Statutory Trust Law Update

Monday, August 3, 2026

The 2026 Amendments to the Delaware Statutory Trust Act

The Delaware General Assembly recently enacted amendments to the Delaware Statutory Trust Act (the "DSTA") which became effective on August 1, 2026. The amendments make a variety of changes relating to the nature and operation of Delaware Statutory Trusts ("DSTs"), including amendments (i) providing for the irrevocability of subscriptions for beneficial interests, (ii) extending liability protections to advisers, (iii) clarifying the mechanisms for ratification and waiver, (iv) prohibiting the use of virtual offices by registered agents, (v) authorizing the revocation of a dissolution of a series, (vi) streamlining the nullification of previously filed certificates, (vii) concerning certificates of merger and certificates of consolidation, (viii) updating the requirements for certificates of division, and (ix) concerning control beneficial interest acquisitions.

I. Irrevocable Subscriptions

Section 3802 of the DSTA has been amended to add a new Section 3802(d), which clarifies that a subscription for a beneficial interest may be irrevocable if the subscription states it is irrevocable to the extent provided by the terms of the subscription.

II. Advisor Limitation of Personal Liability

Section 3803(c) of the DSTA has been updated to extend the limitation of personal liability available to officers, employees, managers and other agents appointed pursuant to the DSTA to advisers. An adviser, as defined in Section 3313 of the Delaware Code, is a person given authority by the terms of a governing instrument to direct, consent to or disapprove investment decisions, distribution decisions or other decisions of the DST.

III. Ratification and Waiver

Section 3806(o) of the DSTA has been updated to clarify the mechanisms for ratification and waiver of void or voidable acts or transactions. The amendment provides that acts or transactions by any trustee, beneficial owner or other person may be ratified or waived, in addition to acts or transactions by a DST. The amendment provides that the ratification or waiver may be express or implied, including by the statements, action, inaction or acquiescence of or by the trustees, beneficial owners or other persons. The amendment also clarifies that when notice of the ratification or waiver is required to be given, it is not a condition to the effectiveness of the ratification or waiver.

IV. Virtual Offices

Section 3807 of the DSTA has been updated to clarify that a registered agent may not perform its duties solely through the use of a virtual office, the retention of a mail forwarding servicer, or both.

The amendment defines the use of a virtual office as performing the duties or functions of a registered agent solely through the internet or through other means of remote communication.

V. Revocation of Dissolution of a Series

Section 3808(f) of the DSTA has been updated to add procedures for revoking the dissolution of a series of a DST. The dissolution of a series of a DST may be revoked prior to the winding up of the series in the same manner as a dissolution of a DST may be revoked. The amendment also clarifies that the dissolution of a series caused by the dissolution of the DST will be automatically revoked upon revocation of the dissolution of the DST, unless the winding up of the series has been completed.

VI. Nullification through Certificates of Correction

Section 3810 of the DSTA has been amended to confirm that, in addition to correcting a previously filed certificate, a certificate of correction may also nullify a previously filed certificate by specifying the inaccuracy or defect with respect to the previously filed certificate and providing that the previously certificate is nullified or void.

VII. Certificates of Merger and Certificates of Consolidation

Section 3815(b) of the DSTA has been updated to change the information that may be or is required to be provided in the certificate of merger and certificate of consolidation. The certificate of merger may state amendments to the certificate of trust of the surviving DST that will be effected by the merger. In a consolidation, if the resulting entity is a DST, a certificate of trust must be attached to the certificate of consolidation.

VIII. Certificates of Divisions

Section 3825(h) of the DSTA provides that a certificate of division must state the name and business address of both the division contact and the division trust where the plan of division is on file. Because this information may change over time, the amendment allows the filing of a certificate of amendment to the certificate of division to amend the name or business address of the division contact or the division trust. A trustee of a dividing trust or a resulting trust who becomes aware that this information was false when made or has changed must promptly amend the certificate of division. This requirement lasts for a period of 6 years following the effective date of the division.

IX. Control Beneficial Interest Acquisitions

The 2026 amendments to the DSTA make changes to Subchapter III of the DSTA related to control beneficial interest acquisitions for certain DSTs registered under the Investment Act of 1940 as closed-end management investment companies or DSTs that are closed-end management investment companies that have elected to be regulated as business development companies under the Investment Company Act of 1940. Sections 3881 and 3883 of the DSTA have been updated to clarify that (i) an "associate" of a person includes any investment fund or other collective investment vehicle or separate account managed or advised by the person specified, (ii) beneficial interests are not control beneficial interests until after a control beneficial interest acquisition has occurred, (iii) reductions in the outstanding beneficial interests of a DST for any reason can cause beneficial interests that were not previously control beneficial interests to become control beneficial interests subject to the requirements of Subchapter III, and (iv) approvals or exemptions of beneficial interests from the requirements of Subchapter III can occur before, at the time of, or after, the acquisition of such beneficial interests.

Section 3882 of the DSTA has been updated to remove the requirement that beneficial interests acquired within 90 days or in a series of related transactions must be considered acquired in the same acquisition. Section 3882 of the DSTA has also been updated to provide that, unless otherwise expressly provided, approvals and exemptions of a control beneficial interest acquisition will apply to all beneficial interests acquired within the same range of voting power to which the approval or exemption applied.

Section 3888 of the DSTA has been updated to require a holder of beneficial interests or an associate of a holder to provide, upon request, the following information: (i) whether a control beneficial interest acquisition has occurred, (ii) whether any beneficial interests are control beneficial interests, and (iii) whether and how many beneficial interests have been voted in violation of Subchapter III. The DST may also adopt procedures that the trustees reasonably believe are necessary or desirable to determine whether and how many control beneficial interests will or have been voted in violation of Subchapter III. These procedures may include presumptions about whether and how a holder of beneficial interests or its associate will vote on any matter. The DST's proxy materials must describe each procedure and presumption to be applied with respect to voting at that meeting. Absent proof reasonably satisfactory to the trustees that the holder acted in a manner different from the presumption, the beneficial owner will be deemed to have voted in a manner consistent with any presumption adopted in accordance with the procedures in amended Section 3888.

X. Conclusion

The DSTA was originally enacted in 1988 to provide greater certainty and flexibility with respect to trusts that are used in business transactions. The Delaware statutory trust is the preeminent form of trust for use in structured finance and investment fund transactions. The 2026 amendments to the DSTA demonstrate Delaware's dedication to providing a sophisticated and modern body of statutory trust law that meets the changing needs of industry participants in the marketplace of today and the future. Delaware is committed to reviewing and enhancing the DSTA to maintain Delaware's position as the top jurisdiction in which to form statutory trusts.