

# WHAT'S SO SPECIAL ABOUT TENNESSEE TRUST LAWS?

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The Volunteer State consistently stands out as one of the leading choices for establishing and maintaining trusts. With its exceptional trust laws, legislature that is supportive and responsive, and a favorable tax environment, Tennessee is widely recognized as a prime jurisdiction. This unique combination is often referred to as The Tennessee Trust Advantage, particularly appealing to families with asset transfer plans spanning multiple generations. Families from all over the United States and even internationally find Tennessee trusts highly desirable, offering protection and continuity for their family legacies. The following advantages serve as a testament to Tennessee's commitment to maintaining its position at the forefront of progressive trust legislation.

- **DIRECTED TRUST STRUCTURE.** Tennessee's directed trust statute provides for the bifurcation of trustee duties—the directed trustee retains responsibility over the administration of the trust, while the designated trust advisor or investment advisor oversees the investment of trust assets. This encourages a family to hand-select its best-in-class team of fiduciaries and advisors to administer and oversee the trust. As example, a grantor's current financial advisor may manage the trust assets, while the trust administration is provided by a Tennessee trustee such as Pendleton Square Trust Company, LLC.

- **FAVORABLE TAX ENVIRONMENT.** While some states levy an income tax on trusts with rates as high as 10-13%, Tennessee does not have a state income tax, inheritance tax, or estate tax. Further, Tennessee does not impose a state capital gains tax on the sale of trust assets.
- **ASSET PROTECTION TRUSTS.** Tennessee's domestic asset protection trust (DAPT) allows a grantor to create a self-settled trust that is protected from certain creditors. The grantor of a Tennessee DAPT can be named as a beneficiary of the trust without compromising its creditor protection features. An out-of-state grantor may create a Tennessee DAPT, but the trustee must be a Tennessee fiduciary, such as Pendleton Square Trust Company, LLC.
- **COMMUNITY PROPERTY TRUSTS.** Tennessee is one of only a very few non-community property states that permit the creation of a community property trust (CPT). This trust allows a married couple to convert separate property into community property by transferring it into the Tennessee CPT. Upon the first spouse's death, the trust assets may receive a full step up in basis to fair market value for tax purposes. While both residents and non-residents can establish a Tennessee CPT, the trustee must be a Tennessee fiduciary.
- **MODIFICATION BY NON-JUDICIAL SETTLEMENT AGREEMENT.** Tennessee law authorizes the modification of an irrevocable trust by a non-judicial modification agreement (NJMA) signed by the trustee(s) and qualified beneficiaries (so long as the modification does not violate a material purpose of the trust). Among other permissible changes, the NJMA could amend administrative provisions, remove and replace trustees, or appoint trust advisors and trust protectors. Modifying a trust via NJMA eliminates the hassle and cost associated with petitioning the court to approve a modification.
- **MODIFICATION BY DECANTING.** Tennessee's decanting statute allows a trustee (subject to certain restrictions) to distribute all or a portion of the assets from an original trust into a second trust that may contain different provisions. While most states require the original trust and the second trust to be wholly separate documents, Tennessee permits the second trust to be either the original trust after modification or restatement, or a new trust. Decanting as the original trust after modification or restatement removes the administrative burden of retitling property into the name of the new trust.
- **SPECIAL PURPOSE ENTITIES AS TRUST ADVISOR.** Tennessee law allows for the creation of a Special Purpose Entity (SPE) to serve as trust advisor or trust protector of a trust administered by a Tennessee trustee. The SPE's flexible structure may include a board of directors who appoint members to investment and distribution committees. Not only does the SPE limit liability for its members by virtue of the LLC or corporate structure, but it also helps customize the different trust administration functions. This is a great tool for families seeking to establish thoughtful governance structures.

- DYNASTY TRUSTS OF 360 YEARS. Tennessee's dynasty trust statute provides that trusts may exist for 360 years from the date of creation. Dynasty trusts offer tax benefits as well as asset protection advantages. In addition to preserving wealth for generations, they can be structured by families to pass on their financial values to those future generations.

As a Tennessee-chartered trust company, Pendleton Square delivers the necessary knowledge and expertise to effectively navigate the state's progressive trust laws. Our custom approach to administering trusts and serving families safeguards your succession objectives. The team at Pendleton Square is excited to assist you in moving generations forward with the benefits of the Tennessee Advantage.



**About the author:**

*Betsy Brown, CEO of Pendleton Square Trust Company, serves families and advisors to deliver trust and estate services. She is passionate about developing thoughtful legacy plans and educating beneficiaries.*