

# Beneficiary Well-Being Trusts Are Important for Business-Owning Families

A unique new Delaware law is valuable for succession planning nationwide



Business-owning families frequently share a common goal of passing their businesses through multiple generations, often with limited success. Most of these failures may be attributed to a lack of preparing a family for the wealth.<sup>1</sup> A new, one-of-a-kind trust law in Delaware is available to families across the country, which offers programs for trust beneficiaries that provide an opportunity to educate, develop, and align the family across multiple generations with the collective goal of passing on family values to beneficiaries and preserving the legacy of the family business.<sup>2</sup>

## Key takeaways

- A new trust law in Delaware can help trust beneficiaries receive education, development, and family alignment
- Well-being trusts are particularly helpful in preserving the legacy of a family business
- This first-of-its-kind statute adds another tool to Delaware's favorable trust laws

## Delaware's New Law

The 2024 Delaware Trust Act added a new Section 3345 to Title 12 of the Delaware Code, which provides for a beneficiary well-being trust.<sup>3</sup> This first-of-its-kind statute adds another tool to Delaware's favorable trust laws. Business-owning families located anywhere in the country may create a beneficiary well-being trust that sets forth the powers, duties, rights and interests of the beneficiaries, trustees and advisers to provide beneficiaries with "beneficiary well-being programs." In addition, the statutory default powers of a trustee were amended to grant trustees of all Delaware trusts, created either before or after enactment of the new law, with the additional power to hire providers of beneficiary well-being services.<sup>4</sup> This is a new feature of Delaware trust law that may be added to virtually every type of trust structure used to carry out an estate plan, similar to the addition of advisers to direct the trustee (that is, a directed trust) or the availability of perpetual dynasty trusts.

**Beneficiary well-being programs** are defined to include “seminars, courses, programs, workshops, counselors, personal coaches, short-term university programs, group or 1-on-1 meetings, counseling, family meetings, family retreats, family reunions, and custom programs ...”<sup>5</sup>

**These programs have the purpose of:**

Preparing each generation for inheriting wealth by providing ... estate and asset planning, assistance with navigating inter-generational asset transfers, developing wealth management and money skills, financial literacy and acumen, business fundamentals, entrepreneurship, knowledge of family businesses, and philanthropy ... and

Educating beneficiaries about the beneficiaries’ family history, the family’s values, family governance, family dynamics, family mental health and well-being, and connection among family members.<sup>6</sup>

Whether the trust explicitly requires a trustee to provide beneficiary well-being programs or provides these services under its default fiduciary powers, the trustee may pay for such services from the trust estate.<sup>7</sup>

## Transfer Challenges

Successful business owners face the challenge of accommodating future generations’ various needs and requirements regarding active participation in the business, their reliance on income from the business and access to information regarding business operations. Some research shows that up to 91% of family business transfers fail by the third generation.<sup>8</sup> This same research reveals the causes of these failures: 60% are due to breakdowns in trust and communication within families, 25% due to heirs who aren’t prepared for financial responsibility and 10% due to a lack of a common family purpose or mission. Surprisingly, only 5% of the cases are due to a failure to prepare wealth for the family through traditional estate, tax and business transition planning. An overwhelming 95% of the issues causing these failures are due to a lack of preparing the family for the wealth.<sup>9</sup>

Often, families with successful businesses use trusts to transition this wealth through the generations. Common trust provisions focus on controlling a beneficiary’s access to the trust funds and limiting information passing to a beneficiary, with the goal of protecting the beneficiary from themselves. However, these restrictive provisions may negatively impact a beneficiary’s well-being by limiting their ability to gain important financial skills, become involved with the family

business in a meaningful way or learn family values and social responsibility that come with inheriting family wealth.

Moreover, trusts may have the unintended consequence of inhibiting beneficiaries’ personal growth and well-being by providing substantial financial resources to a beneficiary without corresponding financial education, family alignment regarding the meaning of wealth or a shared family legacy.<sup>10</sup> Holding family wealth in trust may overlook opportunities to: (1) develop shared family values; (2) preserve a family’s history and heritage; (3) participate in family philanthropy; (4) enhance communication skills; and (5) understand the intention behind this significant transfer of wealth. Using a beneficiary well-being trust helps pass along this personal capital, which facilitates stewardship of the family legacy represented by the business.

Fortunately, Delaware’s new legislation augments the powers of a trustee to prepare a business-owning family for the transfer of wealth. Beneficiaries receiving business interests may have limited financial literacy or financial management skills that prevent them from being effective stewards of family wealth. Even with strong financial skills, they may be missing a common purpose or vision for the family business or lack effective communication or trust among family members. These typical dysfunctional “family dynamics” may lead to distrust and destructive behavior fueled by the significant resources made available to the family through a trust. Beneficiary well-being programs help address these root causes and promote positive family dynamics that allow beneficiaries to flourish.

Consequently, beneficiary well-being programs are ideal for preparing family members to be proper stewards of wealth while receiving the maximum benefit from this endowment. In addition to increasing the likelihood of success in transitioning a business among generations, beneficiary well-being programs help transition family values along the way. Beneficiary well-being programs administered through a multi-generational trust help transfer the family’s core value system, leadership skills, beliefs, sense of common purpose and wisdom. Passing along this personal capital facilitates the stewardship of the financial capital held in trust.

## Impact of High Exemption Amounts

Currently, a significant motivation to fund a beneficiary well-being trust comes from the substantial federal estate and gift tax exemption available in 2025. The Internal Revenue Code provides an exemption from estate and gift tax through the Unified Credit Against Tax,<sup>11</sup> which, in 2025, offsets the tax

on the first \$13.99 million. This elevated credit amount is the result of doubling the basic exclusion from \$5 million to \$10 million, along with indexing for inflation under the Tax Cuts and Jobs Act of 2017 (TCJA).

Without further legislative action, this doubling of the exemption under the TCJA is set to expire at the end of 2025 and fall to approximately \$7 million in 2026.<sup>12</sup> Reducing the exemption makes capturing this “bonus” exemption a use-it-or-lose-it opportunity through completing gifts during 2025. Even if there’s legislative action and the exemption remains at an elevated level indefinitely, capturing the remaining exemption at death may be accomplished using trusts in an estate plan. There are a variety of common trusts funded by gifts during life or through the estate at death. As noted above, beneficiary well-being programs are only an added feature of how trusts may be administered in Delaware—not a stand-alone trust structure with limited applicability. All the common trust structures used for effective tax planning (for example, spousal lifetime access trusts, qualified terminable interest property trusts, credit shelter trusts and intentionally defective grantor trusts) may contain beneficiary well-being trust provisions to help prepare the beneficiaries for the substantial family business wealth held for their benefit.

## Programs for Business Owners

The new Delaware trust law allows well-being programs to broadly support business-owning families during any phase of business ownership. A family may seek well-being programs when actively managing and operating the business, and during this time, programs may focus on business fundamentals and entrepreneurship skills. If the family is preparing to transition the business, the well-being programs may prioritize financial literacy and the responsibilities of stewarding the resulting wealth and carrying on the family’s legacy.

Well-being programs may be formal seminars and courses hosted by educational or financial institutions. Alternatively, the family may seek a customized approach to structure programs, such as family workshops and individual one-on-one sessions. The Delaware trust law states that family meetings, retreats or reunions meet the requirements of well-being programs.<sup>13</sup> These meetings provide families with a forum to discuss and enhance not only financial capital but also relationships across generations.<sup>14</sup> Under the new law, well-being programs can be facilitated by various professionals, such as educational or financial institutions, advisors, counselors, professional coaches and the trustee of the beneficiary well-being trust.

## Common Program Goals

Common goals for all well-being programs are to teach family members fundamental skills, how to collaborate and communicate, to pass along values and instill confidence in the next generation. Well-being programs strive to achieve these goals through four primary areas: (1) financial education; (2) personal and professional development; (3) family engagement and alignment; and (4) family philanthropy.

**Financial education.** For business-owning families, it’s essential that all family members have a solid foundation in financial literacy topics. Financial literacy can help instill confidence in each family member and prepare the next generation to engage in discussions about finance and wealth management. Financial education sessions aim to teach fundamental terminology and concepts in areas such as estate and asset planning, banking basics, financial planning, taxation and investment management.

Financial education sessions can also act as a forum to share the family’s estate or business succession plans. A family can use these conversations as an opportunity to clarify thinking about the purposes of the family’s financial wealth and have an open discussion about difficult subjects<sup>15</sup> and the collective stewardship of the family’s wealth. By doing so, a family may better understand how the family’s business and wealth will transition, and help each member understand their roles and responsibilities for inheriting the family’s legacy.

In creating educational programs, it’s important to have a variety of learning techniques. Financial learning may be coursework provided by educational institutions or programs offered by financial institutions. Family members may also find options for self-study or work with advisors familiar with the family’s wealth plan.

**Personal and professional development.** Personal and professional development helps family members identify individual skill sets, define career paths and understand how to turn interests into successful professions.

These programs may focus on college preparedness, career pathing and skills that improve workplace performance, such as conflict resolution, salary negotiations and leadership. Educational institutions and career counselors can work with family members to provide this training.

When a family business is involved, the well-being programs may also teach technical skills relevant to the family’s business and industry. Sessions may be customized to



cover fundamental business management and operations concepts and can be expanded to more technical concepts of entrepreneurship. In a formal educational setting, family members may pursue an MBA or executive MBA. These services aim to help family members become more effective owners and leaders in the family business.

**Family engagement and alignment.** Well-being programs that focus on a family's engagement and alignment aim to enhance a family's connection and communication, which is important when sharing the responsibility of operating a family business. Facilitated well-being sessions may engage family members by articulating and memorializing the family's values, purpose and mission. Alignment sessions enhance communication by identifying differences in communication style and provide skills to handle those differences. Typically, coaches or facilitators trained in communication and personality assessments will offer these trainings.

Additionally, well-being programs may consist of workshops that codify a shared family governance structure and create a process for family decision making. Having these governance structures in place helps navigate the complexities of family dynamics and relationships, particularly for ongoing management or transitioning a business.

**Family philanthropy.** A common goal for well-being programs related to family philanthropy is to provide a forum to define values and find causes meaningful to the family's charitable mission. There are many ways to structure family philanthropy well-being programs. Family retreats or reunions can include time to volunteer and give back to the community. Facilitated coaching sessions can help a family define their charitable mission and select organizations to support it. Technical education can improve financial literacy by teaching the benefits of charitable giving plans and the structures used to implement them.

By being intentional about philanthropy, a family can begin to achieve their overall goals for the family's legacy. Family philanthropy can instill a sense of responsibility around wealth in the next generation.<sup>16</sup>

### Successful Business Transfer

Delaware's new trust law allows families nationwide to establish beneficiary well-being trusts to create intentional programs to support the successful transfer of business and wealth through generations. Under the new trust law, the trustee is permitted to hire providers of well-being services or provide the services in the role of trustee. The cost for these programs and services is considered an allowable expense of trust administration.

**For families using trusts to transition their business through the generations, trust provisions that restrict a beneficiary's access to trust funds and financial information may negatively impact a beneficiary's well-being. Well-being programs can help remove those obstacles and engage the family in a shared learning experience. The well-being programs aim to provide family alignment and engagement, financial education, personal and professional development, and family philanthropy. By engaging a family in these areas, a family's business and legacy are supported and developed, promoting the successful transfer of wealth and the business across multiple generations.**



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<sup>1</sup> Roy Orville Williams and Vic Preisser, *Preparing Heirs: Five steps to a successful transition of family wealth and values* (Reid, 2003), at p. 17.

<sup>2</sup> See Todd Flubacher, Kristin Keffeler, Elizabeth M. Luk and Jennifer E. Smith, "Delaware's New Beneficiary Well-Being Statute," *Trusts & Estates* (January 2025).

<sup>3</sup> 84 Del. Laws 391, Section 7 (Aug. 29, 2024).

<sup>4</sup> 12 Del. Code Section 3325(32).

<sup>5</sup> 12 Del. Code Section 3345(b).

<sup>6</sup> 12 Del. Code Section 3345(b)(1) and (2).

<sup>7</sup> 12 Del. Code Sections 3325(32) and 3345(d).

<sup>8</sup> *Supra* note 1, at p. 17.

<sup>9</sup> *Ibid.*

<sup>10</sup> Hartley Goldstone, James E. Hughes, Jr., and Keith Whitaker, *Family Trusts: A Guide for Beneficiaries, Trustees, Trust Protectors, and Trust Creators* (Wiley & Sons 2016).

<sup>11</sup> [https://irc.bloombergtax.com/public/uscode/doc/irc/section\\_2010](https://irc.bloombergtax.com/public/uscode/doc/irc/section_2010).

<sup>12</sup> [www.irs.gov/newsroom/estate-and-gift-tax-faqs](https://www.irs.gov/newsroom/estate-and-gift-tax-faqs).

<sup>13</sup> *Supra* note 5.

<sup>14</sup> Charles W. Collier, *Wealth in Families* (2012), at p. 81.

<sup>15</sup> *Ibid.*, at p. 1.

<sup>16</sup> *Ibid.*, at p. 67.

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