

Trends and Developments in Nevada Private Wealth Law

[Bob Armstrong](#), [Ian DeValiere](#), and [Zach Noland](#) authored the Nevada Trends & Developments chapter of the *Private Wealth Law Guide* published by Chambers and Partners. The Guide provides information about trends in Nevada's high-net-worth practice area, including court decisions and legislative developments, that underscore Nevada's position as a top-tier private wealth destination.

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TRENDS AND DEVELOPMENTS IN NEVADA PRIVATE WEALTH LAW

I. Emergence of Licensed Family Trust Companies

Although Nevada's family trust company statutes have provided for licensure since 2009, only in recent years have significant numbers of families begun choosing licensed family trust companies (as opposed to less-regulated unlicensed family trust companies). Among the factors promoting this trend is the exemption of licensed family trust companies from:

- the burdensome reporting requirements of the Corporate Transparency Act (discussed below); and
- the Family Office Rule under the Investment Advisers Act.

Although licensure requires an initial regulatory application filing with the Nevada Financial Institutions Division ("NFID"), which includes submission of personal and financial background information for owners, directors, and officers; a suitability investigation of those individuals; regular renewal applications containing updates on changes to ownership, board members, and officers; and periodic examination by NFID auditors or a qualified third-party auditor, families seem increasingly to find the benefits of license outweigh the marginal regulatory oversight of forming an operating a licensed family trust company. Beyond exemption from certain federal oversight and regulations, those benefits also include greater options for ownership and control, broader definitions for identification of family members, availability of independent directors, and the ability to operate branches in certain other state jurisdictions, allowing family trust companies.

II. Increased formations of retail trust companies in Nevada

Due to the combination of explosive growth in the global private wealth space and Nevada's highly favorable trust and creditor-protection laws, lack of state income tax, minimal regulatory capital requirements, and ease of access to international travel hubs and major metropolitan areas in the western United States, Nevada has experienced unprecedented growth in the formation of local and regional retail trust companies. Those forming retail trust companies include national trust companies, registered investment advisers, multi-family offices, and individual high-net-worth investors. Among the trust and creditor-protection laws they seem to find most appealing are those providing for asset-protection trusts, spousal-access trusts, 365-year multi-generational irrevocable trusts, decanting to modify discretionary trusts, silent-trust features, elective sealing and redaction of court documents (discussed below), and arbitration.

III. Noteworthy Nevada Supreme Court decisions

- *Matter of Paul D. Burgauer Revocable Living Trust*, 138 Nev., Adv. Op. 79, 521 P.3d 1160 (2022)

The Nevada Supreme Court held that minimum contacts under NRS 164.010, the Nevada statute providing Nevada courts with personal jurisdiction over nonresident trustees of Nevada trusts, is a necessary but not sufficient condition for a Nevada court to exercise such jurisdiction, and, if a Nevada court is to exercise such jurisdiction, the nonresident trustee must also have minimum contacts with Nevada under the Fourteenth Amendment of the U.S. Constitution. This decision clarified that the bar for hauling a nonresident trustee into Nevada court is higher than previously thought, making Nevada a more attractive jurisdiction for families that wish to retain highly competent trustees who reside beyond Nevada's borders.

- *Matter of 23 Partners Trust I*, 138 Nev., Adv. Op. 84, 521 P.3d 1190 (2022)

The Nevada Supreme Court held that under Nevada's trust-account statutes: (1) a trustee need not provide an account to any beneficiary whose only distribution interest is discretionary; (2) a power of appointment is not a distributive "interest" entitling a powerholder to an account; (3) only a distribution interest entitles a beneficiary to an account; and (4) entitlement to an account is necessary for a beneficiary's entitlement to a copy of the trust instrument.

This decision clarified the exceedingly narrow bounds of a discretionary beneficiary's entitlement to an account and a copy of the trust instrument itself, offering assurance to the growing number of families who wish to employ silent trusts in their estate planning.

Shortly after this decision, the Nevada Legislature, working closely with Nevada private-wealth practitioners, amended the statute defining the "support interest" category of trust-distribution interests to clarify that a "support interest" is not a discretionary-distribution interest to which the 23 Partners rule would apply. The new statutory language specifies that

- a trustee will have discretion only to determine whether a support-interest distribution would satisfy the applicable distribution standard under the trust instrument; and
- upon an affirmative determination, the support-interest distribution will be mandatory under the trust instrument, meaning the trustee will have no discretion in determining whether to make the distribution.

The Legislature has thereby distinguished a "support interest" from a mere discretionary distribution for a beneficiary's support, the latter of which is left to the trustee's discretion not only as to the determination but also whether to make the distribution in the first place. A trustor should thus use a purely discretionary standard, such as HEMS, for distributions to any beneficiary with respect to whom the trustor wishes to leverage Nevada's silent-trust laws.

IV. Elective sealing and redaction of court filings

Settlers, beneficiaries, and fiduciaries now have expanded rights to seal and redact confidential information related to trusts in Nevada court filings. Since 2015, family trust companies, settlers, beneficiaries, and other fiduciaries of trusts could petition a court to seal trust documents in proceedings relating to a trust or estate. These documents include trust instruments, inventories, accounts, annual reports, final reports, documents relevant to trust administration, and all court orders. Courts typically granted such petitions, but Nevada private-wealth practitioners wished to offer greater assurance to families that proceedings would be entirely confidential with respect to non-interested persons from the very start of proceedings. Thus, during the 2023 Legislative Session, the State Bar of Nevada's Probate and Trust Section proposed - and Nevada lawmakers enacted - a new statute allowing a party simply to elect sealing or redaction upon filing a petition rather than filing and seeking court approval for sealing or redaction. Once a filing is electively sealed or redacted, all subsequent filings and orders are likewise sealed or redacted and may be unsealed or unredacted only upon court order.

V. Popularity of spousal access trusts

For spouses who are uncertain about outliving their resources but desire to fully leverage the ample unified credit and generation-skipping-transfer-tax exemption ("GST exemption") available (each projected to be USD13.61 million in 2025 before roughly halving upon the expiration of the Tax Cuts and Jobs Act in 2026), the use of a Nevada lifetime spousal-access trust ("SLAT") has become an increasingly popular option. A SLAT is an irrevocable trust that names the grantor's spouse as a discretionary beneficiary along with others, including children. Properly funded with the grantor's separate property, the grantor's transfer of assets to a SLAT uses a portion of the grantor's unified credit and possibly GST exemption if the SLAT is eventually to become a long-term, multi-generational irrevocable trust. The objective is to allow the grantor potential indirect access to the income and principal of the trust through distributions to the grantor's spouse. Certain targeted provisions, such as special testamentary powers of appointment and termination of the spouse's beneficial interest in the SLAT upon divorce, can mitigate those challenges and create materially different SLATs for each spouse.

Advantages of the SLAT technique in Nevada include:

- spouses' ability to use their respective unified credits and GST exemptions while retaining some degree of access through the other's beneficial interest;
- undistributed assets and appreciation thereof passing to the non-spousal beneficiaries free of gift and estate tax; and
- creditor protection under Nevada's spendthrift-trust statute.

Disadvantages of the SLAT technique include:

- the grantor's limited and indirect access to SLAT assets through the spouse's beneficial interest, distributions of which may be subject to the discretion of an unrelated trustee;
- the risk that divorce or premature death will cause unintended termination of such access; and
- application of the reciprocal trust doctrine if each spouse creates a SLAT for the other that leaves both in substantially the same economic condition they enjoyed before the transfers to the SLATs.

VI. Long-Term Irrevocable Discretionary Trusts

The long-term irrevocable discretionary trust (also known as a "dynasty trust") remains a cornerstone of long-term estate and succession planning in Nevada partly because of the state's advantageous trust and tax laws and 365-year rule-against-perpetuities period. The benefits of a successful long-term irrevocable discretionary trust in Nevada include:

- family governance, succession, transmission of family values, and education, which foster strong family units;
- planned trustee selection and succession;
- investment management with a focus on long-term endowment;
- holding concentrated, illiquid, and non-marketable securities without diversification;
- diversification into investments not available to the general public, including private equity, alternative-asset classes, and certain types of real estate, while limiting fiduciary risk;
- use of hand-picked investment trust advisers, distribution trust advisers, and trust protectors;
- asset protection from creditors, ex-spouses, improvidence, and third-party manipulation through no-contest clauses, spendthrift provisions, and discretionary distributions that encourage asset retention for beneficial use rather than outright distribution;
- segregation and maintenance of separate property in trust to mitigate asset loss due to divorce involving a beneficiary;
- use of incentive clauses to encourage healthy lifestyles and good behavior among beneficiaries;
- preservation of privacy and confidentiality via record sealing, record redaction, arbitration, and blocker entities;

- use of silent trust provisions and designated representatives to withhold trust terms, trust accounting, and trust inventory from beneficiaries until the appropriate time;
- planning for incapacity, minority, and special needs;
- preservation of legacy assets and businesses and consolidation of voting interests in public and closely held businesses;
- ability to adapt to changing law and circumstances via testamentary and lifetime powers of appointment, decanting, judicial and non-judicial modification, merger, division, and re-situsing; and
- minimal or no state and local income taxes, making grantor-trust tax treatment a viable option.

Because long-term discretionary trusts hold significant amounts of wealth, lawmakers frequently propose federal legislation that would cause adverse tax consequences and ultimately diminish the advantages of long-term irrevocable discretionary trusts. But, for now, such trusts remain an increasingly attractive option for the reasons discussed above.

VII. New default rule that trust protector acts in fiduciary capacity

The Nevada Legislature, again working closely with Nevada private-wealth practitioners, recently replaced language in NRS 163.5553(1), which previously provided that a trust protector may exercise powers as provided in the trust instrument under a best-interests-of-the-trust standard, and added clarifying language in a new subsection. By replacing the best-interests standard with “subject to the terms and provisions in the trust instrument” and clarifying in the additional language that the powers are fiduciary, the Legislature has established a default rule that a trust protector acts in a fiduciary capacity unless the terms of the trust instrument specifically provide otherwise. The option of definitively electing out of fiduciary treatment may be the most appealing aspect of this new law, and it better serves the general policy under Nevada trust law of allowing a trust instrument to determine the scope and extent of applicable fiduciary duties.

VIII. Required documentation for statute of limitations on action contesting trust

The Nevada Legislature also replaced and added new language in NRS 164.021 to precisely clarify what a trustee must provide to interested persons in order to shorten the limitations period for contesting the terms of a trust instrument after the settlor's death. The additional language also allows an interested person to consent to an even shorter limitation period. This is an especially welcome clarification after an earlier court decision caused many Nevada practitioners to disclose prior trust provisions that had been superseded or revoked.

IX. Compliance with the Corporate Transparency Act

The recently enacted Corporate Transparency Act (“CTA”), a new and unprecedented disclosure regime designed to create a national, electronic registry of “beneficial-ownership information” for “reporting companies,” will require an estimated 30-million-plus entities to disclose personal information to the Financial Crimes Enforcement Network by January 1, 2025. Although trusts are generally not among the directly affected entities, various individuals associated with a trust are deemed “beneficial owners” and must disclose the required information. That information includes the reporting individual's full legal name, date of birth, residential address, and unique identifying number from a government-issued document. Such individuals include owners, officers, directors, committee members, and certain grantors, trustees, beneficiaries, trust protectors, investment trust advisers, as well as power holders and owners.

The CTA represents a broader trend toward European-style disclosure at the federal and state levels. But, while states like New York have recently imposed similar and overlapping disclosure requirements at the state level, Nevada requires only initial and annual lists disclosing a company's principals and their respective business or residential addresses.



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