



# Updating Out-of-State Estate Plans in Nevada

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**“I just moved to Nevada—do I need to update my estate plan?” Many estate planning attorneys in Nevada hear those words these days, especially as more people move out of bordering states like California and move to Nevada.<sup>1</sup> For these individuals, and of course many others, updating and maintaining an estate plan is essential for clients seeking to protect their assets and ensure the smooth transfer of wealth upon their passing.**

If a client just moved to Nevada from out of state, it is important to understand how to update the client’s plan to align with Nevada laws. Doing so not only ensures that their estate plan complies with the specific legal requirements and provisions of Nevada

but also provides the client with peace of mind and avoids potential complications during a probate or trust administration process. The primary purpose of this article is to explain and explore the process of updating an out-of-state estate plan in Nevada and the benefits it offers.

## A Preliminary Understanding of Nevada Jurisdiction of Trusts and Wills

Before delving into the update process, it is important to understand the fundamentals of some basic estate planning laws in Nevada regarding the jurisdiction of trusts and wills. For example, for a trust administration a district court in any county where the trustee resides in Nevada, or where the trustee conducts business, or in which the trust has been domiciled, shall assume jurisdiction over a trust.<sup>2</sup> Thus, if a person moves from California to Nevada and owns no real or personal property in Nevada, has no trustees in Nevada upon their death, and has no beneficiaries in Nevada upon their death, a district court may lack jurisdiction over that trust. This situation

may prove problematic for the decedent’s family during the trust administration as the trustee may have to petition for jurisdiction in the state where the trustee is located or by some other means.

With regard to Nevada jurisdiction in a probate, the estate of a decedent may be settled by a district court in any county in Nevada in which any part of the estate is located or where the decedent was a resident at the time of death.<sup>3</sup> Additionally, the estate of a nonresident decedent may be settled by the district court of any county in which any part of the estate is located, and the district court to which application is first made has exclusive jurisdiction of the settlement of that estate. Thus, even if the decedent had a will that was governed under another state’s law, so long as the decedent was domiciled in Nevada upon their death, a Nevada court can take jurisdiction over the probate estate.

## A Three-Step Approach

Updating an out-of-state estate plan typically involves a simple three-step process. To start, begin by thoroughly reviewing the client’s estate plan,

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including the client's wills, trust, powers of attorney, assignments, and advance health care directives. Take note of any provisions that may conflict with Nevada law or require modification and be sure to clearly identify the client's goals and objectives in updating their plan. Next, identify any substantial differences between the estate planning laws of the client's previous state and Nevada. These differences may pertain to matters such as community property, spousal rights, tax exemptions, the Rule Against Perpetuities, personal property, or probate procedures. Understanding these disparities will enable you to make the appropriate modifications. Finally, modify the client's out-of-state estate plan to meet Nevada's legal requirements. This work may involve amending wills, restating or amending existing trusts, decanting irrevocable trusts, updating beneficiary designations, or completing new medical and financial durable powers of attorney. Ensure that all documents are properly executed and witnessed according to Nevada law.

## Benefits of Updating an Out-of-State Estate Plan

Updating an out-of-state estate plan in Nevada offers several advantages. First, it allows the client to adapt their plan to the specific laws and regulations of their new state of residence. Nevada may have different probate procedures, tax laws, and rules surrounding trusts and estates that may impact the validity and administration of the client's original estate plan.

Second, updating the client's estate plan ensures that their wishes are clear and unambiguous under Nevada law. Language and provisions that were valid in the client's previous state may not be recognized or enforceable in Nevada. By restating or updating the client's estate plan, the client can clarify their intentions and minimize the risk of misinterpretation or potential disputes among future beneficiaries.

Third, updating an out-of-state estate plan in Nevada generally provides for greater clarity and compliance particularly with regard to financial and medical durable powers of attorney.<sup>4</sup> While financial institutions and medical facilities are generally required to accept out-of-state financial and medical durable powers of

attorney, it may be difficult as a practical matter.<sup>5</sup> Unfamiliarity with the form, or unsurety about the legality of whether it was validly executed in the original jurisdiction, may cause problems for the principal and agent. This situation can be particularly devastating, especially when a loved one or family member may need their agent to make immediate medical or financial decisions on their behalf. Generally speaking, these medical and financial institutions tend to prefer the Nevada statutory durable power of attorney forms.

Fourth, updating the client's estate plan helps avoid potential conflicts or challenges during the probate process and ensures the efficient distribution of assets according to the client's desires. Once the estate plan has been updated to Nevada law, it is also important for the client to communicate these changes to all relevant parties, including family members, beneficiaries, and appointed fiduciaries. Clear communication helps prevent confusion or misunderstandings in the future.

Fifth, updating the client's estate plan allows the client to take advantage of Nevada's asset protection laws. Nevada offers favorable provisions for protecting assets through various trust structures, such as a Nevada domestic asset protection trust (NAPT),<sup>6</sup> dynasty trusts that can last up to 365 years, or a Nevada incomplete non-grantor trust (NING). Restating and updating the client's plan in Nevada can provide enhanced asset protection for the client's wealth and shield it from potential creditors or legal claims in the future.

Lastly, updating the client's estate plan in Nevada allows the client to benefit from the state's favorable tax laws. Nevada does not levy state-level income tax or estate tax, and by updating the client's plan in Nevada, the client can potentially minimize future income tax liabilities and preserve more wealth for future generations.

Updating an out-of-state estate plan in Nevada is a crucial step for individuals who have become residents of Nevada. By aligning the client's plan with Nevada law, the client is provided with the necessary compliance, clarity, and protection they deserve. Working with an experienced Nevada estate planning attorney is essential for the client throughout the update process to ensure that their plan accurately reflects

their intentions and meets all the necessary legal requirements. Updating the estate plan will provide the client and their loved ones with peace of mind they deserve and helps ensure the smooth transfer of wealth upon their death and the continuation of the client's legacy.



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## ENDNOTES:

1. According to *Forbes* magazine, California is the No.1 state in the U.S. people are leaving and Nevada is the seventh most popular state for people to move to (see <https://www.forbes.com/home-improvement/features/states-move-to-from/>).
2. NRS 164.010(1).
3. NRS 136.010(1)(a) and (b).
4. NRS 162A.620 provides a statutory form power of attorney for financial transactions. NRS 162A.860 provides a statutory durable power of attorney for healthcare decisions (see also NRS 162A.865, which provides a statutory durable power of attorney for healthcare decisions form for adults with intellectual disabilities and NRS 162A.870, which provides a statutory durable power of attorney for healthcare decisions form for adults with dementia). *But see* AB414, which was passed in the 2023 legislative session and became effective on January 1, 2024.
5. NRS 162A.230(3) states: "A power of attorney executed other than in this State [Nevada] is valid in this State if, when the power of attorney was executed, the execution complied with: (a) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to NRS 162A.240; or (b) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b."
6. See *generally* Chapter 166 of the Nevada Revised Statutes known as the "Spendthrift Trust Act of Nevada."