

Delaware Statutory Trusts

Drawing on our history with Delaware Statutory Trusts (DSTs) and our extensive experience representing sponsors of DST offerings, bridge lenders, senior lenders and “non-traditional” sponsors in various DST transactions, our team advises clients on every aspect of the DST.

Members of our team have been engaged in DST transactions since the IRS issued Revenue Ruling 2004-86, which provided “bright line” guidance for the use of DSTs in Section 1031 like-kind exchanges and worked on the first-ever DST offering in 2004. Additionally, a number of our attorneys worked closely with DSTs while in-house, including serving as assistant general counsel for the real estate division of a major investment bank and DST sponsor. Our team members have represented sponsors of several hundred DST offerings and have worked on transactions that collectively involve several billions of dollars. Recently, the team expanded its work in the DST area to include working with REITs and existing real estate companies on the use of the DST structure to facilitate raising capital from 1031 investors.

We have represented sponsors, institutional and individual investors, lenders and broker-dealers in DST transactions from “cradle to grave,” including:

- Assisting clients in structuring DST transactions and offerings, including conforming master lease economics to a tax-compliant structure and drafting of the PPM and related documentation (DST agreement, management agreements and asset management agreements (if applicable) and operating agreements for non-DST entities).
- Assisting sponsors with DST related sensitivities in real estate purchase negotiations.
- Financing of DST transactions, having represented DST borrowers with respect to senior, bridge and mezzanine financings.
- Financing to DSTs and upper tier corporate entities, having represented senior, bridge and mezzanine lenders.
- Acquiring or selling properties currently owned by DSTs.
- Structuring and implementing umbrella partnership real estate investment trust (UPREIT) options.
- Assisting sponsors with investor relations and related securities matters (including drafting of investor purchase agreements, managing dealer and soliciting dealer agreements and coordinating blue sky filings).
- Implementing DST structures that allow an existing real estate company to contribute property to a newly formed DST, and subsequently raise capital from 1031 investors.
- Working with broker-dealers and working with sponsors in connection with the broker-dealer process.
- Working out problematic DST transactions, including representing borrowers springing to LLCs and modifying loan terms and lenders in foreclosure proceedings.
- Selling and closing out successful deals.

Members of the team have represented clients on DST transactions involving the following representative asset types:

- Multifamily

- Single tenant
- Industrial
- Office and commercial
- Student and senior housing
- Medical office, industrial and hospitality
- Distribution centers and warehouses
- Assisted living and skilled nursing
- Self-storage
- Mobile home communities
- Single family home portfolios

In addition to representing ongoing sponsors of DST offerings, we have significant experience representing real estate funds, REITs and other real estate owning entities in connection with the use of the DST structure to expand their offerings to include the DST structure. The representation of real estate funds as first time DST sponsors requires an expansion of the legal services typically needed to adopt a DST structure. Our team has refined its approach in working with these first time DST sponsor to assist them in the transition from the traditional approach to real estate fund formation and navigate the unique issues that they must address in using the DST structure.

Matters

- Represented a Colorado-based real estate company in connection with the adoption of a DST structure by a first-time sponsor involving a self-storage facility in Texas. The DST offering was \$15.5 million. The DST acquired the property from an existing affiliated real estate fund using a \$13.5 million affiliate-funded bridge equity structure. There was no mortgage debt involved.
- Represented a Dallas, Texas-based real estate company that had several existing real estate funds in connection with the adoption of a DST structure by a first-time sponsor involving a multifamily residential property in Texas. The DST offering was \$29.6 million and involved a \$35.5 million loan from a CMBS lender. The offering also includes \$22.9 million of bridge equity from a third-party provider.
- Represented a California-based real estate company in connection with the adoption of a DST structure involving multiple manufactured housing parks located in Michigan, Ohio and Pennsylvania using a ground lease structure. The DST offering was \$32.8 million. The DST acquired the property using a \$31 million loan from a CMBS lender.
- Represented an Austin, Texas-based real estate company that had several existing real estate funds in connection with the adoption of a DST structure involving a portfolio of single-family homes held for rental in several states. The DST offering was \$18.4 million and involved a \$16.5 million affiliate-funded bridge equity structure. There was no mortgage debt involved.
- Represented a Florida-based real estate company with several existing real estate funds in connection with the adoption of a DST structure involving a multifamily residential property in Virginia. The DST offering was \$53.6 million and involved a \$45.2 million loan from an agency lender. The offering also includes \$48 million of bridge equity from a third-party provider.
- Represented a California-based real estate company in connection with the adoption of a DST structure involving a multi-tenant retail property in California. The DST offering was \$18 million. The DST acquired the property from a related party using a \$35.5 million loan from a CMBS lender. The transaction also included selling financing and a third-party-funded bridge equity structure.
- Represented a California-based real estate company in connection with the adoption of a DST structure involving several manufactured housing parks located in Michigan, Ohio and Pennsylvania using a ground lease structure. The DST offering was \$32.8 million. The DST acquired the property using a \$31 million loan from a CMBS lender.

- Represented a real estate investment company in connection with a \$52 million sale leaseback with CMBS debt financing and a DST private placement securities offering for a triple net lease building in Connecticut.
- Represented a real estate investment company in connection with a \$75 million UPREIT offering involving the exchange of DST interests for REIT operating partnership units.
- Represented a DST and non-traded REIT sponsor in connection with the \$72 million CMBS debt financing by a DST borrower of a portfolio of over 20 industrial properties across the United States.
- Represented a real estate investment company in the \$34 million Freddie Mac financing by a DST borrower of a senior living facility in Maryland.
- Represented a real estate investment company in the \$37 million acquisition and subsequent CMBS financing by a DST borrower of a senior living facility in Nevada.
- Represented a CMBS lender in the financing of a major single tenant operated facility in Illinois, with a DST borrower ownership structure.
- Represented a lender in connection with the origination and implementation of a credit facility to fund bridge loans to a DST sponsor.

Publications

July 22, 2025

How Real Estate Funds Can Leverage Del. Statutory Trusts

Co-Author, Law360

March 2024

Adopting a DST Structure as Part of a Capital Raise for a Real Estate Investment Trust

Co-Author, ALI CLE

September 13, 2023

Understanding Why More Non-Traded REITs and Real Estate Funds Are Adopting a DST Structure as Part of a Capital Raise

November 8, 2022

Delaware Statutory Trusts: Breaking Down the Tax and Investment Benefits

Speaker, American Law Institute Continuing Legal Education