

**Management of a Nevada Self-Settled  
Spendthrift Trust**

**1. Distributions.**

1.1 Trust Distributions to a Settlor: A settlor/creator of a Nevada self-settled spendthrift trust cannot receive distributions from the trust without someone else's consent.

(a) The best way to resolve this issue is to appoint a trustee other than the settlor to handle all administrative decisions for the trust.

(b) Settlers who create a self-settled spendthrift trust want to manage the assets, and so their trusts are designed so that the duties of the trustee are divided. The Managing Trustee manages the assets, and the Distribution Trustee determines the appropriate distributions to or for the benefit of the settlor.

1.2 Indirect Distributions: The Distribution Trustee must approve any distributions to a settlor from any asset belonging to the spendthrift trust.

(a) Account Access. Some bank accounts, brokerage accounts, and other investments offer check-writing privileges, debit cards, ATM cards, credit-cards, automatic bill-paying services, automatic transfers, and other programs that allow a settlor of a spendthrift trust to benefit from distributions. Use of such services by the settlor without consent of the Distribution Trustee may cause the trust to lose its status as a spendthrift trust as to the affected assets.

(b) Trust-Owned Business Entities. Sometimes a settlor may receive distributions (compensation/reimbursements) from a business entity that is owned by the spendthrift trust. If these distributions are made in the ordinary course of business and for full and adequate consideration, these distributions are probably acceptable. Even so, until the law is clarified, either by court rulings or by the legislature, even this type of distribution should be avoided without the consent of a third party. A manager, director, or officer of the company who is not a settlor of the spendthrift trust should be required to approve any distributions to a settlor so long as the spendthrift trust is an owner of an interest in the company.

(c) Ongoing Consent. With the consent of the Distribution Trustee, arrangements may possibly be made for ongoing, regular distributions to a settlor of a self-settled spendthrift trust, including some of the benefits and privileges discussed above, but only if the Distribution Trustee's consent can be unilaterally terminated or withdrawn at any time, effective immediately.

## 2. Control.

2.1 Internal Management: The Distribution Trustee does not have to participate in the decisions relating to the internal management of the spendthrift trust or any of its assets, except with respect to distributions to a settlor of the spendthrift trust. Thus, the Managing Trustee, who is usually the settlor, may have full authority to invest, encumber, buy, or otherwise transfer assets so long as no settlor can receive a distribution without the authorization of the Distribution Trustee (or some other third party).

2.2 Dividends; Liquidation: Because no distribution to a settlor is involved, dividends and liquidating distributions that are payable directly to the trust are permissible without the consent or approval of the Distribution Trustee.

## 3. Specific Situations.

3.1 Real Estate: We suggest that any deed conveying real estate to a spendthrift trust convey it to the trust itself. The deed should specifically explain the role of the various trustees, perhaps using language something like this:

*The Managing Trustee may sell, exchange, encumber, and/or otherwise transfer the property without the consent of the Distribution Trustee if the full proceeds of the sale, transfer, or exchange are completely paid, delivered, or transferred to the Grantee herein, but the consent of the Distribution Trustee is required if the Grantors will receive any payment, distribution, consideration, or benefit of any kind for less than full and adequate fair-market consideration.*

*Under the terms of the spendthrift trust's governing instrument, the Grantors, as beneficiaries of the spendthrift trust, may be allowed to use the property only in the discretion of the Distribution Trustee with the Distribution Trustee's consent on such terms and conditions as the Distribution Trustee shall from time to time determine, and the Distribution Trustee's consent may be unilaterally withdrawn at any time without cause.*

*The foregoing imposes limits on the trustees' ability to convey title for the purposes of NRS 164.067(1), but nothing herein requires anyone dealing with the trustees to examine a copy of the trust agreement or to otherwise*

*investigate the application of any proceeds from the sale or exchange that are delivered to the trustees in accordance with the foregoing.*

3.2 Financial Accounts; Investments: Ideally, financial accounts and investments can be titled so that internal decisions with respect to investments that stay inside the trust can be managed by the Managing Trustee without the consent of the Distribution Trustee. As a practical matter, it may be necessary to establish accounts that require two or more signatures, one of which must be the Distribution Trustee. A letter of instructions to the financial institution, brokerage company, or other investment institution might include the following:

*The Managing Trustee has authority to sell, exchange, encumber, and/or otherwise transfer the property without the consent of the Distribution Trustee if the full proceeds of the sale, transfer, or exchange are completely paid, delivered, or transferred to the spendthrift trust or to an account or investment in the name of the spendthrift trust; however, the consent of the Distribution Trustee is required if a settlor of the spendthrift trust will receive any distribution or benefit.*

*With the consent of the Distribution Trustee, arrangements can be made to allow regular, specified payments and transfers to or for a settlor of the trust; however, the Distribution Trustee's must be able to withdraw that consent at any time without cause, effective immediately upon giving notice of the withdrawal.*

3.3. Bank Accounts: If a bank does not have a method for insuring that two signatures are required on checks, we recommend that the spendthrift trust not open an account with that bank or that no settlor be a signatory.

#### **4. Privacy or Protection.**

4.1 Privacy. Normally, ownership of assets is personal and confidential. Public records normally show only the assets that are recorded, such as deeds, trust deeds, and mortgages. Other assets are generally not made part of the public record. For those who want asset protection, however, a public record of asset ownership may provide additional protection.

4.2 Two-Year Look-Back Period. Nevada's spendthrift trust law allows a creditor two years to challenge a transfer to a spendthrift trust as being fraudulent and void.

(a) If the settlor of a spendthrift trust put assets into the trust at a time when someone had a claim against the settlor, Nevada law allows more than two years to challenge the transfer as long as the claimant (creditor) challenged the transfer within six months of becoming aware of the transfer. Since creditors are

rarely aware of transfers to trusts, this made the two-year limitation potentially meaningless. Some asset transfers, such as the conveyance of a home, are made part of the public record, but the law was previously unclear as to whether or not a creditor would be deemed to be aware of such a transfer.

(b) One might think this is not a problem for those who have no lawsuit pending, but an existing “claim” can exist when the triggering event has occurred without anyone even knowing. The surgeon who has inadvertently left a sponge inside a patient, the attorney who has given a client bad advice, the accountant who has given a client the wrong deadline for a tax return, and the general contractor whose building has hidden defects may all have claims against them that are unknown but existing. For such cases, it is important to have the look-back period expire two years after the transfer of assets to the spendthrift trust, not six months after a claimant learns of the transfer, which could occur much later.

(c) Under current Nevada law, everyone is deemed to be aware of any asset transfers for which there is a public record. This means that anyone who desires to assert that a transfer of an asset was fraudulent and void cannot argue that he or she has more than two years to make that assertion if the transfer to the spendthrift trust is a matter of public record. In such a situation, it is no longer possible for a creditor to say, “I was not aware of that transfer until today and so I have another six months in which to assert a claim on trust assets.”

(d) Accurate record keeping regarding to contributions and distributions is essential. Each addition to the trust has its own two-year look-back period, and distributions are deemed to be made from the most recently contributed assets.

4.3 Choice: Protection or Privacy. So, for the best protection, there should be a public record of all asset transfers to a self-settled spendthrift trust. If the settlor of a spendthrift trust chooses not to make his asset transfers public, then he or she is choosing privacy over protection. For our clients, we usually recommend protection over privacy, and we suggest that a schedule of trust assets be recorded when a spendthrift trust is initially formed and that a supplemental schedule showing additional assets be recorded each time additional assets are added. Ultimately, however, the client must decide how what they are willing to make part of the public record; this decision boils down to privacy vs. protection.

## 5. Conclusion

5.1 Untested Law: Nevada's 1999 changes to its spendthrift trust laws have not been sufficiently tested in the Nevada Supreme Court or any other court that publishes its rulings. Until the law is clarified, care must be taken to comply with the law as carefully as possible.

5.2 Distributions: If a settlor has access to the income or principal of the spendthrift trust without the consent of the Distribution Trustee or some other third party, it could cause the trust to lose its status as a spendthrift trust, at least as to the assets affected. The spendthrift trust should not own any assets to which a settlor of the trust would need ready access. In most cases, day-to-day expenditures would come from bank accounts held in a revocable trust, and a settlor's access to the spendthrift trust's assets would be rare.

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