



Nevada Asset Protection Trusts for Nevada Business Owners

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To people from other states and foreign countries, the benefits of Nevada Asset Protection Trusts (NAPT) are well known. However, the benefits these trusts offer are not appreciated nearly as much by residents of Nevada. In particular, a NAPT can be highly beneficial to resident business owners, including professionals. Unfortunately, we live in a highly litigious society. The mere fact that a person resides in Nevada does not, in and of itself, guarantee protection against claims that the typical Nevada business owner may be confronted with at some point. A wise course for any business owner is to anticipate this possibility and put in place protective measures, such as a NAPT, now.



The key to assuring protection for a business owners' assets is to assure that it is not owned directly. While it is commonly assumed that ownership through a corporation, limited liability company or limited partnership protects individually owned assets, if the business is sued, owners can rarely count on such protections. Even a much-vaunted corporate shield is increasingly proving unreliable. Additionally, directors and officers liability insurance (D&O) can turn out to be insufficient or inapplicable. The assault may also come from an

opposite direction, such as an estranged spouse seeking to reach the business owner's interest itself.

So, what precisely does the NAPT achieve? Essentially, it allows a business owner to take a sizeable portion of accumulated wealth and preserve it. Once the assets are owned by the NAPT, they are not owned by the business owner and cannot be reached by his or her creditors. The NAPT recognizes no exceptions, not even for alimony or child support. This does not mean that the NAPT can be used to defeat pending or anticipated claims, that would constitute a fraudulent conveyance. Rather, the trust needs to be created before such claims arise. Generally, once in trust for two years, the assets can be protected for centuries - 365 years under Nevada's statute. Even during the two-year seasoning period before the assets are officially protected, the business owner is not left wholly vulnerable since a creditor needs to prove by clear and convincing evidence that the transfer to the NAPT was fraudulent or violates a legal obligation owed to the creditor under a contract or valid court order.

Once in the NAPT, some may wonder if a business owner surrenders access to the assets.? The answer is a definitive "no"; the business owner can also be a beneficiary. He or she cannot have an absolute right to income or principal, however, there is no problem with being a discretionary beneficiary. Presumably the trustee chosen by the business owner will be respectful of his or her wishes as to distributions. If not, the business owner retains the power to replace the trustee, which effectively allows the business owner to substitute a new trustee for one who has not been responsive.

Does the business owner's discretionary interest and power to change the trustee have adverse tax consequences? Again, the answer is "no". From a tax standpoint, the trust is neutral. The creation of the trust does not engender a gift

tax. Likewise, the income earned by the assets in trust may continue to be reported on the return of the business owner. Meanwhile, the business owner or trusted advisors can exercise full control over trust investments without adverse tax consequences.

Are there additional trustee fees? Yes, but in fact trustee fees are quite reasonable. It would not be unreasonable for a Nevada trust company to charge \$2,000-\$4,000 per annum for NAPT trustee services. The actual value of the trust assets should not affect the amount of the fees, unlike with the more traditional trust.

In short, the NAPT is a very carefully designed ownership vehicle that affords strong protection from all creditors, and does so without imposing significant tax or administrative costs on the owner, who, effectively, keeps control over investment policy and can be a beneficiary.

By Neil Schoenblum, JD, LLM, First American Trust of Nevada, LLC

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