

A red paper airplane is shown in flight, moving from the bottom right towards the top right. A white, stylized cloud trail follows the path of the airplane, starting from the bottom left and curving upwards. The background is a light blue gradient.

**Using
Common
Trust Powers
to Achieve
Uncommon
Results**



Delaware Bankers Association

P.O. Box 781

Dover, DE 19903-0781

Phone: (302) 678-8600 Fax: (302) 678-5511

www.debankers.com

BOARD OF DIRECTORS

CHAIR

Thomas M. Forrest
President & CEO

U.S. Trust Company of Delaware

CHAIR-ELECT

Dominic C. Canuso

EVP & Chief Financial Officer

WSFS Bank

PAST-CHAIR

Joe Westcott

Market President

Capital One

DIRECTORS-AT-LARGE

Tarrie Miller

President & COO

County Bank

Matthew Parks

Director

Discover Bank

DIRECTORS

Diana Clift

Head of Legal

Barclays

Nicholas P. Lambrow

President, Delaware Region

M&T Bank

Caroline Harty Dickerson

Chief Executive Officer

Commonwealth Trust Company

Isabel Pryor

Chief Administrative Officer & SVP

Key National Trust Co. of DE

James Hutchinson

SVP/Market Executive

PNC Bank, N.A.

Bonnie Rumbold

Chief Human Resources Officer

Sallie Mae

George Kern

Regional Director

Bessemer Trust Co. of Delaware

Joel Schiller

SVP Chief Risk Officer

Artisans' Bank

Lisa P. Kirkwood

SVP, Regional Vice President

TD Bank

Shelley Waite

Head of CCB Collections

JPMorgan Chase & Company

President, CEO & Treasurer

Sarah A. Long

Delaware Banker

Editing & Design

Greg Koseluk

Editorial Disclaimer:

The opinions expressed in articles by authors other than the Association staff and officers are the responsibility of the authors only and not necessarily those of the Delaware Bankers Association. Questions and comments should be addressed to the Editors. No part of this publication may be reproduced without the written permission of the Editors. Copyright 2021 by the Delaware Bankers Association. All Rights Reserved.

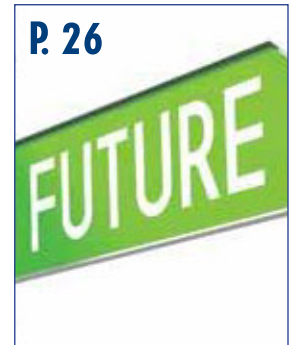
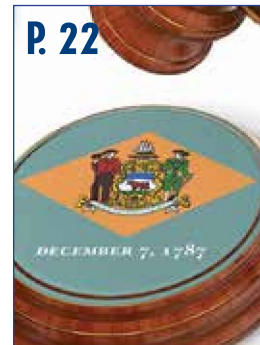
Delaware Banker seeks to provide banking updates and other news of interest to the members of the Delaware Bankers Association. With the exception of official announcements, the Delaware Bankers Association disclaims responsibility for opinion and statements contained in Delaware Banker, and does not endorse any product or service. Delaware Banker is designed to provide accurate information on the subject matter covered. It is presented with the understanding the publisher is not engaged in rendering legal, accounting, or other professional services or advice.



Fall 2021

Vol. 17, No. 4

The Quarterly Publication of the Delaware Bankers Association



Contents

View from the Chair	4
President's Report	6
What's New at the DBA	8
Using Common Trust Powers to Achieve Uncommon Results	10
2021 Delaware Trust Conference Special Section	15
A Sweet Return: 2021 Delaware Trust Conference	17
Delaware Trust Act 2021	22
The Past, Present, and Future of Spendthrift Trusts	26
For Your Benefit	32
Compliance Focus	34
Accounting for Success	36
Trust Administration Update	38

SUBMISSIONS

Delaware Banker welcomes news items from members of the Delaware Bankers Association. The Editors reserve the right to refuse any advertising or editorial copy deemed unsuitable for publication. The Editors reserve the right to set the publication date in accordance with the Association's needs. Direct submissions to Greg Koseluk at greg.koseluk@debankers.com

SUBSCRIPTIONS

Delaware Banker is available free of charge to all officers, executives, management, and key personnel of DBA members. Paid subscriptions to Delaware Banker are available to all others at a rate of \$20 per year. To be placed on the subscriber list, please email Greg Koseluk at greg.koseluk@debankers.com.

ADVERTISING

Advertising inquiries should be directed to Greg Koseluk at (302) 382-6467 or greg.koseluk@debankers.com. Rates will be furnished upon request.

Trust Administration Update

Delaware Designated Representatives: Statutory Update



Travis G. Maurer
Young Conaway Stargatt & Taylor, LLP



Kenneth L. Norton
Young Conaway Stargatt & Taylor, LLP

Since its enactment, 12 Del. C. § 3339 has permitted the appointment of a designated representative to represent and bind a trust beneficiary in any judicial proceeding or nonjudicial matter affecting the beneficiary's interest in the trust. Although often used in tandem with 12 Del. C. § 3303, the so-called “silent trust statute” which allows a trust instrument to vary or eliminate a beneficiary's right to be informed for a period of time, Delaware's recently amended statutory framework regarding designated representatives creates maximum flexibility in the administration of both “silent” and “non-silent” trusts.

Role of the Designated Representative

During the course of the administration of a trust, various matters often necessitate the involvement of trust beneficiaries (for example, to provide consent or a release with respect to investment decisions, distributions or other actions of trust fiduciaries). Because direct participation by beneficiaries with respect to trust administration matters is not always possible (e.g. silent trusts or in the case of minor beneficiaries), 12 Del. C. § 3339 permits a designated representative to stand in the shoes of any nonparticipating beneficiaries to represent and bind such beneficiaries in any judicial proceeding or nonjudicial matter affecting their interest in the trust—for example, with respect to a nonjudicial settlement agreement, pursuant to 12 Del. C. § 3338, or a modification by consent, pursuant to 12 Del. C. § 3342.

Appointment of a Designated Representative

The designated representative typically serves by express appointment as such in the governing instrument or by subsequent selection by someone authorized by the governing instrument to appoint a designated representative. However, the

need for a designated representative may arise as a post-execution consideration.

For example, 12 Del. C. § 3547 generally allows the virtual representation of a trust beneficiary by another beneficiary with a substantially identical interest or a custodial parent of the trust beneficiary. However, such virtual representation is prohibited if there is a material conflict of interest between the representative and the beneficiary with respect to the particular question or dispute. So, virtual representation is not always an option in the context of family wealth planning where material conflicts of interests may exist between a trust beneficiary and his or her parents or the other beneficiaries of the trust.

Recent updates to 12 Del. C. § 3339 provide a creative solution to the virtual representation problem discussed above by allowing the trustor to appoint a designated representative when one is not appointed pursuant to the terms of the trust instrument. It should be noted that appointment by the trustor is subject to certain restrictions contained in 12 Del. C. § 3339(a)(4).

Acceptance by a Designated Representative

In addition, the revised statutory language of 12 Del. C. § 3339 modifies the means by which a designated representative may accept his or her appointment. Prior to the most recent amendments, an appointment became effective only after a designated representative delivered his or her written acceptance thereof to the trustee. However, the revised statutory language provides that acceptance may be accomplished through service or similar action by the designated representative.

**YOUNG
CONAWAY**



Travis G. Maurer, Richard J.A. Popper, Timothy J. Snyder, John J. Paschetto, Justin P. Duda
Norman M. Powell, Craig D. Gear, James P. Hughes, Jr., Allurie R. Kephart, Vincent C. Thomas

Our Business & Tax Section Is Expanding to Better Serve You

*Asset Protection • Business Transactions • Entity Formation and Governance
Legal Opinions • Tax, Trusts and Estates*

MEET OUR NEWEST
COLLEAGUES



Richard W. Nenno
Joining October 18, 2021



Lauren M. McCrery



Sarah M. Hand