# MLCP/NEVADA WEALTH PRESERVATION TRUST™

Spendthrift Trust History. The concept of Spendthrift Trust law has been around almost since the beginning of the uses of trusts, of centuries ago. The term "spendthrift" relative to a trust document refers to a distribution restriction attached to a beneficiary's portion IN TRUST. The restriction applies to the legal reach that would otherwise be allowed to a creditor against a debtor/beneficiary. That simply means that a beneficiary's portion, *while being held in a spendthrift trust*, is not available to satisfy a claim that any creditor may have against the debtor/beneficiary. Spendthrift trust law is truly foundational in its application and is a crucial part of the estate planning dynamics for many families. Through its common law application, spendthrift trust regulations exist in all 50 states.

Self-settled Spendthrift Trusts. Prior to April 1, 1997, spendthrift trust law only applied to protecting the assets of a 3rd party beneficiary – that is, a party (beneficiary) of the trust who did not create the trust. That meant that a (1st party) settlor/creator of a trust could not enjoy the benefits of spendthrift trust law for his own asset protection with the very trust that he established. That all changed in 1997, however, with the enactment of the Alaska Trust Act that soon became known as "self-settled spendthrift trust" law. Delaware and Nevada quickly followed suit, and passed similar legislation in that same year. (As of this writing, there are now 13 states with similar law.)

Personal Asset Protection. The primary concept of a *self-settled spendthrift trust* is that the settlor/creator would transfer assets to the trustee of a trust to which he – as well as any other beneficiary of the trust – is recognized as a "permitted beneficiary" even though the settlor is considered a 1st party to the trust. That arrangement provides a significant dimension of asset protection for not just the (other) beneficiaries of the trust but also for the asset-owner settlor *during his lifetime*. Such trusts are now widely referred to as "Domestic Asset Protection Trusts" (DAPTs) – made in America, not offshore – and are understandably growing in popularity along with the public's increased awareness of their benefits.

Nevada is the Leader. At this point, Nevada is arguably the best state in the nation for an asset owner to establish a DAPT. Nevada legislators have clearly adopted a "pro-trust" attitude (inclined to be favorable to a settlor's intentions) and have combined that position with their digital-age promotion of electronic signature (ESIGN) law. There is no question that the Nevada lawmakers' pro-trust climate and their commitment to a digitized legal world has gained our vote. We utilized Nevada's body of law to create the MLCP version of the Nevada self-settled spendthrift, which we have branded as the MLCP/Nevada Wealth Preservation Trust™ (NWPT). So, we will hereafter refer to the DAPT more specifically as the NWPT™. It is derived from –

**Chapter 166 of the Nevada Revised Statutes (NRS)**

An Asset Protection Fortress. For a Nevada resident/creator, a properly "seasoned" NWPT (that is, a NWPT in existence beyond Nevada's 2-year statute of limitations) would be very difficult if not impossible for any subsequent creditor to penetrate in order to satisfy a claim against the property transferred by the creator to the NWPT. In fact, Nevada law not only doesn't recognize such a claim but also prohibits it. (See **NRS §166.170**.)

For Non-Nevada Citizens. Citizens of foreign (non-Nevada) states may also establish a NWPT, and may expect much of the same level of protection as a Nevada resident. For example, if a foreign resident created a NWPT – which must be made in conjunction with a Nevada Trustee – and subsequently became adjudicated as a debtor in his own state, the court of the debtor's state would have to find a path to compel the Nevada trustee of the NWPT to actually "break the (Nevada) law" and set aside its fiducial responsibility so as to allow the creditor's goals to be forced against the debtor's NWPT property. That required process of law creates significant obstacles for any potential adverse creditor.

A Barrier for Existing Creditors. Nevada law creates significant challenges for even *existing creditors* wanting to get property transferred to a NWPT to satisfy a claim. An existing creditor may not bring an action with respect to a transfer of property to a Nevada self-settled spendthrift trust UNLESS the creditor can *prove by clear and convincing evidence* that it was a fraudulent transfer (pursuant to NRS Chapter 112) or that the transfer violated a legal obligation owed to the creditor under a contract or a valid court order enforceable by the creditor. In the absence of such burdensome proof, the property transferred is not subject to the claims of the creditor. Moreover, any such action taken by a creditor, relative to property transferred to the NWPT, must be done within two years of the transfer – or within six months from the time the creditor discovers or reasonably should have discovered the transfer, whichever is later – or the case will not be heard by a Nevada court.

Let's look closer at the following points to help clarify the powerful applications available under Nevada's Spendthrift Trust (NST) law:

1) **Under the terms of a NWPT, a beneficiary's interest may be deemed as:**

   - ENTIRELY EXEMPT from all legal or equitable processes initiated against the beneficiary by his creditors – other than those granted by the governing instrument (the trust) unless contrary to public policy (such as bankruptcy policy);
   - COMPLETELY SECURE from the beneficiary's creditors regardless of the type or the extent of the value of the interest(s) or even the length of time the interest is held in trust provided the transfers to the DAPT were established lawfully;
   - NOT ASSIGNABLE or subjected to waiver by the beneficiary – either voluntarily or involuntarily, directly or indirectly – for the benefit of any other person or entity(s), including not being available to satisfy the beneficiary's creditor claims and/or a marital elective share.

**2) A trustee of a NWPT cannot be required to:**

- NOTIFY A CREDITOR or to disclose the terms of an outright distribution made to the beneficiary – regardless of the value of the distribution;
- MAKE AN OUTRIGHT DISTRIBUTION(s) regardless if distributions from the trust are subject to the trustee's exercise of discretion;
- WITHHOLD A DISTRIBUTION to (or for the benefit of) the beneficiary whether or not distributions from the trust are subject to the trustee's discretion;
- COERCE THE BENEFICIARY to exercise a power of appointment over his beneficial interest or to revoke the trust.

**3) Under Nevada's specific NST statutes:**

- THE CREATOR MAY VETO income distributions from the NWPT, without cause, otherwise intended by the trustee to be distributed and may remove the trustee if necessary.
- NO-EXEMPTION CREDITOR laws are enforceable including against divorcing spouses (recently upheld in Nevada Supreme Court case; See **Klabacka v. Nelson**) and pre-existing tort creditors – such as a physician's patient who believes he was harmed years ago from a medical procedure and now wants to bring action.
- AN AFFIDAVIT OF SOLVENCY needs to be signed *only once* with the first transfer to the NWPT (and not every time a property is transferred to the NWPT), which is a declaration that the transferor is not making a fraudulent transfer and is solvent after the transfer.
- NO LEGAL ESTATE EXISTS, by operation of law, *in trust* for any permitted beneficiary of a NWPT, including the creator of the NWPT, which essentially precludes the otherwise applied legal doctrine of beneficial interests being subject to attachment once distributed out of the trust. (See **NRS §166.130**.)

The Use of Sole-Grantor Formats. There is debate as to whether or not to use co-grantor NWPT formats for a married couple, at least when community property is involved. However, community property does not have to be recast into sole & separate ownership simply because the spouses' respective interests may be held in separate (trust) accounts. In fact, it would take an express declaration of both spouses to divide community property into separate modes of ownership for each spouse. For asset protection purposes, the structure of sole-grantor NWPTs for each spouse would obviously seem to be the most effective application if maximum protection is the goal. Therefore, on the MLCP platform, the NWPT Addendum is offered ONLY through the sole-grantor DTP format. It is common, indeed often wise, for married couples to establish sole-grantor trusts respectively even if asset protection is not the primary goal. A husband's sole-grantor trust can, for example, benefit his wife – plus his and/or their children –

if he predeceases her. Likewise, a wife's sole-grantor trust can benefit her husband (and others) if she dies first. Also, the spouses can establish an additional co-grantor marital trust if so desired. There are no laws that prohibit one from establishing multiple living trusts.

An Exclusive Application. When using the MLCP platform to establish a NWPT, the user/client is presented with a truly unique opportunity, which is having the ability to "blend" his NWPT directly into his Revocable Living Trust (RLT) estate plan. This is accomplished by the use of a NWPT Sub-Trust, which is simply an "irrevocable" Sub-trust to the RLT. Irrevocable Sub-trusts to RLTs have been widely used and lawfully recognized for decades. Probably the most common application is illustrated with Marital A/B Trust formats were the "B" Trust becomes irrevocable upon the first spouse's decease even though the "B" Trust is a part of the RLT document still in operation for the surviving spouse. The revolutionary design of structuring a Settlor's RLT estate plan directly in connection with his/her NWPT makes the entire process easy, painless and cost efficient particularly with MLCP's electronic signature (ESIGN) technology and Funding Kit.

Permitted/Recommended Secrecy. Confidentiality is the initial wall of defense with any viable asset protection plan including the NWPT. When establishing a NWPT *as a sub-trust with a sole-grantor RLT*, it is recommended to use an abstract term, rather than a family last name, when choosing a name for the RLT. That way, the name of the asset-owner (the RLT creator) would not appear in public records with respect to the NWPT (sub-trust) assets. Also, assets that have been assigned to the trustee of the NWPT must be retitled to the trustee. And since the trustee of a NWPT is normally going to be a Nevada corporation, the holder of the NWPT assets – i.e., the corporate trustee – will not have the settlor's personal name on the NWPT asset accounts; the NWPT account will show only the corporate trustee's identity along with the trust's abstract name. That recommended design provides an initial level of confidentiality that can be very effective on its own, right from the start.

A Convenient Structure. Under Nevada law, and unless the NWPT instrument states otherwise, the settlor's RLT may control the disposition of ALL the assets of the NWPT upon the settlor's decease. That happens when the terms of the NWPT provide that its entire principal will cascade (be payable) to the settlor's RLT upon his decease. Since the administrative and dispositive terms of a RLT can be changed at any time without limitation by the settlor during his lifetime, the blending of the NWPT as a sub-trust to the RLT creates an amazing level of flexibility and asset distribution/administration control for the NWPT settlor without going outside the NRS Chapter 166 "safe harbor" boundaries. When the settlor of the RLT/NWPT dies, the assets of the NWPT are immediately allocated directly to the deceased settlor's RLT. The entire principal amount of the NWPT thus comes under full control of the terms and decrees of the RLT, which now effectively functions as a third-party spendthrift trust for asset protection purposes (for as long as the RLT is in force) as well as being the legal instrument used to determine the final allocations and distributions of the settlor's estate.

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