



Benefits of US Trusts in International Planning

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This Guide is intended to explain some of the unique features of the Alaska and Nevada trust regimes to professional advisors, institutions and their clients. This Guide specifically addresses the use of Alaska and Nevada trusts in an international context.

Trusts for International Clients

In increasing numbers, foreign families and their professional advisors are including U.S. trusts in their international tax, asset protection and estate planning. Some advantages of a U.S. trust for a foreign client include:

Tax Reporting

With the rise of information sharing among countries concerning their citizens' and residents' assets and income, especially the Common Reporting Standards (CRS), the U.S. has become a more attractive jurisdiction for trusts. Compliance with these reporting obligations can be simpler when a U.S. financial institution, such as Peak Trust, is serving as a trustee of a trust.

Legal Certainty

One hallmark of attractive trust jurisdictions, like Alaska and Nevada, are their comprehensive statutory laws governing trusts. In contrast, many non-U.S. jurisdictions rely more heavily on common law. The robust statutory laws of the leading U.S. trust jurisdictions often provides a higher degree of certainty concerning how a trust can be designed and how it will be administered. In some non-U.S. jurisdictions, there can be more unwritten rules, because the statutes provide only a limited, general framework. By its nature, that approach leaves more to a judge's discretion. For some clients, that leaves too much uncertainty.

Settlor Intent

Individuals who create wealth often have specific ideas concerning how that wealth should be managed through succeeding generations. For those individuals, creating a trust in a jurisdiction that respects settlor intent is important. The leading U.S. trust jurisdictions, like Alaska and Nevada, offer the best protection of settlor intent. In contrast, many non-U.S. jurisdictions apply the Saunders rule, which generally allows the beneficiaries to terminate a trust by agreement. Some families also wish to avoid the forced inheritance laws of their home countries, and a U.S.-situs trust potentially can help families achieve that goal.

Non-U.S. Trusts Involving U.S. Beneficiaries

U.S. income tax law often motivates multi-national families to move existing trusts to the U.S. If a non-U.S. trust has a U.S. beneficiary, there can be unwelcome tax consequences. The U.S. beneficiary potentially faces significant, enhanced taxes upon receipt of a distribution from the trust. In addition, the U.S. beneficiary may be taxed upon receipt of a loan from the trust or upon the use of trust property. Those unfavorable tax consequences most frequently arise after the settlor's death, and they may disappear if the trust becomes a U.S. trust for U.S. tax purposes.

Stability and Privacy

The risks of government collapse and lawlessness can create the possibility of unenforceable contracts, criminal victimization and kidnapping for wealthy international clients and their families.

The Diversity and Power of US Investment Opportunities

The power and diversity of U.S. investment opportunities, particularly in comparison to most small countries, is enormous. The United States GDP is approximately 25% of the world's economy. The top ten states in the U.S., as measured by GDP, would rank in the top 20 national economies of the world.

Peak Trust Company offers a range of fiduciary and administrative services for international clients. Our services include:

- Acting as trustee of trusts established by a foreign grantor under Alaska or Nevada law.
- Accepting appointment as successor trustee of foreign trusts re-domiciled into Alaska or Nevada.
- Acting as trustee of stand-by trusts which are either beneficiaries of foreign trusts or objects of powers of appointment.
- Acting as trustee of Alaska or Nevada irrevocable trusts established by foreign settlors.
- Acting as trustee of trusts established under foreign trust laws where the choice of law permits the appointment of a foreign trustee as sole or co-trustee.

At a time of unpredictable political and economic changes in many regions of the world, many clients would like to base their multi-generation planning in jurisdictions that offer the security of a stable political and legal environment. Using Alaska or Nevada as a trust domicile may satisfy your international clients' long-term planning requirements while protecting their privacy and family from threats against their safety.

Both Alaska and Nevada have been, and continue to be, rated as top-tier U.S. trust jurisdictions in *Trusts and Estates Magazine*, *The Trust Advisor* and *Forbes Magazine*. Both jurisdictions are highly ranked because of their favorable tax treatment of trusts and the states' commitment to ensuring that their trust laws reflect the present day needs of grantors, beneficiaries, drafting attorneys and trust professionals.

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The Alaska Advantage

Alaska was the first state in the nation to adopt "new age" trust laws, which allowed for self-settled trusts and domestic asset-protection trusts. Since that time, Alaska has continued to adopt cutting-edge trust statutes, allowing for unique planning opportunities. In addition, Alaska has some of the most comprehensive asset-preservation statutes in the country. The following reasons briefly illustrate the Alaska advantage.

Self-Settled Spendthrift Trusts and PLR 200944002

Alaska was the first state to allow for self-settled spendthrift trusts and arguably has the best spendthrift statutes for both the grantor and other trust beneficiaries. Alaska provides for "self-settled" spendthrift trusts, which allows the grantor to set up an irrevocable trust, be a discretionary beneficiary and avoid the assets being subject to creditor claims of either the grantor or any other beneficiary. Also, the assets in such a trust may be excluded, if so desired, from the grantor's taxable estate even though the grantor is a trust beneficiary. In PLR 200944002, the IRS agreed that the Grantor of a trust can be a trust beneficiary of an Alaska Self-Settled Spendthrift Trust and the assets of the trust will not be included in the Grantor's Estate. **Alaska is the only state that has received a favorable ruling from IRS regarding self-settled trusts.**

Creditor Protection

Unlike the laws of other states, Alaska has no special "class" of creditors and creditors must prove actual fraud, rather than constructive fraud, before self-settled trust assets can be attached. Additionally, Alaska has a statutory provision that clarifies that a beneficiary does not have a property right in

his or her beneficial interest of a discretionary trust but, rather, has a mere expectancy. Therefore, creditors of a beneficiary have no legal interest to attach. Furthermore, there is a provision that allows a trustee to directly pay the expenses of a beneficiary of a discretionary trust. The creditors cannot seek a court order to attach trust assets or distributions nor can they obtain a court order to compel the trustee to make a distribution to the creditor.

No State Income Tax

Trust beneficiaries can see the earnings in the trust compound-free from state and local income taxes, thereby providing extraordinary year-on-year returns. In addition, Alaska has no state gift or estate tax and no intangibles tax.

Alaska Permits Perpetual (Dynasty) Trusts

Using perpetual trusts can significantly increase wealth passing from generation to generation by avoiding unnecessary estate, gift and generation-skipping transfer (GST) taxes. In Alaska, trusts can last forever; however, if a beneficiary exercises a special power of appointment, the trust is limited to 1000 years.

Powerful Trust Decanting Statute

Alaska has one of the most flexible and effective ways to move a trust to the state to reap the benefits provided by its laws. Alaska's decanting statute is one the broadest and most comprehensive of all decanting laws. Many times, the terms of a trust do not permit the trustee and beneficiaries to take advantage of planning opportunities. But the Alaska decanting provisions can be made to apply to a trust created outside of Alaska, which can be used to provide significant advantages to the trust beneficiaries. Additionally, Alaska's decanting statute specifically allows for the ability to extend the duration of a trust, the ability to grant a lifetime power of appointment to a beneficiary and the ability to decant for purposes of protecting public-assistance benefits.

In addition to self-settled trusts, these advantages can be drafted into a variety of other trusts, including Dynasty Trusts, Charitable Remainder Trusts (CRT), Grantor Retained Annuity Trusts (GRAT), Grantor Retained Unitrust (GRUT) and Qualified Personal Residence Trusts (QPRT).

Alaska's Unique and Flexible Trust Provisions

Alaska has a variety of laws that provide opportunities to perform unique and flexible planning. Some of these advantages are listed below.

- Grantors and beneficiaries may increase or decrease trustee duties and responsibilities, providing for the most reliable ways to accomplish their goals.
- Alaska law permits a grantor to separate the trust's investment duties, distribution duties and administrative duties by appointing different trustees for each area of responsibility. A trustee who has not been given a responsibility cannot be held liable under Alaska law for another trustee's actions.
- Nonresidents of Alaska can have their wills probated under Alaska law.
- The Trust Incontestability Clause provides that lifetime trust provisions that penalize (e.g., disinherit) a beneficiary for taking certain action, such as contesting the trust or the decedent's will or suing another family member, will be enforced even if probable cause exists for the beneficiary to have instituted the proceeding.

Nevada has no Rule Against Perpetuities, which provides the ability to minimize transfer taxes by creating a trust that can continue for up to 365 years.

The Nevada Advantage

Peak Trust Company's experience and knowledge, in combination with Nevada's unique trust laws, allows us to develop the most effective and flexible strategies to meet your needs and objectives. Come find out today how Peak Trust Company can develop a successful strategy for you.

Self-Settled Trusts

Nevada allows for self-settled trusts, commonly referred to as Domestic Asset Protection Trusts (DAPTs).

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Directed Trusts

Nevada has specific statutes that allow for directed trusts. This allows for clients to continue relationships with legacy advisors.

No State Income Tax

Nevada has NO state income tax on trust income or gains.

Superb Decanting Statute

Nevada has one of the best decanting statutes, which provides for an effective means to modify trust provisions to accommodate changing family needs, changing tax laws or outdated trust provisions.

Trust No-Contest Clause

Provides an effective method to eliminate challenges to trust provisions or beneficiaries.

Protective LLC and LP statutes

Nevada has some of the best and most flexible limited partnership and limited liability statutes.

Confidentiality

Nevada provides the highest confidentiality to grantors and trust beneficiaries because it does not require identity disclosure.

Best Fraudulent Conveyance Statutes

Nevada has some of the most protective fraudulent conveyance statutes due to the time limit allowed for a creditor to bring action against the trust.

Controlling Information to Beneficiaries

In a situation where a settlor does not want beneficiaries to know of the existence or the value of the assets in the trust, in Nevada, the statutes give the settlor the right to elect what notice is given to beneficiaries and to specify when and what information will be provided.

For more information, please visit the Peak Trust Company website at www.peaktrust.com or contact one of our knowledgeable team members at (844) 391-2789.

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