

The Delaware Edge

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Michael E. Roberts, J.D., LL.M.

President

Reliance Trust Company of Delaware

Michael.Roberts@fisglobal.com



the place where something exists or originates;
specifically : the place where something (such as a
right) is held to be located in law

- Taxation
- Jurisdiction
- Governing Law
 - Asset Protection
 - Rule against Perpetuities
 - Ability to Decant or Modify
 - Other factors
 - Duty to notify beneficiaries
 - Validity of No Contest provisions
 - Ability to serve as fiduciary



- Bank of America N.A. v. Comm’r of Revenue, 54 N.E. 3d 13 (Mass. 2016)
- Kimberley Rice Kaestner 1992 Family Trust v. N. Carolina Dep’t of Revenue, 793 S.E.2d 683 (N.C. 2016)



State	Income Tax
South Dakota	No
Nevada	No
Alaska	No
Delaware	No (except residents)

- Delaware Incomplete Non-Grantor” Trusts (“DING”)
- Delaware Tax Trap



- Hanson v. Denckla, 357 U.S. 235 (1958)
- Uniform Trust Code: Section 202
- In the Matter of Peierls Family Inter Vivos Trusts,
2013 WL 5539329 (Del. Oct. 4, 2013)

State	Rule against Perpetuities
South Dakota	Perpetual
Nevada	365 years
Alaska	Perpetual 1,000 yrs if POA
Delaware	Perpetual 110 yrs for real estate

State	Statute of Limitations		Exception Creditors	Preexisting Tort	Ease of Use
	Future	Preexisting			
Nevada	2 yrs	2 yrs or 0.5 yr discovery	No	No	No affidavit required
South Dakota	2 yrs	2 yrs or 0.5 yr discovery	Divorcing spouse; Alimony; Child support	No	No affidavit required
Delaware	4 yrs	4 yrs or 1 yr discovery	Divorcing spouse; Alimony; Child support	Yes	No affidavit required
Alaska	4 yrs	4 yrs or 1 yr discovery	Divorcing spouse	No	Affidavit required



State	Notice	Ascertainable Standard to Discretionary	Remove Mandatory Income	Accelerate Remainder Interest
Nevada	No	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes
Delaware	No	No	Yes	No
Alaska	Yes	No	No	No



- Duty to notify beneficiaries
- Validity of No Contest provisions
- ILITs
 - Insurable interest
 - Prudent investor
- Ability to serve as fiduciary

- Trust Tradition
- Population

	Wilmington, DE	Reno, NV	Sioux Falls, SD
Within 50 miles	7,151,472	588,804	335,369
Within 100 miles	20,464,043	1,690,519	908,084
Within 150 miles	40,244,858	4,942,483	1,656,250

- Court System

Year	Delaware	Nevada	South Dakota	Alaska
2017	11	37	1	6
2015	1	35	9	12
2012	1	37	11	13



Delaware – the Trust Friendly State

Trust Friendly Structure	State Income Tax	Directed Trust Statute	Protector Statute	Asset Protection Statute
Early 20 th Century	Residents Only	Yes 1986	Yes 2008	Yes 1997

Dynasty Trust Statute	Limited Disclosure to Beneficiaries	Decanting Statute	Insurable Interest in Trustee of ILIT	In Terrorem Clause
Yes 1995*	Yes 2003	Yes 2003	Yes 1998	Yes 2003

