

Trust Act 2022

On June 30, 2022, Governor John Carney signed into law the Delaware Trust Act 2022. This Act includes several important changes to Title 12 of the Delaware statutes, as outlined below:

BENEFICIARY NOTICE PROVISION (SECTION 3534)

this Section was revised to explicitly include designated representatives (as defined under §3339) within the class of persons who may receive notice on behalf of an individual under the statute.

CREDITOR RIGHTS (SECTION 3536(E))

the update to this Section expands the ability of a beneficiary of charitable remainder trust to transfer the remainder interest to a charity by assignment, in addition to a release, and expands the ability of the beneficiary of a QTIP trust to transfer an interest in the trust by assignment or other means to the succeeding beneficial interest.

RELEASE OF BENEFICIAL INTEREST BY BENEFICIARIES (SECTION 3536A)

new to the Delaware Statute, Section 3536A permits a beneficiary of a trust to release (in full or in part) his or her interest in the same, even if the beneficiary previously accepted some benefit of such interest. This will provide a streamlined way for a longtime beneficiary of a trust who no longer wants or needs the income (or other interest in the trust) to terminate that interest. In this way, an older beneficiary who would like her interest to terminate so that her children may receive the remainder interest sooner (assuming the trigger for the change of beneficiary would otherwise be the initial beneficiary's death) may facilitate a transfer of the interest presently.

RECEIPT OF NOTICE (SECTION 3546)

Section 3546 has been amended to conform its provisions regarding the receipt of notice to those of Section 3585 (outlined below). The revised statute now provides that the receipt of notice shall be either (i) the date the notice is received, or (ii) in the absence of evidence of the date of receipt, it will be presumed to have been received seven (7) days after the notice was sent.

NOTICE DEFINITIONS (SECTION 3585)

the revisions to Section 3585 clarify the use of the statutory limitations periods applicable to actions against a trustee following the trustee's delivery of an accounting. The clarifications include the addition of (i) a presumption that a person has received a report seven (7) days after the report was sent in conjunction with Section 3534 of Title 12. (ii) a confirmation of the fact that persons may waive the 120-day notice period instead of waiting for the same to toll to accelerate the expiration of such period where all parties agree, and (iii) a confirmation that the limitations period of Section 3585 are not intended to expand the limitation period for claims against the estate or revocable trusts of a deceased individual fiduciary. In addition, the revisions clarify the fact that Section 3585 is intended to bar judicial proceedings.

