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# ALASKA TRUST LAW

*The Last Frontier in Estate Planning\**

\*Alaska residency not required

Alaska's trust laws are among the most progressive in the U.S., providing a number of unique estate planning and tax savings benefits not available in most other states. Alaska was the first state to pass legislation authorizing self-settled domestic asset protection trusts and continues to be in the forefront in updating and improving its statutes to provide favorable protections for individuals, families and family-owned entities. Alaska has become one of the top states of choice for the location of trusts and family limited liability companies.

## Alaska Trust Legislation

The Alaska Trust Act became effective on April 2, 1997. The two major focal points of the Trust Act were the authorization of domestic self-settled asset protection trusts (as an alternative to offshore trusts) and the effective elimination of the Rule Against Perpetuities thereby enabling "dynasty" or "perpetual" trust planning.

Alaska has some of the strongest asset protection laws in the country. Alaska bars all creditors from attaching the trust assets before distributions are made to a beneficiary. This includes, but is not limited to, claims by tort, creditors, and ex-spouses for alimony or child support. Moreover, a 2006 amendment specifically provides that a



There are various ways one can benefit from setting up trusts in Alaska.

As an experienced trust and estate planning attorney licensed in Alaska, Washington and Oregon, Ted Simpson is in a unique position to help individuals take advantage of Alaska trust law, allowing his Washington and Oregon clients to shelter their assets from taxes and from other creditors.

beneficiary's interest in a trust is not considered property subject to division in a divorce or dissolution. Alaska has not adopted the Uniform Trust Code.

The term "Alaska Trust" is frequently applied to both the Alaska Asset Protection Trust and the Alaska Dynasty Trust. Often an Alaska Trust will contain both types of planning, but some Alaska Trusts are designed solely for asset protection and others solely for multi-generational planning. Both types of trusts are discussed in this article.

In 1998, Alaska made another major improvement to its trust laws by enacting the Alaska Community Property Act.

## Alaska Asset Protection Trusts

An Alaska Asset Protection Trust is an irrevocable trust which enables the grantor of the trust to not only be a beneficiary, but also to have protection from creditors. This is unlike Oregon and Washington law which generally does not permit creditor protection. For a grantor to receive the asset protection contemplated by the Alaska Trust Act, however, the grantor's transfer of assets to the trust must not be a fraudulent transfer and certain situs requirements must be met.

Alaska's statutes require that a grantor sign an "Affidavit of Solvency" prior to contributing assets to an Alaska Trust. Additionally, although not required by the statute, a general rule of thumb is that no more than 50 percent of the grantor's net worth should be contributed to the trust.

In addition to providing asset protection for grantors, Alaska Asset Protection Trusts can also be used in place of prenuptial agreements, for estate freezes, and can be designed as grantor trusts or nongrantor trusts (the latter of which can take advantage of the fact that Alaska has no state income tax on trusts). Alaska Asset Protection Trusts are also frequently drafted to include perpetual or dynasty planning which is discussed below.

## Alaska Dynasty Trusts

An Alaska Dynasty Trust is an irrevocable trust intended to benefit successive generations. Grantors of such trusts generally have two goals in mind:

1. Protecting the trust assets from transfer taxes (gift tax, estate tax, and generation skipping tax) for as long as possible; and
2. Protecting the trust assets from claims of the beneficiaries' creditors by taking advantage of Alaska's strong asset protection statutes as discussed above.

Alaska is one of the premier jurisdictions for dynasty trusts. The general rule in Oregon that

a trust must terminate by the end of a period of time set by the Rule Against Perpetuities (the later of "a life in being, plus 21 years" or 90 years). Distribution of the trust assets to the beneficiaries also mean that such assets are includable in the beneficiaries' estates for transfer tax purposes and are exposed to creditors' claims. Alaska, however, has abolished its Rule Against Perpetuities except if a trust contains a power of appointment, in which case the perpetuities period runs for 1,000 years. This means that assets held within the trust have the opportunity for substantially more growth than if they were subject to transfer taxes at succeeding generations.

For a Dynasty Trust to come under Alaska jurisdiction, it must also meet situs requirements. Dynasty planning may be included within an Alaska Asset Protection Trust (in which case the grantor will be a beneficiary) or it may stand alone (in which case the grantor will not be a beneficiary).

## Alaska Community Property Trusts

An Alaska Community Property Trust is a revocable trust that enables a married couple in a non-community property state, such as Oregon, to obtain the benefits available to married couples living in community property states. One of the primary benefits is a double step up in basis on the death of the first spouse.

Assuming a decedent owned property which had appreciated prior to death, a "step up" in basis means the tax basis of the property is raised to match the value of the property on the date of the decedent's death, lowering the taxable gain on the later sale of the property. Married couples living in separate property states, like Oregon, are allowed a step up in basis only for the deceased spouse's half of jointly owned property. Married couples living in community property states, on the other hand, are allowed a "double" step up in basis - i.e., both the deceased spouse's half and the surviving spouse's half are stepped up.

In addition to authorizing Community Property Trusts, Alaska is unique in the U.S. in that it is the only state to permit couples to selectively choose which of their assets are to become community

property. Alaska's community property benefits are available to non-residents if the trust complies with Alaska situs requirements.

Alaska Community Property Trusts are not appropriate for everyone. Couples who might benefit from an Alaska Community Property Trust include couples in long-term stable marriages who own valuable real estate, businesses or stock with low basis. Couples in which one spouse is terminally ill may also benefit if they currently hold joint title to their low basis property or if the ill spouse is anticipated to survive for at least one year.

## Alaska Decanting Statutes

Alaska's decanting statutes permit a trust to be modified within certain parameters to better meet a family's needs. In Oregon, only judicial action can modify a trust. This process either requires the consent of all the beneficiaries or a court-approved equitable deviation.

Trustees or beneficiaries might wish to modify an irrevocable trust to:

1. Improve the trust's governance structure;
2. Change the law applicable to the trust when the terms of the trust don't facilitate a change to its governing law;
3. Change dispositive provisions;
4. Change the administrative terms of the trust to ensure that the trust provides the proper tools to its fiduciaries for the best management of the trust; or
5. Modernize an outdated trust agreement.

Alaska's decanting statutes provide trustees and trust beneficiaries flexibility without negative GST tax consequences if certain requirements are met.

## Alaska Limited Liability Companies

Alaska's LLC statutes are among the top-rated in the country for use in conjunction with estate planning and asset protection. Alaska revised its LLC statutes in 2000 to improve the

protection that LLC members would have from their individual creditors. Among other things, the legislation made the charging order the exclusive remedy for such creditors. The statutes also expressly prohibit the foreclosure of an LLC interest. Furthermore, a court cannot order the judicial dissolution of an LLC unless the court finds it impossible for the entity to carry on the purpose of the enterprise.

Other benefits of utilizing Alaska LLCs are the ease and low cost of setting up and maintaining them and the fact that Alaska has no state personal income tax. Given their advantages, Alaska LLCs are frequently used in conjunction with Alaska Asset Protection Trusts, Alaska Dynasty Trusts, and Alaska Community Property Trusts to provide an extra layer of protection and/or as a mechanism for controlling the investments of the trusts.

## Alaska Situs Requirements

Statutory requirements necessary to bring a trust within the jurisdiction of Alaska law are as follows:

1. At least some of the trust assets are deposited in Alaska and being administered by a qualified person. (If the trustee does not have custody of the assets, it is recommended that cash of at least \$10,000 be deposited with the trustee, to be held in either a government obligations fund or a tax-free fund.)
2. At all times at least one trustee shall be a "qualified person" under Alaska law.
3. The duties of the Alaska qualified trustee shall include (on an exclusive or non-exclusive basis) maintaining books and records of the trust in Alaska and (also on an exclusive or non-exclusive basis) preparing or arranging for the preparation of the tax returns of the trust.
4. At least part of the administration of the trust shall occur in Alaska, including physically maintaining trust records in Alaska.



Find out more about the various ways one can benefit from setting up trusts in Alaska.

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