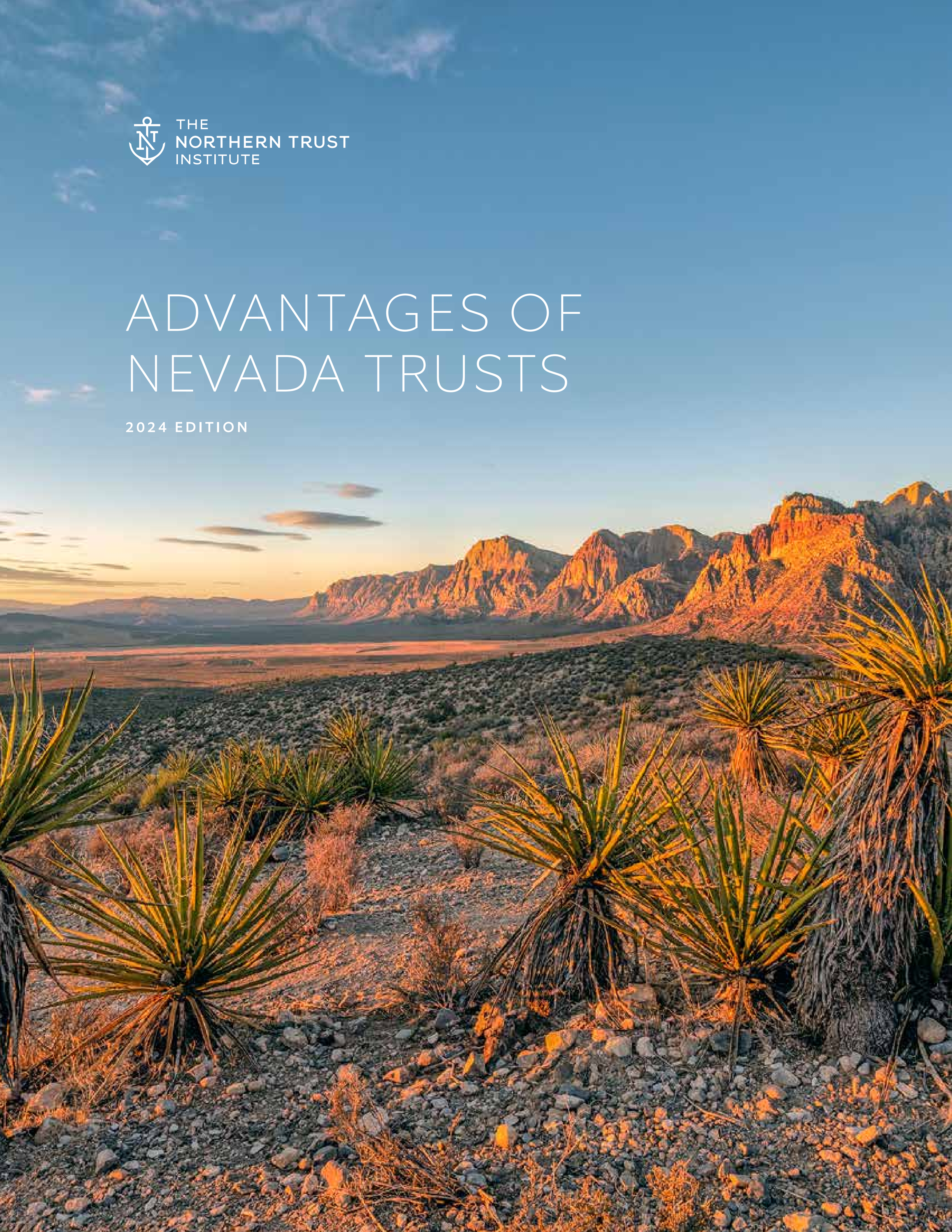
THE NORTHERN TRUST INSTITUTE

ADVANTAGES OF NEVADA TRUSTS

2024 EDITION



ADVANTAGES OF NEVADA TRUSTS

The State of Nevada is increasingly becoming more recognized as a trust-friendly jurisdiction due to its modern laws, savings on state income tax, investment flexibility and other benefits. In this paper we highlight the most significant legal and tax advantages for Nevada residents and nonresidents who may be considering establishing a trust in Nevada, and their professional advisors.

The Northern Trust Institute brings the breadth and depth of the firm to address the increasingly complex and sophisticated wealth management needs of our clients and their advisors. Informed by the latest insights and continually vetted through feedback, our advice is grounded in real-world outcomes and backed by proven credibility.

We believe you will find this information helpful and welcome the opportunity to collaborate with you to enable our clients to create meaningful legacies.

TRUSTS IN NEVADA — AT A GLANCE

Below are highlights of topics covered in this year's edition.

Can you direct a trustee on investments in Nevada?

Nevada has a "directed trust" statute that permits a trustee to be directed on investments, distributions and other matters. The statute also recognizes the role of a trust protector. Directed trusts are discussed beginning on page 7.

Are Nevada trusts subject to Nevada income tax?

Nevada does not have a state level income tax. Thus, Nevada trusts are not subject to Nevada income tax. The trusts are still subject to federal income tax if they are not grantor trusts for income tax purposes. Also, even if a trust is not subject to Nevada income tax, it may be subject to income tax by another state depending on the trust's contacts with other states. Income taxation of Nevada trusts is discussed beginning on page 8.

Does Nevada allow long-term or "dynasty" trusts?

The Nevada statute allows a Nevada trust to last for 365 years, thus enabling the creation of a long-term trust. These trusts can be useful in long-term wealth transfer planning. The ability to have a long-term trust in Nevada is discussed beginning on page 10.

Are "quiet trusts" permissible in Nevada?

Trusts where the beneficiaries do not receive information about the trust for a period of time are sometimes referred to as "quiet trusts," "silent trusts" or "confidential trusts." These are permitted in Nevada, and are discussed beginning on page 12.

If needed, is it possible to modify a Nevada trust?

Nevada has various methods for modifying irrevocable trusts. These methods include decanting and nonjudicial modification agreements. There are various factors that go into deciding whether it is necessary to modify a trust. The topic of modifications of Nevada trusts is discussed beginning on page 14.

Does Nevada permit electronic execution of trusts?

Nevada statute permits electronic execution of trusts as well as electronic notarization. This facilitates remote execution of documents. This is discussed beginning on page 17.

Are there other flexible provisions of Nevada law?

Nevada provides a progressive and flexible environment in which to establish a trust. This paper covers the above topics plus several other key provisions of Nevada law.

2023 UPDATES TO THE NEVADA STATUTES

Nevada revises its statutes every two years, with the most recent revision becoming effective July 1, 2023. The following reflects revisions to the statute[1] that applies to Nevada trusts.

A settlor can specify a method in the trust instrument to determine whether the settlor or trustee is incapacitated. This change was accomplished by adding provisions to Chapter 163 of the statute.[2] These provisions also provide mechanisms for determining whether a party has regained capacity.

Certain information concerning trusts in pleadings and filings is confidential. A new section was added to NRS 164 which provides that confidential information relating to trusts that is contained in petitions and related filings may be redacted and filed under seal without a prior court order. The statute requires that unredacted copies are provided to all parties entitled to notice as part of the court proceeding.

"Support interest" is further clarified. Under Nevada statute, a distribution interest from a trust is classified as either a mandatory interest, a support interest (subject to an ascertainable standard), or a discretionary interest. Prior to the amendment, the statute classified a distribution interest as a support interest if the trustee is required to make distributions to the beneficiary pursuant to an ascertainable standard. The amendment revises the circumstances under which a distribution is classified as a support interest by adding the italicized words to NRS 163.4185, *"A distribution interest may be classified as a support interest if the trustee is mandatorily required to make distributions to the beneficiary upon the determination of the trustee that the distribution will satisfy a defined ascertainable standard set forth in the instrument and, upon such a determination, the trust instrument does not otherwise condition such distribution authority on the further discretion of the trustee."*

A Trust Protector is a fiduciary. The Nevada statute authorizes the appointment of a trust protector with various powers over the trust such as the power to amend the trust or remove and replace trustees.[3] The amendment to the trust protector statute provides that, unless otherwise provided in the trust instrument: (1) the powers of a protector of a trust are fiduciary in nature; and (2) the trust instrument may define the scope and extent of the fiduciary standard applicable to the exercise of any of the powers and duties of a protector. This is discussed in this paper under Directed Trusts beginning on page 7.

A trustee must provide sufficient notice for the 120-day statute of limitations to apply to a person who is contesting the validity of the trust, when using the validation procedure for a revocable trust becoming irrevocable under NRS 164.021. The statute is modified to clarify that the notice must contain the dispositive provisions of the trust instrument that pertain to the beneficiary or a complete copy of the trust agreement. This is discussed in this paper under Limiting Post-Mortem Challenges to Trusts, on page 13.

TABLE OF CONTENTS

FLEXIBLE TRUST JURISDICTIONS

As the demographics of wealth have changed over the past 15 years, the need for trust structures that are more flexible has become a driving force within the trust industry and for legal and tax advisors. The benefits of flexible trust structures include the ability to create trusts including any one or more of the following: (i) favorable income and transfer tax treatment; (ii) long-term trusts; (iii) flexibility built into the trust provisions; (iv) trusts where the trustee is directed on matters such as investments, distributions, tax compliance or other duties; and (v) protection of the trust assets from the claims of creditors of the settlor or beneficiaries. Nevada is an excellent example of a state that has adapted its laws to provide these benefits, in a flexible jurisdiction with infrastructure that consistently promotes these benefits.

Although not the only example, one common scenario occurs when an individual has created a significant amount of wealth over the previous 20 years. Perhaps this wealth was created through a closely held operating company, investments in marketable securities, or in any number of ways. Often the wealth creator would like to pass the fruits of their labor to their children and successive generations, but does not want to give up complete control of the management of the wealth. The increasing popularity of directed trusts is a response to this desire by individuals creating trusts. Nevada is at the forefront of providing directed trusts as a wealth transfer solution.

DIRECTED TRUSTS

As of the date of this edition, more than 40 states have some form of statute that allows a trustee to be directed on matters such as investments, distributions, tax compliance or perhaps a combination of some or all of these functions. Much of the wealth that funds trusts comes from settlors who are still in the wealth creation stage. Typically they have generated their wealth by having significant control over their assets or business. Nevada has been a leader in developing the law of directed trusts.

Uniform Directed Trust Act

The trend continues with the promulgation of the Uniform Directed Trust Act ("UDTA") by the Uniform Law Commission in 2017.[4] So far 17 states have enacted or introduced the UDTA with California being the most recent in 2023, and two additional states have proposed adoption of the UDTA. The widespread enactment of directed trust legislation is evidence of the increase in the use of directed trusts for flexibility.

The Nevada Directed Trust Statute

Nevada's statute is clear that a trustee can be directed by a third party named in the trust instrument. The statute stipulates that if a fiduciary is directed by a party named in the trust instrument, the directed fiduciary is not liable, individually or as a fiduciary, for any loss that results from complying with the direction.[5] Note that the statute provides for a total absolution of liability. This is different than the directed trust statutes of several other states, such as Delaware and the UDTA, which provide that the trustee is not liable as long as the trustee does not act with willful misconduct, a standard that is defined in the Delaware statute.[6]

The Nevada statute defines the role of the "directing trust advisor" to mean a trust advisor, trust protector or other person designated in the trust instrument who has the authority to give directives that must be followed by the fiduciary.[7] The term does not include parties that give recommendations, counsel or advice to the fiduciary if the fiduciary is not required to follow that advice. Also defined are the specific advisor roles of "distribution trust advisor," "investment trust advisor" and "trust protector."[8] Nevada trusts are often drafted with these roles in the document and with mechanisms to fill the role at a later date by a party specified in the document, if and when desired, if the roles are not filled in the trust instrument at the creation of the trust. The role that is most frequently utilized is the investment trust advisor. Probably the most common example of the use of an investment trust advisor is where a settlor wants the corporate trustee to manage the trust's portfolio of marketable securities, while at the same time wants the trustee to be directed to retain some special holding, such as a closely held business interest or a concentrated position of stock. To enable the trustee to report on the value of the asset that the trustee is being directed to hold, the statute provides that the investment trust advisor has the power to provide a value for non-publicly traded investments held in the trust that are subject to the investment management authority of the investment trust advisor. This avoids a trustee who is directed from undertaking actions, such as valuation of directed assets, that are outside the scope of their limited administrative role. The investment trust advisor is, by default, a fiduciary[9] unless the trust agreement provides otherwise.[10]

The directed trust structure might also be used to direct the trustee on distributions. In this instance the trust instrument would have a distribution trust advisor. This could be an interim step while the trustee becomes more familiar with the family, or a permanent role so there will always be an individual or group of people directing the trustee on distributions. Although less common than directed trusts for investments, this is also a frequent use of the directed trust structure. As with the investment trust advisor, the distribution trust advisor is a fiduciary unless the trust agreement provides otherwise.[11]

Finally, the role of trust protector is used to perform various functions that a trustee might not be able or willing to do. Examples include the power to modify the trust, add or eliminate beneficiaries, and change the situs and governing law of the trust. Prior to 2023 the trust protector was not a fiduciary. However, with the revisions to the statute in 2023, the trust protector is now a fiduciary, but the trust instrument can provide otherwise.[12]

As illustrated below, the directed trust statute has provided a useful solution to a number of common trust situations/ challenges.

CLIENT SITUATION:	POTENTIAL SOLUTION:
Concentrated position A trustee of a trust with a concentrated position in a particular asset may want to sell a substantial portion of the asset to achieve greater diversification and reduce the concentration risk. The beneficiaries may oppose a sale because of their emotional attachment to the asset or simply the belief that the asset will perform well over the long term.	**Family committee manages concentration** To resolve this familiar conflict, the parties can seek to modify the trust into an administrative trust in which a family committee (composed of family members who are experienced professionals) has exclusive investment responsibility for the concentrated asset, while the trustee retains management authority over the more diversified assets.
Funding with closely held assets A client wants to contribute to a family trust certain interests in a closely held operating business or investment entity, but the client is uncomfortable with the notion that the trustee would have management responsibility for the closely held asset.	**Client retains control** If the client designates themselves as the investment advisor for the closely held asset, the trustee will not have any authority to participate in decisions regarding the client's business or investment entity.

SAVINGS ON FIDUCIARY INCOME TAXES

State income taxes can be a significant drag on the growth of an irrevocable trust. In many states, a trust's realized capital gains and accumulated ordinary income are taxed at rates between five and 10 percent, with rates in California as high as 13.3 percent. Thus, when considered in addition to the 20 percent rate on capital gains at the federal level plus the potential federal net investment income tax of 3.8 percent, state income taxes can greatly reduce trust earnings, especially over several generations. Nevada does not have a state income tax, and therefore does not impose any fiduciary income tax on Nevada trusts. Income accumulated and capital gains realized in the trust are not taxed by Nevada.

FIGURE 1*

	Sale in Nevada Trust	Sale in California Trust
Sale Proceeds	$10,000,000	$10,000,000
Tax Cost	$0	$0
Gain on Sale	$10,000,000	$10,000,000
State Income Tax	$0	$1,330,000
Federal Income Tax	$2,380,000	$2,380,000
Proceeds Net of Tax	**$7,620,000**	**$6,290,000**
Nevada Benefit	**$1,330,000**	

Assumptions:

1. Federal capital gains rate: 23.8%
2. California state income tax rate: 13.3% (maximum rate of 12.3% plus a mental health services tax of 1% for taxable income over $1,000,000)
3. No federal tax deduction for state taxes paid

*Examples used are for illustrative purposes only. Actual results may vary.

An Example of the Potential Tax Savings

If two trusts (one in California and one in Nevada) were to sell a zero-basis asset for net proceeds of $10 million, the after-tax proceeds of the sale in the Nevada trust would potentially be worth $1.33 million more because the proceeds in the California trust would be subject to California income tax at a rate of 13.3 percent (see Figure 1).

Potential Taxation by Other States

Although Nevada will not impose an income tax on a Nevada trust, depending on the trust structure, another state might impose a state-level income tax on the Nevada trust. A number of factors can cause a Nevada trust to become subject to state income tax in another state. Examples include the following:

- **Fiduciary Activities in Another State.** Many jurisdictions will treat a trust as a resident trust, and subject to state income tax, if the trust has a fiduciary residing in that state, or if the trust administration occurs in that state. For example, if a Nevada trust has an individual co-trustee or investment trust advisor or distribution trust advisor (discussed beginning on page 8) located in California, that state would consider the trust to be subject to its tax regime.[13] Similarly, if a Nevada corporate trustee delegates a major portion of its trust administration duties to an affiliate in another state (i.e., the affiliate has full discretion to manage the trust's investment portfolio without any supervision by the Nevada trustee), there is a risk that the affiliate's state would consider the trust to be resident and fully taxable in that state. If a Nevada trust has source income from an operating business or real estate located in another state, that state will likely claim that it is entitled to tax at least a proportionate share, if not all, of the trust's federal taxable income.
- **Source Income in Another State.** If a Nevada trust has source income from an operating business or real estate located in another state, that state likely will claim that it is entitled to tax at least a proportionate share, if not all, of the trust's federal taxable income.[14] Portfolio managers of Nevada trusts should be aware of investments that could generate source income from a high tax state. Investments like hedge funds and private equity funds often have layers of entities, and managers should be mindful that a fund could allocate state-sourced income to a trust on a Form K-1.
- **"Residence-by-Birth" States.** Some states will attribute resident status to an irrevocable trust established in another state if the settlor of the trust was a resident of the state when the trust became irrevocable. Examples of states that have adopted this treatment of non-domiciliary trusts — known as the "residence-by-birth" approach — include, but are not limited to, Connecticut, Illinois, the District of Columbia, Michigan, Minnesota, New York, Ohio, Pennsylvania, Virginia and Wisconsin. There may be due process grounds for challenging the constitutionality of residence-by-birth tax schemes under the Supreme Court's decision in *Quill Corp. v. North Dakota*.[15] Following the *Quill* decision, state courts were notably unfriendly to states' attempts to assert taxing jurisdiction solely on the basis of the grantor's residence for trusts that had no other contacts with the state, and until the *Kaestner* case, which is discussed below, the Supreme Court had declined to address the issue. Thus, fiduciaries are often left with little guidance regarding their obligations to pay fiduciary income tax to another state.[16]

Recent Court Cases Regarding a State's Ability to Tax a Nonresident Trust

There have been a number of cases where state courts ruled that the mere fact that the trust was created by a settlor who was a resident of that state was not sufficient to create a taxable nexus where there were no other connections with the state. These cases are the *McNeil* case in Pennsylvania, the *Linn* case in Illinois and the *Fielding* case in Minnesota.[17] They are notable, in part, because they were decided in residence-by-birth states. But, because these cases relied on their specific facts, care should be used in relying on these cases. Residents of Pennsylvania, Illinois, Minnesota and other residence-by-birth states should not assume their trusts will be exempt from state income taxes merely because the trust is located in Nevada or another trust-friendly jurisdiction.

The trend of determining taxation to be unconstitutional continued in the *Kaestner* decision, which arose from the North Carolina courts and was ultimately decided in the U.S. Supreme Court.[18] In this case, the U.S. Supreme Court addressed the constitutionality of state taxation of a trust's undistributed income, based solely on a beneficiary living in the state imposing the taxation. North Carolina imposed an income tax on a trust over a four-year period even though the beneficiaries received no income in those tax years, had no right to demand income in those years, and could not count on ever receiving income from the trust. The Court held that this imposition of tax violated the Due Process Clause of the U.S. Constitution.

DYNASTY TRUSTS

The Rule Against Perpetuities

Prior to the latter part of the 20th century, every state had adopted, in one form or another, the rule against perpetuities (the Rule), which has the effect of limiting the duration of a trust. Under the traditional common law Rule, all interests in the trust must vest, and the trust must terminate, within 21 years after the death of all identified individuals living at the creation of the trust. The Rule reflects a policy that property owners should not be permitted to restrict the transfer of their property beyond the lives of persons who were likely known to the owner plus the minority period of the next generation. The practical effect of the rule against perpetuities was that trusts could last only a few generations, after which the trust assets would have to be distributed outright to the remainder beneficiaries.

The Generation Skipping Transfer Tax Reintroduced in the 1986 Tax Act

The complexity of applying the Rule Against Perpetuities caused a number of states to develop alternatives to the rule, such as the 90-year period under the Uniform Statutory Rule Against Perpetuities. However, it was not until the Tax Reform Act of 1986 (the 1986 Act) that states began to seriously consider abolishing the Rule outright. The 1986 Act reintroduced the transfer tax on generation-skipping transfers (the GST tax). Congress intended the GST tax to apply to transfers that skipped the next immediate generation and would otherwise avoid an estate tax at that intermediate generation.[19] The 1986 Act provided each transferor with a lifetime exemption from the GST tax, which, following the passage of the Tax Cuts and Jobs Act of 2017 (TCJA) is $13.61 million in 2024.[20]

Note that under the TCJA, on December 31, 2024 the basic exclusion amount is set to return to the lower amount of $5 million, the exclusion amount prior to the TCJA, with adjustments for inflation. Importantly, the Internal Revenue Code (the IRC) does not place any limit on the duration of trusts which are "exempt" from the GST tax due to a grantor's allocation of GST exemption. Under the traditional Rule, the limit on the length of a GST-exempt trust would be two generations. Consequently, a state's extension or outright abolition of the Rule would vastly increase the number of generations who could enjoy the fruits of the transferor's GST-exempt trust, without diminution of the trust assets on account of any federal transfer tax.

Nevada's Repeal of its Rule Against Perpetuities

In 1987, the Nevada Legislature adopted the Uniform Statutory Rule Against Perpetuities to allow an interest in property to last 90 years, or 21 years after the death of an individual living at the time of the interest's creation, whichever is longer. In 2005 the Nevada Legislature modified the then-existing statutory Rule Against Perpetuities to allow 365-year interests, allowing trusts in Nevada to last 365 years.[21] For an individual who has created wealth and now wants to pass it to children, grandchildren and successive generations, the long-term trust can provide a family savings vehicle. These long-term trusts are often referred to as "dynasty trusts" because they are seen as a way to share the wealth within a family for generations to come.

As a general rule, dynasty trusts also will have one or more mechanisms to terminate the trust early, if needed. This can be done by drafting limited powers of appointment exercisable by beneficiaries at all or some of the generations. These limited powers of appointment allow the beneficiary to determine the disposition of the trust assets upon their death, and this disposition can be in further trust or outright. Assuming that a trust is divided into multiple trusts for branches of the family at each successive generation, one branch of that generation might use the limited power of appointment to change the ultimate disposition, including terminating their trust, while other branches of the family may keep the assets in their trusts for successive generations. Also, the trust protector, which is discussed on page 7, often has the power to terminate the trust. Thus, the dynasty trust is an effective way to preserve and continue family wealth, while having the flexibility to terminate the trust early in certain instances.

Constitutionality of the Repeal Called Into Question

The constitutionality of Nevada's statute allowing trusts to last for 365 years, along with similar statutes in eight other states, was called into question in a 2014 law review article,[22] which received a notable amount of attention at the time, including discussion in an article in the *New York Times*.[23] The argument posed by the authors of the law review article was that since Section 4 of the Nevada Constitution provides that "no perpetuities shall be allowed except for eleemosynary purposes," the long-term nature of 365 years may violate the intent of the Nevada Constitution's ban on perpetual interests.

However, in March 2015 the Supreme Court of Nevada indirectly confirmed the validity of Nevada's statutory rule against perpetuities, which permits trusts to last for as long as 365 years. In the decision known as the *Bullion Monarch* case, the Supreme Court of Nevada made it clear that the Nevada Legislature has the authority to decide how the Rule Against Perpetuities applies to property interests in Nevada.[24] Although the *Bullion Monarch* ruling applies to a commercial transaction between two mining companies and does not address the statute that creates the ability to establish a trust that lasts up to 365 years, the reasoning applied by the court is instructive. Two mining companies were arguing before the U.S. Court of Appeals for the Ninth Circuit over a mining royalty agreement and the application of the common law Rule Against Perpetuities to that royalty agreement. The Circuit Court certified that question to the Supreme Court of Nevada. The Supreme Court of Nevada upheld the Nevada statute that excludes non-donative transfers such as commercial leases from the Rule Against Perpetuities as defined under Nevada common law and the Nevada Constitution.

Nevada's highest court held, without any dissenting opinions, that the definition of "perpetuities" in the Nevada Constitution is not static and the Nevada legislature can create statutes that define what constitutes "perpetuities." Although the *Bullion Monarch* decision did not directly address the statute permitting Nevada dynasty trusts to last up to 365 years, it appears that in order to hold that this statute violates the Nevada Constitution, the Supreme Court of Nevada would have to reverse its ruling that the Nevada Legislature has the authority to create statutes that define "perpetuities."

Quantifying the Benefit

The economic benefit of a GST-exempt dynasty trust cannot be denied. As Figure 2 demonstrates, a client's ability to contribute assets to a trust that will continue for generation after generation without the imposition of any transfer tax, and potentially no state income tax, is an extraordinary opportunity when compared to the alternative of passing assets outright from generation to generation, subject to a federal transfer tax at each generation. Based on a $13.61 million contribution to a trust utilizing the basic exclusion amount for 2024, a five percent after-tax rate of return on the investment assets, a new generation every 25 years, and a federal estate tax of 40 percent applied at each generational transfer, the GST-exempt trust would have a value of $528,512,855 after only 75 years. The same sum of $13.61 million held outside of a trust (and subject to a gift tax or estate tax upon transmittal to each successive generation) would have a value of $114,158,777. (See Figure 2.)

Common Funding Examples of a Nevada Dynasty Trust

- A settlor contributes cash, marketable securities or interests in a closely held entity (in the latter case, often at discounted values) to an irrevocable trust, using the settlor's lifetime applicable gift tax exclusion ($13.61 million in 2024). The settlor then allocates a portion of their lifetime GST exemption (also $13.61 million in 2024). This allows multiple generations to benefit from the trust and to allow for appreciation of assets indefinitely.

- A settlor sells assets to a trust with the hope that the assets will appreciate. The trust that purchases the assets is an irrevocable trust that is "defective" for income tax purposes, meaning it includes powers that will cause it to be treated as a grantor trust for income tax purposes. The settlor contributes seed money to the trust in order to collateralize the trust's purchase of the assets, and the settlor may use their lifetime gift tax exclusion in order to avoid making a taxable gift to the trust. The trust then purchases the appreciating assets from the settlor in exchange for a promissory note that is collateralized by the seed money. The promissory note will bear interest at the appropriate applicable federal rate, which is a minimum rate of interest set by the IRS (the AFR). If the rate of return on the purchased assets exceeds the interest rate on the promissory note (i.e., the hurdle rate), then the settlor will have successfully transferred the appreciated value of the asset out of their estate and to the trust which can benefit family members and allow for future appreciation of the assets.

- A trustee of an irrevocable life insurance trust with "Crummey" powers (with multiple beneficiaries) acquires a life insurance policy on the life of the settlor (or a joint and survivor policy on the lives of the settlor and the settlor's spouse). The settlor(s) contributes the annual insurance premiums using their annual gift tax exclusions ($18,000 in 2024) or, in the case of a single premium insurance policy, using their lifetime applicable gift tax exclusion ($13.61 million in 2024). Death benefits payable to the trust often will vastly exceed the premium expense, and the insurance proceeds are excludable from the settlor's estate and exempt from GST tax (assuming an allocation of the settlor's GST exemption to the trust).

Long-Term Trusts with Favorable Tax Treatment of Nevada Trusts

FIGURE2*

	NEVADA DYNASTY TRUST Transfers in Trust to Next Generation Every 25 Years	TAXABLE OUTRIGHT Transfers to Next Generation Every 25 Years
Year 1	$13,610,000	$13,610,000
Year 25 Value	$46,088,291	$46,088,291
Transfer Tax	—	($18,435,316)
Ending Value	$46,088,291	$27,652,974
Year 50 Value	$156,071,311	$93,642,787
Transfer Tax	—	($37,457,115)
Ending Value	$156,071,311	$56,185,672
Year 75 Value	$528,512,855	$190,264,628
Transfer Tax	—	($76,105,851)
Ending Value	$528,512,855	$114,158,777
Nevada Benefit	**$414,354,079**	

Assumptions:

1. Federal estate tax rate: 40%
2. Return on investment assets: 5% annually
3. No state income taxes
4. No distributions from trust or consumption of principal or income
5. No basic exclusion amount used to offset taxable amount in future years

*Examples used are for illustrative purposes only. Actual results may vary.

FREEDOM OF DISPOSITION

Confidential Trusts

Nevada statute regarding notice when there is not a confidential trust. Under Nevada law, even if the trust is not a confidential trust, the reporting requirements to beneficiaries are more narrow than those in many other states. Nevada does not impose an affirmative duty to provide a beneficiary a copy of the trust instrument except in limited circumstances. Rather than focusing on a beneficiary's rights to information under common law, the statute has codified the beneficiary's rights to information in the statute's trust accounting provisions. A beneficiary can request an inventory of the trust assets if the beneficiary is entitled to an accounting.[25] A beneficiary can demand a copy of the trust instrument if the beneficiary is entitled to an accounting.[26] However, this is not an absolute right and can be subject to provisions in the trust agreement limiting disclosure requirements. So the pivotal point is when a beneficiary has a right to an accounting. A beneficiary may have a right to an accounting under the terms of the trust agreement. If this is not addressed in the trust agreement, the statute provides that the trustee need not issue an accounting unless a "qualified" demand for one is made. There is not an "affirmative" duty to issue an accounting absent such a demand. Specifically, the statute provides that, "the trustee shall deliver an account, upon demand [emphasis added]... to each current beneficiary, and to each remainder beneficiary of the trust. A trustee is not required to provide an account to a remote beneficiary pursuant to this section."[27] Furthermore, a beneficiary with a purely discretionary interest, not subject to an ascertainable standard, is not entitled to demand an accounting.[28] Also, the statute provides that "while the trust is irrevocable in its entirety, but is subject to a broad power of appointment, the trustee is not required to provide an account other than to the power holder for the trust or portion of the trust that is subject to a broad power of appointment."[29]

The ability to create a confidential trust under Nevada statute. A settlor may not want to disclose the existence of a trust to their beneficiaries, at least initially, because they fear that the knowledge of substantial wealth will reduce the beneficiary's incentive to lead a productive life, or for other reasons. Perhaps the settlor wants their children to graduate from college before knowing about the trust, reach a certain age or level of maturity, or any of many different scenarios where having a "confidential trust" may be useful for the family. Under Nevada law, the trust instrument can expand, restrict or eliminate the rights of beneficiaries, including the right to know of the trust and to receive statements.[30] As noted in the prior section, each of the accounting provisions mentioned above provides that they can be overridden by the provisions of the trust instrument. It is important to note that in order to have a confidential trust under this statute, the trust instrument must provide that the trustee is not required to provide the beneficiary with information or make the beneficiary aware of the existence of the trust. Whether a confidential trust is advisable is a decision for the settlor and their legal advisors.

Designated Representatives Under Nevada Law

Although the Nevada designated representative statute is not as robust as the designated representative statue in Delaware and some other states, Nevada law does recognize the concept of a designated representative in the role known as a "reviewer." The reviewer has the power to receive an accounting and copy of the trust agreement and to represent the beneficiary. This is done in the following instances. First, if the trust is a confidential trust, the beneficiary can request the Court to permit a " confidential account."[31] In this proceeding, the beneficiary selects a reviewer who receives a copy of the trust and an account. After reviewing this, the reviewer files a confidential report with the Court. The reviewer must be an attorney or accountant.[32] However, the use of this provision is dependent on the beneficiary of a confidential trust realizing that he is a beneficiary and making a demand for information. Second, whether or not the trust is a confidential trust, the statute permits a holder of a power of appointment to receive an account in the place of the beneficiary.[33]

Limiting Post-Mortem Challenges to Trusts

There may be instances when the settlor wishes to have the validity of a trust they are creating confirmed during their lifetime, precluding anyone from contesting the validity of the trust after the settlor's death. For example, the settlor may fear that a given person will wait until the settlor's death and then do everything possible to challenge the trust without having to face the settlor. Or there may be certain provisions in the trust instrument that the settlor feels could be questioned and wants to verify and validate the trust provisions.

In certain circumstances, Nevada provides a method to achieve validation of a trust before the settlor's death through a "pre-mortem validation." Upon a revocable trust becoming an irrevocable trust due to the settlor's death, or the trust becoming irrevocable before the settlor's death, due to express terms of the trust, the trustee may provide notice to any beneficiary, heir or interested person, limiting the period to contest the trust to 120 days.[34] In order to obtain the 120-day limitation, the trustee must provide all relevant portions of the trust instrument (including any subsequent amendment) which contain provisions relevant to the beneficiary. In the *Horst* case the Nevada Supreme Court held that the trustee did not provide all of the relevant portions of the trust agreement to a beneficiary who brought a cause of action, and the 120-day statute of limitations therefore did not apply.[35] The statute was amended in 2023 to provide that the notice must contain, "the dispositive provisions of the trust instrument which pertain to the beneficiary, a complete copy of the trust instrument, or notice that the heir or interested person is not a beneficiary under the trust."[36]

No-Contest Clause

If the pre-mortem validation seems a bit extreme for a particular client, settlors still have the option to use a no-contest or "in terrorem" clause in a will or a trust.[37] An in terrorem clause is a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of the will or trust who sues to contest the validity of the will or trust or to vary its terms. In terrorem clauses generally are enforceable under Nevada law. The statute provides, with certain exceptions, that a no-contest clause in a trust must be enforced by a court according to the terms expressly stated in the no-contest clause.

Purpose Trusts

At common law, a trust without definite beneficiaries, or at least readily identifiable beneficiaries, failed for lack of a proper purpose unless it qualified as a charitable trust.[38] The problem with non-charitable trusts that did not have a defined class of beneficiaries was that there was no party to enforce the trustee's duties under the trust. In the case of a charitable trust, the power of enforcement resides in the State's Attorney General, who has plenary authority to enforce a charitable trust within its jurisdiction.

In 2017, Nevada recognized non-charitable purpose trusts.[39] The statute provides that a trust may be created for a non-charitable purpose without a definite ascertainable beneficiary or for a non-charitable but otherwise valid purpose. Some types of non-charitable purposes are the maintenance of a piece of property or to continue distributions to non-charitable organizations. The non-charitable purpose for which the trust is created must be stated with sufficient particularity in the trust instrument to be ascertainable by a court. A purpose trust may be enforced by a trustee, trust advisor, trust protector or person appointed under the terms of the trust. If no such person is appointed, it may be enforced by the court.

Increased interest in purpose trusts. Business owners that desire to retire, but want to see their ventures continue to operate with the attention and values that extend beyond mere profit-making, may benefit from selling the business to a purpose trust.[40] A purpose trust allows families to focus a trust on a specific goal rather than on a specific beneficiary. With a purpose trust, the benefits of the business could succeed to its employees or a charity in place of (or in addition to) family members, for the purpose of keeping the business intact, subject to the control of an advisory committee and trustee. By embracing the idea of the purpose trust, business owners can ensure the continuity of their ventures while upholding the values and commitments that have made them successful. The transfer of the company by the owner to the purpose trust can be structured in various ways including by gift, sale or a combination of the two. The transaction can be structured so that the business owner makes a partial or complete gift of the company to the purpose trust. If the transaction is done by a sale, again this can be the owner's entire ownership or a portion. Also if done by a sale, the transaction can be structured so the owner receives a stream of payments over time.

METHODS FOR MODIFYING A TRUST IN NEVADA

Over the last few years there has been an increased desire to modify trusts that are irrevocable. With time passing, there may be the realization that there is a need to "tweak" the provisions of these trusts to accommodate changing circumstances or changes to trust laws. In some cases, modifications of trusts are desirable when a corporate trustee becomes successor trustee to an individual trustee and beneficiaries want to add an investment direction advisor.

The Nevada statute explicitly provides that a person other than the settlor having the ability to modify a trust does not cause the trust to be revocable.[41] Specifically, the statute states that any authority, power or right granted to any person other than the settlor under the terms of the trust instrument or by law, including the power or right to amend the trust, does not make a trust revocable. That same section of the statute states that a trust is irrevocable except to the extent that a right to revoke the trust is expressly reserved by the settlor under the terms of the trust instrument.

Modifications to trusts may involve combining two or more trusts into one trust, or dividing a trust into two or more trusts. Where the trust instrument does not explicitly grant the trustee the power to combine two or more trusts into a single trust or divide a trust into two or more trusts, the combination or division can be accomplished after providing a notice of proposed action to all interested parties or obtaining a court order approving the combining or dividing of the trusts.[42]

Two Procedures Specific to Nevada

Before discussing the various methods for effecting these modifications, such as decanting, merger and nonjudicial modification statutes, it is worth discussing two items that are specific to Nevada. These are the **notice of proposed action[43] and the ability to petition the Probate Court for approval** of an action.[44]

The notice of proposed action was initially enacted in 2003, and its use was limited to matters involving the investment and management of trust assets, actions taken under the Nevada Principal and Income Act, or decanting. The statute was amended in 2015 to allow trustees, trust advisors (including investment trust advisors, distribution trust advisors and trust protectors) to expand the use of the notice of proposed action for any aspect of trust administration that falls within the authority of their role. If the fiduciary using this statute notifies adult beneficiaries of a proposed action, in the absence of written objection from those parties within a defined period (not less than 30 days), the fiduciary can proceed with the proposed action without liability to a present or future beneficiary. This method provides greater certainty for fiduciaries undertaking modifications to trusts, which might not be found in other jurisdictions.

The ability to petition the probate court for approval allows a fiduciary or beneficiary to petition the court regarding any aspect of the affairs of the trust. These include, but are not limited to, the following:

- Determining the construction of the trust instrument;
- Determining the existence of an immunity, power, privilege, right or duty;
- Determining the validity of a provision of the trust;
- Settling the accounts and reviewing the acts of the trustee, including the exercise of discretionary powers;
- Instructing the trustee;
- Compelling the trustee to report information about the trust or account to the beneficiary;
- Granting powers to the trustee;
- Approving or directing the modification or termination of the trust;
- Approving or directing the combination or division of trusts; or
- Permitting the division or allocation of the aggregate value of community property assets in a manner other than on a pro rata basis.

Like the notice of proposed action, this ability to petition the court for approval also provides greater certainty for all parties.

Decanting

Beginning with New York in 1992, more than 30 states have adopted legislation to allow trustees with discretion to distribute trust principal to appoint some or all of such principal in favor of another trust. This process is known as "decanting" a trust, and it offers trustees the ability to modify terms of an irrevocable trust. The trend continues with the promulgation of the Uniform Trust Decanting Act by the Uniform Law Commission in 2015.[45] So far 15 states have enacted this uniform act, and it has been introduced into legislation in one other state and the District of Columbia.

Nevada enacted its decanting statute in 2009.[46] The statute allows a trustee to decant the assets from an existing trust (which is often referred to as "the first trust") to a second trust if the trustee has the discretion to distribute income or principal from the first trust. The statute permits the trustee to decant whether acting in the trustee's own discretion or at the direction or with the consent of another party pursuant to the terms of the trust instrument. This may be useful if the trustee is not comfortable with the requested decanting and there is a distribution trust advisor named in the trust instrument who has distribution authority.

The statute defines the second trust to include the first trust as modified, thus it is not required that a new trust be created as part of the decanting process. This may be administratively easier and may be useful if there is a concern about using a new tax identification number for the decanted trust. Of course, it is equally permissible to create a new trust as part of the decanting.

Like several states, Nevada allows a trustee to decant even if the first trust is subject to an ascertainable standard. However, unlike some states where the second trust would be limited by any ascertainable standard found in the first trust, Nevada does not limit the second trust to the same standard unless the trustee who is decanting is also a beneficiary. In those instances, any ascertainable standards applicable to distributions to the trustee/beneficiary under the first trust must also exist in the second trust.

The statute does not require court consent, but explicitly permits a trustee to petition the court for approval, which can give a trustee certainty before proceeding. Nevada also permits a trustee to utilize the notice of proposed action as described above to create a time period in which parties may file an objection, after which time a trustee can proceed without liability if there are no objections.

The statute specifically provides that decanting is an exercise of a power of appointment held by the trustee and is not a modification. It further provides that the trust can therefore be decanted even if it is an irrevocable trust and even if the trust instrument provides that the trust cannot be amended.

The statute also provides that the definition of a beneficiary of the second trust includes a beneficiary of the first trust to whom a distribution of income or principal may be made from the first trust at a future time or upon a specified event. There is no requirement that the distribution to the beneficiary from the second trust be limited to the future date or specified event. This is different from many decanting statutes that require that the decanting can only be made in favor of beneficiaries who are currently eligible to receive distributions from the first trust. Thus, unlike the decanting statutes in many states, Nevada's decanting statute permits the acceleration of the interests of beneficiaries.

The decanting statute applies to a trust as long as it is governed by Nevada law or administered in or under the laws of Nevada. If a trust is moved to Nevada from another state, the Nevada decanting statute can be used regardless of the original governing law of the trust. While this is similar to some other states' decanting laws, unlike some other states Nevada's statute also specifies that the statute can be used for any trust that is governed by Nevada law. This would mean that Nevada's decanting statute could be applied to a trust administered in another state if it is legitimately subject to Nevada law for any purpose.

The second trust can be established by any party, including a trustee, without violating the requirement under Nevada statute that a trust instrument be signed by a settlor. This makes it easier for the trustee of the first trust to declare the second trust where the settlor is no longer alive, or if there is a reason that the settlor does not want to settle the second trust.

The second trust can have a limited or general, inter vivos or testamentary, power of appointment. Thus, although beneficiaries cannot be added to the second trust by means of the decanting, beneficiaries could later be added indirectly using a power of appointment in the second trust.

Nonjudicial Settlement Agreement (NJSA) Statute

Unlike decanting and directed trusts, which began with state statutes and led to uniform acts on a national level, the NJSA became widespread on a national level with the enactment of the Uniform Trust Code in 2000.[47] Generally speaking, an NJSA provides a method, without having to pursue a judicial procedure, to allow all of the interested parties (settlor, fiduciaries and adult beneficiaries) to agree to certain matters including directing the trustee to take an action or refrain from a specified act, or to approve the accounting of a trustee. The agreement can be used to clarify ambiguities in the trust agreement. However, an NJSA cannot violate a material purpose of the trust, and must include terms and conditions that could be properly approved by the court in a judicial proceeding. A key feature of an NJSA is the ability to bind successor beneficiaries as well as minor or incapacitated beneficiaries who cannot participate in the agreement directly.

Nevada enacted its NJSA statute in 2015.[48] The statute is a method for resolution of trust administration and investment matters without court approval. The statute provides the following nonexclusive list of matters that can be addressed by an NJSA:

- The investment or use of trust assets;
- Lending or borrowing of money;
- Addition, deletion or modification of a term or condition of the trust; interpretation or construction of a term of the trust; designation or transfer of the principal place of administration of the trust;
- Approval of a trustee's report or accounting;
- Choice of law governing the construction of the trust instrument or administration of the trust, or both;
- Direction to a trustee to perform or refrain from performing a particular act;
- The granting of any necessary or desirable power to a trustee;
- Resignation or appointment of a trustee and the determination of a trustee's compensation;
- The merger or division of trusts;
- Granting of approval or authority for a trustee to make charitable gifts from a non-charitable trust;
- The transfer of a trust's principal place of administration;
- Negating the liability of a trustee for an action relating to the trust and providing indemnification therefore; and
- The termination of the trust.

Two tests must be met for an NJSA to be valid under the Nevada statute:

i. The agreement cannot violate a material purpose of the trust; and

ii. Its terms and conditions must meet the requirement that they can be properly approved by a court.

These two requirements mirror the Uniform Trust Code provisions on NJSAs. The Nevada Statute's enumerated powers are more expansive than those listed under the Uniform Trust Code's NJSA provisions, although the list under the Uniform Trust Code is also nonexclusive.

Nevada's statute provides that an NJSA must be signed by all "indispensable parties" to be effective. Indispensable parties include all persons whose consent would be required for a binding settlement by a court. Nevada's virtual representation statute applies to NJSAs to allow for the representation of minor, incapacitated, unborn, and persons whose identity or location is unknown and not reasonably ascertainable. If an indispensable party does not sign or object in writing to the NJSA then the trustee can consider proceeding with a notice of proposed action, which is described above.

NJSAs can be very useful in a variety of situations beyond interpretation of unclear terms in a trust or definition of a trustee's duties and responsibilities. Similar to decanting, NJSAs can be used to add investment or distribution advisors and to modernize trust provisions for added flexibility in trust administration. They are also an excellent tool to move existing trusts to Nevada to capitalize on its flexible trust laws.

THE USE OF ELECTRONIC AND DIGITAL MEDIA

Nevada permits the use of electronic wills and trusts.[49] The statute refers to the Nevada Uniform Electronic Transactions Act (UETA), Chapter 719 of the Nevada statutes. For an electronic will to be valid, it must be created and maintained in an electronic record as defined in the UETA, and contain the date and electronic signature of the testator. It must also include an authentication of the testator, which can be any of the following: a fingerprint, retinal scan, voice recognition, video recording, digitalized signature or facial recognition. The statute also requires the electronic signature and seal of a notary, or of two or more attesting witnesses.

An electronic trust is a valid trust instrument when it: is written, created and stored in an electronic record; contains the electronic signature of the settlor; and meets the requirements otherwise set forth for a valid trust under the Nevada statutes. An electronic trust is deemed to be executed in Nevada if it is: transmitted to and maintained by a custodian designated in the trust instrument at the custodian's place of business in Nevada or at the custodian's residence in Nevada; or maintained by the settlor at the settlor's place of business in Nevada or at the settlor's residence in Nevada; or by the trustee at the trustee's place of business in Nevada or at the trustee's residence in Nevada.

The statute requires that an electronic will or trust must name and utilize the services of a custodian in Nevada. In 2021, the statute was modified in various places to update provisions relating to electronic wills and trusts, including adding "blockchain" in the definition of electronic record, and allowing the witnessing of a will by means of audio-video communication.

Nevada also permits electronic notarization.[50] This was permitted by statute beginning in 2019. This includes remote online notarization where the signatory appears before the notary online rather than in person.

ASSET PROTECTION UNDER NEVADA LAW

Asset Protection for Third-Party Beneficiaries

When discussing the use of a Nevada trust for asset protection, people generally think of a self-settled asset protection trust where the settlor is also a permissible beneficiary of the trust. However, the statute that governs Nevada asset protection trusts, The Nevada Spendthrift Trust Act of Nevada,[51] also applies to third-party beneficiaries whether or not the settlor is also a beneficiary.[52] The statute defines a spendthrift trust as one in which the terms of the trust agreement impose a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary.[53] The statute also provides that no specific language is necessary for the creation of a spendthrift trust. It is sufficient if by the terms of the trust instrument (construed in the light of this statute if necessary) the settlor manifests an intention to create such a trust.[54] The beneficiaries of the trust must be named or clearly referred to in the trust instrument. No spouse, former spouse, child or dependent shall be a beneficiary unless named or clearly referred to as a beneficiary in the writing.[55] A creditor of the beneficiary cannot bring a cause of action to reach the assets of the trust unless the creditor can prove by clear and convincing evidence that the transfer of property to the trust was a fraudulent transfer as defined under Nevada's fraudulent transfer statutes.[56] The time period for a creditor to bring a cause of action based on a claim of fraudulent transfer is the same as described under the self-settled asset protection trust discussion.

Provisions Related to Settlors of Trusts That Are Grantor Trusts for Income Tax Purposes

The Nevada Statute provides that a trust instrument may authorize the trustee, in the sole discretion of the trustee or at the direction or with the consent of a directing trust advisor, to reimburse a settlor for all or a portion of the tax on trust income or capital gains taxes that are payable by the settlor. This would be applicable in a trust that is a grantor trust for income tax purposes, meaning that the taxation of the trust flows to the settlor rather than the trust being a separate taxable entity. The statute provides that a trust instrument may provide that the trustee may pay such amount to the settlor directly or to an appropriate taxing authority on behalf of the settlor.[57]

The statute goes on to provide that the power of a trustee to make this payment does not cause the settlor to be treated as a beneficiary for purposes of Nevada law. The statute defines "beneficiary" as a person who has a present or future beneficial interest in a trust, vested or contingent, but does not include the holder of a power of appointment. The point of this limitation is to ensure that Nevada's asset protection statutes are not compromised by the ability to reimburse a settlor for taxes paid on a grantor trust. Also, the statute addressing claims of creditors goes on to specify that the power to reimburse the settlor for taxes on a grantor trust does not enable a creditor of the settlor to seek to satisfy a claim against the settlor from the assets of the trust.[58] Similarly, the statute provides that a settlor's power of substitution or power to borrow from the trust without adequate interest or adequate security, which are two powers commonly used to create a grantor trust for income tax purposes, do not give a creditor the ability to look to the trust to satisfy a claim against the settlor. This applies even if the settlor is a permissible beneficiary of a self-settled asset protection trust.

Note, however, that these limitations do not apply if the creditor can prove by clear and convincing evidence that the transfer to the trust was fraudulent as to that creditor, as defined under Nevada's Uniform Fraudulent Transfers Act.

Self-Settled Asset Protection Trusts (SSAPT)

We turn now to a topic that has received significant attention since 1997, when the first SSAPT statute was enacted.[59] Oftentimes this topic is covered under the term Domestic Asset Protection Trusts (DAPT) or simply asset protection trusts. Since trusts created for third-party beneficiaries generally have spendthrift provisions (as noted above for Nevada), those can be viewed as asset protection trusts as well. However, beginning with the Alaska statute in 1997, new laws allowed a person to be both the settlor and a beneficiary of a trust, thus the term "self-settled," and, if done properly, under the given statute the assets in the trust should be shielded from the claims of the settlor's creditors, as well as the claims of creditors of the third-party beneficiaries of the trust.

This legislative change represents a shift in centuries-old law. The Restatement (Second) of Trusts provides a good example of the common law view. It reads that "where a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit."[60] Thus, the SSAPT legislation overrides the Restatement (Second) of Trusts. Currently there are at least 20 states with some type of legislation enabling the creation of an SSAPT.

The Nevada statute. In 1999, Nevada enacted the "Spendthrift Trust Act of Nevada," which as noted above, addresses creditor protection for third-party beneficiaries as well as situations where the settlor is a beneficiary.

The Nevada statute is representative of the concept of an SSAPT. A settlor can be a beneficiary as well as settlor, and their creditors should not be able to reach the assets in the trust as long as certain rules are followed. These rules include the following requirements: (i) the transfer is to an irrevocable trust; (ii) the trust must have a Nevada resident trustee (if the settlor is also a permissible beneficiary); (iii) the trust must incorporate Nevada law; and (iv) the trust must have a spendthrift clause. The settlor is allowed to retain certain rights, which include: (i) the ability to be a permissible beneficiary as to principal and income; (ii) the right to veto distributions of income or principal to other beneficiaries; (iii) the ability to have a limited inter vivos and/or testamentary power of appointment; (iv) the power to appoint and remove trustees and advisors; and (v) the ability to serve as an investment advisor. Note that the settlor cannot serve as a trustee. In short, the settlor can be a permissible beneficiary, and their creditors should not be able to bring a cause of action against the trust to settle an order to satisfy a debt owed by the settlor to the creditor, provided none of the asset transfers are found to be fraudulent.

The time period that a creditor can bring a cause of action is limited. If the person is a creditor when the assets are transferred to the trust, the creditor must bring the cause of action within the later of two years after the transfer to the trust is made, or six months after the transfer could have been reasonably discovered by the creditor. If the person becomes a creditor after the transfer of assets to the trust, the creditor must bring the cause of action within two years. To be successful during this period, the creditor must prove that the settlor's transfer of assets to the trust was a fraudulent transfer.

Most SSAPT statutes have various types of "exception creditors" where there is no statute of limitation for the time that the claim can be brought against the trust. These typically include marital relations claims such as an order for alimony, child support or property division, as well as claims based on torts such as property damage, bodily injury or death. The Nevada statute does not have exception creditors. The creditors are limited to those alleging a fraudulent transfer, and the time period is limited to two years as described above. Finally, the Nevada statute specifically provides that community[61] property can be transferred into a Nevada SSAPT by husband and wife and retain the community property status.

The Nevada statute provides that the powers related to a settlor of a grantor trust for income tax purposes (power to reimburse the settlor, settlor's power to substitute assets, settlor's power to borrow without adequate interest or adequate security) do not give a creditor the ability to look to the trust to satisfy a claim against the settlor.

Although there has been some case law upholding the asset protection nature of these trusts, in large part the case law across the country is mixed.

CONCLUSION

Nevada continues to be recognized as a leading jurisdiction for flexible trust laws. This is largely due to its infrastructure for the trust and estates industry, possessing a sophisticated legal bar and judicial system, and having a progressive and flexible legislative process. To learn more, please contact your Northern Trust representative or one of the individuals provided below.

To learn about our Nevada trust services, please contact:

David A. Diamond
President
The Northern Trust
Company of Delaware and
Advisor to The Northern Trust
Company of Nevada
dad10@ntrs.com
302-428-8711

Gregory J. Wood
Senior Vice President
The Northern Trust
Company of Delaware
gjw3@ntrs.com
302-428-8725

Suan W. Tan
Trust Advisor
The Northern Trust
Company of Nevada
swt3@ntrs.com
702-304-6840

ENDNOTES

1 NRS chapter 163 governs Nevada trusts.

2 NRS 163.558.

3 NRS 163.5553.

4 Uniform Directed Trust Act 2017, https://www.uniformlaws.org.

5 NRS 163.5549.

6 12 Del. C. § 3313.

7 NRS 163.5536.

8 NRS 163.5537, 163.5541, and 163.5547 respectively.

9 NRS 163.5543 provides that the investment trust advisor is a fiduciary.

10 NRS 163.5551.

11 NRS 163.5537 provides that the distribution advisor is a fiduciary. NRS 163.5551 provides the exception where the trust agreement states that the advisor is not a fiduciary.

12 NRS 163.5553.

13 Cal. Rev. and Tax. Code § 17742(b).

14 See, e.g., Cal. Rev. and Tax. Code §§ 17734, 17737; N.Y. Tax Law § 633(a).

15 *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (due process clause requires minimum contacts between a state and a taxpayer to justify state's authority to impose tax)

16 See, e.g., *Chase Manhattan Bank v. Gavin*, 733 A.2d 782 (Conn. 1999). See also, *District of Columbia v. Chase Manhattan Bank,* 689 A.2d 539 (D.C. 1997).

17 *McNeil v. Commonwealth of Pa.*, 67 A.3d 185 (Pa. Commw. Ct. 2013) (holding that despite the settlor's Pennsylvania residency at the time of the trust's creation, because the trust had no Pennsylvania beneficiaries or other connections, the imposition of a Pennsylvania fiduciary income tax violated both the Pennsylvania and U.S. Constitutions); *Linn v. Department of Revenue*, 2 N.E.3d 1203 (Ill. App. Ct. 2013) (finding that the income taxation of the trust in question violated the Due Process Clause of the U.S. Constitution because there was not a sufficient minimum connection between the trust and the state of Illinois); *Fielding v. Commissioner of Revenue*, 916 N.W. 2d 323 (2018) (holding that four irrevocable inter vivos trusts lacked sufficient relevant contacts with Minnesota during the relevant tax year to be permissibly taxed, consistent with due process, on all sources of income as resident trusts.

18 *North Carolina Department of Revenue v. Kimberly Rice Kaestner 1992 Family Trust*, 588 U.S. (June 21, 2019).

19 IRC § 2601.

20 IRC § 2631(a); An Act to provide for reconciliation pursuant to Titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. 115-97, 131 Stat. 2126 (2017).

21 NRS 111.1031.

22 *Unconstitutional Perpetual Trusts*, Steven J. Horowitz and Robert H. Sitkoff, 67 Vanderbilt Law 1769 (2014).

23 *The Ins and Outs of Trusts That Last Forever*, Paul Sullivan, *The New York Times*, December 5, 2015.

24 *Bullion Monarch v. Barrick Goldstrike*, 131 Nev. Adv. Op. 13, March 26, 2016.

25 NRS 165.030.

26 NRS 165.147(1).

27 NRS 165.1207(1)(a).

28 NRS 165.1207(1)(b)(5).

29 NRS 165.1207(1)(b)(2).

30 NRS 163.004(1)(a).

31 NRS 165.145.

32 NRS 165.145(3).

33 NRS 165.1207(1)(b)(2).

34 NRS 164.021.

35 *In the Matter of Horst*, 136 Nev. Adv. Op. 90 (December 31, 2020).

36 NRS 164.021(2)(c)

37 NRS 137.005 addresses no-contest clauses in wills, and NRS 163.00195 addresses no-contest clauses in trusts.

38 See, *Morice v. Bishop of Durham*, 9 Ves. 399 (1804).

39 NRS 163.5505.

40 For an in-depth discussion on the use of purpose trusts for the transfer of a business, see, *The Changing Landscape of Business Succession, How and Why Purpose Trusts Matter*, July 14, 2023, Prof. Susan Gary, University of Oregon Law School.

41 NRS 163.004 (2).

42 NRS 163.025.

43 NRS 164.725.

44 NRS 153.031.

45 Uniform Decanting Trust Act 2015, https://www.uniformlaws.org.

46 NRS 163.556.

47 UTC § 111.

48 NRS 164.940.

49 NRS 133.085, electronic wills; NRS 163.0095, electronic trusts.

50 NRS 240.1997.

51 Nevada Statutes, Chapter 166 – Spendthrift Trusts.

52 NRS 166.040(1).

53 NRS 166.020.

54 NRS 166.050.

55 NRS 166.080.

56 NRS 166.170(1)(b)(3).

57 NRS 163.557.

58 NRS 163.5559.

59 Alaska Stat. §§ 13.36.310, 34.40.110.

60 Restatement (Second) of Trusts § 156 (1969).

61 NRS 123.125.

ABOUT THE NORTHERN TRUST INSTITUTE

The Northern Trust Institute is dedicated to helping clients achieve more with their wealth through tailored strategies backed by research and innovation. More than 170 experts, representing diverse areas of expertise and geography, collaborate to analyze real-world client outcomes and harness the best ideas from working with wealthy individuals and families. The resulting insights enable the delivery of personalized advice to clients when they need it most.

ABOUT NORTHERN TRUST

Northern Trust collaborates with clients and their advisors to offer holistic wealth management services for individuals and families, privately held businesses, family offices, and foundations and endowments. We are recognized for innovative technology, service excellence and depth of expertise across all aspects of financial planning, including wealth transfer, banking, insurance, investments, tax management, philanthropy, family communication and more.

NORTHERN TRUST

Northern Trust
50 South La Salle Street
Chicago, Illinois 60603

866-296-1526

122023_804950_WM_NevadaTrust_2024