

## 2020 TRUST DECANTING CHART: STATE BY STATE

For years, a trustee who needed to move assets from one trust to another had to rely on common law by cobbling together old case law to justify the asset transfer. And even then, many trustees were unwilling to decant their trust assets because they lacked specific statutory authority. Luckily, modern trust law has seen an evolution in trust decanting, with 29 states enacting statutes to authorize and outline the process of trust decanting. Decanting statutes are 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.<sup>1</sup> 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. 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. The following chart outlines the 29 states with decanting statutes and summarizes their relevant provisions and the variety of authorized actions a trustee may take.

### TRUST DECANTING STATE RANKINGS CHART<sup>2</sup>

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 Power of Appointment in Second Trust to Non-Beneficiary?	Can Accelerate Remainder Beneficiary's Interest?
1	South Dakota	Yes	Yes	No	Yes / Yes	Yes	Yes
2	Nevada	Yes	Yes	No	Yes / Yes	Yes	Yes
3	Delaware	Yes	Yes	No	No / Yes	Yes	Yes
4	Tennessee	Yes	Yes	No	Yes / No	Yes	Silent
5	New Hampshire	Yes	Yes	No (except for charitable trusts)	Yes / No	Yes	Silent
6	Ohio	Yes	Yes	Yes	No / Yes	Yes	No
7	Missouri	Yes	Yes	Yes, only to beneficiaries of second trust	No / Yes	Silent	Yes
8 (tie)	Alaska	Yes	Yes	Yes	No / No	Yes	No
8 (tie)	Illinois	Yes	Yes	Yes	No / No	Yes	Silent
10 (tie)	Indiana	Yes	Yes	Yes	Yes / No	Silent	Silent
10 (tie)	South Carolina	Yes	Yes	Yes	No / Yes	Yes	No
10 (tie)	Texas	Yes	Yes	Yes	No / No	Yes	Yes
13	Wyoming	Yes	Yes	No	Yes / Silent	Silent	Silent



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14	Rhode Island	Yes	Yes	Yes	Silent / No	Silent	No
15	Florida	Yes	Yes	Yes	No / No	Silent	Silent
16 (tie)	Alabama	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	California	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	Colorado	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	Georgia	Yes	Yes	Yes	Yes / Silent	Yes	No
16 (tie)	Kentucky	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	New Mexico	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	North Carolina	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	Virginia	Yes	Yes	Yes	No / No	Yes	No
16 (tie)	Washington	Yes	Yes	Yes	No / No	Yes	No
25	Michigan	Yes	No	Yes	No / No	Yes	Silent
26 (tie)	Arizona	Yes	Yes	No	Yes / No	Silent	Silent
26 (tie)	Minnesota	Yes	Yes	Yes	No / No	No	No
26 (tie)	New York	Yes	Yes	Yes	No / No	Yes	No
26 (tie)	Wisconsin	Yes	Yes	Yes	No / No	Silent	No

<sup>1</sup> For a list of decanting procedures, requirements and restrictions by state, see Steve Oshin's "Annual Trust Decanting State Rankings Chart." <https://www.oshins.com/state-rankings-charts>.

<sup>2</sup> Ibid.

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