



Trust Decanting Chart: State by State

Advisor Guide

Although trust decanting arguably exists under common law, 22 states, listed in the chart below, have enacted decanting statutes. While both common law and decanting statutes permit an ILIT trustee to exercise his or her discretionary distribution authority to decant ILIT trust property to a new ILIT, the existence of a state statute should give the trustee statutory authority for the distribution. This can be particularly important when the new trust has substantially different terms or beneficial interest from the old trust.

Although decanting statutes don't generally require court approval or the consent of the settlor and/or beneficiaries, there are certain statutory prerequisites for exercising this power, and they vary from state to state.¹ For example, all of the states with decanting statutes require the trustee to have the power to invade the trust corpus in order to decant. However, Florida and New York prohibit a trustee from decanting when the power to invade principal is limited to an ascertainable standard. While the provisions of a state decanting statute may be limiting, they do allow a trustee to maintain the anonymity of the trust's provisions, which is not an option when a court is involved in a trust reformation.

Trust Decanting State Rankings Chart²

Rank	State	Has Decanting Statute?	Can Decant Trust with Ascertainable Standard?	Notice to Beneficiaries Required?	Can Decant Trust with Ascertainable Standard into Discretionary Trust? Can Remove Mandatory Income Interest?	Allow Grant of Power of Appointment in Second Trust to Beneficiary for the Benefit of Non-Beneficiary?
1	South Dakota	Yes	Yes	No	Yes/Yes	Yes
2	Nevada	Yes	Yes	No	Yes/No	Yes
3	Tennessee	Yes	Yes	No	Yes/No	Yes

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4	New Hampshire	Yes	Yes	No (except for charitable trusts)	Yes/No	Yes
5	Delaware	Yes	Yes	No	No/Yes	Yes
6	Ohio	Yes	Yes	Yes	No/Yes	Yes
7	Alaska	Yes	Yes	Yes	No (except after the first trust would have ended)/No	Yes
8 (tie)	Arizona	Yes (short provisions)	Yes	No	Yes/No	Silent
8 (tie)	Virginia	Yes	Yes	Yes	No (except if court approval)/No	Yes
10	Illinois	Yes	Yes	Yes	No/No	Yes
11	Missouri	Yes	Yes	Yes (but only to beneficiaries of second trust)	No/Yes	Silent
12	Indiana	Yes	Yes	Yes	Yes/No	Silent
13	South Carolina	Yes	Yes	Yes	No/Yes	Yes
14 (tie)	Kentucky	Yes	Yes	Yes	No/No	Yes
14 (tie)	Michigan	Yes	No	Yes	No/No	Yes
14 (tie)	North Carolina	Yes	Yes	Yes	No/No	Yes
14 (tie)	Texas	Yes	Yes	Yes	No/No	Yes

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18 (tie)	Florida	Yes	No	Yes	No/No	Silent
18 (tie)	Rhode Island	Yes	Yes	Yes	Silent/No	Silent
20	Wyoming	Yes (short provisions)	Silent	No	Silent/Silent	Silent
21	New York	Yes	Yes	Yes	No/No	No
22	Wisconsin	Yes	Yes	Yes	No/No	Silent

¹ For a list of decanting procedures, requirements and restrictions by state, see Steve Oshin's "Annual Trust Decanting State Rankings Chart." http://www.oshins.com/images/Decanting_Rankings.pdf. January 2015.

² Ibid.

This material is for informational purposes only and is not meant as tax or legal advice. Please consult with your tax or legal advisor regarding your personal situation.

This illustration is hypothetical and there is no guarantee that similar results can be achieved.

Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation-skipping tax). Failure to do so could result in adverse tax treatment of trust proceeds.

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