

2016 DELAWARE TRUST CONFERENCE

*“We Are Family” – ‘Hot’ Vehicle for Estate, Tax,
Family, and Business Planning”*



Jerome K. Grossman, Esq. – Partner, Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
302-571-6685
jgrossman@ycst.com

Patricia H. Matthews – Vice President, J.P. Morgan Trust Company
500 Stanton-Christiana Road
Newark, DE 19713
302-634-3386
patricia.h.matthews@jpmorgan.com

Delaware Statutory Trusts

- I. Statutory entity
 - A. Certificate of Trust filed with Secretary of State
 - B. Trust agreement between grantor, equity owners, and trustee(s), one or more whom must be either a Delaware resident individual or entity that has Delaware trust powers.

II. Trust agreement provisions

III. Taxation

- A. Corporation
- B. Partnership
- C. Grantor trust (advantages for I.R.C. section 1031 exchanges)

IV. Advantages

- A. Limited liability
 - 1. Beneficiaries
 - 2. Trustee
 - 3. Partnership
- B. Delegation of management/management flexibility
- C. No need for annual meetings
- D. No franchise taxes (compare to corporations) – annual registration fee
- E. No limit on number of investors
- F. Availability of indemnification
- G. Classes of beneficial interest
- H. Other trusts can be beneficial owners
- I. Can have series interests (classes)
- J. Valuation discounts
- K. Preferred by lenders to tenants-in-common (TIC) structures
- L. Special purpose entity/bankruptcy protection
- M. Structured financing

v. Example of estate planning utilization

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- VI. Uses in Like-Kind Exchanges and Certain Drop-and-Swap Transactions
 - A. Advantages
 - B. Disadvantages
 - C. Acquisition transactions
 - D. Disposition transactions