

The Nevada 365-Year Dynasty Trust: Estate Tax Savings, Creditor and Divorce Protection

The Nevada perpetuities law was modified in 2005 to allow a dynasty trust to continue for up to 365 years with its assets protected from estate taxes, creditors and divorcing spouses during such time. Prior to the change in the law, Nevada dynasty trusts were limited to 90 years to approximately 120 years.

A dynasty trust is an irrevocable trust that leverages a person's estate, gift and generation-skipping transfer tax exemptions for as many generations as applicable state law permits. Whereas most attorneys draft trusts to provide for mandatory distributions to the grantor's children at staggered

ages, a dynasty trust is drafted to encourage the trustees of the trust to keep the assets in trust for the benefit of the beneficiaries.

For estate tax purposes, it is not sufficient to plan only one generation at a time. The potential estate taxes that the clients' children's estates may face as a result of such inferior planning are often not given enough consideration by the attorney in drafting the trust. As of 2008, the tax code allows each person to transfer up to \$2 million without any federal generation-skipping transfer (GST) tax. Meanwhile, the exemptions in 2008 for federal estate and gift taxes are \$2 million and \$1 million, respectively.

Interestingly, the estate and gift tax exemptions are utilized in nearly every estate plan, yet all too often attorneys do not draft their trust agreements to utilize the GST tax exemption. Failure to use an individual's GST tax exemption is a horrific economic waste over the course of time.

Most dynasty trusts are designed as Beneficiary Controlled Trusts. The beneficiaries usually become trustees of their own trust upon reaching the age at which most attorneys' trusts would distribute the trust assets outright to the beneficiaries. There are two general classifications of Beneficiary Controlled Trusts – discretionary trusts and support trusts.

Discretionary Trusts

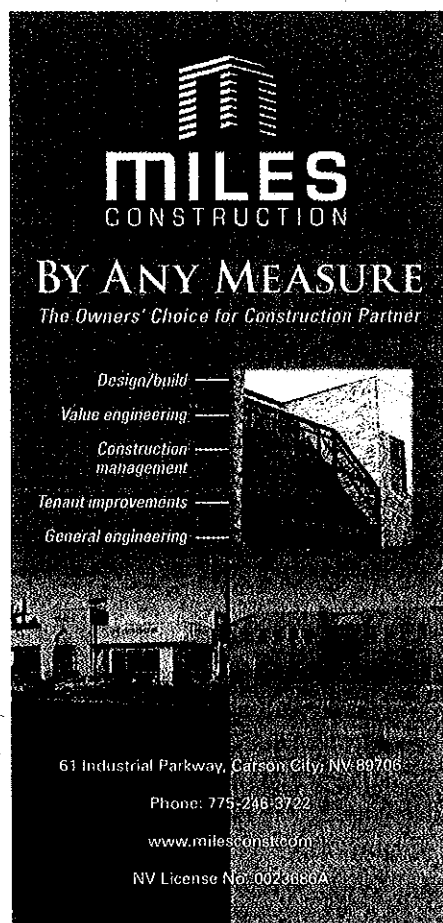
For maximum creditor and divorce protection, an independent trustee is used to make discretionary distributions and other tax sensitive decisions. The primary beneficiary can be given the power to remove and replace the inde-

pendent trustee with or without cause. Additionally, the primary beneficiary can be the investment trustee thereby being able to make all investment decisions over his trust assets. Thus, the primary beneficiary has the control over and use of the trust property as though he owned it free of trust. However, by having the dynasty trust as the owner, if drafted correctly, the assets are protected from estate taxes and from the beneficiary's creditors, including divorcing spouses. This co-trusteeship, although slightly more complex than having just one trustee, provides the ultimate combination of control, estate tax savings and creditor protection.

Support Trusts

Alternatively, the primary beneficiary can be the sole trustee. With this option, the beneficiary can only distribute assets to himself for his health, education, maintenance and support. This is often called a "support trust," as opposed to a "discretionary trust" which uses an independent trustee for discretionary distributions. Although a support trust is simpler to administer than a discretionary trust, certain creditors of the beneficiaries of a support trust may access the trust assets, so it is less protective than a discretionary trust. One such creditor is a divorcing spouse of a beneficiary which is why the discretionary trust is the superior option. ❁

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