

# ESTATE PLANNING

## *Matters*

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### SIGNIFICANT CHANGES TO NEVADA'S TRUST AND TRUSTEE LAWS

Along with the other changes mentioned in this publication, the Nevada legislature recently passed Senate Bill 287 which made comprehensive changes to its trust and trustee laws. These changes add depth and value to the already robust statutory provisions governing trusts and trustees in Nevada. The following is a brief summary of some of the changes and clarifications made:

- ◆ Classification and definitions of an interest in a trust as a discretionary interest, support interest, or mandatory interest as well as the rights and interests of beneficiaries and other parties with respect to such interests.
- ◆ Permission to appoint a third party fiduciary to direct the trustee in carrying out certain duties such as discretionary distribution decisions and investment decisions.
- ◆ Allowance of trust "decanting" or the ability to appoint some or all of an irrevocable trust's assets to another trust. This new provision increases flexibility in dealing with antiquated trust provisions or changes in circumstances or laws.

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### NEW LAWS TO AFFECT THE NEVADA On-Shore TRUST®

In Nevada's most recent legislative session, significant changes were made to NRS 166: Nevada's statute governing asset protection trusts. We believe these changes, which became effective on October 1, 2009, further validate Nevada's asset protection trusts, or NOSTs (Nevada On-shore Trusts®), as legitimate and effective wealth preservation tools.

#### **Some highlights of the recent changes to the statute are as follows:**

- ◆ Confirmation that a settlor of a NOST has the right to serve as a trustee of the NOST. NRS 166.040(3)
- ◆ Settlers of NOSTs can remove trustees, direct investments and execute other management powers. NRS 166.040(3)

- ◆ The two-year statutory waiting period does not restart if property is transferred from the NOST to be refinanced and then re-conveyed back into it. NRS 166.170(4)
- ◆ Advisers (accountants, attorneys, or investment advisers) to the settlor or trustee of a NOST are specifically protected from third-party claims under certain guidelines. NRS 166.170(5)

These changes to Nevada's NOST statute should give added confidence in the NOST's ability to protect one's assets. Given the volatility of today's economy, it would be wise for our clients to consider using a NOST in their overall estate plan to better preserve the wealth they have accumulated over the course of their lives.

As a reminder, Nevada's asset protection trust statute has been in place for more than ten years. Nevada has been, and continues to be, a pioneer in the area of asset protection. Other states are now joining Nevada and a handful of other jurisdictions to provide the same asset protection techniques Nevada offers to its residents. Fortunately, as a front-runner in the industry, Nevada is a seasoned veteran in the field of wealth preservation and, consequently, those who formed NOSTs early on are now reaping the benefits of increased protection. We remain confident that NOSTs are one of the most effective asset protection tools available to Nevada residents. *B*



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- ♦ Provision that allows for the creation of a trust via an exercise of a power of appointment included in a trust.
- ♦ Permission given to a non-corporate trustee to lend trust funds to himself if such a power is already included in the trust agreement and all beneficiaries consent to the transaction.
- ♦ Allowance for a trustee to buy trust property or sell trust property to himself provided the trust agreement allows for this or if all beneficiaries consent to the sale.
- ♦ Automatic inclusion of all statutory trust powers even when the trust agreement is silent on this matter.
- ♦ Permission granted to a trustee to provide notice to the beneficiaries, heirs, and other interested parties when a revocable trust becomes irrevocable. Any action to contest the trust must be brought within 120 days from the date notice is served.
- ♦ Trustee allowed to convert an income trust to a unitrust to provide that the amount of income to be distributed is defined as a percentage of the total assets in the trust. This change will allow the trustee to focus on the total return of the trust which is to the advantage of all beneficiaries, both present and remainder.
- ♦ Provision that trustees fees are to be allocated equally between trust income and principal.

As mentioned above, these new laws provide further statutory protection, guidance, and flexibility to trustors, trustees, and beneficiaries in their settling, administering, and benefitting from trusts. While this article is only meant to serve as a brief overview of the new legislation, should you have any questions regarding these changes or would like to receive more detail on them, please do not hesitate to contact us. *J*



## New Power of Attorney Form

The Nevada Legislature made changes to the statutes and forms for two important documents that our office includes in most estate plans. The statutory form for the Healthcare Power of Attorney has been revised. In addition, our office has updated our forms to provide additional choices regarding end-of-life care including an option for avoiding "heroic measures" under certain conditions.

The changes to the statutes regarding the Asset Management Power of Attorney were more significant. The legislature provided a new statutory form in an effort to transition to a uniform version of this document. The goal of the new law is that a durable power of attorney will be more widely accepted, resulting in increased effectiveness. An interesting addition to the statute provides that third parties with whom an attorney-in-fact deals must accept a validly executed power of attorney, or they are otherwise liable for attorney fees and court costs incurred by the principal or his agent in proving the validity of the document. It seems that the main purpose of this new change is to persuade banks and other institutions to accept these new uniform versions of the durable power of attorney.

Improvements to the options contained in the Healthcare Power of Attorney and our office's adoption of the new uniform form for Asset Management Power of Attorney are good reasons to contemplate replacing these documents so that they will be a more effective element of your estate plan. *J*