

# Delaware Statutory Trusts (DSTs)

Real estate companies and sponsors increasingly utilize Delaware Statutory Trusts (DSTs) to structure tax-efficient investment opportunities, broaden capital sources, and facilitate complex acquisitions and financings. Kelley Drye provides integrated counsel on the securities, real estate, financing, tax, and corporate issues that drive successful DST transactions.

## About

Since the IRS issued Revenue Ruling 2004-86—which established the framework for using Delaware Statutory Trusts in Section 1031 like-kind exchanges—Kelley Drye’s team has been at the forefront of DST transactions. We began representing clients in DST offerings shortly after the IRS issued its foundational ruling, and today we continue to guide sponsors, institutional and individual investors, lenders, bridge lenders, and broker-dealers through every phase of a DST’s lifecycle.

Members of Kelley Drye’s team have represented sponsors of countless DST offerings—transactions that collectively involve several billions of dollars. We also help REITs and established real estate companies leverage the DST structure to raise capital from 1031 exchange investors, expanding their reach and investor base.

## Full-Cycle DST Legal Services

Kelley Drye represents clients in DST transactions from inception to exit, providing practical, sophisticated legal guidance at every stage. Our services include:

- Structuring DST transactions and offerings, including conforming master lease economics to a tax-compliant structure and drafting PPMs, DST agreements, management agreements, asset management agreements, and operating agreements for non-DST entities
- Advising sponsors on DST-related considerations in real estate purchase negotiations
- Financing DST transactions—representing DST borrowers with respect to senior, bridge, mezzanine, and structured credit solutions, including credit tenant lease (CTL) financing for single-tenant net lease assets
- Representing senior, bridge, mezzanine, and CTL lenders providing financing to DSTs and upper-tier corporate entities
- Acquiring or selling properties currently owned by DSTs
- Structuring and implementing umbrella partnership real estate investment trust (UPREIT) options
- Managing investor relations and securities matters, including investor purchase agreements, managing dealer and soliciting dealer agreements, and coordinating blue sky filings
- Implementing DST structures that enable real estate companies to contribute property to a newly formed DST and raise capital from 1031 exchange investors

- Coordinating with broker-dealers on distribution processes and compliance
- Working out problematic DST transactions, including representing borrowers springing to LLCs, modifying loan terms, and advising lenders in foreclosure proceedings
- Closing out successful deals, including dispositions and investor liquidity events

## **Property Types and Asset Classes**

Our team has structured and closed DST transactions spanning virtually every commercial real estate asset class. This breadth of experience means we understand the property-specific issues that can affect DST structuring, financing, and investor considerations.

Our representative asset class experience includes multifamily residential properties, single-tenant net lease facilities, industrial buildings and portfolios, office and commercial buildings, student housing and senior living communities, medical office buildings, hospitality assets, distribution centers and warehouse facilities, assisted living and skilled nursing properties, self-storage facilities, mobile home and manufactured housing communities, and single-family home rental portfolios.

## **Expanding DST Strategies for Institutional Investors**

Beyond our work with established DST sponsors, we have deep experience helping real estate funds, REITs, and other institutional owners adopt the DST structure for the first time. Entering the DST market as a first-time sponsor presents unique challenges that go beyond traditional real estate fund formation—from navigating securities and tax compliance requirements to structuring offerings that attract 1031 exchange investors. Our team partners with these clients to bridge the gap between their existing investment platforms and the specialized demands of the DST model, providing hands-on guidance through each step of the transition.

## **Experience**

Represented a New Hampshire-based real estate investment and advisory firm specializing in single tenant net lease properties in connection with the adoption of a DST structure involving a multinational utility provider's campus headquarters. The DST offering was over \$700 million. The DST acquired the membership interests in the existing owner entity with cash and the assumption of multiple tranches of CTL debt. The transaction also included seller financing.

Represented a Dallas-based multinational real estate investment and development company in connection with its development and CTL financing of various build-to-suit industrial warehouses for Amazon (including properties in Florida, Massachusetts, Michigan, Virginia, Tennessee, California, Iowa, North Carolina, Texas and Wisconsin) ranging in size from \$250 million to \$600 million.

Represented a Dallas-based multinational real estate investment and development company in connection with its development and CTL financing of a build-to-suit industrial warehouse for Federal Express located in Michigan in the approximate amount of \$400 million.

Represented a New Hampshire-based real estate investment and advisory firm specializing in single tenant net lease properties in connection with the adoption of DST structures involving various industrial warehouses for Amazon. The DST offerings ranged in size from \$200 million to \$1.1 billion. The DSTs acquired the membership interests in the existing owner entities with cash and the assumption of multiple tranches of CTL debt.

Represented a New Hampshire-based real estate investment and advisory firm specializing in single tenant net lease properties in connection with the adoption of a DST structure involving a full-service regional bank's office tower in Detroit, Michigan. The DST offering was in the range of \$130 million. The DST acquired the membership interests in the existing owner entity with cash and the assumption of multiple tranches of CTL debt.

Represented a New Hampshire-based real estate investment and advisory firm specializing in single tenant net lease properties in connection with the adoption of a DST structure involving various United States Veterans Affairs and other United States General Services Administration facilities across the country. The DST offerings ranged in size from \$50 million to \$300 million. The DSTs acquired either fee title or the membership interests in the existing owner entity with a combination of cash, CTL debt and/or seller financing. Certain of the DST offerings involved multiple properties in a combined offering.

Represented the borrower on a credit facility to provide bridge equity in connection with a portfolio of DST offerings. The credit facility involved a term loan and revolving loan component.

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 included \$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 California-based real estate company in connection with the adoption of a DST structure involving a multi-tenant retail property. 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 North Carolina-based real estate company in connection with the adoption of a DST structure involving a multi-family property in Virginia. The DST offering was \$54.7 million and the acquisition was funded with approximately \$45 million of agency debt.

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 CMBS lender in the financing of a major single-tenant-operated facility in Illinois, with

a DST borrower ownership structure.

Advised real estate funds and REITs on adoption of DST structures for capital raising, including offerings ranging from \$15.5 million to \$75 million across multifamily, industrial, self-storage, manufactured housing, and senior living assets.

## **Related Services**

Real Estate

Real Estate Finance

Real Estate Transactions

## **Contacts**

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