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## **KEY PROVISIONS OF DELAWARE'S TRUST ACT 2020**

### Enhancements to statutes regarding nonjudicial settlement agreements and modification with grantor's consent or nonobjection (12 Del. C. §§ 3338 and 3342):

- When a grantor is a party to a nonjudicial settlement agreement under section 3338, or when a trust is modified with a grantor's consent/nonobjection under section 3342, then:
  - the beneficiaries needing to consent are all of the trust's beneficiaries (tracking federal tax law); and
  - the grantor can't virtually represent anyone else (unless the grantor certifies in writing that the trust is an incomplete gift for federal gift tax purposes)

### Amendments to statute allowing appointment of multiple trustees and allocation of duties among them (12 Del. C. § 3343):

- A power to appoint additional trustees can be exercised only when there is a vacancy
- Trustee powers that can be allocated include the power to direct or prevent trustee actions
- Greater detail has been provided regarding the interplay of this statute and section 3313A (the excluded co-trustee statute)
- The trustee now excluded can avail itself of any remedies available to a removed trustee (such as obtaining a release under section 3588 or obtaining eventual exoneration upon providing a report under section 3585)
- Existing trustees are given 30 days' notice of any modification of their duties, unless they waive it

### Further protections for departing fiduciaries and their beneficiaries (12 Del. C. § 3585):

- The ability of a trustee to obtain exoneration 120 days after notice is sent to a party can now occur when the trustee is in the process of resigning or being removed (not just when the trustee has actually resigned or been removed)
- Beneficiaries are protected because the trust property must be transferred to the successor trustee within a reasonable time after the 120-day period expires, and because the beneficiary continues to have a cause of action as to the trustee's administration of assets during or after the 120-day period

### Sustainable investing for those managing institutional funds (12 Del. C. § 4703):

- Now permitted (just as for private trust funds under sections 3302 and 3303)

