



Nevada Asset Protection Trust – Just Prudent Planning

by Geri Tomich, Esq.*

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Nevada is one of the few states, that has a statute that allows the creation of a self-settled spendthrift trust to protect ones assets from creditors. As a practitioner in this state, I may be biased in saying that Nevada law is superior in the creditor protection arena but many will agree that this bias is not baseless.

In October of 1999, the Nevada State Legislature revised the “Spendthrift Trust Act of Nevada” allowing a person to create a spendthrift trust for the protection of his own assets – hence the term self-settled spendthrift trust. If created and managed correctly, a person can create a trust to which he transfers his personal assets and avail of creditor protection, even when the person is also a beneficiary of the trust. Nevada law also does not prohibit the person from serving as trustee of the trust but it is very important that the power to make distributions to the person is at the discretion of someone else. This is where the use of professional trustees is highly beneficial.

Nevada has one, if not, the friendliest of the self-settled spendthrift trust laws out there. Mainly because it has the shortest time frame for a creditor to file an action at two years compared to the common four-year window that other states impose. What window?! Under Nevada law, creditors may still file an action against assets transferred into self-settled spendthrift trusts for the first two years of the transfer or six months after a creditor discovers the transfer, whichever is later. In other states, the common time frame is four years.

Another reason why Nevada laws are far more superior than other states is that Nevada self-settled spendthrift trusts are also protected against child and spousal support. Just this year, 2017, the Nevada Supreme Court upheld the validity of Nevada self-settled spendthrift trusts as asset protection against child and spousal support obligations. The lower court first ruled that funds from a Nevada self-settled spendthrift trust can be used to pay for the settlor’s child- and spousal-support obligations because, despite the validity of the Nevada self-settled spendthrift trust, there is a strong public policy argument which favors subjecting the interest of the trust beneficiary to claims for child support and alimony. However, the Nevada Supreme Court reversed the lower court and ruled that, despite such a strong public policy rationale, Nevada law is clear and explicitly protects Nevada self-settled spendthrift trust assets from the personal obligation of the beneficiary. The Nevada Supreme Court even discussed the legislative history that supports this conclusion. Specifically, the Nevada legislature enacted these laws to make Nevada an attractive place for wealthy individuals to invest their

assets. So, despite public policy arguments that are allowed in other states to pierce the protection of a self-settled spendthrift trust, Nevada laws acknowledge that the protection is meant to apply to despite such public policy arguments.

The protective outcome of this case does not, however, apply to child-support or alimony obligations if they are already known at the time the trust was created. Again, advanced planning is key! Create a Nevada self-settled spendthrift trust before threats of financial obligations exist.

To create a Nevada self-settled spendthrift trust, certain requirements must be met:

What are the General Requirements?

- The Trust must be in writing and irrevocable;
- The Trust must not require the Trust's income or principal be distributed to the Settlor; and
- The Trust must not be intended to hinder, delay or defraud known creditors. If you are already being sued, it's too late.

Who Can Create The Trust?

Anyone can create an asset protection trust under Nevada law so long as there is a Nevada connection. Nevada connection is established if the creator of the trust ("Settlor or Grantor") is domiciled in the state of Nevada, some of the assets transferred into the trust is located in Nevada, and/or one of the trustees is a Nevada resident of Nevada trust company.

While anyone can utilize the benefits of this trust, persons who are exposed to risk and liability through their profession (e.g. doctors, home builders, attorneys) should seriously consider creating an asset protection trust as soon as possible to have a vehicle to protect their assets from potential personal claims – this is simply part of prudent planning. Remember, when a lawsuit is pending, it is too late.

How Are Assets Protected?

As to creditor claims and actions, Nevada statute clearly states that "a person may not bring an action with respect to a transfer of property to a spendthrift trust if the person is a creditor when the transfer is made, unless the action is commenced within: (i) two years after the transfer is made; or (ii) six months after the person discovers or reasonably should have discovered the transfer, whichever is later." If a person becomes a creditor after the transfer of property is made, that creditor must commence its action within two years after the

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transfer of property is made into the trust. Thus, any creditor whose claim arises two (2) years after the transfer of property to the Trust is forever excluded from bringing an action to recover assets from the Trust.

Because of the simplicity and ease of creating self-settled spendthrift trusts under Nevada law, creating, and of course funding, said trusts have become a part of any prudent planning used to protect a person's assets from frivolous lawsuits and potential judgment creditors without the expense and complications of "shipping your money away" off-shore.

** Geraldine Tomich, Esq. is a shareholder at Marquis Aurbach Coffing with offices in Reno and Las Vegas, Nevada. She practices in the areas of asset protection, estate planning, probate, guardianships, estate & gift taxation, and business entity formation. Ms. Tomich obtained her masters of law (LL.M.) degree from Thomas Jefferson School of Law from which she graduated magna cum laude. She obtained her juris doctor degree from Gonzaga University School of Law. Ms. Tomich is involved in various community outreach organizations where she volunteers her time. She is a founding director of the Gift Planning Advisors, a Las Vegas group of professionals who provide educational opportunities for planned giving professionals and heighten awareness of donor opportunities. She also sits on the board of Nevada Community Foundation, an officer of the Southern Nevada Estate Planning Council, and a member of the Planned Giving Council of Vegas PBS.*

¹ In Matt Klebacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 v. Eric L. Nelson, et. al., 133 Nev. Adv. Op. 24 (Nev. 2017).

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1880 E. Warm Springs, Ste 135, Las Vegas, NV 89119
Phone: 702.462.6677 x602 Toll Free: 844.391.2789