

4 Applications for Titling Trusts

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Imagine this scenario: A leasing company would like to use its fleet of 500 motor vehicles, titled in several states, to secure a loan from a finance company. In order for the lender to hold a security interest in the vehicles, its lien must be noted on all the title certificates in the various states — an expensive logistical nightmare.

Warehouse lending, securitizations and permanent lending by different financiers entail similar titling issues. One solution for all four scenarios involves creation of an entity called a statutory trust.

In the case of the 500-vehicle fleet, the leasing company would transfer the titles to the trust and would serve as beneficiary of the trust. Any newly acquired vehicles would be titled in the trust's name. The trust would then be listed as the owner of the vehicles on the title and lessor under the leases. The leasing company would enter into an agreement with the trust to service the leases, so there would be limited operational change. The finance company, meanwhile, would make a loan to the trust, secured by the leasing company's beneficial ownership in the entity, perfected by filing a financing statement.

To form a statutory trust, an entity simply files in the state of organization — there are no common law trust filing issues. Notation as lienholder on the titles is unnecessary. (Standard financing for the leases stays essentially the same as financing leases for an inventory seller, except that the trust is the debtor.)

Titling trusts can be used in more complicated transactions, such as warehouse lending, permanent lending by different lenders, and securitizations. Many states have statutory trusts, but the most often used, a Delaware statutory trust, allows the creation of sub-trusts that are insulated from liabilities of the general trust and other sub-trusts.

Utilizing sub-trusts, a trust can allocate various assets to a sub-trust dedicated to a warehouse loan, and where there is later a permanent loan or securitization, the assets can be reallocated to another subtrust as the warehouse loan is paid off. Additionally, sub-trusts allow for several permanent loans with different lenders, as well as different securitization structures.

There are some complications for lenders utilizing titling trusts. For one thing, trust documents and servicing arrangements need to be reviewed. Normal sale and assignment documents for inventory and related lease financing will need to be slightly modified. Use of a titling trust, however, eliminates the need to note the lien on the certificate of title or otherwise retitle vehicles, except upon initial transfer of titles to the trust.

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