

Trust Jurisdiction Comparison Guide

Alaska, Nevada & Delaware

Choice of Trust Jurisdiction

Setting up the trusts that best meet the needs and values of your clients and protect the interests of their beneficiaries involves not only developing the most advantageous trust plans, but also choosing the most favorable trust jurisdiction. Ultimately the decision rests on the grantor's goals for the trust and the client and attorney's preferences. Peak Trust Company can help you establish and administer trusts in three top-tier jurisdictions, Alaska, Nevada and Delaware. (The grantor need not live in either Alaska, Nevada, or Delaware to set up trusts in these states.)



Alaska



Nevada



Delaware

Note: Peak Trust Company cannot provide legal advice and this material should not be construed as such. Jurisdiction-specific law should be discussed with appropriate skilled legal counsel. The differences discussed here are general statements and do not cover the many complexities of the subject. Alaska, Nevada and Delaware frequently propose and pass updates and clarifications to their respective statutes. Please consult legal counsel and official state sources for the most up to date information on jurisdiction specific law. Peak Trust Company makes no guarantees as to the completeness or relevance of these statements.

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Alaska

No specific statutory methods for creating a Trust.

Trusts created after August 30, 2000, are presumed revocable unless expressly made irrevocable.

Revocable trust may be modified or revoked by complying with trust provisions (and only by trust terms if trust stated exclusive method) or a writing signed by settlor and delivered to trustee during settlor's lifetime. A revocable trust may not be revoked or modified by a Will.

An attorney-in-fact under a power of attorney may not modify or revoke a revocable trust unless expressly permitted by the trust instrument.

If joint settlors of a community property trust, follow community property statute. If not community property, each settlor may revoke or modify as to his contribution to the trust. {AS 13.36.340}

Inter vivos trust may be executed electronically. {AS 09.80.010}



Nevada

Unless provided otherwise by specific statute, regulatory or contractual restrictions, a trust may be established by (1) a declaration that declarant or another person holds property as trustee, even without regard to formal title (signed schedule of property not required and existence of trust may be established by extrinsic evidence); by transfer of property during life or at death to another as trustee; an exercise of a power of appointment in trust; or by an enforceable promise to make a trust (promise to make a trust is enforceable only if enforceable as a contract. {NRS 163.002; NRS 163.005}

Trust is created if the settlor manifests intent to create trust and the trust has property, except may have testamentary devise to unfunded trusts. {NRS 163.003; NRS 163.230}

Trust must have an ascertainable beneficiary (or class of beneficiaries); must authorize a trustee or some other person to select the beneficiary; be a charitable trust, pet trust; public benefits trust; or a non-charitable purpose trust. {NRS 163.006}

Oral trust authorized for personal property; established by clear and convincing evidence. Oral declaration of settlor, in and of itself, is not sufficient to establish the creation of an oral trust. {NRS 163.009}

Trust is irrevocable except to the extent that a right to revoke the trust is expressly reserved by the settlor. Any power to amend the trust granted to another person, other than the settlor, does not make the trust revocable. {NRS 163.004(2)}

Electronic nontestamentary trust is valid if created and stored in an electronic record in a manner that any alteration would be detectable, contains electronic signature of settlor and date and time thereof, includes an authentication to identify the settlor or is electronically notarized, and meets all requirements for valid trust regardless of settlor's physical location if it meets certain requirements set forth in statute. {NRS 163.0095}.



Delaware

Creation, modification or revocation of a trust whereby a beneficiary's interest is contingent upon surviving the trustor must be (1) in writing executed by the trustor and witnessed by one disinterested person or two credible persons or (2) in a writing executed by a trustee who is a disinterested person. {12 Del. C 3545(a)}

A trust created by a writing shall not be void merely because of 12 Del. C 3545(a) if such writing was validly executed under the law of the initial place of administration or, if the trust is not yet actively administered, the initial situs of the trust. {12 Del. C 3545(b)}

A trust that is revocable by the trustor during the trustor's lifetime may refer to a written statement or list to dispose of items of tangible personal property, other than money, evidence of indebtedness, documents of title, securities and property used in trade or business if in trustor's handwriting or signed by trustor and identifies the items and legatees with reasonable certainty; is not inconsistent with the terms of the trust or any other writing; writing with latest date controls.

If otherwise valid, a governing instrument, resignation, removal, appointment, acceptance, consent, release, etc. may be executed in accordance with Uniform Electronic Transaction Act. {12 Del. C 3550(a)}



Alaska

Trust may include provision that Alaska law governs the validity, construction and administration of a trust and trust is subject to jurisdiction of Alaska courts. Governing law provision will be conclusive if (1) some or all of the trust assets are on deposit in Alaska (such as a bank account or fiduciary trust account); (2) at least one trustee is a qualified person (as defined below); (3) the Alaska trustee powers include, on an exclusive or non-exclusive basis, maintain records and prepare or arrange for tax returns; and (4) part or all of the administration occurs in Alaska, including physically maintaining trust records. {AS 13.36.035(c)}

Qualified trustee includes: (1) an individual residing and domiciled in Alaska; (2) a trust company organized under state law and that has its principal place of business in Alaska; or (3) a bank organized under state law or a national bank with trust powers and has its principal place of business in Alaska. {AS 13.36.390(3)}

Alaska law governs the administration of the trust, and the court has jurisdiction while the trust is administered in Alaska unless: (1) the trust specifies that the law of another jurisdiction governs the administration of the trust; (2) the trust expressly precludes a change in the choice of law for the administration of the trust; and (3) the trust expressly states that a change for the choice of administration of a trust may not occur, even if there is an Alaska trustee.

A trust is considered administered in Alaska if (1) the trust specifies that the trust is to be administered in Alaska; (2) the principal office of the trustee having custody of the trust's principal assets and records is located in Alaska, unless the trustee elects to maintain the administration in the state whose laws is stated in the trust to govern; (3) the only trustee is a qualified person, unless the trustee elects to maintain the administration in the state whose laws govern the trust; (4) a majority of all trustees consists of qualified persons unless the trustee elects to maintain the administration in the state whose laws govern the trust; or (5) a majority of the trustees are not qualified persons and a majority of the trustees, including at least one qualified trustee, executes an acknowledged instrument that Alaska shall be the primary place of administration. {AS 13.36.035(f)-(h)}

Situs of foreign trust moved to Alaska when meets requirements of AS 13.36.035(c) and qualified person registers trust.



Nevada

Nevada law will apply if (1) provided for in the trust; (2) a person designated by the trust has the right to designate the governing law; or (2) the trust does not provide for the governing law or no authorized person designated the governing law, and the settlor or the trustee was a resident of Nevada at the time the trust was created or at the time the trust became irrevocable.

Person not domiciled in Nevada may have the right to designate the governing law for validity and construction of the trust if properly designated under the trust. {NRS 164.045}

A trust is considered domiciled in Nevada and subject to jurisdiction of Nevada courts if (1) the trust provides that the situs of the trust is Nevada or that Nevada court has jurisdiction over the trust; (2) a person authorized by the trust designates that the Nevada is the situs or jurisdiction for the trust; (3) the trust owns real property located in Nevada; (4) the trust owns personal property, wherever located, if the trustee is incorporated or authorized to do business in Nevada, is a trust company licensed under Nevada law, a family trust company, as defined under Nevada law, or a national association having an office in Nevada; (5) one or more beneficiaries of the trust reside in Nevada or (6) at least part of the administration of the trust occurs in Nevada. {NRS 164.010(2)}

A trust that moves its situs to Nevada is valid whether or not it complies with the laws of Nevada at the time the trust was created or thereafter. NRS 164.045(3)



Delaware

Laws of Delaware govern administration of trust while the trust is administered in Delaware unless instrument expressly provides that laws of other jurisdiction govern and provides that law governing the administration of a trust shall not change on account of change in place of administration. {12 Del. C 3332(b)}

Fiduciary that acts based upon good faith belief that the laws of other jurisdictions govern while administered in Delaware, fiduciary liability shall be determined under law of the other jurisdiction. {12 Del. C 3332(c)}

A trust is deemed administered in Delaware if: (1) the sole trustee is an individual residing in the State or a corporation or other entity having an office for the conduct of trust business in the State; (2) the trust has more than 1 trustee only 1 of which is a corporation or other entity having an office in the State for the conduct of trust business; or (3) the trust has more than 1 trustee all of whom are individuals and ½ or more of whom reside in the state. {12 Del. C. § 3340}



Alaska

Trust may include provision that provides that a beneficiary's interest in the trust, including a beneficiary who is a settlor, may not be involuntarily or voluntarily transferred prior to payment or delivery to the beneficiary by the trustee. Beneficiary's use of real or tangible personal property, in the exercise of trustee's discretion, is not payment or delivery.

Spendthrift provision is deemed a restriction under applicable bankruptcy laws.

A creditor (existing or future creditor) of a beneficiary, who is not the settlor, cannot satisfy a claim out of beneficiary's interest in an irrevocable trust, even if the beneficiary has the right to receive through the exercise of a person's discretion, whether or not limited by a standard, a distribution of income or principal (or both).

Spendthrift protection applies even if settlor is a trustee, a beneficiary is a sole trustee, co-trustee or a trust advisor. Settlor may retain the power to appoint a trustee, a trust protector or an advisor, the power to remove and appoint replacement trustee, trust protector who is not related or subordinate to the settlor under IRC § 672(c) or remove and replace a trust advisor.

Express protection for spendthrift trust in the event of divorce or dissolution of marriage of a trust beneficiary. {AS 34.40.110}

Property subject to a power of appointment granted to a donee is not subject to claims of donee's creditors except to extent donee is permitted to appoint to donee or donee's estate (or creditors thereof) and effectively exercises the power in favor of donee, donee's estate (or creditors thereof). {AS 34.40.115}

Applies to all trusts that meet governing law provisions under AS 13.36.035(c) or whose place of administration is or has been moved to Alaska under AS 13.36.035(f)-(g) (see above for details); no requirement for a qualified trustee (as defined in the governing law section).



Nevada

Settlor may, by a writing (will, deed, conveyance, or any other writing) establish a spendthrift trust which provides that a beneficiary's interest may not be transferred accelerated or otherwise assigned, voluntarily or involuntarily or by operation of law or any other process. {NRS 166.120} No specific language is required to create a spendthrift trust, if the terms of the trust manifest settlor's intent to create a spendthrift trust. {NRS 166.050}

Payments from a trust, whether mandatory or discretionary, can be made only to the beneficiary or on behalf of the beneficiary and not by way of assignment or beneficiary order, or by way of any court order, including garnishment, levy or attachments. Beneficiary has no power to assign or transfer or order the assignment of income. {NRS 166.120}

Nothing prohibits a settlor from holding other powers under a spendthrift trust, whether or not the settlor is a co-trustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers. Settlor may not hold the power to make to distributions to itself without the consent of another person. {NRS 166.040}

Following factors, alone or in combination, must not be considered to be improper control or dominion over a trust: (1) beneficiary is serving as trustee; (2) settlor or beneficiary holds unrestricted right to remove or replace trustee; (3) the settlor or beneficiary is a trust administrator, general partner, manager, owner, etc. of any business entity owned by the trust; the trustee is related by blood, adoption, or marriage to the settlor or beneficiary; the trustee is the settlor's or beneficiary's agent, accountant, lawyer, financial advisor or friend or business associate. {NRS 163.4177}

Nevada Spendthrift Trust Act applies to all spendthrift trusts created in or outside of Nevada if (1) all or part of the land or personal property is located in Nevada; (2) the declared domicile of the creator of a spendthrift trust affecting personal property is Nevada; or (3) at least one qualified trustee has powers that include maintaining records and preparing income tax returns for the trust, and all or part of the administration of the trust is performed in Nevada.

If the settlor is a beneficiary, at least one trustee must be a person who resides or has its domicile in Nevada, a trust company organized under federal law or the laws of any state and maintains an office in Nevada, or a bank that is organized under federal or any state law, maintains an office in Nevada and possesses and exercises trust powers (Qualified Trustee"). {NRS 166.015}



Delaware

A grantor may make a transfer to an irrevocable spendthrift trust through a direct transfer to the trust or by the exercise of a lifetime power of appointment. The trust must contain a governing law provision that Delaware law governs the validity, construction and administration of the trust and must contain a spendthrift clause. 12. Del. C. §3570(11)}

A spendthrift trust must have a Qualified Trustee (resident of the state other than the grantor or regulated bank or trust company with the following powers (on an exclusive or non-exclusive basis): maintaining records, preparing for or arranging for preparation of income tax returns, or otherwise materially participates in the administration of the trust {12. Del. C. §3570(8)}

Spendthrift provision is deemed a restriction on the transfer of the grantor's beneficial interest in the trust under applicable non-bankruptcy laws within the meaning of the bankruptcy code. {12 Del. C. §3570(c)}

A creditor shall have no right against the interest of a beneficiary unless the beneficiary has a testamentary or lifetime general power to appoint and the beneficiary actually exercises such power to favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate or the creditors of the beneficiary's estate, and then only to the extent of such exercise. {12 Del. C. §3536(d).



Alaska

Settlor may be a discretionary beneficiary of an irrevocable spendthrift trust. {AS 34.40.110}

Trust must be governed by Alaska law. No requirement but suggested that at least one trustee be a qualified trustee under Alaska law.

Settlor must sign a sworn affidavit of solvency prior to each transfer to a self-settled trust, attesting to ownership and right to transfer the property, the transfer will not render settlor insolvent, the settlor does not intend to defraud a creditor; the settlor has no pending or threatened court or administrative actions; except as disclosed, the settlor is not more than 30 days in default on a child support obligation; the settlor is not contemplating filing for bankruptcy, and the assets were not derived from unlawful means.

Settlor may be reimbursed for income taxes payable by the settlor on trust income or principal; payment may be made directly to the taxing authority (applies whether trustee makes payment under a mandatory or discretionary provision).

Settlor also may have the following powers and rights: right to veto a distribution; may possess a testamentary or lifetime non-general power of appointment or similar power; right to income or principal from a charitable remainder annuity trust or charitable remainder unitrust; right to receive a percentage of the value of a trust each year but not exceeding the amount that may be defined as income under Alaska law or the Internal Revenue Code; right to use real property held in a qualified personal residence trust; right to income or principal from a grantor retained annuity trust or a grantor retained unitrust; right to use real or personal property owned by the trust in the discretion of the trustee; right to distributions from an individual retirement account trust.

Settlor may serve as co-trustee or trust advisor provided it does not place trustee powers over discretionary distributions. Settlor may have the power to appoint a trustee, a trust protector or an advisor, the power to remove and appoint replacement trustee, trust protector who is not related or subordinate to the settlor under IRC § 672(c) or remove and replace a trust advisor.

An agreement between the settlor and the trustee that attempts to grant greater rights or authority to the settlor is void.



Nevada

Creditors of settlor cannot reach irrevocable spendthrift trust assets to satisfy claims even if the settlor is authorized to receive income or principal from the trust in the discretion of another person. {NRS 166.040}

When a settlor is a beneficiary of a spendthrift trust, at least one trustee must be a person who resides or has its domicile in Nevada, a trust company organized under federal law or the laws of any state and maintains an office in Nevada, or a bank that is organized under federal or any state law, maintains an office in Nevada and possesses and exercises trust powers (Qualified Trustee"). {NRS 166.015}

Settlor may be reimbursed for any tax payable by the settlor on trust income or principal. {NRS 163.5559}

Trust will be a self-settled spendthrift trust even if Settlor is a discretionary benefit of trust, the beneficiary of a charitable remainder trust, has the right to receive a percentage of the value of the trust each year; but not exceeding the amount that may be defined as income under 26 USC 643(b), settlor's has the right to receive minimum distributions from a qualified retirement plan or deferred compensation plan at the direction of another person, has the right to use real property held under a personal residence trust, the right to receive distributions under a grantor retained annuity trust or a grantor retained unitrust; or the settlor is authorized to use real or personal property owned by the trust.

Settlor may hold other powers under a spendthrift trust, whether or not the settlor is a co-trustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers. Settlor may not hold the power to make to distributions to itself without the consent of another person. {NRS 166.040}

An agreement, express or implied, between the settlor and the trustee that attempts to grant or permit greater rights to the settlor is void. {NRS 166.045}



Delaware

Settlor may be a discretionary beneficiary of current income and/or principal of an irrevocable spendthrift trust, in trustee's discretion, or pursuant to a standard, or an adviser's direction to the trustee.

Trust must expressly incorporate the laws of Delaware to govern the validity, construction, and administration of the trust and must appoint a qualified trustee. {12 Del. C. § 3570(11)(a)}

Settlor may have the following powers and rights in a trust: right to serve as investment adviser; power to veto a distribution from the trust; a lifetime or testamentary power of appointment (other than a power to appoint to the grantor, grantor's creditors, grantor's estate or creditors of the grantor's estate), the grantor's potential or actual receipt of income, including rights to such income retained in the trust; the grantor's right to income or principal from a CRAT, CRUT, GRAT or GRUT, or the grantor's receipt each year of a percentage (up to 5%) of the value of the trust assets; the grantor's potential or actual receipt of principal (including real property or tangible personal property) if such potential receipt or use of principal is from trustee's exercise of discretion, pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or at the direction of an adviser (in adviser's discretion or pursuant to a standard); the grantor's right to remove a trustee or adviser and to appoint a new or additional trustee or adviser; the grantor's use of a residence in a QPRT; the grantor's right to appoint a designated representative; and the trustee's ability, whether pursuant to discretion, direction, or grantor's exercise of a testamentary power of appointment, to pay after the death of the grantor, all or part of grantor's debts, expenses of administration of grantor's estate or any estate or inheritance tax imposed on grantor's estate. 12 Del. C. §3571; 12. Del. C. § 3570(11)(b).

Grantor may be reimbursed for income taxes due on the trust if payment is pursuant to a provision in the trust instrument that expressly provided for the payment and is the result of a qualified trustee acting in the qualified trustee's discretion or a mandatory direction or pursuant to the grantor's exercise of a lifetime power of appointment or at the direction of an adviser acting in the adviser's discretion. {12 Del. C. §3570(11)(b)(9)}

An agreement or understanding purporting to grant or permit the retention of any greater rights to the grantor shall be void. {12 Del. C. § 3571}



Alaska

No creditor protection for transfers to self-settled trust for payment of child support judgment if at the time of the transfer, the settlor is in default by 30 or more days in making a payment due under a child support judgment or order.

A creditor of the settlor who was a creditor before the assets were transferred to the trust must bring an action to enforce the claim against the trust within the later of 4 years after the transfer is made or 1 year after the transfer is made or reasonably should have been discovered if the creditor can establish, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer, or files another action against the settlor that asserts a claim based on an act or omission that occurred before the transfer and the action is filed within 4 years after the transfer.

A creditor that becomes a creditor of the settlor after the transfer must bring the action within 4 years after the transfer.

Creditor of the settlor must establish by clear and convincing evidence that the settlor's transfer was made with the intent to defraud that particular creditor. A settlor's express intent to protect the trust from a beneficiary's future potential creditors is not evidence of an intent to defraud.

A claim against the trust may only be satisfied from that part of the trust for which a transfer restriction is not disregarded by the court and an attachment or other order may not be made against the trustee with respect to a beneficiary's interest in the trust or against property subject to a transfer restriction, except to the extent a transfer restriction is not allowed.

Protection for advisors, attorneys, accountants and trustees who prepared or assisted in preparing trust or any limited partnership or limited liability company that is subsequently transferred to the trust (limited to general fraudulent conveyance laws). {AS 36.40.110}

Express protection of trust assets in a divorce or dissolution even if the settlor is a discretionary benefit; unless the settlor transferred the assets to a self-settled trust after the date of the settlor's marriage or within 30 days before the marriage and the settlor did not give written notice of the transfer to the other party.

Parties to marriage may agree to alter these rules. {AS 34.40.110(l)}



Nevada

Claims against spendthrift trust by a creditor when transfer is made to the trust must be commenced within 2 years of date of transfer or 6 months after the creditor discovers or reasonably should have discovered the transfer, whichever is later.

If the creditor becomes a creditor after the transfer is made to the trust, action must be commenced within 2 years after the transfer is made.

Discovery of the transfer is deemed at the time a public record is made as to the transfer, including recording a deed transferring real property to the trust.

Creditor must prove by clear and convincing evidence that the transfer was fraudulent under the fraudulent transfer statute (intent to hinder, delay, or defraud creditors), or the transfer violated a legal obligation owed to a creditor under a contract or a valid court order that is legally enforceable against the creditor.

Proof of a fraudulent transfer by one creditor is not deemed proof by other creditors; proof as to one asset is not proof as to other assets transferred to trust.

Creditor cannot bring claim against an adviser to the settlor or trustee of a spendthrift trust unless can establish, by clear and convincing evidence, that the adviser acted in violation of the laws, knowingly and in bad faith and the adviser's actions directly caused the damages suffered by the person.

A person, other than settlor or beneficiary, cannot bring claim against a trustee of a spendthrift trust unless it can be established by clear and convincing evidence that the trustee acted in violation of the laws, knowingly and in bad faith and trustee's actions caused the claimed damages.

Any subsequent transfer to a trust is disregarded in determining if creditor can bring claim relating to prior transfer to trust.

Any distribution to beneficiary shall be deemed made from the most recent transfer to the trust.

For purposes of decanting from one spendthrift trust to another spendthrift trust, the time of the transfer to the trust shall be deemed the time of the transfer to the original trust. {NRS 166.170}

If trust situs is transferred to Nevada and if the laws of the original state are similar for purposes of spendthrift trusts, the transfer to the trust shall have occurred on earliest of the date of the original transfer or the date the applicable laws of the original state were substantially similar to Nevada law. {NRS 166.180}



Delaware

No creditor protection for claims for support or alimony in favor of grantor's spouse, former spouse or children, or for a division of property in respect to separation or divorce in favor of grantor's spouse or former spouse. 12 Del. C. §3573(1). A spouse or former spouse only included persons to whom the grantor was married at, or before, the time the qualified disposition of made. 12 Del. C. §3570(9).

No creditor protection for a person who suffers death, personal injury, or property damage on or before the date of the qualified disposition by a grantor, which death, personal injury or property damage is at any time determined to have been caused by the tortious act or omission of either the grantor or by another person for whom such grantor is vicariously liable. 12 Del. C. §3573(2).

A creditor cannot bring a claim against a qualified disposition in trust unless the claim is brought within specified time period: For claims arising prior to qualified disposition in trust, within the later of four years from the time of the transfer or one year from the time the creditor could or reasonably should have discovered the claim; and for claims arising after the qualified disposition, within four years of the date of the qualified disposition. 12 Del. C. §3572(b).

A transfer of an existing trust to Delaware shall have a claim period commencing from funding of existing trust in other state. A trust that is decanted to a new trust shall have a claim period starting from the date the first trust was funded. An existing creditor may establish a fraudulent transfer under the fraudulent transfers act (6 Del. C. §§ 1304 and 1305

A future creditor of the grantor must establish by clear and convincing evidence that the grantor made the qualified disposition with actual intent to defraud that creditor. 12 Del. C. §3572(a).

Protection for trustees, advisors and any person involved in the counseling, drafting, preparation, execution or funding of a trust. {12 Del. C. §3572(d)}

Where spouses make a transfer of property owned as tenants by entirety, in any action by a creditor of either or both spouses, the sole remedy available to the creditor shall be an order directing the trustee to transfer the property to both spouses as tenants by the entirety. {12 Del. C. §3574(g); 12 Del. C. § 3334}

If a transfer to spendthrift trust is voided, the creditor's sole remedy is an order directing the trustee to transfer to the transferor such amount as is necessary to satisfy the transferor's debt to that creditor. {12 Del. C. § 3574(g)}

Alaska

A creditor of a beneficiary may not force a distribution of a discretionary interest in an irrevocable trust. A creditor may not compel a trustee to exercise its discretion to make a discretionary distribution.

Even if a beneficiary has an outstanding creditor, a trustee with authority to pay income or principal to a beneficiary, may instead pay the distribution to a third party for the benefit of the beneficiary and the trustee is not liable to outstanding creditor for making such payment. A creditor may not maintain an action to interfere with trustee's discretion to apply income or principal on behalf of the beneficiary or obtain an order of attachment or other relief to prevent a trustee from making a discretionary payment to a third party on behalf of the beneficiary. Creditor may seek relief for a fraudulent transfer under AS 13.40.110.

Discretionary interest is any interest subject to the discretion of trustee, even if limited by a standard and even if words such as "sole" or "absolute" are not used. Discretionary interest is not a property interest or enforceable right but a mere expectancy that a creditor of a beneficiary cannot attach or otherwise reach. {AS 13.40.113}

No rule against perpetuities unless exercise of a power of appointment, then 1,000 years. {AS 34.27.051}

Nevada

Discretionary interest means that the trustee has discretion to determine whether a distribution should be made, when and the amount of the distribution. If a trust provides for a support interest that also includes mandatory language, but the mandatory language is qualified by discretionary language, the support interest is classified as a discretionary interest. {NRS 163.4185}.

A beneficiary who has a discretionary interest does not have an enforceable right to a distribution from the trust and a court may review the exercise of discretion only if the trustee acts dishonestly, with bad faith and willful misconduct.

Trustee given unfettered or absolute discretion, or similar words, has no duty to act reasonably in the exercise of that discretion.

Even if a beneficiary has an outstanding creditor, a trustee of a discretionary interest may pay any expense on the beneficiary's behalf and may exhaust the income and principal of the trust for the benefit of such beneficiary. {NRS 163.419}

A creditor may not exercise, and a court may not order the exercise of:

- (1) A power of appointment or any other power held by a beneficiary;
- (2) Any power held by a trust protector or any other person;
- (3) A trustee's discretion to (a) distribute any discretionary interest; (b) distribute any mandatory interest which is past due directly to a creditor; (c) take any other authorized action;
- (4) A power to distribute a beneficial interest solely because the beneficiary is a trustee.

Up to 365 years. {NRS 111.1031(2)(b)}

Delaware

A creditor may not directly or indirectly compel a distribution of a discretionary interest except to the extent expressly granted by the terms of the trust.

A beneficiary eligible to receive distributions in the discretion of a trustee or other fiduciary, even if subject to an ascertainable standard, has a discretionary interest in the trust, which is a mere expectancy and not a property right. An interest that includes mandatory distribution language such as "shall" but that is qualified by discretionary language is a discretionary interest. {12 Del. C. § 3315}

Regardless of whether a beneficiary has an outstanding creditor, a trustee may make direct payment of any expense on behalf of such beneficiary. A trustee is not liable to a creditor of a beneficiary for paying the expenses of a beneficiary.

Creditor of a beneficiary may not seek an order compelling the trustee, any other fiduciary, or any beneficiary to notify the creditor of a distribution made or to be made from a trust. May not compel the trustee or beneficiary to make a distribution from a trust whether or not distributions are subject to the exercise of discretion of a fiduciary. May not prohibit a trustee from making a distribution to or for the beneficiary whether or not distributions are subject to discretion of a fiduciary and may not compel the beneficiary to exercise a power of appointment or power of revocation over the trust. {12 Del. C. §3536}

No rule against perpetuities for personal property including interests in LLC (LLC may own real property), direct ownership by trust in real property subject to 110-year limitation. 25 Del. C. § 503.



Alaska



Nevada



Delaware

Directed Trusts

Trust may confer certain trustee powers on one trustee to the exclusion of the other trustees. Provides for separate administrative, investment and distribution trustees.

Excluded Trustee must act in accordance with the direction from the directing trustee.

Excluded trustee is not liable either individually or as a fiduciary, for complying with direction from another trustee.

Excluded trustee has no obligation to inquire or investigate action of directing trustee.

Trustee with power to act has sole fiduciary liability and sole obligation to account to beneficiaries with respect to the granted power. {AS 13.36.072(c)}

Settlor may appoint a person as an advisor to the trustee regarding property of the trust.

Unless trust provides otherwise, all power remains vested in the trustee and the trustee is not required to follow advice of advisor and advisor is not considered a fiduciary.

Trust may require trustee to follow advice of advisor and advisor is considered a fiduciary.

Exclusive obligation to account to the beneficiaries and defend against a beneficiary claim based on the advice rests with the advisor.

Trustee who is required to follow the advice of the advisor is not liable, individually or as a fiduciary, for following advice and has no duty to inquire or investigate the advice. {AS 13.36.375}

Trust Adviser

A fiduciary is a “directed fiduciary” as to any action taken that the fiduciary has no power to take under the trust, is mandated by the trust and for which the trustee has no discretion to act otherwise; and is directed or prohibited from taking by a directing trust adviser. {NRS 163.5548}

A directed fiduciary is not liable (individually or as a fiduciary) for complying with direction of directing trust adviser, whether the direction is to act or not, or failing to take action proposed by a directed fiduciary if the action required the approval, consent or authorization of a person who did not provide the approval, consent or authorization, or was contingent upon a condition that was not met or satisfied.

A directed fiduciary is not liable for any obligation to perform, to investigate an investment or make any recommendation or evaluation of an investment to the extent the investment is made by a directing trust adviser. {NRS 163.5549}

Settlor may appoint an investment adviser to direct the fiduciary regarding investment decisions, vote proxies, value non-publicly held investments; and retains investment advisers and delegates any of its powers. {NRS 163.5557} Investment Trust Adviser shall be considered fiduciary unless the instrument states otherwise. {NRS 163.5551}

Distribution adviser may be appointed to direct the trustee with regard to all discretionary distribution decisions. {NRS 163.5557}.

A directing trust adviser means a trust adviser, trust protector or other person designated in the trust who has the authority to give directives that must be followed by the fiduciary. Term does not include a trust adviser, trust protector or other person who gives recommendations that the fiduciary is not required to follow. {NRS 163.5536}

A directed fiduciary is not obligated to review, inquire or investigate any investment made by a directing trust adviser. {NRS 163.5549}

Trust may appoint separate trustees with specific powers to the exclusion of other trustees, such as administrative, investment and distribution trustees. Excluded Trustee must act in accordance with direction from the directing trustee. Excluded Trustee has no duty to act in absence of direction.

If trust confers upon a cotrustee the power to direct certain actions of an excluded trustee, the excluded trustee must act in accordance with the direction and has no duty to act in the absence of such direction. Excluded Trustee is not liable, individually or as a fiduciary, for any loss resulting from compliance with direction unless willful misconduct by directed trustee.

Excluded Trustee is not liable, individually or as a fiduciary, for any loss resulting from action of cotrustee and is not a fiduciary with respect to any power which the instrument confers upon a cotrustee exclusively; and has no duty to monitor the trustee or to give notice to any beneficiary of any action taken by trustee. {12 Del. C 3313A}

The power to appoint a successor trustee is deemed to include the power to appoint multiple successor trustees, including the power to allocate various trustees powers among several trustees (permits the creation of “excluded trustees” {12 Del. C. § 3343

Advisers and protectors (person granted authority to direct, consent to or disapprove fiduciary’s investment, distribution and other decisions of the fiduciary) are fiduciaries, unless the trust provides that they act in a non-fiduciary capacity. {12 Del. C. 3313(a)}

If instrument requires fiduciary to follow direction of adviser, fiduciary is not liable for following direction of adviser except in case of willful misconduct by directed fiduciary. {12 Del. C 3313(b)}

Directed Fiduciary has no duty to monitor conduct of adviser, provide advice to the adviser, or communicate or warn any beneficiary or third party of adviser’s actions. Absent clear and convincing evidence to the contrary, the actions of a fiduciary pertaining to matters directed by the adviser shall be presumed to be administrative actions taken by the fiduciary and shall not be deemed an undertaking to monitor the adviser. If instrument requires fiduciary to act with consent of adviser, then except in case of willful misconduct or gross negligence on part of the fiduciary, fiduciary is not liable for any act taken or omitted as result of adviser’s objection or failure to provide consent after request by fiduciary. {12 Del. C 3313(c)}



Alaska



Nevada



Delaware

Trust Protector

Trust may appoint a trust protector and trust protector has powers set out in trust instrument; may include power to remove and appoint trustee; modify or amend a trust to achieve favorable tax status or response to changes in tax law or state law, increase or decrease interest of any beneficiary; and modify terms of a power of appointment granted by the trust.

Trust protector may not modify a trust to add beneficiaries.

A trust protector is not liable as a trustee or fiduciary when performing the function of a trust protector unless the trust provides to the contrary. {AS 13.36.370}

Trust protector may have the powers granted by the trust and may include, power to modify or amend the trust to achieve a more favorable tax status or respond to changes in federal or state law; modify or amend the trust to take advantage of changes in the rules of perpetuities or other state laws restricting terms of a trust, distribution of trust property or administration of the trust; increase or decrease the interests of any beneficiary under the trust; modify the terms of any power of appointment granted by the trust (cannot modify to grant a beneficial interest to person who is not specifically provided for in the trust); remove and appoint a trustee, trust adviser, investment committee member, or distribution committee member; terminate the trust; direct or veto trust distributions; change the location or governing law of the trust; appoint a successor trust protector or trust adviser; interpret the terms of the trust at the request of the trustee; advise the trustee on matters concerning a beneficiary; and review and approve a trustee's reports or accounting. {NRS 163.5553}

Trust Protector will be held to fiduciary standard if considered a "directing trust adviser".

Trust protector may have all the powers granted by terms of the trust and may include the power to remove and replace trustees, advisers, trust committee members and other protectors; modify or amend a trust to achieve favorable tax status or to facilitate the efficient administration of trust; power to modify, expand or restrict terms of a power of appointment granted a beneficiary by the terms of the trust.

Trust protector is considered an "adviser" for purposes of duties and liabilities. {12 Del. C.3313(f)-(g)}

Notice Requirements

Trustee must register the trust in the superior court in the judicial district of primary place of administration. {AS 13.36.005} Trust cannot waive registration requirement. {AS 13.36.020}

Within 30 days of acceptance of trust, trustee must notify, in writing, current beneficiaries and, if possible, one or more persons who can virtually represent future beneficiaries under AS 13.06.120 of the court where the trust is registered and the name and address of trustee.

Trustee has general duty to keep the beneficiaries reasonably informed of trust and its administration. Upon reasonable request, trustee must provide the beneficiary a copy of trust provisions that affect the beneficiary's interest and relevant information about the trust assets and trust administration. {AS 13.36.080}

Settlor may, in the trust or a separate document, exempt trustee from notice provisions and providing information to beneficiaries who are not entitled to a mandatory distribution from the trust.

Disclosure exemption ends at the earlier of the settlor's death or court determination of settlor's incapacity. {AS 13.36.080}

Trustee must provide a copy of the trust upon demand to a beneficiary who is entitled to an accounting. {NRS 165.147}

Trustee may provide notice to beneficiaries, any heir of the settlor, or to any other interested person when a revocable trust becomes irrevocable on the death of settlor or under the terms of trust. The notice must contain name of settlor, date of trust, contact information for trustee; any provision of the trust which pertains to the beneficiary, or notice that the interested person is not a beneficiary. Notice must include a statement (bold, 12-point) that the person has 120 days from date of notice to contest the trust or be forever barred. No action to contest trust can be brought after 120 days of notice unless party can prove he did not receive actual notice. {NRS 164.021}

Trust may restrict or eliminate the right of a beneficiary to be informed of the beneficiary's interest for a period of time. {NRS 163.004}

A trustee has a general common law duty of disclosure to a beneficiary.

A trustee may provide notice to beneficiaries of the existence of the trust, trustee's name and address, beneficiary's interest in the trust. Upon receipt of notice, beneficiary must commence any action to contest the validity of the trust within 120 days of notice (notice must include statement regarding time limitation for claim). {12 Del. C. § 3546}

A trust may limit the beneficiary's right to be informed of interest in trust for a period of time, including, but not limited to, a period of time related to the beneficiary's age; a period of time related to the lifetime of the trustor or spouse of a trustor; a period of time related to a term of years or specific date; and/or a period of time related to a specific event that is certain to occur. During any time, a trust restricts or eliminates the beneficiary's right to be informed, unless the trust provides otherwise, any designated representative shall represent and bind such beneficiary for purposes of judicial proceedings and nonjudicial matters. {12 Del. C. §3303}



Alaska

Unborn person, minor, incapacitated person or unascertainable person may be bound by another person with a substantially identical interest in the proceeding.

If no conflict of interest, a parent may represent a minor child

An agent under a power of attorney with authority to act with the particular question at issue may represent and bind the principal.

A guardian or conservator may represent and bind the incapacitated person or minor.

Beneficiaries of class gifts may represent and bind other members of the class and beneficiaries with prior interests may bind remainder beneficiaries.

A living person may bind and represent the following persons to the extent the same interest or share of interest passes to the person: surviving spouse, persons who are or might be the distributees, devisees, heirs or issue of the living person upon the happening of a future event.

A holder of a power of revocation, a general or nongeneral power of appointment, may represent and bind the permissible appointees and takers in default or other persons subject to the power.

A Settlor or a trust protector with authority may, either in the trust or a separate document, designate a person to represent and bind another person.

A designated representative may not represent a beneficiary if serving as trustee.

A designated representative may not represent a beneficiary if the person is also a beneficiary unless appointed by settlor, is the settlor's spouse, grandparent or descendant of a grandparent of the settlor or settlor's spouse.

A person representing a beneficiary is not liable for action or omission to act made in good faith. {AS 13.06.120}



Nevada

Unless otherwise represented by counsel, a minor, incapacitated person, unborn person, or person whose identity is unknown and not reasonably ascertainable may be represented by a person who has a substantially similar interest with respect to the question or dispute provided there is no material conflict of interest.

Presumptive remainder beneficiary (beneficiary who would receive trust income or principal if trust were to terminate or if no termination provided, would receive or be eligible to receive distributions of income or principal if all current beneficiaries were deceased) may represent and bind a contingent remainder beneficiary if no material conflict of interest.

A holder of a power of appointment may represent and bind a person who is a permissible appointee or taker in default of appointment.

If a minor or incapacitated person cannot be represented as stated above, the custodial parent or guardian of estate may represent beneficiary in judicial and non-judicial proceedings and there is no material conflict of interest. Representation of a minor or incapacitated beneficiary under this provision is binding on any unborn person if the unborn person has an interest substantially similar to the minor or incapacitated person and no material conflict of interest exists. {NRS 164.038}



Delaware

Virtual representation applies to judicial and nonjudicial proceedings. A minor, incapacitated person, unborn person, or person whose identity is unknown and not reasonably ascertainable may be represented by a person who has a substantially similar interest with respect to the question or dispute provided there is no material conflict of interest. Presumptive remainder beneficiary (a beneficiary who would receive income or principal of the trust if trust were to terminate or if no termination date, a beneficiary who would receive or be eligible to receive distributions of income or principal if all current beneficiaries were deceased) or person authorized to represent a presumptive remainder beneficiary under the statute may represent and bind a contingent successor remainder beneficiary. A contingent successor remainder beneficiary or a person who may represent the contingent successor remainder beneficiary may represent and bind more remote contingent beneficiaries. A holder of a general testamentary or an inter vivos power of appointment or a nongeneral testamentary or inter vivos power of appointment that is exercisable in favor of persons or persons (other than holder, holder's estate, or creditors of holder or holder's estate) may, with consent of any person required for the exercise of the power, represent and bind takers of default; but in the case of a nongeneral power of appointment only to the extent there is no material conflict of interest. Parent or guardian may represent and bind a minor or incapacitated person not otherwise represented under the statute if no material conflict of interest. A parent may represent an unborn beneficiary if no conflict of interest. A parent representative may represent another minor, incapacitated, unborn, or unascertainable beneficiary with respect to substantially related matter if no material conflict of interest. 12 Del. C. §3547

Designated Representative may be appointed to represent one or more beneficiaries by the terms of the governing instrument either as a designated representative or by grant of authority to represent and bind a beneficiary in a judicial proceeding or nonjudicial matter, or by one or more person who are expressly authorized under a governing instrument to appoint a person as a designated representative. The Trustor may appoint a designated representative and if appointed for a judicial proceeding or nonjudicial matter, the designated representative shall serve in a fiduciary capacity, must not be related or subordinate to the trustor within the meaning of IRC §672(c) and the trustor, within 30 days of appointment of the designated representative, must provide written notice to the surviving parent(s) or guardian of the beneficiary who will be represented by the appointed designated representative, or by a beneficiary to act as a designated representative for such beneficiary. A designated representative is presumed to be a fiduciary. {12 Del. C. §3339}



Alaska

No specific requirement to provide an accounting unless stated in trust. Upon request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee. {AS 13.36.080} Settlor may provide an exemption from requirements for a period of time that is the shorter of the settlor's death or a judicial determination of incapacity; but exemption does not apply to a beneficiary entitled to a mandatory distribution. {AS 13.06.120}



Nevada

An interested person to whom a trustee is required to account may make a written request to the trustee any time 60 days or more after the appointment of the trustee for a list of assets of the trust known to the trustee. List must be provided within 15 days after receipt of written request. {NRS165.030}

If trust does not expressly alter rules, upon demand, trustee must provide an account to each current beneficiary and each remainder beneficiary (but not remote beneficiary) but subject to the right to petition the court for instruction, except as follows:

- Account provided only to settlor who retained power of revocation (unless court-appointed guardian or a person having the right of revocation demands an account on behalf of the settlor or court determines settlor is incompetent or is susceptible to undue influence and orders account to be provided).
- Account only to person holding a broad power of appointment (defined as ability to appoint to powerholder without any restrictions or limited power of appointment to any person).

Trustee is not required to provide a beneficiary information that does not affect that beneficiary's interest in the trust and may redact the account.

Account not required to a beneficiary of an irrevocable trust while that beneficiary's only interest in the trust is a discretionary interest (trustee has discretion to determine whether a distribution should be made, when and the amount of the distribution).

Beneficiary may waive right to an account. {NRS 165.1207}

If the court finds that a beneficiary is entitled to an account, but the trust authorizes or directs the trustee not to provide an account, the court can order the trustee to prepare and file a confidential report with court and one or more reviewers retained by beneficiary.

Reviewers must submit report to the court as to whether the trust has been properly administered or accounted for with applicable law, the trust and GAAP, trustee can object to report. If court finds a problem, can order an account be provided to beneficiary or grant other relief. {NRS 165.145}



Delaware

Trustee not required to file any account or inventory, except (1) to extent inter vivos trust instrument requires filing; an order of the court; or if trustees appointed by the court as provided in court order (2) and certain testamentary trusts; {12 Del. C 3521-3524}

The obligation to file an accounting may, without court approval, be released by the interested parties of the trust if the trustee sends a written notice and request for waiver and consent or nonobjection. Statute sets forth required contents of notice. {12 Del. C. §3526}



Alaska

Non-residents may transfer property to a joint community property trust and elect to classify the trust property as community property under Alaska law. Trust must comply with specific requirements, including, having an Alaska qualified trustee (see above), and contain specific language regarding spousal rights and consequences of electing community property. {AS 34.77.100}

Community property held in a community property trust or another trust remains community property of the spouses if distributed to the spouses. {AS 34.77.030(i)}

Community property held in a community property trust may be divided on a non pro rata or a pro rata basis upon death of one spouse {AS 34.77.155}

Beneficiary who receives a report, which includes a final and interim report and an accounting and is notified about the location and ability to examine the trust records must bring action against trustee within three (3) years of receipt of the report, even if the report lacks adequate disclosure.

Trustee may petition court for approval of report. Sixty (60) days' notice of the hearing provided to beneficiaries. Beneficiaries must file and serve claims within forty-five (45) days of receiving notice or claims are barred. Report must adequately disclose the existence of potential claims.

Trustee may shorten limitation period by providing notice (statute specifies language and font) to beneficiaries that claims must be brought within six (6) months of receiving the report or are barred. Report must adequately disclose the existence of potential claims.

No limitation period for claims brought by a beneficiary against a trustee for fraud committed by the trustee. {AS 13.36.100}



Nevada

An irrevocable trust of which both spouses are distribution beneficiaries may provide that community property or separate property transferred to the trust remains community property or separate property, as applicable, during the marriage. Any community property or separate property, including appreciation and income thereof, that is distributed or withdrawn from a trust remains community property or separate property, as applicable. {NRS 123.125}

If two settlors create a nontestamentary joint trust that provides for the pecuniary or fractions division of community property upon death of one settlor, the trustee has the authority to distribute the community property on a non-pro rata basis so long as the fair market value of the distributions is, at the time of the distribution, the same as if the distribution were made pro rata. {NRS 164.950}

Account deemed approved and final:

(1) By a beneficiary who received a copy of the account if no written objection is delivered to the trustee within 90 days after the trustee provided the account; or

(2) By all beneficiaries who are not required to receive an account, such as non-vested and contingent beneficiaries, remote beneficiaries, minor beneficiaries, and unborn or unknown beneficiaries if the account is deemed approved and final by a beneficiary who has a similar, but preceding interest, in the trust, under virtual representation statute, or as to any beneficiary who has waived an account.

If submitted to court for approval, account is deemed final upon approval of the court, subject to right of appeal. {NRS 165.1214}



Delaware

Interested person may initiate proceeding against trustee until first to occur of

(1) one year of being sent report adequately disclosing facts constituting claim, unless longer period specified in instrument.

(2) in case of trustee ceasing to serve, 120 days after date beneficiary was sent report that discloses facts constituting claim and notice of cessation of trusteeship and 120-day period to bring a claim.

(3) Date proceeding otherwise precluded by adjudication, release, consent, limitation or pursuant to governing instrument.

Report may be sent to the beneficiary, or a person who may represent a beneficiary under virtual representation or a designated representative.

In the absence of a report, a claim for breach of trust or other claim against a trustee must be commenced within 5 years of the first to occur of: (1) removal, resignation or death of the trustee; (2) termination of the person's interest in the Trust; or (3) the termination of the trust. No limitation period for an action to recover for fraud or misrepresentation related to the report or an action based on the trustee's administration of the assets during or following expiration of any applicable limitation period. {12 Del. C 3585}



Alaska

A provision in a trust penalizing a beneficiary by charging the beneficiary's interest in the trust or in another manner for challenging acts of the trustee or other fiduciary, or for instituting any other proceedings relating to the trust is enforceable even if probable cause exists for the proceeding. {AS 13.36.330}



Nevada

Except as stated below, a no-contest clause is enforceable and must be construed to carry out settlor's intent without regard to the presence or absence of probable cause or the good faith or bad faith of the beneficiary in bringing the action.

No-contest clause may apply to reduce or eliminate a beneficiary share based on the conduct set forth by the settlor in the trust; which may include conduct other than formal court action, conduct that is unrelated to the trust, including, commencement of civil litigation against the settlor's estate or family members; interference with the administration of another trust or business entity; efforts to frustrate the intent of a settlor's power of attorney; and efforts to frustrate the designation of beneficiaries related to a nonprobate transfer of settlor.

No-contest clause is not enforceable: (1) if beneficiary seeks to enforce the clear and unambiguous terms of the trust, transfer of property to the trust, or any document referenced in or affected by the trust and any trust-related instrument; (2) enforce the beneficiary's legal rights related to the trust, a transfer of property to the trust; any document referenced in or affected by the trust; or any other trust-related instrument; (3) obtain a ruling with respect to the proper administration, construction or legal effect of the trust or; (4) enforce the fiduciary duties of the trustee;

No contest- clause not enforceable if the court determines by clear and convincing evidence that the conduct of the beneficiary was a product of coercion or undue influence or caused by lack of sufficient mental capacity to knowingly engage in the conduct; a beneficiary acts as a trustee or trust protector to exercise a power set forth in the trust, such as reforming, modifying or decanting the trust, removing or replacing a trustee, making or withholding distributions, or exercising any other discretionary power; or a beneficiary seeks to invalidate a trust, a transfer of property into the trust, any trust-related instrument if the legal action was instituted and maintained in good faith and based on probable cause.

Trustee may suspend distributions to a beneficiary to the extent that the conduct of the beneficiary may invoke no-contest penalty. {NRS 163.00195}



Delaware

A provision in a trust that would reduce or eliminate the interest of any beneficiary who initiates or participates in an action to contest the validity of such trust or to set aside or vary the terms of a trust is enforceable.

A no-contest provision does not apply to any action brought by the trustee; any action in which the beneficiary is determined by the court to have prevailed substantially; any settlement agreement amount the beneficiaries; any action to determine whether a proposed action constitutes a contest within the enforceable provision or any action brought by a beneficiary for the construction or interpretation of a trust. 12 Del. C. §3329.



Alaska

A trustee authorized to pay trust principal from a trust (“invaded trust;”) to one or more current beneficiaries (but not a trustee who is a settlor or a beneficiary) may appoint trust assets from one trust to another trust, which may be an existing trust, or a new trust created by the settlor or the trustees.

The permissible changes to the existing trust depend on trustee’s discretion: If a trustee has unlimited discretion (discretion to invade principal not limited by an ascertainable standard), the trustee may eliminate one or more current or remainder beneficiaries, change the shares of beneficiaries, grant a power of appointment which may include permissible appointees who are not beneficiaries of the invaded trust, and extend the duration of trust. Cannot add beneficiaries except as permissible appointees under a power of appointment.

If the trustee has limited discretion (discretion to distribute principle is limited by an ascertainable standard), the beneficiaries and standard for distribution must remain the same in the appointed trust as the invaded trust, except in the case of decanting to a special needs or supplemental needs trust.

Trustee with limited discretion cannot grant a power of appointment and must include same power of appointment as in invaded trust. The limited discretion trustee may extend duration of the trust and may change standard for distribution for the term extended beyond the original term of the trust.

No trustee may exercise decanting authority to eliminate marital or charitable deduction, reduce or eliminate a current right to a mandatory distribution of income or principal if the right has come into existence, but may reduce or eliminate a mandatory right during extended duration of the trust and may reduce or eliminate a mandatory right if appointing to a special needs trust or supplemental needs trust, to increase trustee compensation or decrease, indemnify, or exonerate trustee from liability.

Applies to Alaska trusts and non-Alaska trusts administered in Alaska.

Notice to at least one qualified beneficiary (directly or through virtual representation or designated representative), the settlor, and person entitled to remove and replace trustee is required.

Notice to a qualified beneficiary is not required if settlor exempted trustee from notice under AS 13.36.080.



Nevada

A Trustee with discretion to distribute income or principal, either through exercise of its discretion or at the direction of a person authorized to direct the action, or with consent of another person as provided in governing instrument, may appoint property to a second trust.

The second trust may only have as beneficiaries one or more of the beneficiaries of the first trust, including beneficiaries to whom a distribution of income or principal may be made in the future from the original trust at the time or upon the happening of an event (allows for acceleration of remainder interests). A permissible appointee of a power of appointment in the second trust is not considered a beneficiary of the second trust.

Second trust may grant a general or limited power of appointment to one or more beneficiaries of the second trust who are beneficiaries of the first trust, may provide that, at a time or occurrence of an event specified in the trust, the remaining trust assets in the second trust must be held for the beneficiaries of the original trust upon the terms and conditions that are substantially identical to the terms and conditions of the original trust; and may appointed to a special needs trust; pooled trust or third-party trust.

Second trust may eliminate an income interest of a beneficiary unless the first trust is a trust for which a marital deduction was taken, a trust for which a charitable deduction was taken, or a grantor-retained annuity or unitrust.

A trustee may not appoint to a second trust if the property to be appointed is subject to a power of withdrawal by a beneficiary and that is exercisable at time of the proposed appointment, unless the power of withdrawal remains the same in the second trust.

A trustee may not appoint to a second trust if a contribution to the first trust qualified for a gift tax exclusion by reason of IRC§ 2503(c), unless the second trust provides that the beneficiary’s remainder interest must vest not later than the date upon which such interest would have vested under the terms of the first trust.

A trustee who is a beneficiary of the first trust cannot decant to a second trust if the trustee does not have discretion to make distributions to itself; the trustee’s discretion to make distributions to itself is limited by an ascertainable standard and under the second trust, it is not limited by an ascertainable standard, or the trustee’s discretion to make distributions to himself can only be exercised with the consent of a co-trustee or a person holding an adverse interest and under the second trust the trustee’s discretion is not limited



Delaware

A trustee with discretion to distribute income or principal, either through trustees’ discretion or at direction or consent of an adviser, may appoint income or principal or both from the first trust to a second trust (which may be a separate trust or a modification of the first trust).

The second trust may only have beneficiaries who are the proper object of the invasion power in the first trust (may eliminate beneficiaries but may not add beneficiaries) and may provide that, at a time or upon an event specified in the trust, the remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions concerning each beneficiary’s interest that are substantially identical to the first trust’s terms and conditions.

Second trust may grant a power of appointment (including a general power of appointment and may include appointees who are not beneficiaries of the first trust) to one or more of the discretionary beneficiaries of the first trust.

If the first trust received a contribution that qualified for the gift tax exclusion under IRC § 2503(c), the second trust must provide that the beneficiary’s remainder interest shall vest and become distributable no later than the date upon which such interest would have vested and become distributable under the first trust.

The Trustee may not exercise the power to reduce any income or unitrust interest of a beneficiary for which a marital deduction has been taken for federal income tax purposes, and the exercise of the power to decant cannot apply to trust property subject to a presently exercisable power of withdrawal held by a beneficiary who is the only trust beneficiary to whom or for the benefit of whom, the trustee has authority to make distributions.

If the first trust had an open class of beneficiaries (such as a class composed of descendants of a person), the exercise of the power to decant may be made to a second trust having only beneficiaries, including unborn future beneficiaries, who are among the members of the open class, even if the class remains open in the second trust; however, the second trust may not permit distributions to or among members of the open class sooner than when or in excess of the amount permitted by the first trust.

Second trust may have a term that is longer than the term of the first trust, including, but not limited to, a term measured by the lifetime of a current beneficiary.

Applies to any trust administered in Delaware. Written statement of exercise of power of invasion requirement; but



Alaska

Notice of decanting does not affect limitation period unless the notice constitutes an interim report under AS 13.36.100). {AS 13.36.159}

Trust Decanting (continued)

Irrevocable trusts may be modified or terminated with court approval for unanticipated circumstances, to achieve settlor's tax objectives, and by consent of qualified beneficiaries. {AS 13.36.345, .355 and .360}

Court may reform a trust to conform to settlor's intent if there is a mistake of fact or law, and intent established by clear and convincing evidence. {AS 13.36.350}

Trust Protector may be given the power to modify or amend the terms of the trust. {AS 13.36.370}

Modification of Trusts



Nevada

by an ascertainable standard and may be exercised without consent, or the trustee of the first trust does not have discretion to make distributions that will discharge the trustee's legal support obligations but under the second trust, the discretion is not limited.

A trustee who may be removed by the beneficiaries and replaced with a trustee that is related to or subordinated to a beneficiary may not appoint to a second trust to the extent that the exercise of the authority by such trustee would have the effect of increasing the distributions that can be made from the second trust to such beneficiary or group of beneficiaries that held the power to remove and replace the trustee, unless the distributions are limited in the second trust by an ascertainable standard.

Notice of decanting is not required but is permissive. Can use notice provisions under NRS 164.725 to commence short limitation period to object.

Trustee's decanting authority applies to a trust that is governed by, situated in, or administered under the laws of Nevada, including trusts moved from another state. {NRS 163.556}

Nonjudicial settlement agreements may be used to modify the terms of a trust or terminate a trust, provided it does not violate a material purpose of the trust. {NRS 164.940} Trust Protector may be granted powers to modify the terms of a trust. {NRS 163.5553}



Delaware

no notice to beneficiaries required. {12. Del. C. § 3528}

Unless prohibited by the terms of the trust a nonjudicial settlement agreement, or under a modification agreement, an irrevocable trust may be modified during the trustor's lifetime to include a provision or modify an existing provision that could have been included in a trust where such trust created upon the date of modification by written consent or written nonobjection of all the trust's trustors, all then serving fiduciaries and all beneficiaries with an interest in the trust. If the transfer to the trust was not an incomplete gift for federal gift tax purposes, the trustor (or agent or guardian) may not represent and bind any beneficiary (other than the trustor) with respect to the modification. {12 Del. C. §3342}

Trust Adviser may be granted power to modify or amend a trust to achieve favorable tax status or to facilitate the efficient administration of the trust. {12 Del. C. § 1313 (f)}

Alaska

Trustee may terminate if trust is less than \$50,000.

Court may modify or terminate a non-charitable trust or remove the trustee and appoint a different trustee, if the court determines that the value of the trust is insufficient to justify the cost of administration.

Trust is distributed in accordance with settlor's probable intent. {AS 13.36.365}

Nevada

After notice to the beneficiaries, trustee may terminate a trust if total value is less than \$100,000 or if a trust that is uneconomical to administer, the trustee concludes that the value of the trust is insufficient to justify the cost of administration. An Interested Trustee may not exercise this power.

A court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration. Upon termination, the trust is distributed in a manner consistent with purpose of the trust. {NRS 163.187}

The court may terminate or require distribution of a trust prior to time provided in trust if administration or continued administration is no longer feasible or economical. {NRS 163.185}

Delaware

Unless trust provides otherwise, a trustee (other than the settlor, a beneficiary or a trustee who may be removed as trustee by one or more settlors or beneficiaries and replaced with a successor trustee who is either among the persons exercising the removal and replacement power or who is related or subordinate (within the meaning of IRC § 672(c) to any such person) may, upon written notice, terminate and distribute the trust to one or more beneficiaries in the trustee's discretion if the trustee determines the cost of administration would defeat or substantially impair the purpose of the trust. No court proceeding or approval is required.

Written notice to all interested persons required (may use virtual representation or designated representative). Statute provides for objection period and right to petition court. {12 Del. C. § 3542}

Talk to a Trust Officer

Have a question about an advanced planning technique? Our seasoned experts are just a phone call away.



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