



**Delaware's New Beneficiary Well-Being Trust Law**

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The First State is First Again with a Novel New Trust Law That Helps Prepare a Family for Inherited Wealth

by  
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Delaware Governor John Carney signed Beneficiary Well-Being Trust legislation into law on August 29, 2024.<sup>1</sup> The new fiduciary powers granted to a trustee in a Beneficiary Well-Being Trust are essential for modern trust planning. Because the “great wealth transfer” is beginning, families are using the historically high \$13.61 million per-person exemption from federal estate and gift tax<sup>2</sup> to pass an estimated \$84 trillion over the next 20 years from the Silent Generation and Baby Boomers to Gen X and Millennials.<sup>3</sup> The high exemption amounts urge families to plan for the impact of dynastic family wealth and a personal trust is often the preferred solution. Also, beneficiary well-being services allow modern trust tools such as directed trusts, silent trusts, and incentive trusts, to have their greatest impact. Finally, beneficiary well-being programs help business-owning families address the complex dynamics involved with transitioning an active family business through the generations and enhance the likelihood of a successful transition.

## Need for Beneficiary Well-Being Trusts

Historically, the powers and duties of a trustee have focused upon providing the greatest financial impact for the family - i.e., lowest taxes, highest returns, largest value of distributions made to beneficiaries. The traditional

powers of a trustee include powers to buy and sell assets, to hire and fire advisors, to determine distributions to beneficiaries, and powers related to tax compliance and tax efficiency. Unfortunately, these powers do not address the impact of the wealth upon the family. Moreover, a trustee’s duties are similarly focused on maximizing the value of the assets held in trust and providing financial support to trust beneficiaries pursuant to the standards described in the trust agreement. Duties that require the trustee to be prudent, objective, and fair. These traditional duties only address a beneficiary’s financial well-being, not their personal, non-financial well-being.

Fortunately, Delaware’s new Beneficiary Well-Being Trust legislation augments the powers of a trustee to prepare the family for the wealth. These beneficiary well-being programs increase the chance of a successful transition of wealth through the generations. Beneficiaries receiving significant inheritances 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 this family legacy or lack effective communication or trust among family members. These typical dysfunctional “family dynamics” may lead to distrust and destructive behavior that is 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 which allow beneficiaries to flourish.

### **Delaware's New Beneficiary Well-Being 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>4</sup> If the governing instrument makes express reference to Section 3345, the trust is deemed to include the powers, duties, rights, and interests of the beneficiaries, trustees, and advisers, as provided in Section 3345. "[B]eneficiary 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 "[e]ducating 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> Trustees and advisers of a Beneficiary Well-Being Trust shall provide trust beneficiaries with these programs<sup>7</sup> at the expense of the trust.<sup>8</sup> Dynastic wealth, especially when held in trusts controlled by independent parties, may become isolating and divisive within a family. Financial independence may lead family members to "go their separate ways". Holding assets in trust may prompt distrust among family members if only select family members are active in trust administration, receive complete information regarding trust assets and administration, or these valuable trust assets are held in a pooled "pot" trust for multiple beneficiaries with distributions controlled by subjective distribution standards. The goal of beneficiary well-being programs is to enhance beneficiary education, engagement and transparency regarding family wealth to provide for a beneficiary's holistic well-being.

The new Beneficiary Well-Being law was effective upon enactment and applies to trusts whenever created. This first-of-its-kind statute adds another tool to Delaware's favorable trust laws. Affluent families located anywhere in the country may create a Beneficiary Well-Being Trust that sets forth 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>9</sup> Whether the trust explicitly requires a trustee to provide Beneficiary Well-Being programs, or the trustee provides these services under its default fiduciary powers, the trustee may pay for such services from the trust estate.<sup>10</sup>

**This One-of-a-Kind Tool Helps Families Capture Historically High Estate and Gift Tax Exemptions as Part of the Great Wealth Transfer**  
Wealthy families have traditionally focused their estate planning on

minimizing taxes and maximizing distributions to family members. During this process, these families may overlook opportunities to develop shared family values, preserve their family's history and heritage, participate in family philanthropy, enhance communication skills, and share their intentions behind this significant transfer of wealth. Instead, beneficiaries may often take their inheritances and go their separate ways while dissipating these sums on their current needs and desires without properly shepherding the family endowment through the generations. This loss of family wealth may be from a lack of understanding and education. A Beneficiary Well-Being Trust may provide the financial resources to fund these educational and personal development activities through multiple generations.

A current motivation to fund a Beneficiary Well-Being Trust comes from the potential reduction in the federal estate and gift tax exemption at the end of 2025 if current law is not changed. The federal estate and gift taxes are a "unified" tax system since these transfer taxes are applied against the value of property passing by gift during lifetime or from an estate upon death. The Internal Revenue Code provides an exemption from the estate and gift tax through application of the Unified Credit. If someone were to die in 2024, their lifetime taxable gifts plus the value of their estate would be totaled upon death, the federal transfer tax calculated, and a unified credit would be applied to offset the tax on the first \$13.61 million of value. This credit has changed over time and is currently at its highest value ever – shielding \$13.61 million per person. This elevated credit amount is the result of the Tax Cuts and Jobs Act of 2017 (TCJA) doubling the basic exclusion from \$5 to \$10 million along with indexing for inflation. However, these provisions of the TCJA are set to expire at the end of 2025 with the base amount reverting to \$5 million. With inflation adjustments, this exemption value is anticipated to be approximately \$7 million in 2026. This unified tax credit may be used either during life to shield gifts from tax or at death to eliminate tax on estate assets, or both.<sup>11</sup> Consequently, the reduction of the exemption at the end of 2025 from approximately \$14 million to \$7 million makes the difference (the \$7 million "bonus" exemption) a use-it-or-lose-it proposition.

According to Knight Frank Global Wealth Report, there are approximately 290,000 individuals in the United States with a net worth greater than \$30 million.<sup>12</sup> These families face a tough choice between shielding their net worth from estate and gift taxes, by capturing this "bonus" exemption through gifts in trust, or retaining full control over their wealth and subjecting it to potential tax upon death. Several strategies using trusts exist whereby a married couple may gift assets in trust for each spouse to retain some level of access and control during their lives. These trusts are often referred to as Spousal Lifetime Access Trusts (or SLATs). As discussed above, trusts have typically focused on financial management until now, with a trustee holding duties to invest as a prudent person and make distributions to beneficiaries based upon the common standards of health, support, maintenance or education. Families facing the difficult choice of whether to capture the "bonus" exemption in trust now have the benefit of Delaware's new law to provide for a beneficiary's well-being.

Moreover, a Beneficiary Well-Being Trust may be only one of many favorable features of a trust administered in Delaware. As noted above, married couples are creating trusts that benefit each other (SLATs) to capture the bonus exemption while retaining access to the trust assets. Because just over \$27 million can pass gift tax-

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free into these trusts, SLATs have become family endowments that may last multiple generations. In Delaware, investments and distributions may be controlled by hand-selected advisers to retain further control over these trusts. Consequently, Beneficiary Well-Being Trusts may be structured as SLATs which are investment and distribution-directed and last in perpetuity.

Beyond the ultra-wealthy who are capturing bonus exemption in multi-million-dollar trusts, a Beneficiary Well-Being Trust can serve any affluent family<sup>13</sup> who wants their heirs to receive more than financial benefits from their wealth. Even if a trust does not last indefinitely, the next generation may benefit greatly from receiving financial literacy education, coaching around inheriting wealth, information about the beneficiaries' family history, family values, family governance, and connection among family members.

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

Most business-owning families share a common goal of transitioning their business through multiple generations. Moreover, they face the challenge of accommodating the various needs and requirements of future generations regarding active participation in the business, their reliance upon income from the business, and access to information regarding business operations. Not surprisingly, research indicates that approximately 70% of transfers from one generation to the next will fail and 91% of multi-generational wealth transfers are doomed to fail by the third generation.<sup>14</sup>

Additional research reveals the causes of these failures: 60% are due to breakdowns in communication and trust within families, 25% due to heirs who are not prepared for financial responsibility, 10% due to a lack of a common family purpose or mission, and only 5% due to taxes, corporate governance, legal challenges and other business-related obstacles that can be addressed through traditional estate planning, insurance, or other risk mitigation strategies.<sup>15</sup> Surprisingly, only 5% of these breakdowns are due to a failure in preparing the wealth for the family through traditional estate planning, tax planning and business transition planning. However, 95% of the issues causing these failures are due to a lack of preparing the family for the wealth. Beneficiary well-being programs are ideal vehicles for preparing the family members to be proper stewards of the wealth while also receiving the maximum benefit from this family 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.

### Conclusion

Delaware's novel new Beneficiary Well-Being Trust law is an essential tool for modern trust planning to help affluent families transition family wealth successfully through the generations. Families who have created a family endowment by funding multi-generational trusts using the historically high exemptions from federal estate and gift taxes now have a tool to prepare the family

for the wealth and develop the next generation of family leaders, fund personal development activities, and maintain family cohesion through multiple generations. For business-owning families, it may help them beat the odds and successfully transfer the business through multiple generations. The First State continues to pioneer impactful trust laws that unlock the full potential of personal trusts to impact the well-being of trust beneficiaries.<sup>16</sup>



*As part of the Wilmington Trust Emerald Family Office & Advisory® team, Jeff is responsible for developing trust planning strategies for wealthy individuals and families throughout the United States and abroad. He works closely with his clients' legal, tax, and investment advisors to construct and implement appropriate trust structures that take advantage of the state of Delaware's unique trust and tax laws.*

*Jeff is a recipient of the Wilmington Trust Chairman's Club award. He is a member of the Estates and Trusts Section of the Delaware State Bar Association and the Real Property, Trust & Estate Section of the American Bar Association.*

#### Notes:

- 1- 84 Del. Laws 391, §§ 5 and 7 (2024)
- 2- IRC §§ 2010 and 2505
- 3- The Cerulli Report – U.S. High-Net-Worth and Ultra-High-Net-Worth Markets 2021: Evolving Wealth Demographics (January 20, 2022)
- 4- 84 Del. Laws 391, § 7 (2024)
- 5- 12 Del. Code § 3345(b)
- 6- 12 Del. Code § 3345(b)(1) and (2)
- 7- 12 Del. Code § 3345(c)
- 8- 12 Del. Code § 3345(d)
- 9- 12 Del. Code § 3325(32)
- 10- 12 Del. Code §§ 3325(32) and 3345(d)
- 11- IRC §§ 2010 and 2505
- 12- Knight Frank. The Wealth Report 2020, <https://content.knightfrank.com/content/pdfs/global/the-wealth-report-2020.pdf> p. 54 (last accessed Nov. 11, 2024)
- 13- Knight Frank. The Wealth Report 2020, <https://content.knightfrank.com/content/pdfs/global/the-wealth-report-2020.pdf> p. 54 (last accessed Nov. 11, 2024). Approximately 18.5 million individuals in the US have a net worth greater than \$1 million.
- 14- Roy Orville Williams and Vic Preisser, *Preparing Heirs: Five steps to a successful transition of family wealth and values* (Reid, 2003), p17
- 15- Roy Orville Williams and Vic Preisser, *Preparing Heirs: Five steps to a successful transition of family wealth and values* (Reid, 2003)
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