

MORRIS NICHOLS ARSHT & TUNNELL



TODD A. FLUBACHER
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PRACTICE AREAS

Trusts & Estates Litigation
Trusts, Estates & Tax
Delaware Trust Counsel
Estate Planning & Administration
Legal Opinions
Non-Profit

EDUCATION

J.D., with honors, 1999, University of
Maryland School of Law
Staff and Associate Editor, *The
Business Lawyer*, 1997-1999
B.S., finance, summa cum laude,
1992, Drexel University

ADMISSIONS

Delaware, 1999
U.S. District Court for the District of
Delaware, 1999

Todd works with national, international and local clients on the creation, migration, modification and administration of Delaware trusts. He represents Delaware trustees, beneficiaries, law firms and individuals throughout the country on all matters involving Delaware trusts and estates. Todd's practice primarily emphasizes the unique advantages of Delaware trust law, including directed trusts, dynasty trusts, tax planning, asset protection trusts, and all aspects of trust validity, construction and administration. He frequently serves as Delaware trust counsel to many of Delaware's corporate trustees, providing guidance on all aspects of trust administration and fiduciary risk.

Todd has substantial experience with migrating trusts to Delaware and modifying trusts by decanting, merger, non-judicial settlement agreements, Delaware Court of Chancery trust petitions, administrative amendments, and addressing issues pertaining to choice of Delaware governing law. He drafts, reviews and comments on Delaware trust documents and renders Delaware trust law opinions. Todd files trust petitions with the Delaware Court of Chancery for instructions, reformations, modifications, transfer of trust situs, construction, choice of law and other trust-related matters.

As an estate planner, Todd assists high-net-worth clients in Delaware with saving taxes, implementing planning goals, and managing and preserving wealth for future generations. He also works with executors of Delaware estates to assist with estate administration, and related tax reporting, filings, probate and planning.

Todd also has a substantial fiduciary litigation practice, representing trustees, executors, and beneficiaries in all types of trusts and estates litigation, including, directed trusts, choice of law, disputes over construction and interpretation of trusts and wills, creditor's rights, trustee breach of fiduciary duties, trustee compensation, undue influence, will contests, trustee self-dealing and many other issues. He also has served as an expert witness on Delaware trust law in large litigation matters involving Delaware trusts.

Todd is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and he serves on the Fiduciary Litigation Committee and Program Committee, and was previously a member of the New Fellows Steering Committee. He is also a member of the Society of Trust and Estate Practitioners. Todd holds the designation of Accredited Estate Planner® (AEP®) by the National Association of Estate Planners & Councils, is ranked Band 1 in *Chambers HNW* among private wealth law attorneys in Delaware, is included in *The Best Lawyers in America* (2014-2019), and he is AV-rated by his peers in Martindale-Hubbell. *Best Lawyers* 2018 edition named him “Delaware Lawyer of the Year” for Litigation - Trusts and Estates. Todd was named as one of the Top 30 attorneys in the country in the area of trusts and estates law by Best of the Best USA compiled by *Expert Guides*.

Todd is a past-chair of both the Estates & Trusts and Tax Sections of the Delaware State Bar Association. He served as an observer for the Drafting Committee for the Uniform Directed Trust Act. He also serves as member of the Board of Directors of The Joshua M. Freeman Foundation.

Todd is a nationally recognized author on Delaware trust law and his articles have appeared in notable publications such as *Trusts & Estates* magazine and *Estate Planning* magazine, among others. He is a recognized speaker, frequently appearing before professional and business audiences across the country, including ACTEC, the Heckerling Institute, Notre Dame Tax & Estate Planning Institute, Estate Planning Councils, the Delaware Tax Institute, the Delaware Trust Conference and numerous webinars.

Professional Activities

- American Bar Association (Business Law, Real Property and Probate & Taxation Sections)
- American College of Trust & Estate Counsel (Fellow; Fiduciary Litigation Committee; Program Committee)
- The Society of Trust and Estate Practitioners (STEP)
- Delaware Bankers Association (Delaware Trust Conference Planning Committee)
- Delaware State Bar Association (Chair, Estates & Trusts Section, 2004-2005; Chair, Taxation Section, 2007-2008)
- Delaware Trust Conference (Co-Chair)
- Estate Planning Council of Delaware (Past President, Past Member of Board of Directors)
- National Association of Estate Planners & Councils
- The Joshua M. Freeman Foundation (Member of Board of Directors)

Representative Matters

- Represent beneficiaries in dispute over disposition of trust. *IMO Trust FBO Samuel F. duPont U/A Dtd. Aug. 4, 1936*, C.A. No. 12904-MG
- Served as Special Litigation Trustee. *In re: The Milton Grant 2006 Irrevocable trust Agreement Number Two*, C.A. No. 11170-ML
- Represent beneficiaries in case involving proposed modification of a testamentary trust. *In re Trust Under Will of Flint for the Benefit of Shadek*, C.A. No. 10593-VCL
- Represent trustee in dispute over disposition of trust. *IMO Trust Under Will of Harold S. Schutt*, C.A. 10574-MZ
- Represent beneficiary in dispute over trust. *IMO Opperman, Dwight D. Special Trust*, C.A. No. 9718-ML
- Represent settlor in dispute over trust. *IMO Susan D. Elia Irrev. Trust U/A Dtd. Sept. 15, 2011*,

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C.A. No. 9472-MA

- Represented parents of minor beneficiaries in a matter involving a variety of fiduciary issues. *IMO: Two Trusts Created Pursuant to Agreement Dated April 29, 1991 Known as JBG Childrens 1991 Trust Agreement*, C.A. No. 5894-VCP
- Represented executor and trustee in defense of challenge to will and trust. *In re Estate of Seppi*, C.A. 3189-MA, 2010
- Represented trustee in case involving creditor claim against estate and trust. *In re Trust Under Agreement of Walter F. Wickes, III*, C.A. 2515-VCS, 2008
- Represented trustee in construction matter. *In re Barker Trust Agreement*, C.A. 20455-VCL, 2007
- Represented trustee in breach of trust challenge. *McNeil v. McNeil*, No. 409,2001, 497,2001, 505,2001
- Represented trustee in breach of trust challenge. *McNeil v. Bennett*, C.A. No. 15875
- Represented trustee in fee dispute. *In re Trust Under Agreement of Christopher L. Ward*, C.M. 9841-N.C., 2001

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