

**Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #314**

**Date:** 17-Feb-16

**From:** Steve Leimberg's Asset Protection Planning Newsletter

**Subject:** [Steve Oshins on the Curious Case of the Misunderstood Timing for Protection in a Nevada Spendthrift Trust](#)

*“This doesn’t relate back to the general two-year statute of limitations in NRS Section 166.170.1 in any way and is completely separate from it in all respects. The key is that the creditor must prove by clear and convincing evidence that the transfer was a fraudulent transfer or violates a legal obligation owed to that creditor.*

*If that fact does not exist as of the date of the transfer to the Nevada spendthrift trust, then the transferred assets are protected from creditors starting on day one. It’s that simple. This should not be confused with Nevada’s two-year statute of limitations which merely dictates the final date upon which a creditor is allowed to bring an action with respect to a transfer of property to the trust.”*

The Nevada spendthrift trust has created a significant amount of discussion over the years with its short two-year statute of limitations and its lack of any exception creditors. But the two-year statute of limitations has been misunderstood by many people for years. This newsletter seeks to clarify that the creditor protection with a Nevada spendthrift trust generally begins on day one, whether it’s a self-settled trust or a third-party trust, much to the shock of most advisors.

**Steven J. Oshins, Esq., AEP (Distinguished)** is an attorney at the Law Offices of **Oshins & Associates, LLC** in Las Vegas, Nevada. Steve is a nationally known attorney who was inducted into the NAEPC Estate Planning Hall of Fame® in 2011. He is listed in The Best Lawyers in America®. He has written some of Nevada's most important estate planning and creditor protection laws. Steve can be reached at 702-341-6000, x2 or at [soshins@oshins.com](mailto:soshins@oshins.com). His law firm's web site is <http://www.oshins.com>.

Steve authors three different annual state rankings charts and one state income tax chart:

- [The Annual Domestic Asset Protection Trust State Rankings Chart](#)
- [The Annual Dynasty Trust State Rankings Chart](#)
- [The Annual Trust Decanting State Rankings Chart](#)
- [The Annual Non-Grantor Trust State Income Tax Chart](#)

Now, here is Steve Oshins' commentary:

## **EXECUTIVE SUMMARY:**

Nevada's spendthrift trust statutes are found in Nevada Revised Statutes ("NRS") Chapter 166. While most people think about these statutes from the standpoint of self-settled spendthrift trusts, NRS Chapter 166 governs both self-settled and third-party settled trusts, so this newsletter discussion is relevant to both.

Estate planners often refer to Nevada's two-year statute of limitations without fully understanding how the statutes are drafted, at least in this author's experience. They generally assume that it takes two years to obtain creditor protection using a Nevada spendthrift trust. However, that is simply not the case. In fact, the protection is significantly better than most people believe.

Other jurisdictions may have similar advantages, but this newsletter only addresses Nevada law.

## **COMMENT:**

### **NRS Section 166.170.1**

NRS Section 166.170.1 lays out the statute of limitations as follows:

1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:

(a) If the person is a creditor when the transfer is made, unless the action is commenced within:

(1) Two years after the transfer is made; or

(2) Six months after the person discovers or reasonably should have discovered the transfer, whichever is later.

(b) If the person becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

At first glance, this appears to require two years to obtain protection from a future creditor and the longer of two years or six months from discovery to obtain protection from a preexisting creditor. And the foregoing is how most planners tend to interpret these rules.

However, NRS Section 166.170.1 merely says that “[a] person may not bring an action” after such statute of limitations. It says nothing about the date the spendthrift trust assets are actually protected from creditors. Certainly, getting past the statute of limitations does increase the probability of the trust assets being protected since the creditor cannot sue the trust after that point assuming that the judge follows these statutes. So these time limits are extremely important in that respect. But they do not dictate the actual rules of protection.

[Note that there is a federal exception if the spendthrift trust is a “self-settled trust or similar device” within the meaning of Section 548(e) of the Bankruptcy Code. However, since this newsletter pertains to both self-settled and third-party settled spendthrift trusts, this issue is beyond the scope of this newsletter and not discussed herein.]

### **NRS Section 166.170.3**

NRS Section 166.170.3 lays out the actual rules of protection as follows:

3. A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor.

Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property. [Emphasis added.]

This doesn't relate back to the general two-year statute of limitations in NRS Section 166.170.1 in any way and is completely separate from it in all respects. The key is that the creditor must prove by clear and convincing evidence that the transfer was a fraudulent transfer or violates a legal obligation owed to that creditor.

If that fact does not exist as of the date of the transfer to the Nevada spendthrift trust, then the transferred assets are protected from creditors starting on day one. It's that simple. This should not be confused with Nevada's two-year statute of limitations which merely dictates the final date upon which a creditor is allowed to bring an action with respect to a transfer of property to the trust.

### **Summary**

This distinction is an important consideration for planners to understand as they properly plan for and describe the rules with their clients. Whether the Nevada spendthrift trust is self-settled or third-party settled, these are the rules. This may open doors for planners who were unaware of just how quickly assets can be protected.

Although the protection can be obtained quickly, this still will not stop fraudulent transfers from being unwound. So the advisor should not interpret this newsletter to mean that they should move more slowly given the quick protection. Rather, they should use this knowledge to create planning opportunities if they weren't taking advantage of these rules before now.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

*Steve Oshins*

**TECHNICAL EDITOR: DUNCAN OSBORNE**

**CITE AS:**

**LISI** Asset Protection Newsletter #314 (February 17, 2016) at <http://www.leimbergservices.com> Copyright 2016 Leimberg Information Services, Inc. (LISI). Reproduction in Any Form or Forwarding to Any Person Prohibited – Without Express Permission.

**CITES:**

[Nevada Revised Statutes Chapter 166](#)

**[Click here to comment on this newsletter.](#)**

HELP US HELP OTHERS! TELL A FRIEND ABOUT  
OUR NEWSLETTERS. JUST **[CLICK HERE.](#)**

[Click Here](#) for Steve Leimberg and Bob LeClair's **NumberCruncher**  
and **Quickview** Software, Books, and Other Resources