

The Advantages of Delaware and Nevada Trusts

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With more than 250 years of history developing legal precedent in trust law, Delaware continues to lead the way in areas of multigenerational planning, asset protection and tax savings. More recently, Nevada has followed Delaware's lead and shown a strong commitment to enacting progressive trust laws that offer many of the same advantages seen in Delaware.

These states operate under the premise that a grantor should have the legal right to control the investment, management and distribution decisions for their trust – and they offer a great deal of flexibility to a grantor in ensuring their wishes are followed.

Regardless of your state of residency, there are many compelling reasons to consider a Delaware or Nevada trust as part of your estate:

Tax Advantages

Delaware irrevocable trusts are exempt from Delaware state income tax on accumulated earnings and capital gains if there are no remainder beneficiaries residing in Delaware. In most cases, no Delaware tax of any type will be assessed on these trusts. Nevada has no state or corporate income tax, so the accumulated earnings and capital gains of a Nevada trust are not taxed at the state level.

Strict Confidentiality

Delaware and Nevada courts are sensitive to a grantor's right to confidentiality. They do not require court filings, which helps ensure a trust stays private rather than becoming a matter of public record.

In both states, grantors can even restrict beneficiary access to information under certain circumstances. This is especially useful for those who are not ready to disclose the existence or value of the trust to beneficiaries.

Balanced Beneficiary Needs

Delaware and Nevada both permit the use of "total return trusts," which better align the interests of income and remainder beneficiaries.

Continuity and Control

In Delaware, "Dynasty Trusts" can generally last indefinitely. In Nevada, Dynasty Trusts can last for up to 365 years. These lengthy perpetuity periods help shelter trust assets from estate, generation-skipping, gift and inheritance taxes for many generations. This can result in significant tax savings and continued management and control of family wealth.

Investment and Distribution Flexibility

Through a Delaware or Nevada "Directed Trust," a grantor can appoint a third-party "Investment Advisor" to manage the trust's investments and a third-party "Distribution Advisor" to make discretionary decisions about trust distributions to beneficiaries. The Investment Advisor option is particularly useful for trusts with illiquid or concentrated positions that a trustee may feel obligated to diversify as part of their administrative duties, while the Distribution Advisor option is advantageous when a third party, such as a relative or trusted friend, is best positioned to understand and determine the unique needs or circumstances of trust beneficiaries.

Protection from Creditor Claims

It is well accepted that irrevocable trusts for third parties, if properly drafted with spendthrift provisions, can protect trust assets from claims of a beneficiary's creditors.

Both Nevada and Delaware, however, permit self-settled "Asset Protection Trusts," which can help shield a grantor's assets from creditor claims. These strategies provide an attractive alternative to housing an account offshore.

Adaptability and Efficiency

Historically, irrevocable trusts were inflexible because their provisions were locked into place at inception. The laws of both Nevada and Delaware provide significant flexibility that allow for the "refreshing" or modernization of trusts to address changes in law or other circumstances not anticipated at the creation of a trust:

Nevada and Delaware both have statutes allowing for decanting a trust without court approval. In the decanting process, a new trust is created and the assets of the old trust are decanted (poured into) the new trust.

- Nevada and Delaware also both allow the appointment of a third-party "Trust Protector" with powers to modify the trust document to take advantage of changes in tax law as they occur and to make a variety of other decisions relating to the administration of the trust, all without the necessity of court approval.
- Finally, both states also permit the use of binding "non-judicial settlement agreements" for broad purposes, including resolution of disputes among interested persons, removal and appointment of fiduciaries, and amendment of the terms of the trust consistent with the grantor's intent.

These tools can help to avoid the burden of court involvement in trust administration and can save the trust and beneficiaries significant time and expense.

For more information, contact your Financial Advisor.

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