



Corporate Trustee Services

Under Nevada Law

There are a number of advantages to having a *professional corporate trustee* serve as the successor trustee of your clients' trusts. That can be even a greater factor when the corporate trustee is directed (by the trust) to administer the trust under Nevada's favorable trust laws. The benefits of using a Nevada situs for trusts in conjunction with corporate trustee services extend to you the advisor as well as to your clients.

Under **Nevada Revised Statutes (N.R.S.) 164.045** ("Choice of Law") the State of Nevada recognizes trusts created by non-residents, as well as Nevada citizens, as being valid and enforceable under Nevada law WHENEVER the governing document identifies Nevada as the trust's situs/jurisdiction even if the appointed successor trustee is not physically located in Nevada. **My LifeCard Plan® (MLCP)** revocable living trust templates are written to auto-select the governing law of Nevada for the administration of ALL trusts generated through the MLCP platform (unless otherwise directed by the client).

Under Nevada law, a corporate trustee can be appointed as a "directed-administrative trustee" where the client, or the client's investment advisor, directs the investment activities of the trust assets. Corporate trustees will additionally accept appointment not only as an original trustee but also either as a "primary successor" trustee or an "alternate successor" trustee determined by the client's choice. Corporate trustees can also serve as a "co-trustee" with a family-member successor trustee.

An independent corporate trustee administering a trust under Nevada law can provide client benefits for immediate and/or future use including but not limited to:

- *experience & compliance* in working with applicable legal requirements;
- *reliability & availability* that can avoid costly interruptions;
- *objectivity & impartiality* in carrying out a client's intentions;
- *custodial services* for IRAs to administer "see-through" conduit trusts;
- *formal record keeping* for proper tax and trust accounting procedures;
- *administrative capabilities* for long-term administrative goals; and
- *permanency of longevity* that will exist past the lifetime of an otherwise family-member trustee to administer multi-generational plans.

- Nevada Revised Statutes / Pro-Trust Laws -

The State of Nevada's expansive, PRO-TRUST body of law is significant for trust creators for many reasons as there are several/notable estate-planning benefits available to the families of residents and non-residents alike:

No State Income Tax. Nevada allows for trusts of resident and non-resident trustors situated in Nevada to be exempt from (NV) state income tax. Distributable net income retained, rather than distributed outright to an income beneficiary, will be added to the corpus of the trust without the imposition of a state income tax liability regardless of the trustor's state of domicile. (NOTE: this exempt rule applies to living trusts of non-resident trustors only after the non-resident trustor's decease where the trustor was a resident of a state that imposes an income tax.)

Nevada Recognizes Independent Investment Advisors. Nevada is one of only a few jurisdictions who have codified "directed trust" statutes. Applied "directed trust" law recognizes the authority of a client-appointed advisor to the trustee (i.e. a Trust Investment Advisor [TIA]) who can direct the general investment-decision-making activities concerning a trust's assets. That means that a client's own financial advisor may continue to manage the client's assets held in the trust even after the client's decease and for as long as the trust is in existence.

Nevada Recognizes Trust Protectors. Nevada is one of only a few jurisdictions who have legislatively recognized the powers/authority of a "trust protector". Trust protectors can be granted broad-based authority, second only to the client-trustor, to entirely remove any trustee without cause, including the initially appointed corporate trustee and/or the TIA.

Nevada Recognizes Practical Administrative Procedures. Nevada recognizes (a) realistic/flexible trust administration procedures, (b) established prudent (man) rules governing trusts, (c) judicial precedent favorable to trust administration, (d) the need and determination to maintain a favorable environment for trust management activity, (e) the denial of any rights to pretermitted heirs (those born or adopted after the establishment of the trust) unless otherwise expressly stated in the trust, and (f) the doctrine of multi-jurisdictional trust administration, applied when necessary.

Legislative Adoption of Domestic Asset Protection Trusts Law. Nevada recently enacted law recognizing the Nevada Asset Protection Trust (NAPT) – also known as a "Self-Settled Spendthrift Trust" – which qualifies the trustor as a discretionary beneficiary of a self-settled, irrevocable trust that can exclude the entire value of the trust from being in the trustor's estate for transfer tax purposes and insulate the corpus from trustor's creditors in a civil judgment claim.

Long Life Multi-generational Trusts. Nevada has significantly extended the duration period that a trust may exist and be formally recognized under state law. Patriarch/Matriarchs wanting to create multi-generational, asset-protected trusts may establish such a trust in Nevada with express mandates that the family wealth be held IN TRUST and administered under the trust's specific terms for as long as 365 years (after the trustor's decease).

User-Friendly Investment Standards. Nevada has enacted standardized trust investment laws. Nevada code allows for trusts to be invested and administered by the trust investment advisor in a more uniform manner. That promotes the rules that have been modernized for today's investment standards for the benefit of all concerned parties, which provides for:

- A trust's entire investment portfolio to be considered when determining the prudence of an individual investment (not just a singular investment).
- A client-appointed TIA to not be held liable for individual investment losses, so long as the investment, at the time of acquisition, is consistent with the overall portfolio objectives of the account.
- Diversification as a required fiduciary investment protocol where no category or type of investment is deemed inherently imprudent. Instead, suitability to the trust account's (client) purposes and beneficiaries' needs is considered as the determinant.

- Nevada Law Recognizes All ESIGN Applications -

According to the "**Electronic Signatures in Global and National Commerce Act (ESIGN), the "Act"** – which is a body of law enacted by Congress specifically referred to as *The Consumer Consent Provision in CFR §101(c)(1)(C)(ii) of the "Act"* – the effect of an "electronic signature" will be **legally sufficient to acknowledge, authenticate, and validate** electronic documents.

The primary reason Congress adopted the electronic-signature "ESIGN" law was to facilitate e-commerce efficiency with its inherent offering of transactional speed, ease of implementation, simplistic confirmation, and electronic-record archiving. Nevada has acknowledged the wisdom of the Congress concerning their legislation in this area, and has correspondingly implemented the full force and effect of (ESIGN) "electronic signatures" as those definitions are codified in the Nevada statutes.

The following is text copied from NRS 719.100 (emphasis added)

"Electronic signature" defined. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

The following is text copied from NRS 163.0095 (emphasis added)

NRS 163.0095 > Electronic trust.

1. **An electronic trust** is a trust instrument that:
 - (a) Is written, created and stored in an electronic record;
 - (b) Contains the electronic signature of the settlor; and
 - (c) Meets the requirements set forth in this chapter for a valid trust.

The following is text copied from NRS 133.085 (emphasis added)

NRS 133.085 > Electronic will:

1. **An electronic will** is a will of a testator that:

(a) Is written, created and stored in an electronic record;

(b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one authentication characteristic of the testator; and,

(c) Is created and stored in such a manner that:

i) Only one authoritative copy exists;

ii) The authoritative copy is maintained and controlled by the testator or a custodian designated by the testator in the electronic will;

iii) Any attempted alteration of the authoritative copy is readily identifiable; and,

iv) Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative copy.

2. Every person of sound mind over the age of 18 years may, *by last electronic will*, dispose of all of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's debts.

3. *An electronic will that meets the requirements of this section is subject to no other form, and may be made in or out of this State. An electronic will is valid and has the same force and effect as if formally executed.*

- Non-Residents May Establish a Will in Nevada -

According to **NRS 136.010**, even a non-resident may establish a Last Will & Testament in Nevada if any part of his/her estate is located in Nevada and the decedent's executor applies first to the Nevada court to open the estate administration.

Following is text copied from NRS 136.010 (emphasis added)

NRS 136.010 > Resident decedent; Nonresident decedent:

1. Wills may be proved and letters granted in the county where the decedent was a resident at the time of death, whether death occurred in that county or elsewhere, and the district court of that county has exclusive jurisdiction of the settlement of such estates, whether the estate is in one or more counties.

2. The estate of a nonresident decedent may be settled by the district court of any county in which any part of the estate is located. The district court to which application is first made has exclusive jurisdiction of the settlement of estates of nonresidents.
