graboyes*, 371 B.R. 113 (Bankr. E.D. Pa. 2007)

7- *BBIG Real Estate, LLC v. Wilmington Trust, National Association*, 2025 WL 24914 (S.D. Fla. 2025).

8- *Velenchik v. First Union Nat. Bank*, 2003 WL 21152967 (Conn. Super. Ct. 2003).

9- Anecdotally, this author has sat across the table from banks and their counsel on several occasions who have all but admitted the purpose of a late fee after maturity is to coerce compliance. Avoid such statements.

10- *Dobson Bay Club II DD, LLC, et al. v. La Sonrisa De Siena, LLC*, 393 P.3d 449 (Az. 2017).

11- In sophisticated commercial loan transactions, borrowers tend to "delete," and lenders tend to accept the deletion of, late fees at maturity or acceleration. Practically, many factors outside of the borrower's control can affect the exact date of a loan refinance, even if the borrower has never missed a payment. And in larger loan transactions, the risk of a last-minute six or seven figure line-item addition to the refinance settlement sheet is simply not tenable. As such, lenders should expect more sophisticated borrowers and their counsel to simply not accept a late fee immediately upon the maturity or acceleration of the loan. Of course, there is always default interest to compensate a lender in such an event.

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In Trust or Not in Trust: That Is the Question

by
Gina M. Nelson
and Jonathan Chang
Chilton Trust



As estate planners and trust professionals, we often approach planning conversations with an inherent bias toward the use of trusts—particularly when advising high-net-worth clients. Trusts have long been a cornerstone of sophisticated estate planning, offering a powerful combination of control, protection, and long-term tax efficiency. Their benefits are well documented and frequently discussed in both professional circles and client-facing conversations.

However, as with any planning tool, trusts are not without their limitations. While they can provide structure and security, they can also introduce complexity, administrative burden, and, in some cases, unintended interpersonal consequences. The decision of whether to leave assets to a beneficiary outright or in trust is not merely a technical one—it is deeply personal and should be tailored to the client’s family dynamics, financial goals, and long-term vision.

A thoughtful estate plan requires a careful evaluation of both approaches to ensure that the ultimate disposition of assets aligns with the client’s intentions and provides meaningful benefits to future generations

The Case for Trusts

One of the most compelling advantages of leaving assets in trust is the creditor protection such structures can provide. Assets held in a properly drafted irrevocable trust are generally shielded from a beneficiary's creditors, including claims arising from lawsuits, divorce proceedings, and even bankruptcy. This protection can be particularly valuable in an increasingly litigious society, where even financially responsible individuals may face unexpected legal exposure.

For beneficiaries who struggle with financial discipline, budgeting, or decision-making—or who may face challenges such as substance abuse or other vulnerabilities—a trust can serve as a critical safeguard. By placing limitations on access and incorporating discretionary distribution standards, the trust structure ensures that assets are preserved and used in a manner consistent with the grantor's intent. In many cases, this can mean the difference between long-term financial stability and rapid depletion of inherited wealth.

In addition to creditor protection, trusts offer meaningful safeguards in the context of divorce. Assets held in trust are typically considered separate property and are not subject to equitable distribution in divorce proceedings, provided the trust is properly structured and maintained. This protection exists even in the absence of a prenuptial or postnuptial agreement, making trusts an especially valuable planning tool for clients concerned about preserving family wealth across generations.

Trusts are also particularly beneficial when planning for younger beneficiaries. Minor children or young adults often lack the experience and maturity required to manage significant financial assets. Without a trust, inherited assets may be controlled by a legal guardian or distributed outright at a predetermined age, which may not align with the client's preferences. A trust allows the grantor to designate a trusted individual or institution to manage investments, make distributions, and guide the beneficiary's financial development over time. Moreover, the grantor can determine whether assets should ever be distributed outright or remain in trust indefinitely.

For clients with blended families, trusts can play a crucial role in ensuring equitable outcomes. Leaving assets outright to a surviving spouse may unintentionally disinherit children from a prior relationship, particularly if those assets are later redirected through the surviving spouse's own estate plan. By contrast, a marital trust structure allows the surviving spouse to benefit from the assets during their lifetime while preserving the remainder for the grantor's children. This approach provides financial security for the spouse while maintaining control over the ultimate distribution of assets.

Tax efficiency is another significant advantage of trusts, particularly for families with substantial wealth. Properly structured trusts can minimize or eliminate exposure to estate and generation-skipping transfer (“GST”) taxes, both of which are currently imposed at a top rate of 40%. By allocating GST exemption and utilizing dynasty trust structures, assets can pass from generation to generation without incurring additional transfer taxes. Over time, this can result in substantial tax savings and enable the preservation of wealth for multiple generations.

The Case for Outright Distributions

Despite their many advantages, trusts are not always the ideal solution. One of the most common concerns expressed by beneficiaries is the perceived lack of access to trust assets. Unlike outright ownership, where individuals have complete control over their finances, trust beneficiaries must often request distributions from a trustee. This process can involve providing documentation such as budgets, tax returns, or invoices, which may feel intrusive or burdensome.

The presence of a trustee as a “gatekeeper” can also lead to frustration, particularly when distribution requests are denied. Even when trustees act in good faith and in accordance with the terms of the trust, beneficiaries may perceive these decisions as restrictive or unfair. Over time, this dynamic can erode trust—not only in the fiduciary sense, but also in personal relationships.

Family dynamics can become especially complicated when a family member is appointed as trustee. While it may seem natural to select the most responsible or financially savvy child for this role, doing so can place that individual in a difficult position. Acting as trustee often requires making decisions that may not be well received by siblings or other relatives, such as denying distributions or enforcing restrictions. This can create tension, resentment, and, in some cases, lasting familial conflict.

Conversely, the desire to preserve family harmony may lead a trustee to approve distributions that are inconsistent with the trust's intent. This can undermine the effectiveness of the trust and expose assets to the very risks the structure was designed to mitigate.

Outright distributions, by contrast, offer simplicity and autonomy. Beneficiaries who receive assets outright have complete control over their financial decisions, allowing them to invest, spend, or save in accordance with their own goals and priorities. For financially responsible individuals, this level of independence can be both empowering and appropriate.

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Providing assets outright can also encourage beneficiaries to develop financial literacy and take ownership of their economic future. Rather than relying on a trustee, they are responsible for managing their own investments, planning for taxes, and making strategic decisions. This can foster a sense of accountability and confidence that may be beneficial in the long term.

The Case for Delaware

In recent decades, Delaware has emerged as one of the premier jurisdictions for trust administration in the country. Its sophisticated legal framework, flexible statutes, and well-established case law make it an attractive option for families seeking to maximize the benefits of trust planning. This flexibility often puts a Delaware Trust in the forefront of the conversation—even for families who might not have other ties to the jurisdiction. Understanding how Delaware law allows trustees to adapt to changing economic, tax, beneficiary and family situations can help families feel more confident that their plans will work as intended for generations to come.

Delaware was one of the first states to enact a directed trust statute, allowing grantors to divide fiduciary responsibilities among multiple parties, assigning specific roles to individuals or institutions best suited for each function. For example, a trusted family member with investment expertise may serve as investment advisor, while a corporate trustee handles administrative duties and distribution decisions.

This division of responsibility creates a highly customizable framework that balances professional oversight with family involvement. It can also reduce friction between trustees and beneficiaries, as decision-making authority is more clearly defined and aligned with each party's strengths.

The Delaware Court of Chancery is one of the oldest courts in the country having specialized in fiduciary law dating back to the 1700s. With a myriad of fiduciary case law and precedent, a family can be confident that their Delaware trust is interpreted consistently and equitably by the Delaware court. This level of predictability is particularly valuable in complex or high-stakes planning scenarios, where ambiguity can lead to disputes or unintended outcomes.

Flexibility is another hallmark of Delaware trust law. Given that Delaware trusts can continue in perpetuity, the ability to change and adapt trust documents over time is key to ensuring a grantor's intent isn't frustrated by unforeseen circumstances. Delaware statutes allow for multiple options in modifying the terms of a trust. Nonjudicial settlement agreements, decantings and other forms of trust modifications allow trustees, grantors, and beneficiaries to adapt the trust's structure to changing circumstances without court intervention. This adaptability ensures that trusts can evolve

to remain relevant and effective over time, even as family dynamics, tax laws, and financial goals change

Additionally, Delaware does not impose state income tax on trust income accumulated for nonresident beneficiaries. This can result in substantial tax savings, particularly for families residing in high-tax jurisdictions. Over time, the ability to reinvest income without state-level taxation can significantly enhance the growth of trust assets and combined with the perpetual nature of a Delaware Dynasty trust will aid in trust growth exponentially.

Importantly, establishing a Delaware trust does not require families to adopt a rigid or overly complex structure. Rather, it offers a flexible set of tools that can be tailored to meet a wide range of objectives, from asset protection to generational wealth planning.

Balancing the Advantages and Disadvantages

Given the strengths and limitations of both trusts and outright distributions, many estate plans benefit from a hybrid approach. By leaving some assets in trust while distributing others outright, clients can achieve a balance between protection and flexibility.

For example, assets intended for long-term preservation or for vulnerable beneficiaries may be held in trust, while other assets are distributed outright to provide immediate liquidity and autonomy. This approach allows beneficiaries to access funds without restriction while still benefiting from the safeguards provided by a trust structure.

The hybrid model also underscores the importance of selecting the right trustee or combination of trustees. Pairing a family member with a corporate trustee can often provide the best of both worlds. The corporate trustee can handle administrative responsibilities and serve as an objective decision-maker, while the family member offers personal insight into the beneficiary's needs and circumstances.

This collaborative approach can help mitigate potential conflicts and ensure that the trust operates in a manner that is both effective and sensitive to family dynamics.

Conclusion

There is no universal answer to the question of whether assets should be distributed outright or held in trust. Each approach offers distinct advantages and potential drawbacks, and the optimal solution will depend on the unique circumstances of the client and their beneficiaries.

By carefully considering factors such as asset protection, tax efficiency, beneficiary characteristics, and family dynamics, estate planners and trust professionals can design strategies that align with the client's goals and values. Whether through the use of trusts, outright distributions, or a combination of both, a well-crafted estate plan provides not only financial benefits but also peace of mind.

Ultimately, the goal is not simply to transfer wealth, but to do so in a way that supports and sustains future generations—ensuring that the client’s legacy is preserved and their intentions are honored for years to come.



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“You Knew, You Agreed, You’re Bound”

The Law of Beneficiary Consent, Release, Ratification, and Indemnification in Favor of a Trustee

by
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Trust beneficiaries have the right to expect that the trustee will administer the trust in accordance with the terms of the trust instrument and the rules of equity.¹ The trustee’s departure from these standards could give rise to causes of action for the beneficiary and legal liability for the trustee. But what if the trustee departs from these standards and the beneficiary approves of the departure? Or what if the trustee and beneficiary are aligned with respect to a particular transaction but the trustee wants additional assurance it can more easily handle a court challenge should a beneficiary change his or her mind if the transaction turns unfavorable? In those circumstances, the trustee defenses of consent, release, ratification under *12 Del. C. § 3588* (“Section 3588”) can serve to reduce liability and facilitate complex trust transactions.

This article traces the historical roots of these trustee defenses, articulates their core principles, explains Section 3588, and explores practical uses of these defenses in Delaware trust practice.

Common Law Roots

The roots of these trustee defenses go far back in American common law. An 1888 case in Massachusetts typifies this. In that suit, the beneficiary brought claims against executors regarding the wrongful payment of principal, notwithstanding the beneficiary’s execution of a document reciting those payments, stating that they were made at his request,

covenanting to hold the executors harmless from all other claims on the fund, acknowledging that the payments mentioned were in full satisfaction of the will, and ratifying all the doings of the executors. The judge in that case, the legendary Oliver Wendell Holmes, Jr., denied the beneficiary's claim and expounded the principle that undergirds these trustee defenses: "There is no illegality in a cestui que trust [beneficiary] authorizing an act which otherwise would be a breach of trust towards himself, or in his releasing or agreeing to hold harmless his trustee for such an act after it is done."² As expressed by this legendary jurist, the underlying idea is that the rules for the administration of trusts exist primarily for the benefit of the beneficiary, but if he or she voluntarily withdraws from their protection, when fully competent, he or she ought to be permitted to do so,³ and the trustee is absolved of liability.

This principle is also found in Delaware common law. As far back as 1913, the Delaware Court of Chancery held a trustee not liable for following the direction of beneficiary.⁴

Consent, Release, Ratification: What's the Difference?

Each of these defenses share the underlying principle that where a beneficiary approves of a trustee's act that is otherwise a breach of trust or of equity, and the beneficiary is competent, fully informed, and not improperly induced, that beneficiary cannot hold the trustee liable. Nonetheless, there are differences between the defenses that bear mentioning.

The concept of consent is that a beneficiary cannot hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary, prior to or at the time of the act or omission, consented to it.⁵ For a simple explanation, let's imagine that trustee holds a house in trust for beneficiary. At beneficiary's request, trustee did not insure the house, which subsequently burns. Beneficiary likely cannot hold trustee liable for breach of trust for failing to insure the house.⁶

Under common law, the concept of release differs from consent in that a consenting beneficiary consented to the act or omission of the trustee prior to or at the time of the act or omission, whereas under a release the act or omission of the trustee was not consented to by the beneficiary but he or she subsequently agreed to discharge the trustee from liability for breach of trust in previously acting or omitting to act.⁷ Thus, when the beneficiary believes he or she has a claim against the trustee, the beneficiary may release the trustee from liability and extinguish the claim.⁸

The concept of ratification posits that an act which could have been approved in advance by the beneficiary has been validated from the date of its performance by an approval after the event.⁹

Codification of Common Law Trustee Defenses

These common law defenses were codified in the Uniform Trust Code. The Uniform Trust Code is the first national codification of the law of trusts, and many of its provisions reflect longstanding common law principles.

Specifically, Section 1009 of the Uniform Trust Code codifies, with some slight changes, the standards for recognizing

beneficiary approval of acts of the trustee that might otherwise constitute a breach of trust. The text of Section 1009 provides as follows:

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

- (1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

While the common law, in part, distinguishes the concepts of consent, release and ratification based on whether they occurred before or after the approved conduct, the comments to Section 1009 provide that consent, release, or affirmance may occur either before or after the approved conduct. This simplifies the process of obtaining waiver and provides parties more flexibility than under the common law.

Section 3588, while based on Section 1009, has some key differences. It reads:

(a) A person may not hold a trustee liable for a breach of trust or other claim if the person consented to the conduct constituting the breach or other claim, released the trustee from liability for the breach or other claim, or ratified the transaction constituting the breach or other claim, unless:

- (1) The consent, release or ratification of the person was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release or ratification, the person did not know of:
 - a. The person's rights; or
 - b. Material facts the trustee knew or should have known with the exercise of reasonable inquiry.

(b) A consent, release, ratification, or indemnification in favor of a trustee need not be supported by consideration.

Several key features of Section 3588 warrant attention. First, Section 3588 expands the class of persons who can utilize waiver of liability. The term "trustee" includes fiduciaries and other persons exercising, or directing or consenting to the exercise of, or that are required to be consulted before the exercise of, powers or duties under a trust's governing instrument or under Title 12 of the Delaware Code,¹⁰ such as trust advisers, protectors, enforcers, and designated representatives. Section 3588 is applicable to any "person" interested in a trust, not just beneficiaries.

Second, Section 3588 expands the claims subject to waiver of liability, covering any claim against a trustee, not just breach of trust claims. The expansion of persons and claims subject to Section 3588 means the statute is flexible to meet the realities of complex trust structures and transactions.

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Third, Section 3588(a)(1)-(2) provides limitations on these defenses. A waiver is ineffective if it is obtained by improper conduct and the beneficiary is not properly informed. Improper conduct of the trustee includes fraud, duress, undue influence, or the trustee's abuse of the fiduciary relationship.¹¹ The trustee should inform the person of his or her rights and of the material facts affecting a transaction which depart from the terms of the trust, inasmuch as the trustee knows or should know these facts.¹²

It should be noted here that Delaware common law provides additional limitations on these defenses. There is no waiver of liability for a fiduciary's bad faith conduct or from general future fiduciary obligations.¹³

Fourth, Section 3588 clarifies that consents, releases and ratifications are enforceable whether or not supported by consideration. This eases the process of obtaining waiver of liability. Other jurisdictions generally require adequate consideration paid, such as furnishing the beneficiary with substituted benefits, making of some other financial arrangement, or delivery of certain property,¹⁴ for a release to be valid.

Preparation of the Release

It is often advisable for fiduciaries to collect a release in connection with trust transactions, such as a trust modification, resignation of trustee, termination of the trust, and many others.¹⁵ Here are some key components of such a release:

- Describe the trust, relevant provisions of the trust agreement, and the trust's fiduciaries. Consider attaching a copy of the trust agreement.
- Ensure Delaware law governs the administration of the trust and the release.
- Describe the transaction in detail, including any statutes that may govern the transaction. Attach documents material to the transaction.
- Identify the releasors, including the beneficiaries. Ensure beneficiaries are represented pursuant to the terms of the trust agreement and the Delaware trust code, including Delaware's virtual representation statute, 12 *Del. C.* § 3547. This statute allows certain parties to represent and bind the interests of other parties, including for purposes of a consent and release. For example, minors, incapacitated persons, unborn persons, or unascertainable persons, contingent successor remainder beneficiaries, more remote contingent successor remainder beneficiaries, and persons whose interests, as takers in default, are subject to certain powers of appointment can all be represented and bound for purposes of the consent and release by another person, subject to the terms of the statute.

- If the release is in connection with a trustee who is resigning, has resigned, is being removed, has been removed, is ceasing to serve, or has ceased to serve as trustee, and the release includes (i) a trustee report¹⁶ and (ii) adequately discloses the time allowed under 12 *Del. C.* § 3585 for initiating proceedings against the former trustee, include a provision whereby the releasors waive the applicable limitations period found in 12 *Del. C.* § 3585 for breach of trust or other claim.¹⁷ This will bar actions by a person against a trustee, subject to the provisions of 12 *Del. C.* § 3585.
- Have releasors attest to their having reviewed the release and its accompanying documents with their legal and other advisers or that the releasors declined to do so.
- Have releasors waive their claims related to the transaction against the trustee or other fiduciary pursuant to Section 3588.
- Have the releasors indemnify the trustee or other fiduciary related to claims in connection with the transaction.

Conclusion

The legal principles embodied in Section 3588 reduce liability and facilitate complex trust transactions. Whether part of a trust modification, such as a decanting, non-judicial settlement or a consent modification agreement, or upon a trust termination, fiduciaries should consider seeking a beneficiary's approval to preclude later claims. As both common law and Section 3588 make clear, when a beneficiary knowingly approves the trustee's conduct, the rule is as practical as it is powerful: you knew, you agreed, you're bound.



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Notes:

- 1- Remedies of the beneficiary against the trustee, Bogert's The Law of Trusts and Trustees § 86.
- 2- *Pope v. Farnsworth*, 16 N.E. 262, 265–66 (Mass. 1888).
- 3- Consent, Bogert's The Law of Trusts and Trustees § 941.
- 4- *Ford v. Wilson*, 85 A. 1073, 1077 (Del. Ch. 1913).
- 5- Restatement (Second) of Trusts § 216 (1959).
- 6- Restatement (Second) of Trusts § 216 cmt. a illus. 4 (1959).
- 7- Restatement (Second) of Trusts § 217 cmt. a (1959). As described below, this distinction has been eliminated in the Uniform Trust Code and in Section 3588.
- 8- Release, Bogert's The Law of Trusts and Trustees § 943.
- 9- Ratification or confirmation, Bogert's The Law of Trusts and Trustees § 942.
- 10- 12 Del. C. § 3580.
- 11- Restatement (Second) of Trusts § 216 cmt. l (1959).
- 12- Restatement (Second) of Trusts § 216 cmt. k (1959).
- 13- *New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 548, 592 (Del. Ch. 2023). Bad faith has been described as irrational, unconsidered and self-interested conduct. See *Mennen v. Wilmington Tr. Co.*, 2015 WL 1914599, at *28 (Del. Ch. Apr. 24, 2015), adopted, (Del. Ch. 2015), *aff'd sub nom. Mennen v. Fiduciary Tr. Int'l of Delaware*, 166 A.3d 102 (Del. 2017).
- 14- Release, Bogert's The Law of Trusts and Trustees § 943.
- 15- Recently, the Court of Chancery relied on Section 3588 to dismiss a beneficiary's breach of fiduciary duty claims against trustees in connection with a decanting. The Court ruled that the beneficiary's claims were barred because the

beneficiary consented to the decanting. The Court found the beneficiary was not induced by improper conduct to consent to the decanting, and at the time he consented, he knew that the trust agreement did not specify that the trustees could invade the principal. Therefore, the beneficiary knew of the same material facts the trustees knew or should have known, and his consent barred him from bringing claims. *Matter of Niki & Darren Irrevocable Tr.*, 2025 WL 3231642, at *6 n.30 (Del. Ch. Nov. 19, 2025). Notwithstanding dismissal of the beneficiary's claim, the Court ruled that the decanting was a nullity and the assets that stemmed from the decanting must be viewed as never leaving the original trust. *Matter of Niki & Darren Irrevocable Tr.*, 2024 WL 3515556, at *11 (Del. Ch. July 24, 2024). This case remains pending in the trial court.

16- “[A] report adequately discloses the facts constituting a claim if it provides sufficient information so that the person knows of the claim or reasonably should have inquired into its existence.” 12 Del. C. § 3585(b).

17- 12 Del. C. § 3585(d).



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Federal and State Approaches to Business Tax Deductions

One Big Beautiful Bill Act and Delaware House Bill 255

by
Kevin Gobeil, CPA
Santora CPA Group



In 2025, federal and state lawmakers addressed similar tax policy issues but adopted different approaches. At the federal level, Congress enacted the One Big Beautiful Bill Act (OBBBA), which included provisions affecting the timing of business tax deductions. In Delaware, lawmakers passed House Bill 255 (HB 255), which adjusted how certain federal tax changes apply for state tax purposes.

While both laws relate to the deduction of business expenses, they take different approaches to timing. The OBBBA generally allows businesses to deduct certain costs more quickly, while HB 255 requires slower deduction timing for Delaware income tax purposes. Neither law eliminates deductions, but the timing differences have implications for tax revenue and business cash flow.

This article outlines the key provisions of each law, explains how they differ, and summarizes the potential effects of those differences.

Interaction Between Federal and State Tax Systems

Many states, including Delaware, calculate state taxable income by starting with federal taxable income. As a result, changes to the federal tax code often flow through to state tax calculations automatically unless the state enacts legislation to modify or decouple from those changes.

The OBBBA introduced changes that accelerate certain business deductions. Because accelerated deductions reduce taxable income in earlier years, automatic conformity would have reduced Delaware's tax revenues in the short term. HB 255 reflects the state's decision to selectively decouple from specific federal provisions rather than adopt them in full.

Key Federal Provisions Under the OBBBA

Enacted on July 4, 2025, the OBBBA is a broad federal tax and spending law. Several provisions affecting business deductions are particularly relevant to Delaware's response.

- **Research and Experimentation (R&E) Expenses**

The OBBBA allows certain domestic research and experimentation expenses to be deducted more quickly than under prior law. Earlier federal rules under the

Tax Cuts and Jobs Act (TCJA) required pre-2025 costs to be capitalized and amortized over time. The revised approach permits faster deduction of these costs, which can reduce taxable income.

- **Expensing of Business Property**

The law expands full expensing, commonly referred to as 100% bonus depreciation, for qualifying business property. Under this approach, eligible assets may be deducted in full in the year they are placed in service rather than depreciated over multiple years.

- **Depreciation of Qualified Production Property**

The OBBBA also introduces a special depreciation allowance for certain qualified production property, such as manufacturing facilities. This provision allows a significant portion of eligible costs to be deducted in the year the property is placed in service.

Collectively, these provisions accelerate deductions without changing the total amount deducted over time.

Importance of Deduction Timing

The timing of deductions affects when tax benefits are

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realized. Immediate deductions reduce current taxable income and tax liability, while depreciation or amortization spreads deductions across future years.

At the federal level, accelerated deductions are often used to encourage investment and economic activity. For states that conform to federal tax rules, however, faster deductions can result in reduced tax revenues in the short term, even if those revenues may recover over time.

Delaware's Response Under HB 255

HB 255 addresses the timing effects of the OBBBA for Delaware income tax purposes. The bill does not change tax rates or eliminate deductions. Instead, it modifies how certain federal provisions apply at the state level.

The bill applies to both C corporations and individuals with business income, such as owners of partnerships or S corporations.

• R&E Expenses

For R&E expenses incurred before 2025, HB 255 requires Delaware taxpayers to continue using pre-OBBBA deduction timing. As a result, businesses may deduct these expenses immediately for federal purposes while spreading the deductions over time for Delaware purposes.

• Expensing of Business Property

HB 255 decouples Delaware from federal rules allowing full expensing of certain business property placed in service after specified dates. Assets that are fully expensed federally may instead be depreciated over several years on the Delaware return, subject to the pre-OBBBA bonus depreciation phase-out rules under the previous federal tax law.

• Qualified Production Property

The bill also decouples Delaware from the federal special depreciation allowance for qualified production property, requiring depreciation over several decades for state tax purposes.

Different effective dates apply depending on the type of taxpayer, with certain provisions applying immediately to C corporations and others applying to individuals with business income beginning in 2026.

Rationale for Decoupling

Supporters of HB 255 characterized the bill as a revenue timing measure. Because Delaware's tax base is closely tied to federal taxable income, full conformity with the OBBBA's accelerated deductions would have reduced state revenues in the short term. State projections indicated that the impact could be significant over several years.

By slowing the timing of deductions, HB 255 aims to moderate the short-term revenue effects while still allowing deductions over time.



Considerations for Businesses

Some businesses and tax professionals raised concerns about the potential economic and administrative effects of decoupling.

Accelerated deductions are often viewed as incentives for investment, and the differences discussed above between federal and state rules could discourage investment at the state level.

Although HB 255 does not affect federal deductions, it may reduce the combined federal and state tax benefit associated with investments in Delaware, particularly in the early years.

Differences between federal and state tax rules also increase compliance complexity. Businesses may need to maintain separate depreciation and amortization schedules for federal and state filings. This can increase recordkeeping requirements, especially for businesses operating in multiple states.

HB 255 adds divergence points between federal and Delaware tax rules, contributing to these administrative considerations.

Looking Ahead

Several outcomes will become clearer over time, including the revenue effects of HB 255 and whether the law influences business investment decisions. Future federal tax changes may also prompt additional state-level responses.

Conclusion

The OBBBA and Delaware HB 255 address similar business tax issues but reflect different policy priorities. The OBBBA emphasizes accelerated deductions at the federal level, while HB 255 focuses on managing the timing of state tax revenues. Both rely on timing differences rather than eliminating deductions entirely.

These laws illustrate how federal tax changes can lead states to reassess conformity and make targeted adjustments. For state businesses and policymakers, the key issue is not whether deductions are allowed, but when those deductions are recognized for tax purposes.



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*GF&M is excited to announce that
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Neuroscience Meets Philanthropy: There's a Science to How and Why Donors Give

Mike DiPaolo of the DCF in Conversation with Dr. James Russell



Mike DiPaolo
Delaware Community Foundation

"Much like retirement planning, where advisors identify goals and then design strategies to achieve them, philanthropic planning follows a similar path, aligning financial decisions with desired impact."

Dr. Russell James is a renowned expert on the science of charitable giving. His 30-year career includes experience as a planned giving fundraiser, estate attorney in private practice, major gifts fundraiser, and college president. Now a professor at Texas Tech University, he explores the behavior and neuroscience of how and why we give.

Mike DiPaolo is the Vice President for Philanthropy and Southern Delaware at the Delaware Community Foundation (DCF). He works with financial advisors to meet their clients' charitable goals through charitable planning, opening funds, and helping to navigate the complex world of lower Delaware nonprofits for grantmaking

Recently, DiPaolo spoke with James about what financial advisors need to know about how to best serve their clients based on his neuroimaging research.

DiPaolo: Let's start with the basics. What approaches do you recommend for financial advisors looking to grow their practice through charitable planning?

James: Deep expertise in philanthropy is another way advisors can enhance the value they provide to clients. While many clients understand that charitable donations can yield tax deductions, a knowledgeable advisor can help them maximize those benefits. For example,

clients may avoid capital gains tax while still receiving a deduction by donating appreciated stock instead of cash. If they want to maintain a certain portfolio, they can repurchase the same securities with the cash that would have gone to charity, effectively resetting their cost basis and creating additional tax advantages.

DiPaolo: You have some very interesting insights into the psychology of planned giving based on neuroimaging. What are some of the best ways to engage generosity among planned giving donors based on research?

James: Much like retirement planning, where advisors identify goals and then design strategies to achieve them, philanthropic planning follows a similar path, aligning financial decisions with desired impact. Advisors can begin by engaging clients with questions. What meaningful impact do you want your wealth to have? Which causes matter most to you? What legacy would you like to leave behind? Clients who feel their broader purpose is understood are more likely to remain committed to their financial advisor, even if the market gets wonky.

DiPaolo: You've mentioned a "hidden code" influencing end-of-life decisions, particularly in the context of planned giving. What does this concept mean, and how should it shape the way financial advisors approach estate planning conversations with their clients?

James: People tend to have a couple different reactions to death reminders. One reaction is avoidance; the other is the pursuit of symbolic immortality, wherein the individual seeks to make an impact that outlives them. If an advisor wants to talk to a client about any type of planned giving, they need to ease into it – start by discussing something like asset protection – and then pivot to outcomes. Highlight that 41% of heirs had their net worth fall back to, or below, their pre-inheritance level when measured about 12 months later to incentivize clients to create instructions for a more sustained and lasting impact.

DiPaolo: Inheritors may not be prepared — or willing — to steward philanthropic assets and may even resent their intended use. How can advisors bridge the gap between the beneficiary and the mission?

James: The most effective way to prevent this kind of conflict is for advisors to be candid with clients from the outset. Clients interested in establishing something like a private family foundation often hold overly optimistic views about its long-term charitable impact after their death. In practice, charitable giving tends to decline while administrative costs rise. Even organizing a family meeting to discuss the foundation’s future can be problematic, as other decision-makers may feel pressure to align with the founder’s wishes to protect their own

inheritance. Collaborate with clients to establish legal structures that clearly define how assets are to be used after their death, rather than relying on the presumed goodwill of beneficiaries

Advisors can reach out directly to Mike DiPaolo at mdipaolo@delcf.org. Visit delcf.org for more information about the DCF. Find free resources from Dr. Russell James at encouragegenerosity.com.



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Accounting for Success

The Olympic Lesson: Strategic Collaboration for Local Economic Growth



Christina K. Bell, CPA
Belfint Lyons & Shuman, P.A.

"Collaboration, backed by sound financial oversight and measurable goals, transforms ambition into lasting impact."

When the world tuned in to the 2026 Winter Olympic Games, the spotlight focused on elite athletes chasing gold. Yet for those of us who work in community finance and nonprofit leadership, the more instructive story unfolded beyond the podium. The 2026 Winter Olympic Games demonstrated how coordinated planning, disciplined financing, and accountable execution can transform a region's economic trajectory.

Host regions such as Milan and Cortina d'Ampezzo experienced surges in tourism, hospitality demand, retail activity, and infrastructure investment specifically tied to the 2026 Winter Olympic Games. These outcomes were not incidental; they were the result of intentional collaboration across public and private sectors.

This opportunity is not abstract to our region. Philadelphia will host six matches during the FIFA World Cup 2026 this summer, bringing a significant influx of visitors, global attention, and economic activity, presenting a tangible, near-term opportunity to coordinate stakeholders, align capital, and ensure that short-term activity translates into long-term community benefit.

As a CPA specializing in financial reporting and tax compliance for nonprofit organizations, I often see well intentioned initiatives fall short not because the mission lacked merit, but because financial planning and accountability mechanisms were an afterthought. The Olympic model works precisely because financing, risk

management, performance measurement, and long-term impact are built into the framework from the outset. Community initiatives deserve the same discipline.

In a local context, the event might not be an international sporting competition. It may be a regional arts festival, a neighborhood housing redevelopment program, a tourism marketing campaign, or a downtown revitalization campaign.

Community banks are uniquely positioned to catalyze these initiatives. They understand local market conditions, maintain trusted relationships, and can deploy flexible capital. Nonprofits bring mission alignment, programmatic expertise, and community credibility. Together, they can structure initiatives, projects, and special events that are financially viable and socially impactful.

The Olympics required meticulous oversight to manage billions in expenditures. While local projects operate on a smaller scale, the principle is identical. Transparency drives trust, and trust attracts capital.

One of the most powerful takeaways from large scale events is the emphasis on measurable impact. Economic impact studies estimate job creation, visitor spending, and tax revenue effects. Community initiatives require the same analytical rigor.

Banks and nonprofits should jointly define key measurement and performance indicators at the outset. These may include the number of individuals or

organizations supported, jobs created or retained, funds leveraged through matching grants, and measurable improvements in community access to essential services such as healthcare, childcare, or housing. Regular reporting against these metrics strengthens accountability and allows for mid-course corrections. Clearly defined metrics also reduce ambiguity and improve financial statement disclosures related to restricted funds and program outcomes.

Perhaps the most enduring lesson from Milan and Cortina d'Ampezzo is that legacy planning matters. Infrastructure built for a two-week event serves communities for decades. Similarly, local economic initiatives should be designed with sustainability in mind. Community banks can support longevity by structuring loan terms that align with realistic revenue generation timelines, ensuring that repayment schedules match the cash flow cycles of the nonprofit or community initiative. This might include flexible repayment periods, interest-only deferral options during the early stages of a project, or tiered financing that releases funds in phases tied to milestone achievements. By tailoring financial solutions to the unique circumstances of community projects, banks reduce the risk of default while enabling nonprofits to focus on program delivery rather than short-term cash constraints.

Nonprofits can strengthen their sustainability by prioritizing diversified funding streams. Relying on a single funding source can leave an organization vulnerable if that funding disappears. By combining individual donations, foundation grants, corporate partnerships, earned income, and program-related investments, nonprofits build resilience and ensure programs can continue even during economic downturns.

For community bankers and nonprofit leaders, the Olympic example reinforces a familiar truth. Collaboration, backed by sound financial oversight and measurable goals, transforms ambition into lasting impact. As CPAs, lenders, and mission driven executives, we may not host the world's athletes but with global events like the FIFA World Cup unfolding in our region this summer, we are reminded of opportunities we have to apply these same principles in our own communities.



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Special Mortgage Loan Title Policy Endorsements for Special Circumstances



Brent C. Shaffer
Young Conaway Stargatt & Taylor, LLP

"Bankers should be aware that there are many 'special' loan policy endorsements available in Delaware that should be considered in certain situations."

In the Winter 2023 issue of *Delaware Banker*, I discussed some basic concepts with respect to title insurance endorsements that protect lenders. Bankers should be aware that there are many "special" loan policy endorsements available in Delaware that should be considered in certain situations. These endorsements provide protection beyond the typical endorsements required for most mortgage loans. Here are a few examples.

The Delaware Title Insurance Rating Bureau (DTIRB) 40 First Loss-Multiple Parcel Endorsement should be requested when a loan is secured by multiple parcels of real estate. Under title policy "boilerplate" provisions, the insurer must indemnify the lender only for actual loss resulting from a covered title defect. The insurer may argue that no loss exists until the bank accelerates the loan, forecloses on all parcels including those unaffected by the problem, and exhausts guaranties. This endorsement permits the bank to make a claim for that individual parcel's defect without exercising those remedies; the insurer pays the amount by which the covered claim diminishes the value of the collateral below the outstanding indebtedness.

If a single mortgage secures both a fully funded term loan and a revolving credit line, banks face the risk that repayments and re-advances under the revolving line could impair the priority of the term loan lien. The DTIRB 66 Anti-Taint Endorsement insures against the loss of priority of the term loan mortgage lien resulting from repayments and re-advances under the revolving credit

component. Although this endorsement protects against loss or damage due to revolving credit loan advances made after the date of the policy, it does not provide coverage for the future advance aspects (which should be covered by a DTIRB 29 Future Advance-Priority Endorsement).

In some transactions two or more banks agree that their liens will share equal priority regardless of recording order. These "pari passu" (meaning "in equal step") arrangements are documented through recorded mortgage provisions or an intercreditor agreement (under best practices the intercreditor agreement should be recorded). The DTIRB 77 Pari Passu Mortgage Endorsement insures against loss or damage resulting from the invalidity or unenforceability of the insured mortgage due to pari passu provisions and against loss arising from failure of the insured mortgage to maintain equal priority with other designated pari passu mortgages. Each loan's title policy must include a corresponding endorsement cross-referencing the other pari passu mortgages. For this to work, however, each of the pari passu mortgages must be insured by the same title insurance company.

Loan title insurance policies are used to protect the bank against unforeseen title problems that can affect the ability of the bank to recover value from foreclosing on its real estate collateral. Essentially, these "special" endorsements when used in the appropriate circumstances limit the extent to which the title insurer can deny claims for title defects on the basis of standard exclusions buried in the policy.

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