

Mary E. Vandenack provides the transcript from Legal Visionaries podcast on Nevada Private Trust Companies.

TRANSCRIPT:

Mary: On today's episode, my guests are Dan Gerety, President and CPA with Gerety & Associates in Las Vegas, Nevada. Dan has an extensive background in trust and estate work. And what I want to share is I'm just really appreciative of having met Dan on the recommendation of a Nevada attorney when I had a situation early on. The first time I was bringing a client into Nevada, I came across Dan, and just am really appreciative of his knowledge and the collaborative teamwork relationship he provides on clients. It's really amazing.

And I'm also joined today by David Holmes who's a director at Gerety & Associates. I love the fact they both hail from the Midwest, although they're probably in warmer weather today as we record than we are here in Omaha. But thanks to both of you for joining me today. We're going to talk in this episode about Nevada private family trust companies, and in another episode, we're going to talk about Nevada family offices, and we're going to talk about that under the lender bagel structure.

So, I really appreciate you being here today, you guys. So, we're just going to jump in and start talking about the Nevada private family trust company. Can you just take a moment and explain what that is?

Dan: Yes. In Nevada, there's licensing requirements for public trust companies, or as we call them, retail trust companies, which offer their services for the public, where a family trust company is a trust company that can be set up in Nevada, either licensed or unlicensed, that only offers services for a family. And it's limited to actually if you need to notify the state of which family member, that person, designated family member it's license for, and it can cover down to 10 generations of that family.

Mary: So, let me just back up. So, the retail trust company, just to be clear, would be... what are some of the big names? There's Bridges Trust Company, Northern Trust Company,

Dan: There's Northern Trust Company. Schwab has set up a trust company. We have Premier Trust. Everybody's moving their retail trust companies into Nevada. A lot of them had Delaware trust companies, of course. And a lot of people now are also setting up Nevada trust companies, a lot of the big names. A lot of the banks have moved in using their bank status to set up trust companies in Nevada. If you're chartered as a bank, you automatically qualify if you're regulated in another state. But if you're coming in just as a trust company, the retail trust company needs at least a million of capital to be set up, needs to be approved by the state.

Mary: So, we were talking about the Nevada private family trust company. And I diverge, **Dan**, to ask you just to clarify the retail trust company. So, there's your big names, and a lot of them have opened in Nevada because Nevada has very favorable laws. And the retail trust

companies are obviously an option, and there's a lot of great things about them. But our focus today is really talking about the private family trust company and why somebody might choose that as an alternate. So, you've explained a little bit what one is, but why might a family choose a private family trust company as opposed to one of the retail trust companies?

Dan: Well, the family usually wants to pick a private family trust company. The first option they would have is naming individual people as trustees. There's no requirement to be licensed in Nevada if you're an individual as a trustee. But if you want to set up a company, and usually with why a family would want to set up a trust company is to control who the trustee is, and a lot of times it could be for state purposes. If they're trying to set up in Nevada, they may be choosing Nevada because there's no state income tax. So, they want the trust company to be located in Nevada, where if it's an individual and that individual was located in California, for example, then California would have nexus because the trustee's located there. But they don't want to use a retail trust company. They want to keep control of the trust in the family. So, you set up an LLC or a corporation to be that trust company, and then have that trust company managed in Nevada. You then are-

Mary: So wait, let me ask you a question there. So, what I'm hearing you say is we have clients who, okay, don't want to use the retail trust company for whatever reason. And I know sometimes even though the trust laws have changed dramatically, and you can have these directed trusts, I still have clients who feel burned by trustees. What happened might have happened 20 years ago, which we had some interesting situations, and trust laws evolved. So, a lot of people say I don't want to use a retail trust company, so I want to use my friend Bob.

Dan: Right.

Mary: And so, Bob may live in California, or maybe Bob all of a sudden starts drinking a lot and develops a gambling problem when he starts visiting Nevada, or Bob just dies. And so, one of the issues is succession for Bob. Right? So, if we wrap that into this family trust company, is it correct to say by having the Jones family private family trust company, we can name Bob as somebody who works for our private family trust company, but then he administers the trust. But if he starts gambling or dies or becomes incapacitated, we have the entity as the trust company rather than Bob himself?

Dan: We can fire Bob and replace Bob easily without changing who the trust company or who the trustee is. So, it's very simple. The succession is very easy to manage. You can create a board of directors. You should have your meetings in Nevada.

Mary: And I think that's actually the state statute requires you to have at least two a year, right?

Dan: Right, right. If you're a retail company, you're required to have quarterly meetings in Nevada with your board of directors. But the private trust company, yeah, I believe it's two. I'm not positive about that.

Mary: So, I think it's four meetings total, but two of them need to be in Nevada. Obviously best practices is more in Nevada, and it's fun to visit there.

Dan: And it's good to put an employee maybe in Nevada that works for that trust company potentially, and that could be just to have that connection. But you can have family members that are coming from out of the state. But obviously make sure that the trust management, the business, is being carried on in Nevada. You want them to come here for those meetings would be the best choice.

Mary: And so, best practices is the more context and the more activity in Nevada, the better.

Dan: Exactly.

Mary: And another example you mentioned was when you go with the individual trustee who's Bob, and you mentioned California specifically. And each of the 50 states, the joy of having 50 states with different rules when we do what we do is that they each get to make their own rules, and they each look at how can we try and make this trust subject to our state income taxes, or they do the same thing in the entity world. And one of the things you mentioned is that when we have Bob as our individual trustee, if he's a resident of California, then California says this trust is taxable in California based on the trustee's residence.

Dan: Exactly. I mean, I have had clients that named their children as trustees after their death. Well, one kid lives in California, one kid lives in Colorado. Both of those states are going to say, "All this portfolio income is now taxed in those states," where we could potentially avoid that.

Mary: And what I've seen happen with that is they can name their kids at a time that they're all living in Nebraska and Alabama, but then they move. People move. It's a mobile society. Right?

Dan: All the time. Yep, that's correct.

Mary: And I've had several situations where all of a sudden mom or dad dies, get a call and one of the kids is in California, and suddenly you have a California trust. And that's one of the reasons I personally like to say, "Okay, if we don't want to use the retail trustee, let's look at the options."

Mary: So, one of the things in Nevada is that you have both licensed and unlicensed private family trust companies. Can you clarify the difference between those two structures?

Dan: Yes. Most people probably want to use an unlicensed company. All you need to do is notify the state of who your designated family member is so you can tell whether it qualifies as a private family trust company. And there's not a lot of other requirements with that other than you do need to make annual accountings unless the trust document says otherwise. So, it does give you an out even on that. Where a license, where you might want to use a licensed family trust company, is where maybe there's not the most cohesive family or you want some regulation by the state to come in. And then you do have a minimum capital requirement with a license family trust company of \$300,000, but it's a lot less than a million dollars for a retail trust company. But you would have oversight where maybe you don't trust all the family members that are running the trust company. You would rather have the state have some oversight over that where they're reporting to the state and can jump in if needed. Otherwise, the clients that I have that

set them up have not used a licensed family trust company, but I can see where you might want that if you do have some infighting within the family.

Mary: When I think the other place, and I really say to avoid this, but you sometimes see clients want to go down this path, is if they actually want to be a trustee for some trust of friends versus just the immediate family, and then they have to go to that licensed trust format, isn't that correct?

Dan: Yes. Then you're stepping into the retail trust company which requires a million of capital, but it would be much easier to take that step in the future. Also, how a trust company can go on 10 generations, but you can change who the designated family member is over time. So, I think you can change that easily the way I interpret our statutes.

Mary: Which is pretty important, the point you just made, because we have a lot of... Nevada's a great state for asset protection for long-term trusts. So, it's among my top few for setting up dynasty trusts and asset trusts that have asset protection features. It's just a great state in terms of the respect of trust. So, we have a lot of trust that go on for a long time. That ability to change the family member and keep that family trust company intact is really important. Which I mentioned the asset protection. A lot of my clients are also very concerned with privacy. Now we have the Corporate Transparency Act coming into play, and I think that's going to impact us all a lot in the next few years on our ability to do privacy. And I didn't ask you that question ahead of time, so I'm not expecting you to go down that path. But to the extent that we just acknowledge that is out there and say how can a private family trust company create some privacy for a family that establishes one?

Dan: Well, there's actually in the statutes there's built in some privacy rules. They actually have a definition of what confidential information is, such as the names of the stockholders. Members and owners of the trust company is confidential information. Ownership information, what capital contributions are addresses. Business affiliations are confidential under the state law. Now federal law could, as you said, trump that. But information obtained from the family trust company, findings of the commissioners through any examination or investigation are confidential. Any information required to be reported or filed with the commissioner is confidential. Any information that qualifies as any person's non-public personal information under the U.S. statutes and regulations is confidential. Any information or agreement relating to any merger, consolidation, or transfer is confidential. Any information or agreement relating to any relationship with a contracting trustee is confidential. And also, any other non-public information that in the judgment of the commissioner could be useful in connection with an act of bribery, extortion, identity theft, or terrorism is confidential. So, you think about it, any financial information could be used for identity theft or bribery. That's confidential information under the statutes that we have here in Nevada.

Mary: So, I know this is a podcast, so I have just your voice. But if this were written, I would just put all of that in bold. Because I would say, that is... I have a lot of clients for whom privacy is a significant concern. And if you think about the breadth of the list that you just read for clients seeking privacy, it's one of the best lists. And that's, again, I think why Nevada. And there's other states that have done good jobs, too, obviously, but we're talking about Nevada today. That is why it's made itself very competitive in this arena. So Dan, the other thing is sometimes

what you hear about setting up a family trust company is that it can facilitate passing on family values. How would that work?

Dan: Well, that's where the family trust company will, with its meetings, quarterly meetings, strategize for the family. It can also act as a bank. It can do many, many things just like a family office. A family office even more so, probably. But the best example I have of that is a family client of mine, they've since passed, but they would have quarterly meetings, would bring all the family together, the attorneys, the accountants, the financial advisors, and discuss what was going on with the family partnership, what was going on there. The trust company would help manage that. They also would throw a retreat once a year for... I was asked to attend one of the retreats the family had to explain to the third generation how to read their tax returns, for example. But I was so impressed with that family on that team building retreat with four generations showed up. Of course, the fourth were pretty little. But grandma was explaining family core values just like a business, what are our family's core values, and trying to pass that on to the future generations. Just impressive. And I think if you have the family trust company, you can work with them and set that up for the family.

Mary: Which also makes the structure more supportable. Because one of the things I've seen done is bringing in future generations of family members, and we might set them up little investment accounts. But then they need to meet with the investment advisor, often with an older family member, or one of the professionals involved in the family trust company, and we start teaching financial management issues. And the other one, and one of my favorites, because I love philanthropy and working with foundations and those gifts. But one of the coolest structures I saw, and the family trust company managed the foundation, and what they would do is give each, both children and grandchildren and ultimately great-grandchildren, the ability to gift so much money. But the whole family was the board, and each family member had to bring in an analysis, the reports on the nonprofit, what they were doing, review their budget. And so, we even had young teenagers at the table analyzing financial statements for foundations. It was pretty amazing. I'm just going to say you and I have been monopolizing this, so I just want to check in with David and see if he has anything that he wants to share on what we've been talking about so far.

David: Thank you, Mary. The ability to pass on the family values and to transfer the knowledge from an older generation to a younger generation I think is one of the greatest benefits of a private family trust. Very often, families will unitize or put into a silo their financial information. And once you get to a level of wealth where you're going to impact multiple generations, I think it's very critical for not necessarily the person who earned the wealth, but the person who manages the wealth presently, to be able to pass on to the next generation their expectations and their indications of how to manage their money. And that's where these team building events and the retreat type styles of meetings are very helpful to be able to pass that along to the next generation and allow the older generation to see how well a particular child or descendant manages their wealth and how they approach it. You oftentimes will have one or two grandchildren that are very financially astute, and they may be the people that you want to turn the management of that trust over to once you give up control as the senior member of the family. But there may be children who aren't very financially adept, and those are the people that you do not want to name as the successor trustee. So, I think learning the emotional and the mental capacity from a financial and an investment perspective is very critical. And that's

where a private family trust can use that ability of the younger generation and the next trustee to facilitate the increase in the family wealth over time.

Mary: And the family trust company could actually be involved in managing and participating in a family business as well. And just as with respect to the financial assets, you might have those who are good at being involved in business or different roles by bringing family members along gradually in an organized structure. Because a lot of times what I see on the estate end is families where there's been no conversation. All of a sudden, they might be inheriting millions of dollars, and there's been no transition or preparation. And I've seen beneficiaries go through it all. Right? Or whatever which could still happen. You don't have to in this process disclose everything you own in every detail. But what I've seen is a lot of education, bringing along, and just creating some opportunities that I don't see if you go without ever having conversations about a very important topic, really. Well, so we've talked a lot about some of the advantages and disadvantages. I was going to ask you why Nevada, and I think we've really answered that question. But is there anything we've missed on why Nevada? Because there's other options for family trust companies. Nevada's a good one. Again, there's no state income tax, we've talked about that. Great trust rules. Dan, you read a list of the privacy rules. That's just amazing. Is there anything else you would footnote other than it's a little warmer, again, so it's nice to visit there for those meetings?

Dan: It is warmer than South Dakota.

Mary: Right.

Dan: But also, asset protection, I think we've talked about that. It does have some of the best in the country in asset protection statutes. And also, law against perpetuities. This trust can go on 365 years in Nevada. So, a trust set up in Nevada works very well that way. There are other states that have completely eliminated the law against perpetuities where a trust can go on for infinity, but 365 years usually satisfies most clients. And I think that's...the state really has a good base of it that they're trying to protect those statutes and keep them in play to give the asset protection, to give this no state income tax. I'm confident our legislature can keep it that way, I hope. Fingers crossed.

Mary: Well, it's interesting, because I'm actually involved with the Uniform Laws Commission, and I think you know that, and they're working on this conflict of trust and estates laws where they're trying to get some of these things uniform. And I'm thinking none of the states are ever going to pass this. The ones who have created really competitive trust environments have also done some great things for themselves, the states, economically. So, why would we all do it the same way uniformly? Go ahead.

Dan: Which could happen. But the asset protection that is in... there's other good states, but it's at the top. The privacy rules are at the top of a top few states. New law against perpetuities and no income tax is the biggest.

Mary: Fabulous, right?

Dan: Yeah.

Mary: So, I'm just going to say, do you have any last thoughts? Today we're going to do another episode again on family offices, and we'll chat in that a little bit, because you can integrate the family office concept in the family trust companies. There are good reasons to have it separate, which we'll talk about in that episode. But are there any last thoughts that either of you would want to add today? I'll just go to Dan first. Did you have any last thoughts today?

Dan: No, not really. I think we covered quickly, I mean quickly, but we covered a lot of what the family trust can be. And setting it up, I think, as an LLC probably makes sense to me. And you can elect to have it taxed as an S Corp if that makes sense. But for the family trust, I think a pass-through type of structure is probably best for it. And then that can that makes it much more flexible, I mean LLC much more flexible than a corporate type of structure as far as-

Mary: And it can depend a little bit on exactly what you're trying to do and the family structure. And we did, and I know it was when we talked is like, okay, we really need 10 hours to discuss this subject because we're just giving it the broad breadth today in terms of what it is, why Nevada, what these advantages are. Obviously, there's some fairly detailed rules on how to set it up, on how to keep it in place. And it is really important that if you go down this path that you're willing to follow through with the compliance and the work that it takes to have the structure in place. A lot of clients that we work with have run family businesses. They're well equipped to do this. Sometimes they sell a business and they're ready to go play, and they're like, "Maybe I don't really want to deal with that." So, it's a matter of really letting clients know that it's a little bit work. Well, did you have any last thoughts on this topic today, David?

David: I think we've pretty well covered it, so I'm just going to leave it at that.

Mary: All right. Well, thanks to both of you for being here today. I look forward to talking to you on another episode. As we reach the end of our episode, I want to thank our sponsors, InterActive Legal, Carson Private Client, and Foster Group. That's all for now. Thanks for listening to today's episode, and stay tuned for our weekly releases.