

KOLESAR & LEATHAM

ATTORNEYS AT LAW

400 SOUTH RAMPART BLVD., SUITE 400
LAS VEGAS, NEVADA 89145
702.362.7800
knevada.com

February 27, 2019

Launching A Nevada Trust Company

Matthew D. Saltzman, Esq.
msaltzman@knevada.com

We have a robust practice advising clients on trust company matters and we have worked with clients to charter many Nevada retail trust companies. We also routinely represent clients who form family trust companies that may be licensed or un-licensed.

In Nevada a natural person can act as a trustee of a trust but special licensing requirements exist for business entities that act as a trustee. For years, providing fiduciary services was the sole province of bank trust departments and corporate trustees. They administered trusts for wealthy clients, keeping decisions about asset choice and administration—and the profits from those activities—to themselves.

Starting a trust company traditionally has been difficult and expensive. State laws typically discourage new entrants. But Nevada offers a level playing field for persons who decide to launch their own trust company.

Why Provide Trust Services?

Because of powers conferred to them by state laws, trust companies have the unique ability to act as a trustee — a person or company that administers financial assets for the benefit of someone else. The assets are typically held in the form of a trust, which is a legal document that defines who the assets are being held for and how they can be used. As detailed in Nevada's trust company laws, licensed trust companies are permitted to perform a variety of functions, including the following:

- Trust Administration. These services include safekeeping and management of client assets. This includes administering distribution requests, managing insurance claims, tax and retirement planning, and farm and property management.
- Investment Management. Investment management services include formulation and administration of investment programs carried out in accordance with fiduciary principles. These services may be provided to individuals, corporations, charitable organizations and trusts.

- Custodial and Escrow Services. Under Nevada law a state licensed trust company can act as a custodian of assets and act as an escrow agent. Trust companies can assist in transactions involving newly developing technologies such as cryptocurrency storage and services related to digital security offerings.
- Trust and Estate Planning Services. A trust company can be named as an executor in a will, and as such is responsible for settling estates. This can include collecting debts, settling claims, accounting for assets to the courts and distributing wealth to beneficiaries.
- Qualified Plan Design and Management. These services comprise assistance to individuals and businesses in formulating and implementing retirement plans that qualify for special tax treatment. Such plans range from Individual Retirement Accounts (conventional IRAs, Roth IRAs) and qualified retirement plans such as 401(k) and 403(b) plans, for example, to plans for the self-employed (SEP IRAs) and executive benefit plans. In some cases, trust companies are called upon to educate employees about a particular plan or a set of plan options, and to create and monitor investment portfolios for the particular type of plan chosen. The services required may include record-keeping and tax return preparation services for plan participants.
- Corporate Money Management. These services include assisting in managing short-term cash assets, as well as constructing portfolios of money market instruments, Treasury bills, government agency paper and commercial paper, with a view to generating the highest possible return consistent with relevant risk parameters.
- Charitable Funds Management. These services comprise asset-growth assistance to charitable organizations, foundations and endowments, and in some cases formulation of investment guidelines or planned donation programs, as well as assistance in the design and implementation of charitable trusts.

Trust companies also offer estate planning advice, and may be able to utilize affiliates to sell various insurance products to minimize the impact of estate taxes. In addition, a trust company may act as a guardian of a minor's property until adulthood or as conservator of an estate of an adult unable to handle his own finances.

In order to be successful, a state-chartered trust company must be established in a jurisdiction that supports a wide range of trust alternatives and provides a favorable operating environment. Taxation is the central issue in operating a trust company, both from a customer service and an enterprise perspective.

A jurisdiction in which trusts can be created without state taxation, where transactions within a trust can be performed state tax free and where gains are not subject to state tax is most

Launching A Nevada Trust Company
Page 3
February 27, 2019

desirable. On the enterprise level, the absence of a state corporate income tax can make a substantial difference in trust company profitability. Fortunately, competition among states has created an environment where a start-up trust company can select a jurisdiction that imposes no tax at the corporate level.

Another criterion in the choice of jurisdiction is the range of trust vehicles that its laws permit. Two types of trusts, in particular, should be permitted. The first is the dynasty trust, which is a trust that has perpetual duration and continues forever. The second is the asset protection trust, which can serve to preserve assets and shield beneficiaries from creditors. Nevada has enacted laws permitting irrevocable trusts that severely limit creditor's rights to trust assets under certain circumstances.

Why Nevada as a Jurisdiction for a Trust Company?

By several measures, Nevada offers numerous benefits as a state in which to incorporate and operate a trust company:

- No State Tax. Nevada has no state corporate or personal income tax, which means it does not tax trust company profits or trust income. This makes it possible for trusts or other entities managed by a Nevada trust company to produce returns that are not taxed on the state level.
- Wide Range of Trust Vehicles. Nevada permits the creation of dynasty and asset protection trusts, as well as the full range of trusts permitted by other states.
- Reasonable Capital Requirements. Nevada requires \$1,000,000 in minimum capital, or additional levels as the commissioner(s) may require. As such, Nevada's initial capitalization requirements are comparable to most other jurisdictions.
- Low Operating Costs. Because of its business-friendly climate, the cost of talented labor, office space, utilities and services in Nevada are among the lowest in the U.S.
- Asset-Protection Friendly. Nevada has one of the best asset protection laws of all the states. It carries one of the shortest statute of limitations. It permits persons in other states to act as co-trustees.
- Out-of-State Ownership Permitted. With the proper management and disclosure, Nevada permits the owner or owners of a licensed Nevada trust company to reside anywhere.

Launching A Nevada Trust Company
Page 4
February 27, 2019

- Host for Retirement Accounts. A Nevada trust company may serve as custodian trustee for many types of retirement accounts including retirement plans under ERISA, such as IRAs, SEP IRAs, Keoghs, 401(k)s and other qualified plans.
- Alternative Assets. Nevada trust law permits trust companies to serve as custodian or trustee for a variety of client assets. These include traditional assets such as stocks, bonds and mutual funds, as well as alternative assets such as cryptocurrency, digitally issued securities, partnership interests, real estate, aircraft and vessels, and personal property such as art, fine wine and autos.

While Nevada is one of the most welcoming states for new trust companies, concern for depositor and customer safety led the state to establish certain requirements. Chief among these is the need for a physical presence in the state.

A Nevada trust company cannot be a mere “brass plate” or “name plate” entity; it must establish what is referred to as a “bricks and mortar” presence in the state. This means that the company must maintain an office in Nevada that the public can enter and in which it may conduct business. It also means that a knowledgeable and qualified trust officer must be available to carry out any trust transaction, as well as maintain books and records.

A trust company licensed in Nevada, therefore, may operate and accept accounts from residents of all 50 states subject to certain limitations. Nevada trust companies may open offices in other states, subject to compliance with such state’s legal requirements.

Each state, however, is free to regulate out-of-state trust companies. In general, there are six activities of an out-of-state trust company that a so-called host state may decide to regulate:

- Client acquisition in the host state.
- Serving as a custodian for a host-state resident.
- Serving as a fiduciary in the host state.
- Marketing services and soliciting customers without establishing an office in the host state.
- Opening a representative office in the host state.
- Opening a full-service office in the host state.

Host states generally consider other activities — such as opening a full-service trust office, a representative office, or an administrative office in the host state — on a case-by-case basis, basing their decision on the level of activity contemplated, the business plan and the level of operating capital. Nevada law allows for a Nevada trust company to operate in other states based on an evaluation of other states' reciprocity provisions.

How to Get Started in Nevada

- **Business Plan and Financial Information.** In addition to proof of \$1,000,000 in permanent capital, or additional levels as the commissioner(s) may require, a detailed three year business plan and a statement of pro forma financial information must accompany each trust company license application. The business plan must include the company's mission statement as well as its medium-and long-term goals, the numerical and time-bound benchmarks for determining whether these goals are being met, the business model to be employed, and the operational plan for achieving the medium- and long-term goals. The operational plan must cover the trust company's strategies and plans for marketing, investing, compliance, information technology and customer service.
- **Local Presence.** Evidence that the applicant has a Nevada office as well as a resident Trust Officer knowledgeable and experienced in trust company matters. Ideally, a properly staffed trust office should employ trust personnel who have earned the Certified Trust and Financial Advisor or similar credential.
- **Personal Questionnaires.** Completion of personal financial and personal history questionnaires by trust company principals (directors, controlling shareholders, officers or managing members) are required to enable the completion of a background investigation.

Applying for a Nevada trust license and seeing the process through to its successful conclusion requires attention to detail. The application and documentation must be complete before the state will act, and experience has shown that a good practice is for applicants and, if possible, the proposed resident trust manager to meet with Nevada regulators in person before or shortly after the filing of the application.

The meeting with regulators may include discussions concerning the content of the business and operational plans. The Commissioner must act on a final application within ninety days. As a practical matter, the time from filing an application to the receipt of final approval from Nevada officials is about four months.

The best advice for persons applying for a Nevada trust company license is to be prepared. While the state encourages business formation, licensing is not automatic. The business and operational plans that will be reviewed should be as complete and detailed as possible, and

Launching A Nevada Trust Company
Page 6
February 27, 2019

based on sound assumptions and verifiable facts. Having a qualified consultant and an attorney at your side who are knowledgeable about Nevada law and business practices can be invaluable.

* * *

For more information, please contact Matthew D. Saltzman, Esq. Mr. Saltzman is a shareholder of Kolesar & Leatham who specializes in corporate and administrative law matters for financial institutions. He routinely counsels banks, trust companies, mortgage and installment lenders on Nevada chartering and regulatory compliance matters.