THE NORTHERN TRUST INSTITUTE

WEALTH MANAGEMENT

NEVADA TRUSTS

Safeguarding Personal Wealth

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NEVADA TRUSTS: SAFEGUARDING PERSONAL WEALTH

Many families and their advisers have found the State of Nevada to be a trust-friendly jurisdiction that promotes modern laws and enjoys attractive income tax advantages. This paper highlights the most significant legal and tax benefits for Nevada residents and nonresidents alike, and their professional advisers, who may be considering whether to establish a trust in Nevada.

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 advisers. 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 as you work to create meaningful legacies.

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FLEXIBLE TRUST JURISDICTIONS

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

Although not the only example, one common scenario occurs when an individual has created a significant amount of wealth over the past twenty years. Perhaps this wealth was created through a closely held operating company, or investments in marketable securities, or in any number of ways. The wealth created in the technology industry since the late 1990s is a good example, and there are many more. Often times the person who has created this wealth would like to pass the fruits of her labor down to her 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 one of several results of this type of wealth creation and Nevada is in the forefront of providing directed trusts as wealth transfer solutions to creators of wealth. This benefits both the creator of the wealth as well as her family, who are often beneficiaries of trusts established to transfer this wealth down successive generations.

SAVINGS ON FIDUCIARY INCOME TAXES

In many states, a trust's realized capital gains and accumulated ordinary income are taxed at rates between 5 and 10 percent, with rates in California as high as 13.3 percent. Thus, in addition to the 20 percent rate on capital gains at the federal level, plus the potential net investment income tax of 3.8 percent, state income taxes can greatly reduce trust earnings. It is worth noting that at the time of this paper, California is considering raising its current income tax rates.

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 a Nevada trust are not taxed by Nevada.

As 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 $5 million, the after tax proceeds of the sale in the Nevada trust would probably be worth $665,000 because the proceeds in the California trust would be subject to California income tax at a rate of 13.3 percent (see Figure 1).

FIGURE 1:

	Sale in Nevada Trust	Sale in California Trust
Sale Proceeds	$5,000,000	$5,000,000
Tax Cost	$0	$0
Gain on Sale	$5,000,000	$5,000,000
State Income Tax	$0	$665,000
Federal Income Tax	$1,190,000	$1,190,000
Proceeds Net of Tax	**$3,810,000**	**$3,145,000**
Nevada Benefit =	$665,000	

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.

POTENTIAL FOR OTHER STATES TO IMPOSE AN INCOME TAX ON A NEVADA TRUST

Although Nevada will not impose an income tax on a Nevada trust, depending on the circumstances 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:

- 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 or distribution adviser (the adviser roles are discussed beginning on page 10) located in states including California, that state would consider the trust to be subject to its tax regime. 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 affiliates state would consider the trust to be resident and fully taxable in that state.[1]

- 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.[2] 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.

- Some states will attribute resident status to an irrevocable trust established in another state if the grantor 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, Ohio, Pennsylvania, Virginia and Wisconsin.[3] 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*.[4] Following the *Quill* decision, state courts were notably unfriendly to states' attempts to assert taxing jurisdiction, and until recently 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.[5] There have been two cases where the state court ruled that the mere fact that the trust was created by a grantor 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 and the ***Linn*** case in Illinois, which are notable, in part, because they were decided in residence-by-birth states.[6] But, because both *McNeil* and *Linn* relied on their specific facts, care should be used in relying on these cases. Residents of Pennsylvania, Illinois, 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. Note that the trend of determining taxation to be unconstitutional continues in the *Kaestner* decision which came from the North Carolina Courts and was ultimately decided in the U.S. Supreme Court.[7] 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.

- In 2014, New York State changed the way it might tax a Nevada trust. If a trust is created by a New York resident, New York considers it a resident trust for income tax purposes. However, if the trust does not have a New York fiduciary, New York source income, or New York real or tangible personal property owned by the trust, New York would consider this a resident trust but not impose fiduciary income tax on the trust. Under the New York 2014–2015 Budget, which became effective April 1, 2014, distributions to a New York resident beneficiary from a New York resident trust will be subject to a throwback tax on previously undistributed income accumulated during any tax year starting after December 31, 2013, if the trust is not already subject to New York fiduciary income tax. Under the throwback rules, a beneficiary's distribution is deemed to include income earned in prior years and thereby potentially increases the beneficiary's tax liability. The throwback tax will apply only to New York resident beneficiaries of trusts created by a New York resident grantor, where the trust is exempt from New York income taxation because it has no New York resident trustees, no New York source income, and no New York real estate or tangible personal property located in the state.[8] Note that the throwback rules do not apply to a Nevada Incomplete Non-Grantor Trust ("NING") trust, which has a separate and distinct status under New York law and is discussed on page 14.

LONG-TERM 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 remainder interests would have to be distributed outright to the class of remainder beneficiaries.

The complexity of applying the Rule caused a number of states to develop alternatives to the common law Rule, such as the 90-year period under the Uniform Statutory Rule Against Perpetuities. But, it was not until the Tax Reform Act of 1986 (the "1986 Act") that states began to seriously consider abolishing the Rule outright. This is because the 1986 Act re-introduced 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.[9] 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[10] is $11.7 million in 2021 and indexed for inflation for subsequent years. Note that under the Tax Cuts and Jobs Act of 2017, this basic exclusion amount will return to the lower amount of $5 million on December 31, 2025. Importantly, the Internal Revenue Code (the "IRC") does not place any limit on the duration of a transferor's GST exemption or the duration of corresponding GST-exempt trusts. Thus, if the limit on the length of a GST-exempt trust were the applicable rule against perpetuities, an 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.

LONG-TERM TRUSTS IN NEVADA

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 statutory Rule Against Perpetuities to allow 365-year interests. This is the statute that permits a trust in Nevada to last 365 years.[11] For the person who has created wealth and now wants to pass it down 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" as they are thought of as a way to share the wealth within a family for generations to come.

As a general rule, Dynasty trusts will also have one or more mechanisms to terminate the trust early, if needed. This can be done by drafting testamentary limited powers of appointment at all or some of the generations. These limited powers of appointment allow the beneficiary to determine the disposition of the trust assets upon her 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 10, 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.

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,[12] which received a notable amount of attention at the time including discussion in an article in the *New York Times*.[13]

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 at the *Bullion Monarch*[14] 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. 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 create 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 has the ability to 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."

LONG-TERM TRUSTS WITH FAVORABLE TAX TREATMENTS

The economic benefit of a GST-exempt Dynasty Trust can hardly 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. Assuming an $11.7 million contribution to a trust, 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 an approximate value of $454 million after only 75 years. The same sum of $11.7 million held outside of a trust (and subject to a gift tax or estate tax upon transmittal to each successive generation) would have an approximate value of $98 million. (See Figure 2.)

FIGURE 2:

	NEVADA DYNASTY TRUST Transfers in Trust to Next Generation Every 25 Years	TAXABLE OUTRIGHT Transfers To Next Generation Every 25 Years
Year 1	$11,700,000	$11,700,000
Year 25 Value	$39,620,353	$39,620,353
Transfer Tax	—	($15,848,141)
Ending Value	$39,620,353	$23,772,212
Year 50 Value	$134,168,577	$80,501,147
Transfer Tax	—	($32,200,459)
Ending Value	$134,168,577	$48,300,688
Year 75 Value	$454,342,425	$163,563,273
Transfer Tax	—	$65,425,309
Ending Value	$454,342,425	$98,137,964
Nevada Benefit =	$356,204,461	

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.

FLEXIBLE PROVISIONS TO ACHIEVE THE GRANTOR'S OBJECTIVES

TIMING OF NOTICE TO BENEFICIARIES

In various instances it may be advisable for a beneficiary not to know that she is a beneficiary of a trust, for a period of time. Perhaps the grantor wants her 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. Nevada statute provides that the trust instrument can expand, restrict, or eliminate the rights of beneficiaries, including the rights to know of the trust and to receive statements.[15] The statute also creates the role of the Designated Representative who legally represents the beneficiaries who do not know of the trust, and has the ability to bind them in judicial and nonjudicial matters.[16] It is important to note that 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. Without such a provision in the trust instrument, the trustee is required to provide notice and information to the beneficiaries.[17] Whether a confidential trust is needed is a decision for the grantor and legal advisers who help her establish the trust.

PRE-MORTEM VALIDATION OF A TRUST

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

Nevada provides a method to achieve this pre-mortem validation of a trust. A maker or legal representative of a maker of a will, trust or other writings constituting a testamentary instrument may have the court determine any question of construction or validity arising under the instrument and obtain a declaration of rights, status or other legal relations thereunder.[18] The proceeding requires that notice be sent to all "interested parties" which would be the same parties that would be required for any court action regarding the trust. If no interested parties file an objection within that time, the matter is generally heard in camera.

NO-CONTEST CLAUSE

If the pre-mortem method seems a bit extreme for a particular client, grantors still have the option to use a no-contest or "in terrorem" clause in a will or a trust.[19] 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 will or 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 object unless it qualified as a charitable trust.[20] The problem with such trusts was that without a certain class of beneficiaries, there was no one to enforce the trustee's duties under the trust agreement. In the case of a charitable trust, the power of enforcement resides in the attorney general, who has plenary authority to enforce a charitable trust within her jurisdiction. In 2017, Nevada enacted a purpose trust statute.[21] The statute provides that a trust may be created for a noncharitable purpose without a definite ascertainable beneficiary or for a noncharitable but otherwise valid purpose. The noncharitable purpose for which the trust is created must be stated with sufficient particularity in the trust instrument to be ascertainable by a finder of fact. The purpose trust may be enforced by a trustee, trust adviser, trust protector, or person appointed under the terms of the trust. If no such person is appointed, it may be enforced by the court.

Purpose trusts are sometimes used to hold a family owned business where the person who created the business wants it to continue to operate indefinitely, without there being beneficiaries who might feel it is better to sell the company. These are not used as frequently as other types of trusts, but fill a need for specific fact patterns.

DIRECTED TRUSTS

Much of the wealth that funds trusts comes from grantors who are still in the wealth creation stage. Typically they have generated their wealth by having significant control over matters. This may mean handling their own investments, running a closely held business, or taking large risks that have led to the wealth. This desire for retaining some level of control has ushered in the growth of directed trusts. As of the date of this writing, over 25 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. The trend continues with the recent promulgation of the Uniform Directed Trust Act ("UDTA") by the Uniform Law Commission. The UDTA was finalized in 2017 and is intended for enactment by individual states. So far at least 13 states have enacted or introduced this uniform act, which serves as evidence that the trend is toward directed trusts becoming more customary, rather than just being a temporary phenomenon.

Nevada's statute clearly provides the mechanism for trusts where a trustee can be directed by a 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 which results from complying with the direction.[22] 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, which provide that the trustee is not liable as long as the trustee does not act with willful misconduct, a standard which is defined in the statute.[23]

The Nevada statute defines the roles of Directing Trust Adviser to mean a trust adviser, trust protector or other person designated in the trust instrument who has the authority to give directives that must be followed by the fiduciary.[24] The term does not include parties that give recommendations, counsel, or advice to that fiduciary if the fiduciary is not required to follow that advice. Also defined are the specific adviser roles of Distribution Trust Adviser, Investment Trust Adviser, and Trust Protector.[25] 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. The role that is most frequently utilized is the Investment Trust Adviser. Probably the most common example of the use of an Investment Trust Adviser is where a grantor wants the corporate trustee to manage the trust's portfolio of marketable securities, while at the same time wanting the trustee to be directed to retain some special holding such as a closely owned company or a concentrated position of stock.

The following illustration provides additional examples of how the role of the Investment Trust Adviser might be used.

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 investment responsibility for the closely held asset.	**Client retains control** If the client designates himself or herself as the investment adviser for the closely held asset, the trustee will not have any authority to participate in decisions regarding the client's business or investment entity.
Non-U.S. person custodies assets in U.S. A non-U.S. person who is a citizen of a politically unstable nation wants to maintain custody of his or her financial assets in the U.S. without subjecting the assets to U.S. income tax.	**Foreign trust avoids U.S. income tax** The grantor can create a "foreign trust" with a U.S. trustee if the trust fails the "control test" under I.R.C. § 7701(a)(30)(E). The control test requires one or more U.S. persons to have the authority to control all substantial decisions of the trust. Thus, by vesting a non-U.S. person with authority to control substantial decisions of the trust (i.e., investments, distributions, termination, and the like), the foreign trust should not be subject to U.S. income taxation except on its U.S. source income. The Nevada directed trust rules nicely accommodate the non-U.S. person's desire to control the substantial decisions of the trust, leaving the trustee to furnish administrative support without liability for the actions of the non-U.S. person.

The directed trust structure might also be used to direct the trustee on distributions. This could be an interim step while the trustee becomes more familiar with the family, or a permanent design so that there will always be an individual or group of people directing the trustee on distributions. Although less common than trusts directed for investments, this is a common use of the directed trust structure.

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.

METHODS FOR MODIFYING A TRUST IN NEVADA

In recent years there has been an increased desire to modify trusts that are irrevocable. Perhaps this is more common because of the large number of Dynasty Trusts that were created and funded during the end of 2012. And, with some time passing, there is the realization that there is a need to "tweak" the provisions of these trusts that might have been created rather quickly during that year-end demand for new trusts. Another reason for modifying trusts is when a corporate trustee becomes successor trustee to an individual trustee and there is a desire to add an Investment Direction Adviser as part of this process.

TWO PROCEDURES SPECIFIC TO NEVADA

Before discussing the various methods for effecting these modifications such as decanting, merger, and non-judicial modification statutes, it is worth discussing two items that are specific to Nevada. These are the Notice of Proposed Action[26] and the ability to petition the Probate Court for approval of an action.[27]

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. With its amendment in 2015, the statute can now be used by trustees, trust advisers (including Trust Investment Advisers, Trust Distribution Advisers, and Trust Protectors) 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 time period which cannot be less than thirty days, the fiduciary can proceed with the proposed action without liability to a present or future beneficiary. This method provides certainty for fiduciaries, which might not be found in other jurisdictions.

The ability to petition the 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 provides certainty for trust parties which might not be found in other jurisdictions.

DECANTING EXISTING TRUSTS

Although these statutes generally refer to the trustee's ability to appoint property from one trust to another, the process is generally referred to as "decanting" a trust. The etymology of this term relates to the concept of decanting wine from one vessel to a second vessel, leaving behind the sediments in the original vessel, resulting in an improved wine in the second vessel.

Beginning in 1992 with New York State, more than thirty 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. Similar to the trend of directed trusts becoming more accepted, leading to a Uniform Act promulgated by the Uniform Laws Commission, decanting has also seen a rise in acceptance and popularity. The Uniform Laws Commission promulgated the Uniform Trust Decanting Act in 2015 and legislation has been introduced or the Act has been enacted in ten states.

Nevada enacted its decanting statute in 2009.[28] 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. 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.[29]

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 it would appear that 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.[30] 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.[31] 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.[32] Thus, although beneficiaries cannot be added to the second trust by means of the decanting, beneficiaries could later be added indirectly through the use of a power of appointment in the second trust.

NONJUDICIAL SETTLEMENT AGREEMENT ("NJSA")

Unlike decanting and directed trusts which began with state statutes and led to uniform acts on a national level, the NJSA began on a national level with the enactment of the Uniform Trust Code in 2000.[33] Generally speaking, a NJSA provides a method, without having to pursue a judicial procedure, to allow all of the interested parties (grantor, fiduciaries, and adult beneficiaries) to agree to do 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, a 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.

Nevada enacted its NJSA statute in 2015.[34] 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 a 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.[35]

Two tests must be met for a 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.[36]

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 a NJSA must be signed by all "indispensable parties" to be effective.[37] Indispensable parties include all persons whose consent would be required for a binding settlement by a court.[38] 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.[39] 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. Like decantings, they can be used to add investment or distribution advisers and to modernize trust provisions for added flexibility in trust administration. They are also an excellent tool to move existing trusts to Nevada to take advantage of Nevada's flexible trust laws.

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.[40] Often times this topic is covered under the term Domestic Asset Protection Trusts ("DAPTs") or simply asset protection trusts. Since trusts created for third-party beneficiaries generally have spendthrift provisions, those can be viewed as asset protection trusts as well. However, beginning with the Alaska statute in 1997, new laws began allowing a person to be both the grantor and a beneficiary of a trust, thus self-settled, and, if done properly, under the given statute the assets in the trust should be shielded from the claims for the grantor'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."[41] Thus, the SSAPT legislation contradicts the Restatement (Second) of Trusts, which has been the guiding authority for years. Currently there are at least twenty states with some type of legislation enabling the creation of a SSAPT. In 1999, Nevada enacted the "Spendthrift Trust Act of Nevada."[42] Of note is the fact that this Act addresses creditor protection for third-party beneficiaries as well as situations where the settlor is a beneficiary. Thus it covers more than just SSAPT.

The Nevada statute is representative of the concept of a SSAPT. A settlor can be a beneficiary as well as settlor, and her 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; (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; and (iii) the ability to have a limited inter vivos and / or testamentary power of appointment, the power to appoint and remove trustees and advisers, and the ability to serve as an investment adviser. Note that the settlor cannot serve as a trustee. In short, the settlor can be a permissible beneficiary and her 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.

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 latter 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 fraudulent conveyance, and the time period is limited to two years as described above.

Finally, the Nevada statute specifically provides that community property can be transferred into a Nevada SSAPT by husband and wife and retain the community property status.[43]

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. The following is a sample of the case law on this topic.

NEVADA TRUSTS

In *Dahl v. Dahl*[44] a divorce was brought forth in the Utah Courts. The Utah District Court looked at the choice of law provision in a trust created under the Nevada Spendthrift Trust Statute, and held that this self-settled asset protection trust created and funded by the husband after marriage, but before divorce proceedings began, was not part of marital property in the divorce proceedings between the husband and wife. However, on January 30, 2015, the Supreme Court of the State of Utah issued an opinion which held that because Utah has a strong public policy in the interest of equitable division of marital assets, the choice-of-law provision in the Nevada trust citing Nevada law as the governing law, did not apply. The Court applied Utah law and found that the trust was to be considered in the division of the marital property in the Utah divorce proceeding. The Court also ruled that under Utah law the trust was revocable because the husband retained the right to amend the trust, and that the wife was also a settlor because she had transferred assets to the trust. The case was remanded to the Utah District Court to determine what property contained in the trust is properly characterized as marital property and either credit the wife with an offset equal to the value of that property, or allow her to withdraw her share of the property. *Klabacka V. Nelson*[45] involved a divorce case in the Nevada District Court, where both husband and wife were Nevada residents. The husband and wife had each set up their own SSAPT before the divorce proceedings began in 2009. In the divorce proceedings, the District Court ordered the husband's SSAPT to satisfy his personal obligations, specifically the husband's child and spousal support claims which were in arrears. Upon appeal, the Nevada Supreme Court reversed this holding, concluding that the order made by the District Court directing support payments to be made from the SSAPT runs contrary to Nevada law. Thus the Nevada Supreme Court upheld the SSAPTs. It is noteworthy that the grantor of each of the two SSAPTs was a resident of Nevada.

DELAWARE TRUSTS

In *TrustCo Bank v. Susan M. Mathews*, The Delaware Court of Chancery issued a Memorandum Opinion granting the defendant's motion for partial summary judgment ruling that the plaintiffs were time barred in their claim that transfers to a Delaware trust created under the Qualified Dispositions in Trust Act were fraudulent transfers. In reaching this conclusion the Court applied a conflict of law analysis involving Delaware, New York, and Florida law to determine which of the states had the most significant contacts. Ultimately the court held that Florida and Delaware had the most significant contacts. The Plaintiffs' claims were time barred under both states' fraudulent conveyance laws. Note that the court stated that it did not need to determine if Delaware's Qualified Dispositions in Trust Act (the Delaware SSAPT statute) applied since the court was able to reach its conclusion based on general debtor / creditor law.

ALASKA TRUSTS

The *Mortensen* case involved a bankruptcy in which the Court set aside the grantor's transfer of real property to an Alaska self-settled asset protection trust as a fraudulent conveyance. In *Huber*,[46] the Trustee successfully obtained a summary judgment invalidating the grantor's transfers to the self-settled asset protection trust made shortly before he filed for bankruptcy, on the grounds that: (i) the Trust was invalid under applicable state law; (ii) Huber's transfers were fraudulent under § 548(e)(1) of the Bankruptcy Code; and (iii) Huber's transfers were fraudulent transfers under the Washington State Fraudulent Transfers Act.

In the more recent case, *Toni 1 Trust v. Wacker*,[47] the Alaska Supreme Court held that Alaska's statute, AS 34.40.110(k), which claims assertion of exclusive jurisdiction does not render a fraudulent transfer judgment against an Alaska trust from a court of another state void for lack of subject matter jurisdiction. The Court denied the claim for relief from a trustee of an Alaska self-settled asset protection trust created by a Montana resident, where the trustee was requesting that the Alaska court assert exclusive jurisdiction over the trust.

THE NEVADA INCOMPLETE NON-GRANTOR TRUST ("NING")

A NING is a type of self-settled asset protection trust with a specific set of provisions and particular objectives.

A client whose portfolio includes an asset with substantial unrealized gains or recurring ordinary income often is interested in planning devices that will minimize the state income tax consequences from the realization of such income, while allowing him or her to retain the economic benefit of the asset. In recent years, clients have relied upon the disconnect between the federal income tax regime and the federal gift tax regime to create an irrevocable trust that eliminates the state income tax liability attributable to the asset while avoiding or deferring a gift for federal gift tax purposes. These have become known as "Incomplete Non-Grantor Trusts" or "ING" trusts. In Nevada, as mentioned above, these trusts are known as Nevada Incomplete Non-Grantor Trusts or "NING" trusts.

As of the date of this paper, pursuant to Rev. Proc. 2021-3, Incomplete Nongrantor Trusts have been placed on the no ruling list for 2021 by the Internal Revenue Service. Thus at this time, the viability of creating and funding a NING is uncertain.

Prior to incomplete nongrantor trusts being placed on the no ruling list, over the past several years, private letter rulings from the Internal Revenue Service (the "IRS") have confirmed that a client may rely on the law of any state that permits the creation of self-settled asset protection trusts to create a trust that "traps" income within the trust and does not pass such income through to the trust's grantor for income tax purposes. Such non-grantor trusts may be funded with contributions that are not taxable gifts for federal gift tax purposes.

Crafting a NING trust agreement requires a bit of maneuvering between the income tax and gift tax provisions of the Internal Revenue Code (the "IRC"). The grantor must relinquish sufficient interest in, and control over, the trust so as to avoid grantor trust status for the trust, without surrendering so much interest and control that he or she will have made a completed gift upon funding the trust. In order to avoid grantor trust status, the trust agreement establishes a distribution committee comprised of other beneficiaries of the trust (i.e., "adverse parties" within the meaning of IRC § 672(a)), whose consent is required in order for the grantor or the grantor's spouse to receive discretionary distributions from the trust or for the trustee to accumulate income in the trust potentially subject to the grantor's testamentary limited power of appointment. The other beneficiaries are typically the grantor's parents, siblings, or adult children. If the grantor retains a limited power of appointment over all of the trust property and the power of appointment is effective at the grantor's death, the transfer of assets into the trust will be incomplete for gift tax purposes until the earlier of the grantor's death or a distribution of trust assets to one of the other beneficiaries (but only as to such distributed assets).

State taxing authorities may attack obviously abusive transactions using NING trusts that are designed primarily to avoid the imposition of state income tax on a particular transaction, such as the disposition of a block of highly appreciated stock. Consequently, advisers should counsel their clients to avoid funding a NING trust with assets that are certain or even likely to be sold shortly after the creation of the trust. A NING trust can become even more vulnerable to attack if a sale of its principal asset is followed by a distribution back to the grantor of all, or a large portion, of the sale proceeds. The grantor's home state taxing authority could view such a transaction as a "sham" and might attack it on the basis of substance over form, assignment of income, or some similar theory that would effectively disregard the non-grantor trust and treat the grantor as the seller in fact.

Ideally, NING trusts should be created only with the intent to continue the trust at least for the lifetime of the grantor. Grantors should avoid transferring a portion of their assets to a trust that is so large that the grantor will need routine distributions from the trust to pay for living expenses. Optimally, for creditor protection as well as sound tax planning, advisers should generally recommend that their clients fund such trusts only with those assets that the client likely will never need to expend, absent extraordinary events.

A 2011 memorandum from the IRS caused some concern about the viability of the NING structure.[48] The IRS ruled that the donors made a completed gift of the beneficial term interest, notwithstanding that they retained a testamentary limited power of appointment. Some practitioners argue that the memorandum should not affect the NING strategy because the grantors were not discretionary beneficiaries.

The practitioners argue that a grantor's retention of a beneficial interest along with a testamentary limited power of appointment should cause the transfer to be an incomplete gift as to the entire interest. Other practitioners, however, have decided to give the grantor the additional discretionary power to appoint assets of the trust among a class of beneficiaries subject to an ascertainable standard.

After several years, the IRS released another private letter ruling that addressed the income and gift tax consequences of ING trusts.[49] The trust agreement established a distribution committee. The committee included the grantor and his four sons acting in a non-fiduciary capacity, and it was authorized to make distributions of income and principal to the grantor and his issue by: (i) a majority vote of members with the written consent of the grantor; or (ii) the unanimous direction of the members excluding the grantor. In addition, the grantor acting in a non-fiduciary capacity retained the power to make distributions of principal to his issue for their health, maintenance, support and education. The power retained by the grantor to distribute principal to his issue is a power not seen in prior private letter rulings. The trust did not require that the distribution committee members be replaced, but did require that there be at least two "eligible individuals" (defined as adult issue of the grantor, a parent of minor issue of the grantor, and the legal guardian of minor issue of the grantor) acting as members of the distribution committee in addition to the grantor. If at any time fewer than two eligible individuals were able to serve as members, the distribution committee would cease to exist. In any event, the distribution committee would cease to exist at the grantor's death. The IRS determined that the grantor would not be treated as the owner of the trust under IRC §§ 673, 674, 676, or 677, and that none of the distribution committee members would be treated as owners of the trust under IRC § 678(a).

The grantor was deemed to have made an incomplete gift based on several retained powers. The grantor retained the power to consent to distributions to any beneficiary including himself with an affirmative vote by a majority of the distribution committee. The members of the distribution committee were considered to be "co-holders" of the power and not adverse parties with respect to the grantor as they ceased to act at the grantor's death and could not exercise any power in favor of themselves, their estates, their creditors, or the creditors of their estates.

The ruling expressly states, "The retention of this [consent] power causes the transfer of property to the Trust to be wholly incomplete for gift tax purposes." The grantor's sole power to distribute principal to his issue also resulted in an incomplete gift because he could change the interests of the beneficiaries. Finally, the grantor held a broad special testamentary power of appointment over the trust that caused the gift to be incomplete as to the remainder for gift tax purposes. It would not be advisable for a grantor to serve as a member of a distribution committee under a NING trust. A consent power coupled with a limited testamentary power of appointment retained by the grantor and careful drafting of the distribution committee structure should result in an incomplete gift in light of PLR201310002.[50]

We can summarize the recent rulings on ING trusts as follows. As indicated in the 2012 CCA as well as the 2013 and later private letter rulings, a testamentary power of appointment held by the grantor will only cause the remainder interest of the trust to be an incomplete gift for federal transfer tax purposes, with a value of zero under Chapter 14 of the IRC valuation rules. But, the term interest would still be a completed gift. The 2013 and later private letter rulings concluded that either the "grantor's sole power" or the "grantor's consent power" caused the transfer of property into a trust to be wholly incomplete for federal gift tax purposes. As noted above, the Nevada statute does permit the grantor of a NING to have a limited inter vivos power of appointment.[51] However, it would appear from the private letter rulings that either the "grantor's sole power" or the "grantor's consent power" are sufficient to cause the transfer to the trust to be an incomplete gift for federal transfer tax purposes.

Finally, under New York law, New York residents do not enjoy the state tax benefits of a NING. Effective January 1, 2014, any "ING" trust is treated as a grantor trust for New York state income tax purposes.[52] Thus, a New York grantor cannot establish a trust that is both an incomplete gift and a non-grantor trust.

CONCLUSION

Nevada is recognized as a leading jurisdiction for flexible trust laws. This is largely due to the flexible laws described in this paper, its infrastructure for the trust and estates industry, a sophisticated legal bar and judicial system, and a progressive and flexible legislative process. For more information, please contact your Northern Trust representative or one of the individuals provided below.

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ENDNOTES

1 See e.g., Cal. Rev. and Tax. Code § 17742(b); Colo. Rev. Stat. § 39-22-108.5.

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

3 The Appellate Court of Illinois, in Cain v. Hamer, 975 N.E.2d 321 (Ill. App., 1st Dist., 2012), ruled in favor of taxpayers who had renounced their residency in Illinois in favor of Florida, but then continued to split their time between Florida and Illinois. The court held that the couple intended Florida to be their permanent home, as evidenced by changing their voter registrations to Florida, paying Florida taxes, obtaining residency cards and drivers' licenses in Florida, and filing a declaration of Florida residency, even though the couple maintained a residence and other contacts and associations in Illinois. This decision raises the question of whether the case, although interpreting residency requirements for purposes of personal income tax, will have a bearing on the taxation of non-grantor trusts created by an Illinois resident who later establishes residency in another jurisdiction.

4 504 U.S. 298 (1992) (due process clause requires minimum contacts between a state and a taxpayer to justify state's authority to impose tax).

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

6 *McNeil v. Commonwealth of Pa*., 67 A.3d 185 (Pa. Commw. Ct. 2013) (holding that despite the grantor'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).

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

8 N.Y. Tax Law § 612(b)(40).

9 IRC § 2601

10 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).

11 NRS 111.1031.

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

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

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

15 NRS 163.004(1).

16 See NRS 165.145, See also, NRS 163.5553(1)(l).

17 NRS 165.147(1).

18 NRS 30.040(2)

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

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

21 NRS 163.5505

22 NRS 163.5549.

23 12 *Del. C.* § 3313.

24 NRS 163.5536

25 NRS 163.5537, 163.5541, and 163.5547 respectively.

26 NRS 164.725.

27 NRS 153.031.

28 NRS 163.556.

29 NRS.163.556(13).

30 NRS 163.556(19).

31 NRS 163.556(17).

32 NRS 163.556(8).

33 UTC § 111.

34 NRS 164.940.

35 NRS 164.940(3).

36 NRS 164.940(2).

37 NRS 164.940(1).

38 NRS 164.942(5) and 132.185.

39 NRS 164.942(1) and 164.038

40 Alaska Stat. §§ 13.36.310, 34.40.110.

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

42 NRS 166.010 et seq.

43 NRS 123.125.

44 *Dahl v Dahl* 2015 UT 23, January 30, 2015.

45 *Klabacka v. Nelson*, 133 Nev. Advance Opinion (May 25, 2017).

46 *In re Huber, 201 B.R. 685 (Bankr. W.D. WA May 17, 2013).*

47 *Toni 1 Trust v. Wacker, 2018 WL 1125033 (Alaska, Mar. 2, 2018).*

48 CCA 201208026 (Sept. 28, 2011).

49 PLR 201310002 (March 8, 2013).

50 Note that the same results were obtained in PLR 201410010 (March 7, 2014) and various subsequent rulings. One point of interest is that the 2014 ruling as well as some of the following rulings allow a non-court appointed guardian to serve on the "appointment committee" and represent the interests of minor beneficiaries.

51 NRS 166.040(2)(b).

52 N.Y. Tax Law § 612(b)(41).

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