

## SULLIVAN COUNTY BAR ASSOCIATION

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#### The Beneficiary Well-Being Trust: What Delaware's Senate Bill 268 Can Teach New York

As attorneys in New York, we are accustomed to the intricate interplay of trust and estate laws, which offer robust protections for grantors, beneficiaries, and trustees.

However, the introduction of Delaware's Senate Bill 268, establishing the Beneficiary Well-Being Trust (BWT), has sparked a nationwide conversation about the evolution of trust law. This new statute brings an innovative approach to beneficiary protections and estate planning goals. For New York practitioners, understanding Delaware's progressive framework can offer insights into how our state might modernize its own trust laws to better align with contemporary needs.

It has always been my opinion that New York should lead the way with respect to innovative trust and estate legislation, since the State likely hosts more trust assets than any other state. As practitioners in New York, we are constrained by New York law, of course, but nothing prevents us from 'looking' at the legislation in other states for ideas on how we may best serve our clients. And, we do have access to many institutional trustees who have trust powers in Delaware. In my experience, local firms occasionally partner with Delaware attorneys to liaise with Delaware trust companies.

#### What Is Delaware's Senate Bill 268?

Delaware's Senate Bill 268 introduces the Beneficiary Well-Being Trust, a first-of-its-kind trust structure designed to prioritize the holistic well-being of beneficiaries. Traditional trusts often emphasize financial management and asset preservation. By contrast, the BWT focuses on addressing the broader physical, emotional, and social needs of beneficiaries, creating a trust instrument that aligns more closely with modern family dynamics and societal values.

Key provisions of the BWT include:

1. **Well-Being as a Trust Purpose:** The BWT explicitly states that the trustee's primary duty is to promote the beneficiary's well-being, which includes health, education, housing, and social development. This approach shifts the trust's purpose from purely financial stewardship to a more comprehensive model of care. In addition, the BWT protects the trustee from liability that may arise from placing a focus on well-being issues.

2. **Discretionary Powers for Trustees:** Trustees of a BWT are granted wide discretion to disburse funds for purposes that enhance the beneficiary's quality of life. This includes funding for therapy, educational programs, social activities, or even relocation expenses to facilitate better living conditions.

3. **Protections Against Creditors:** The BWT incorporates strong asset protection mechanisms, shielding trust assets from most creditor claims while allowing for necessary distributions to the beneficiary.

4. **Oversight and Accountability:** To balance the trustee's expanded discretion, the BWT requires detailed reporting and oversight mechanisms to ensure that funds are used in alignment with the trust's objectives.

5. **Irrevocability and Flexibility:** While the BWT is irrevocable, it allows for adjustments in administration to adapt to changes in the beneficiary's circumstances or well-being goals.

### Comparing Delaware's BWT to New York's Trust Framework

New York's trust law, governed primarily by the Estates, Powers, and Trusts Law (EPTL), provides comprehensive mechanisms for asset management and distribution. However, New York trusts typically lack the specific focus on beneficiary well-being that defines the BWT.

#### 1. Purpose of the Trust:

New York law allows for discretionary trusts, spendthrift trusts, and special needs trusts, all of which can serve specific purposes. However, these structures generally center on asset protection or supplemental financial support, without expressly prioritizing the broader well-being of beneficiaries. Delaware's BWT codifies this holistic purpose, making it a formal part of the trust's mission.

#### 2. Trustee Discretion:

While New York permits trustees broad discretion in certain trust types, Delaware's BWT explicitly empowers trustees to consider non-financial factors in their decisions. This expanded discretion enables trustees to allocate resources toward less traditional but equally critical areas, such as mental health treatment or social enrichment.

#### 3. Asset Protection:

Both New York and Delaware offer robust asset protection mechanisms for irrevocable trusts. However, the BWT incorporates these protections within the context of its well-being-focused mission, ensuring that the trustee's discretion cannot be easily undermined by creditor claims.

#### 4. Oversight Mechanisms:

Delaware's Senate Bill 268 introduces enhanced reporting requirements and accountability for trustees administering a BWT. While New York's trust law includes general fiduciary standards,

it does not specifically mandate oversight mechanisms tailored to well-being objectives. Adopting similar provisions could enhance trust administration in New York.

#### 5. Adaptability:

One of the most compelling aspects of the BWT is its built-in flexibility to adjust trust administration in response to changing circumstances. While New York trusts can sometimes be modified through decanting or judicial reformation, these processes can be cumbersome. The BWT's framework simplifies these adaptations, allowing trustees to respond more effectively to beneficiaries' evolving needs.

#### Why Should New York Take Note?

The BWT reflects a broader societal shift toward addressing holistic needs in financial and legal planning. For New York practitioners, this presents an opportunity to advocate for similar reforms that align with the state's long-standing commitment to progressive legal principles.

#### 1. Meeting Client Expectations:

Clients increasingly seek estate planning solutions that reflect their values, including prioritizing the health and happiness of their loved ones. By integrating well-being-focused provisions into trust instruments, New York can better meet these expectations and maintain its competitive edge as a jurisdiction of choice for estate planning.

#### 2. Enhancing Trustee Roles:

Expanding the trustee's role to include a focus on beneficiary well-being creates opportunities for more personalized and impactful trust administration. This approach aligns with the evolving role of fiduciaries in addressing both financial and non-financial client goals.

#### 3. Promoting Social Equity:

The BWT's flexibility and focus on individual circumstances make it particularly well-suited for beneficiaries with diverse needs, such as those with disabilities, chronic illnesses, or other unique challenges. By adopting similar laws, New York could promote greater social equity in trust administration.

#### 4. Streamlining Administration:

New York's decanting and modification processes can be time-consuming and expensive. Incorporating the BWT's adaptability could streamline trust administration, reducing costs and delays while maintaining effective oversight.

Practical Considerations for New York Attorneys

While Delaware's BWT is an exciting development, it is not without challenges. For one, the expanded discretion granted to trustees requires careful drafting to ensure that the trust's terms are clear and enforceable. Additionally, attorneys must consider how to balance flexibility with accountability, particularly in cases where family dynamics are complex.

For New York practitioners, this means:

- **Reviewing Existing Trusts:** Consider whether current trust instruments could benefit from provisions that prioritize well-being. For example, trustees could be granted broader discretionary powers or encouraged to consider non-financial factors in their decision-making.
- **Advocating for Reform:** As legal professionals, we have a unique role in shaping public policy. By highlighting the benefits of Delaware's approach, we can encourage New York lawmakers to consider similar reforms that address the evolving needs of our clients.
- **Educating Clients:** Many clients may not be aware of the possibilities for incorporating well-being-focused provisions into their estate plans. By educating them about these options, we can help them achieve their goals more effectively.

## Conclusion

Delaware's Senate Bill 268 and the introduction of the Beneficiary Well-Being Trust represent a significant advancement in trust law, one that places the well-being of beneficiaries at the forefront. While New York's trust framework remains robust, there is room for improvement in addressing the holistic needs of beneficiaries. By learning from Delaware's example, New York can continue to lead the way in innovative and equitable legal practices.

As we enter the new year, let us reflect on how we, as attorneys, can advocate for meaningful change in our profession and our laws. Delaware's BWT offers a model for reimagining trust law in a way that truly prioritizes the well-being of those it is designed to protect. Let us ensure that New York remains a leader in meeting the needs of its people.