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Domestic Asset-Protection Trusts: The Basics for Bankruptcy Professionals

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Domestic Asset Protection Trusts: The Basics for Bankruptcy Professionals

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A conversation with...
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SSDST

- Self-settled
- Discretionary
- Spendthrift
- Trust

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Statutory Change
Which Created Asset Protection

- Pre-1997, almost all states had statutory or case law which provided that creditors could reach the maximum amount of assets that the trustee could distribute to the beneficiary.
- Post-1997, DAPT statutes reversed this rule.

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Purposes

- Asset protection
- Transfer tax minimization
- State income tax minimization
- Prenuptial planning
- Pre-immigration planning

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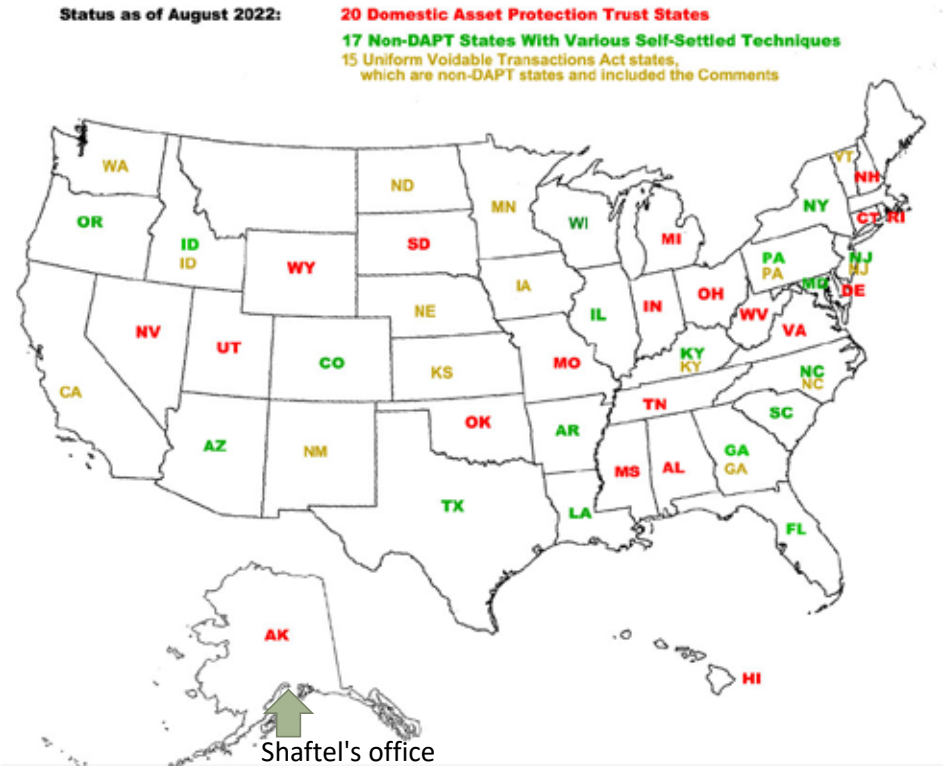

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2022 Chart - Percentages (DAPT States)

Total Land Area (square miles) (2020 Decennial Census)	Total Water Area (square miles) (2020 Decennial Census)	Total Area (square miles)		Total Population (2020 Decennial Census)
50,633.2	1,773.0	52,406		5,024,279
570,865.8	94,722.2	665,588		733,391
4,841.4	700.8	5,542		3,605,944
1,948.0	540.1	2,488		989,948
6,420.7	4,546.2	10,967		1,455,271
35,817.0	593.4	36,410		6,785,528
56,591.0	40,097.0	96,688		10,077,331
46,913.1	1,514.6	48,428		2,961,279
68,727.3	960.9	69,688		6,154,913
109,831.3	710.1	110,541		3,104,614
8,951.0	396.4	9,347		1,377,529
40,847.9	3,965.8	44,814		11,799,448
68,577.8	1,302.7	69,881		3,959,353
1,033.6	510.9	1,545		1,097,379
75,789.6	1,306.0	77,096		886,667
41,227.1	905.9	42,133		6,910,840
82,355.1	2,520.5	84,876		3,271,616
39,471.7	3,291.8	42,764		8,631,393
24,034.8	188.9	24,224		1,793,716
97,063.0	720.9	97,784		576,851
1,431,940.4	161,268.1	1,593,209		81,197,290

Total US geographic area	3,809,525	**Total US Population**	331,449,281
DAPT % of Total US geographic area	41.8217%	**DAPT % of Total US Population**	24.4977%
	0.418217101		0.244976516

Population based on 2020 Decennial Census:
Total US Population 331,449,281

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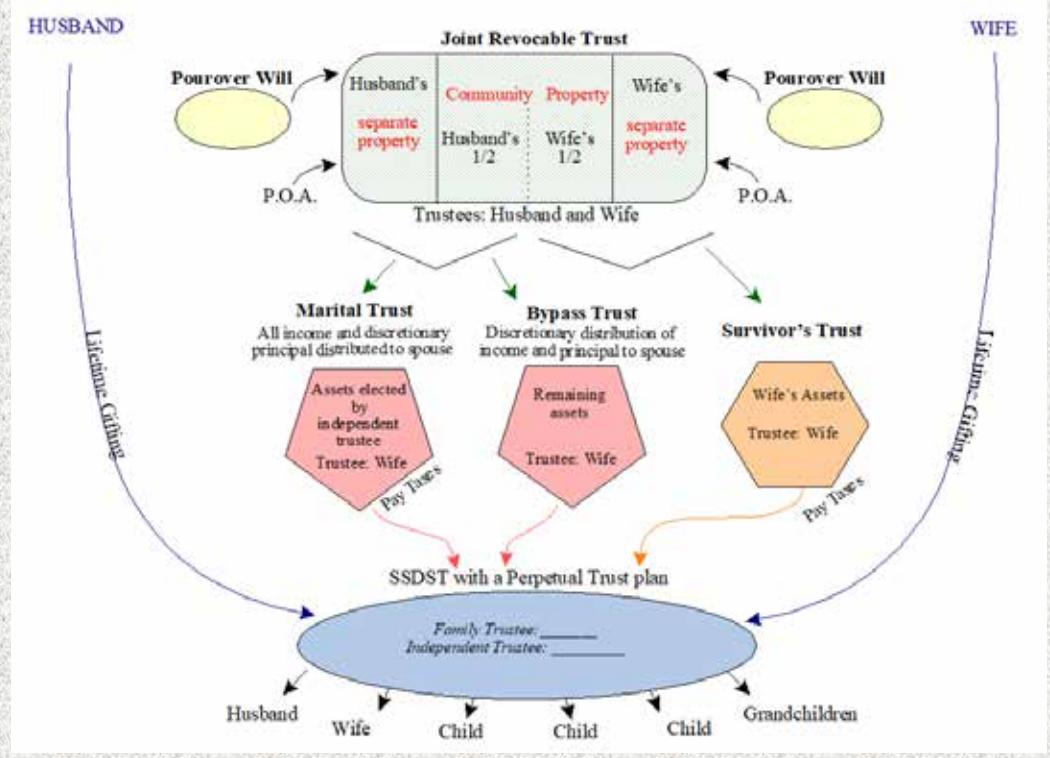

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First Method to Challenge a DAPT:
Non-resident Settlor, Choice of State Law

Second Restatement of Conflict of Laws

Administration: Section 273(b)

[W]hether the interest of a beneficiary of a trust of movables is assignable by him and can be reached by his creditors is determined (in the case of an *inter vivos* trust), "by the local law of the state, if any, in which the settlor has manifested an intention that the trust is to be administered . . . ."

Validity: Section 270(a)

[T]he settlor's choice of DAPT law in the trust instrument will prevail if the DAPT state "has a substantial relation to the trust and that the application of its law does not violate a strong public policy of the state with which, as to the matter at issue, the trust has its most significant relationship under the principles stated in § 6 . . . ."

9

Uniform Voidable Transactions Act

- Section 4
- Comment 8
- Section 10

10

Jurisdiction

Full Faith and Credit Clause

11

Bankruptcy Proceedings

- Nationwide jurisdiction
- Spendthrift trust exception. 11 U.S.C. §541(c)(2) ("A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.")
- Resolve choice of law, fraudulent transfer, and improper implementation issues

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Special 10-year statute of limitation.

11 U.S.C. §541(e):

(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

(A) such transfer was made to a self-settled trust or similar device;

(B) such transfer was by the debtor;

(C) the debtor is a beneficiary of such trust or similar device; and

(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

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Second Method to Challenge a DAPT: Fraudulent Transfer

- Exception in all DAPT states
- All DAPT states have adopted UFTA and many have adopted the 2014 UVTA amendments
- DAPT rules are varied
- Statutes of limitation
- Bankruptcy 10-year statute of limitation, Section 548(e)

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Third Method to Challenge a DAPT:
Improper Implementation, Alter-ego, or Sham

- Trustee independence
- Distributions pursuant to a standard
- Statutory requirements
- Management formalities

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Special Claims

- Child support
- Alimony
- Property division
- Federal tax liability

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Cases

- *Battley v. Mortensen* (Bankr. D.C. Alaska 2011)
- *In re Huber* (Bankr. W.D. Wash. 2013)
- *Dahl v. Dahl* (Utah 2015)
- *Klabacka v. Nelson* (Nev. 2017)
- *Toni I Trust v. Wacker* (Alaska 2018)
- *Trust Company Bank v. Matthews* (Del. Ch. 2015)

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Battley (In re Mortensen)

In re Mortensen, No. A09-00565-DMD, 2011 WL 5025249, at *4, *8 (Bankr. D. Alaska May 26, 2011)

> The trustee alleges that Mortensen failed to establish a valid asset protection trust under Alaska's governing statutes because Mortensen was insolvent when the trust was created on February 1, 2005. Under A.S. 34.40.110(j)(2), the settlor of an Alaskan asset protection trust must file an affidavit stating that "the transfer of the assets to the trust will not render the settlor insolvent." ... The bottom line for Mr. Mortensen is that he attempted a clever but fundamentally flawed scheme to avoid exposure to his creditors. When he created the trust in 2005, he failed to recognize the danger posed by the Bankruptcy Abuse Protection and Consumer Protection Act, which was enacted later that year. Mortensen will now pay the price for his actions. His transfer of the Seldovia property to the Mortensen Seldovia Trust will be avoided.

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In re Mortensen, No. A09-00565-DMD, 2011 WL 5025249, at *6 (Bankr. D. Alaska May 26, 2011)

> Mortensen's trust, established under AS 34.40.110, satisfies the first three subsections of § 548(e)—the Seldovia property was transferred to a self-settled trust, Mortensen made the transfer, and he is a beneficiary of the trust. The determinative issue here is whether Mortensen transferred the Seldovia property to the trust "with actual intent to hinder, delay, or defraud" his creditors.
>
> Mortensen says he did not have this intent when he created the trust and that he simply wanted to preserve the property for his children. Battley counters that Mortensen's intent is clear from the trust language itself. The trust's stated purpose was "to maximize the protection of the trust estate or estates from creditors' claims of the Grantor or any beneficiary and to minimize all wealth transfer taxes."

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In re Huber

In re Huber, 493 B.R. 798, 807, 809 (Bankr. W.D. Wash. 2013)

> The Trustee initially contends that the Trust should be invalidated under Washington State law. The Trust was created in the State of Alaska and designates the law of Alaska to govern the Trust. Alaska recognizes self-settled asset protection trusts, *see* AS 34.40.110, but Washington does not, *see* RCW 19.36.020. As such, the parties agree there is a conflict in the laws of the two states, and the Court must look to choice of law rules for guidance.
>
> ... this Court will disregard the settlor's choice of Alaska law, which is obviously more favorable to him, and will apply Washington law in determining the Trustee's claim regarding validity of the Trust. ... the transfer of assets into a self-settled trust is void.

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Dahl

Dahl v. Dahl, 2015 UT 79, ¶ 32, 459 P.3d 276, 291

> In *In re Estate of Flake*, we held that a settlor's unrestricted power to amend a trust includes, by definition, the power to revoke the trust. ... Modeled on the Uniform Trust Code, Utah Code section 75-7-605 governs a settlor's power to revoke or amend a trust. Consistent with our ruling in *Flake*, the comments to section 75-7-605 make clear that an unrestricted power to amend a trust includes the power to revoke it. Utah Code § 75-7-605 cmt. ("An unrestricted power to amend may also include the power to revoke a trust."). And on this point, Utah law is consistent with the well-established rule from other jurisdictions.
>
> Because Dr. Dahl reserved an unrestricted power to amend any and all provisions of the Trust, we hold that the Trust is revocable under Utah law. Having so held, we now turn our attention to what rights, if any, Ms. Dahl has in the Trust assets.

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Klabacka

TransFirst Grp. Inc. v. Magliarditi, No. 217CV00487APGVCF, 2017 WL 3723652, at *2 (D. Nev. Aug. 29, 2017)

> ... the Supreme Court of Nevada issued *Klabacka v. Nelson*, 394 P.3d 940 (Nev. 2017) (en banc). In *Klabacka*, the Supreme Court of Nevada addressed self-settled spendthrift trusts ("SSSTs") in the context of a divorce proceeding. 394 P.3d at 942–44. Although *Klabacka* did not address alter ego, the opinion casts doubt on my ruling that the alter ego doctrine applies to spendthrift trusts, at least in the context of someone other than the settlor being the alter ego. *See* Nev. Rev. Stat. 163.418 (setting forth clear and convincing standard to show settlor is alter ego of a trustee of an irrevocable trust).

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TransFirst Grp. Inc. v. Magliarditi, No. 217CV00487APGVCF, 2017 WL 3723652, at *2 (D. Nev. Aug. 29, 2017)

> In *Klabacka*, the Supreme Court of Nevada noted that Nevada Revised Statutes Chapters 163 and 166 "evince a clear intention to protect spendthrift trust assets against court order." *Id.* at 949 (footnote omitted, citing Nev. Rev. Stat. §§ 163.417(1)(c)(1), 166.120(2), and 166.120(3)). The Supreme Court of Nevada ruled that the district court had erred by imposing the equitable remedy of a constructive trust over spendthrift trust assets. *Id.* at 953. In doing so, it stated that (1) "the imposition of equitable remedies runs afoul of the protections afforded by those spendthrift provisions," (2) "the self-settled spendthrift provisions of NRS Chapter 166 reflect a considered legislative policy choice," and (3) "if exceptions to the policy are to be made for equitable remedies, it is for the Legislature to undertake that task." *Id.* at 953 n.8; *see also id.* at 948 ("Breaching trust formalities of an otherwise validly created [self-settled spendthrift trust] does not invalidate [it]; rather, it creates liability upon the trustee(s) for that breach. Indeed, if, after [a self-settled spendthrift trust] is validly formed, the trust formalities are breached by a trustee, the proper remedy is a civil suit against the trustee—not an invalidation of the trust itself.").

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TransFirst Grp. Inc. v. Magliarditi, No. 217CV00487APGVCF, 2017 WL 3723652, at *2 (D. Nev. Aug. 29, 2017)

> This language suggests that imposition of the alter ego doctrine against spendthrift trust assets may also be a matter for the Legislature, not the courts. *Klabacka* nevertheless identified two instances in which trust assets were not protected: (1) where community property is placed in a separate property SSST, the non-beneficiary spouse's portion may be traced and distributed from the trust; and (2) the statutory protections for spendthrift trusts "do not apply if a court order is enforcing a judgment levied against the trust by a creditor able to prove, by clear and convincing evidence," a fraudulent transfer. *Id.* at 948. 949 n.5 (citing Nev. Rev. Stat § 166.170(3)).
>
> As I previously ruled, there is sufficient evidence of fraudulent transfers of Dominic's property into the trusts. Thus, although *Klabacka* suggests the alter ego doctrine does not apply to spendthrift trusts, the preliminary injunction shall remain in place based on the evidence of fraudulent transfers.

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Toni 1 Trust (Tangwall v. Wacker)

Toni 1 Tr., by Tangwall v. Wacker, 413 P.3d 1199, 1201 (Alaska 2018)

> In 2010, before the last of these judgments was issued, Bertran and Barbara Tangwall transferred parcels of real property to an Alaska trust called the "Toni 1 Trust" (the Trust). The Wackers filed a fraudulent transfer action under Montana law in Montana state court, alleging that the transfers were made to avoid the judgments. Default judgments in the fraudulent transfer action were entered against Barbara Tangwall, the Toni 1 Trust, and Bertran. After the fraudulent transfer judgments were issued, the Wackers purchased Barbara Tangwall's interest in one of the parcels at a sheriff's sale, as part satisfaction of their judgment against Tangwall and family. But before they could purchase the remaining half interest, Bertran filed for Chapter 7 bankruptcy in Alaska. Her interest in the trust property was therefore subject to the jurisdiction of a federal bankruptcy court. In December 2012, Donald Tangwall, as trustee of the Trust, filed a complaint in the bankruptcy court against the Wackers and bankruptcy trustee Larry Compton.

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Toni 1 Tr., by Tangwall v. Wacker, 413 P.3d 1199, 1202, 1206 (Alaska 2018)

> Tangwall next sought relief in Alaska state court, where he filed the complaint that led to this appeal. The crux of his argument was that AS 34.40.110 grants Alaska courts exclusive jurisdiction over any fraudulent transfer actions against the Trust. ...
>
> ... AS 34.40.110(k)'s assertion of exclusive jurisdiction does not render a fraudulent transfer judgment against an Alaska trust from a Montana court void for lack of subject matter jurisdiction. We therefore cannot grant Tangwall the relief that he seeks from the Montana judgment.

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THIRTEENTH ACTEC COMPARISON OF THE DOMESTIC ASSET PROTECTION TRUST STATUTES

Updated through August 2022

Edited by David G. Shaftel

This August 2022 version of the chart updates the prior August 2019 chart and marks the twenty-fifth anniversary of modern domestic asset protection trusts.

This updated chart includes a new addition to the DAPT community. Alabama enacted its DAPT statute which was effective April 18, 2021.

Also included are George Karibjanian's updated charts describing the states which have enacted the Uniform Voidable Transactions Act, and those that rejected the Comments to that Act. New subjects addressing "silent trusts" have been added. State editors have added helpful citations to their state provisions and added summaries of several non-DAPT asset protection cases. Also included is a suggested method of analysis of the probability that a DAPT will be successful for a client who resides in a non-DAPT state.

Contributors:

The following ACTEC state editors generously contributed, reviewed and edited their state's subjects for accuracy:
Vincent J. Schilleci III (Alabama); **David G. Shaftel** (Alaska); **Deborah J. Tedford** (Connecticut); **Richard W. Nenno** and **Jocelyn M. Borowsky** (Delaware); **Rhonda Griswold** (Hawaii); **Jeffrey B. Kolb** (Indiana); **Robert Tiplady II** and **John Mabley** (Michigan); **Leonard C. Martin** (Mississippi); **Steven B. Gorin** (Missouri); **Layne T. Rushforth** (Nevada); **Amy K. Kanyuk** (New Hampshire); **Bowen Loeffler**, **Michael J. Stegman**, and **Brian Layman** (Ohio); **Amy J. Sine** (Oklahoma); **John Harpootian** (Rhode Island); **Daniel P. Donohue** (South Dakota); **Bryan Howard** (Tennessee); **Robert S. Tippett** (Utah); **Howard M. Zaritsky** (Virginia); **John F. Allevato** and **Christopher J. Winton** (West Virginia); and **Robert H. Leonard** (Wyoming).

Similarly, the following attorneys generously reviewed and/or contributed to the preparation of this chart:
Gray Edmondson (a discussion of "self-settled"); **Richard Franklin** (*inter vivos* QTIP trusts); **George D. Karibjanian** (Uniform Voidable Transactions Act and its Comments); and **Matthew Van Heuvelen** (South Dakota).

INTRODUCTION

A domestic asset protection trust (hereinafter referred to as a "DAPT") is generally an irrevocable trust with an independent trustee who has absolute discretion to make distributions to a class of beneficiaries which includes the settlor. The primary goals of DAPTs are asset protection and, if so designed, transfer tax minimization.

Prior to 1997, Missouri had statutory provisions which supported the formation of DAPTs. In 1997, Alaska was the first state to enact a usable DAPT statute. In the twenty-five years since, eighteen other states have followed suit. Alabama's statute is the most recently enacted addition to our chart. There are now twenty states that allow for the formation of DAPTs.

Legislatures have taken different approaches. The original Missouri statute was terse and only indicated a public policy. Some of the new statutes amend existing statutes, and others enact new "Acts". Interest groups within the various states have influenced the extent of the asset protection provided by the statutes. Often a state's enactments have followed a "camel's nose in the tent" approach. The first statute may only provide minimal asset protection. Then, several years later the state legislature and interest groups become more comfortable with the DAPT approach, and more comprehensive provisions were enacted.

The DAPT chart includes three subjects which are designed to summarize developing case law dealing with DAPTs. At present, DAPT cases are few. However, it is inevitable that the courts will be asked to resolve controversies involving the interpretation and application of DAPT laws. So far, there are only six DAPT cases. Three cases involve Alaska's statute and were decided by the Alaska Supreme Court, an Alaska bankruptcy court, and a Washington bankruptcy court. One case involves Delaware's statute and was decided by the Delaware Court of Chancery. Two cases involved the Nevada statute and were decided by the Nevada Supreme Court and the Utah Supreme Court. The Alaska bankruptcy cases were mixed with fraudulent transfers, and the creditors prevailed. In a recent Alaska case, the Alaska Supreme Court refused to enforce an Alaska statute which stated that Alaska courts have exclusive jurisdiction over fraudulent transfer issues involving Alaska law. The Delaware case involved the application of a statute of limitations to bar the creditors, and the debtor prevailed. A Nevada case held that DAPT assets could not be reached for satisfaction of future spousal support

claims and child support claims. A Utah case applied Utah law to a Nevada DAPT, rather than Nevada's law, in a divorce action.

Planners will want to carefully review the DAPT cases as they are reported. These cases will provide guidance concerning how courts are interpreting a particular state's DAPT law. In addition, often these cases will illustrate implementation errors which need to be avoided.

Two new subjects involving "silent trusts" have been added. The first discusses whether notice of the trust's existence can be withheld, and if so, for how long. The second addresses whether any filings are required when a new trust is formed. The states differ widely with respect to these subjects.

There are no known federal gift or estate tax cases involving DAPTs. However, the Service has issued two private letter rulings: PLR 9837007 (which held that contributions by an Alaska resident to an Alaska DAPT were completed gifts) and PLR 200944002 (which held that the assets of an Alaska DAPT would not be includible in the Alaska settlor's gross estate). Revenue Ruling 2004-64, 2004-2 C.B. 7, held that a trustee's discretion to reimburse the settlor for income tax paid with respect to DAPT income would not alone cause inclusion of the trust assets in the settlor's estate. This revenue ruling is instructive of the Service's attitude with respect to DAPTs.[1]

If implemented correctly, the DAPT approach may be used successfully by residents of states with DAPT statutes. An interesting issue remains: whether nonresidents of DAPT states may form a DAPT under one of the DAPT state's laws and obtain the desired asset protection and tax benefits. The analysis of this issue involves the field of conflict of laws. The choice of law rules most frequently discussed in this area are two sections of the Restatement (Second) of the Law, Conflict of Laws. Section 273 discusses when the creditors of a beneficiary can reach the assets of a trust, and directs that this issue is governed by the law of the state chosen by the settlor in the trust instrument. However, cases in the foreign trust area, and the one DAPT case dealing with this subject, refer to section 270(a), which deals with the validity of an *inter vivos* trust. This section's test is

[1] A thorough discussion of the tax consequences of DAPTs may be found in Shaftel, *IRS Letter Ruling Approves Estate Tax Planning Using Domestic Asset Protection Trust*, J. Taxation, Apr. 2010.

whether the nonresident's state of residence has a "strong public policy" against DAPT asset protection. Since several cases have applied the section 270 rule, it will be important to explore just what is a "strong public policy." The fact that twenty states now have DAPT statutes moves this approach from the eccentric anomaly category to an accepted asset protection and transfer tax minimization planning technique. DAPT states consist of approximately forty-two percent of the geographical area of the United States and approximately twenty-four percent of the population.[2] As more and more states enact DAPT statutes, the conclusion that a non-DAPT state has a "strong public policy" against a DAPT trust seems less likely.

In non-DAPT states, statutory enactment of self-settled techniques which provide protection from creditors of the donor similarly detracts from the conclusion that the state has a "strong public policy" against a DAPT. For example, new types of partial DAPT statutes have emerged. These are statutes which specifically abrogate the rule against self-settled spendthrift trusts for lifetime QTIP trusts, lifetime general-power-of-appointment marital deduction trusts, lifetime credit-shelter trusts, spousal lifetime access trusts, and other lifetime arrangements. The non-DAPT states which have enacted these statutes include Arizona, Arkansas, Florida, Georgia, Kentucky, Maryland, North Carolina, Oregon, South Carolina, Texas, and Wisconsin.[3] In essence, these statutes provide that the assets of the trust are not to be considered assets contributed by the settlor. As a result, the assets cannot be reached by creditors of the donor spouse after the death of the donee spouse.[4]

Another way in which some states have "placed their toe in the water" with respect to self-settled trust asset protection is to enact statutes which protect the assets in an irrevocable grantor trust from a creditor claim even though an independent trustee, in such trustee's discretion, may reimburse the settlor for income tax

[2] Area and population totals from 2020 Decennial Census data. *See* https://data.census.gov/cedsci/map?q=Total%20Population.

[3] Ariz. Rev. Stat. Ann. § 14-10505(E); Ark. Code Ann. § 28-73-505(c)(1); Fla. Stat. § 736.0505(3); Ga. Code Ann. § 53-12-82(b); Ky. Rev. Stat. Ann. § 386B.5-020(8)(a); Md. Code Ann., Est. & Trusts § 14.5-1003(a)(2); N.C. Gen. Stat. § 36C-5-505(c); Or. Rev. Stat. § 130.315(4); S.C. Code Ann. § 62-7-505(b)(2); Tex. Prop. Code Ann. § 112.035(g); Wisc. Stat. Ann. § 701.0505(e)1.a. Some DAPT states also have separate statutes of this type (see, e.g., 12 Del. C. § 3536(c)(4); Mich. Comp. Laws § 700.7506(4)(b); N.H. Rev. Stat. § 564-B:5-505A(e)(3)-(4); Ohio Rev. Code § 5805.06(B)(2)(b); Tenn. Code Ann. § 35-15-505(d); Va. Code Ann. § 64.2-747(B)(3); Wyo. Stat. § 4-10-506(f)).

[4] Franklin, *Lifetime QTIPs—Why They Should be Ubiquitous in Estate Planning*, 50th Annual Heckerling Institute on Estate Planning; Nelson, *Seeking and Finding New Silver Patterns in a Changed Estate Planning Environment:* Create *Inter Vivos QTIP Planning*, ABA RPTE Section Spring Symposium (Chicago May 2014).

resulting from assets in the trust. The non-DAPT states with these statutes include Arizona, Florida, Kentucky, Maryland, New Jersey, North Carolina, Oregon, New York, and Texas.[5] Similarly, Arizona protects the assets in a supplemental needs trust from the settlor's creditors.[6]

A section 529 plan is a statutory technique which allows a donor to place funds in a tax-free accumulation account for the educational purposes of the beneficiary. This is a self-settled technique because the donor may withdraw the funds (subject to a penalty). The following non-DAPT states provide asset protection for these accounts from the claims of a creditor of the donor: Colorado, Florida, Illinois, Louisiana, and New Jersey.[7]

Other types of self-settled techniques which provide protection against creditors of the donor exist in non-DAPT states. These techniques include the well-known homestead exemption in Florida, life insurance policies, annuity policies, and IRAs.

Enactment of asset protection for self-settled techniques such as "*Inter Vivos* QTIP Trusts," tax reimbursement provisions, supplemental needs trusts, 529 accounts, and other self-settled techniques, provides weight to the argument that those states do not have a "strong public policy" against self-settled spendthrift trust asset protection, and therefore residents could form a DAPT under another state's DAPT law. The same reasoning supports residents of DAPT states who use another DAPT state's statute because of its superiority.

Reference to the map illustration on the last page of the chart illustrates the DAPT states and the non-DAPT states that have enacted asset protection for self-settled techniques involving *inter vivos* QTIP trusts, spousal lifetime access trusts, tax reimbursement provisions, supplemental needs trusts, or section 529 accounts.

[5] Ariz. Rev. Stat. Ann. § 14-10505(A)(2); Fla. Stat. § 736.0505(1)(c); Ga. Code Ann. § 53-12-82(a)(2)(B); Idaho Code § 15-7-502(4); Ky. Rev. Stat. Ann. § 386B.5-020(7)(c); Md. Code Ann., Est. & Trusts § 14.5-1003(a)(1); N.J. Stat. Ann. § NJSA 3B:11-1(b); N.Y. Estates, Powers & Trusts Law § 7-3.1(d); N.C. Gen. Stat. § 36C-5-505(a)(2a); Or. Rev. Stat. § 130.315(1)(d); 20 Pa. C.S. § 7745; Tex. Prop. Code Ann. § 112.035(d)(1); Va. Code Ann. § 64.2-747(A)(2). Some DAPT states also have stand-alone statutes of this kind (see, e.g., Alaska Stat. § 34.40.110(m); 12 Del. C. § 3536(c)(2); N.H. Rev. Stat. § 564-B:5-505A(6)).

[6] Ariz. Rev. Stat. § 14-10503,B; § 14-10505, A,2(c); § 14-10103(17).

[7] C.R.S. 23-3.1-307.4; Fla. Stat. § 222.22; 15 ILCS 505/16.5, 735 ILCS 5/12-1001(j); La. R.S. 17:3096G; N.J. Stat. § 18A:71B-41.1.

In addition to the two choice of law rules provided by the Restatement, a new choice of law rule was inserted into the Uniform Fraudulent Transfer Act. In 2014, the Uniform Law Commission adopted amendments to the Act, including new Comments. The Act was renamed the Uniform Voidable Transactions Act.

New section 10 of the Uniform Voidable Transactions Act provides that the governing law for determining a voidable transaction is the state law of the debtor's principal residence. New Comment 8 to section 4 states that if a resident of a non-DAPT state which has enacted the Uniform Voidable Transactions Act creates a DAPT in a DAPT state, the transfer would be voidable.

Section 10 and the Comments of the Uniform Voidable Transactions Act have created considerable controversy.[8] The critics argue it is an inappropriate "back door" attempt to change well-established choice of law rules.[9] Critics are concerned about how much significance a court might give to the Comments.

As of the date of this publication, the Uniform Voidable Transactions Act has been enacted in twenty-two states.[10] Six enacting states (Alabama, Indiana, Michigan, Rhode Island, Utah, and West Virginia) are also DAPT states. The Comments to the Uniform Voidable Transactions Act clarify that in such a situation the DAPT law prevails.[11] Two non-DAPT states (Arkansas and New York) expressly rejected the Comments of the Uniform Voidable Transactions Act. See the attached charts provided by George D. Karibjanian titled *State Law*

[8] For example, see the discussion in Karibjanian, Wehle, Jr., & Lancaster, *History Has Its Eyes on UVTA—A Response to Asset Protection Newsletter #319*, LISI Asset Protection Newsletter #320 (April 18, 2016), www.leimbergservices.com; Richard Nenno & Dan Rubin, *Uniform Voidable Transactions Act: Are Transfers to Self-Settled Spendthrift Trusts by Settlors in Non-APT States Voidable Transfers Per Se?*, LISI Asset Protection Newsletter #327 (August 15, 2016), www.leimbergservices.com; Kettering & Smith, *Comments to Uniform Voidable Transactions Act Should Not be Changed*, LISI Asset Protection Newsletter #329 (August 25, 2016), www.leimbergservices.com; George D. Karibjanian, *The Uniform Voidable Transactions Act Will Affect Your Practice*, 155 Trusts & Estates 17 (May 2016); George D. Karibjanian, Richard W. Nenno & Daniel S. Rubin, *The Uniform Voidable Transactions Act: Why Transfers to Self-Settled Spendthrift Trusts by Settlors in Non-APT States Are Not Voidable Transfers Per Se*, Bloomberg BNA Tax Management Estates, Gifts, and Trusts Journal, Vol. 42, No. 4, July 14, 2017, p. 173.

[9] *Id.*

[10] As of the date of this chart, UVTA legislation is pending in South Carolina and Massachusetts.

[11] Section 4, Comment 8, of the Uniform Voidable Transactions Act.

Status of the Uniform Voidable Transactions Act, as of August 7, 2022, and the illustration created by the National Conference of Commissioners on Uniform State Laws.

Therefore, attorneys who represent clients in non-DAPT states will need to research whether their client's state of residence is one of the presently fourteen non-DAPT states that has adopted both section 10 and the Comments to the Uniform Voidable Transactions Act. If so, then this issue needs to be considered.

As the enactment of DAPT statutes and other self-settled techniques increases, and counter-legislative responses are enacted (e.g., section 548(e) of the Bankruptcy Act and the Uniform Voidable Transactions Act), we should consider further just what constitutes a self-settled trust. Gray Edmondson has contributed the following discussion to assist us in this analysis.

For self-settled trusts, absent DAPT statutes, spendthrift protections are generally not available.[12] As such, creditors can reach the assets which are eligible to be distributed to the settlor. Section 103(15) of the Uniform Trust Code states that a "settlor" is a person who "creates or contributes property to a trust." When a settlor contributes property to a trust of which he or she is a current beneficiary, a self-settled trust clearly has been created. Many other situations are not so clear. Although the laws of certain states have addressed some of these issues, common situations which occur on a regular basis include, but certainly are not limited to, powers of withdrawal (presently exercisable or lapsed),[13] *inter vivos* QTIP trusts as discussed elsewhere in this introduction, the right of a trustee to reimburse a settlor's income tax resulting from assets of the trust as discussed elsewhere in this introduction, trusts with a retained power to substitute assets, trusts created by disclaimer, trusts created in litigation settlements, reciprocal trusts, trusts created by the exercise of a power of appointment, and default

[12] See Restatement (Third) of Trusts § 58 and Uniform Trust Code § 505(a)(2).

[13] See Uniform Trust Code § 505(b) which states that (1) presently exercisable powers are essentially deemed to cause a trust to be self-settled to the extent of the power of withdrawal; and (2) lapsed powers cause the lapsed portion to have been contributed by the powerholder to the extent the lapse amount exceeds the greater of $5,000, 5% of the trust assets, or the gift tax annual exclusion amount. But see *Irwin Union Bank & Trust Co. v. Long*, 312 N.E.2d 908 (Ind. Ct. App. 1974) and *University National Bank v. Roadarmer*, 827 P.2d 561 (Colo. App. 1991), both of which do not treat a lapsed power of withdrawal as causing the powerholder to become the settlor and also suggesting that even currently exercisable powers are personal and not subject to creditors' rights.

provisions applicable upon failure of a powerholder to exercise a power of appointment.[14] Some states have addressed a number of these potential situations.[15] Others have only addressed a very limited number of these situations. The result is that the landscape is not particularly clear. When a person is deemed to be a settlor in these types of cases, he or she may not have satisfied the requirements of a DAPT statute or other specific statute described above. In such a case, trust assets may be subject to claims of the deemed settlor's creditors. [16]

This Comparison of the Domestic Asset Protection Trust Statutes chart will hopefully be useful to academics (law school and continuing legal education), drafters of new DAPT statutes, and the practitioner who is considering a DAPT for the practitioner's client. With respect to the latter user, the reader may want to consider the following categories, which are derived from the above discussion in this introduction: (1) is the client a resident of a DAPT state? (2) If yes, is there another DAPT state that has superior DAPT and asset protection provisions? (3) Is the client a resident of a non-DAPT state that has enacted other self-settled provisions? (4) Has the non-DAPT state enacted the Uniform Voidable Transactions Act but rejected the Comments? (5) Has the non-DAPT state enacted the Uniform Voidable Transactions Act but included the Comments?

Where the practitioner's client falls within the above categories will provide the practitioner and the client with an initial gauge of the probability that the DAPT will be upheld, assuming that it is properly implemented. The included map and list of the Uniform Voidable Transactions Act states will assist the reader in applying the above-described analysis.

[14] Note that Uniform Trust Code § 401 refers to creation of a trust via the "exercise" of a power of appointment but not default provisions that apply in default of exercise. Does this mean that whether a trust is self-settled can depend on whether the new trust is created via the decision to exercise such a power versus accept the trust's default provisions? See also Restatement (Third) of Trusts § 10.

[15] For some of the more comprehensive statutes, see, e.g., Ky. Rev. Stat. Ann. § 386B.5.020; Md. Code Ann., Est. & Trusts § 14.5-507; Tenn. Code Ann. § 35-15-505; Tex. Prop. Code Ann. § 112.035.

[16] For a discussion of these topics, see Gray Edmondson, *The Not so Obvious, But Highly Ubiquitous, Self-Settled Trust,* ACTEC Annual Meeting, Asset Protection Committee (La Quinta, CA, March 20, 2019), https://www.actec.org/assets/1/6/Asset_Protection_A19_Materials.pdf.

The DAPT chart below is designed to give the reader an easy and quick comparison of the various DAPT statutes. The intent of this chart is to provide an unbiased, objective, and non-marketing analysis. A "ranking" of the statutes is deliberately omitted in order to avoid any "marketing" taint.

A chart, by its very nature, is an oversimplification. The reader is urged to carefully analyze the provisions of a statute before implementing a DAPT.

The publication and dissemination of this Chart does not constitute the rendering of legal, accounting, or other professional advice. The editors disclaim any liability with respect to the use of this Chart.

STATE SUBJECT PAGE REFERENCE

NO.	SUBJECT	AL AK CT Page	DE HI IN Page	MI MS MO Page	NV NH OH Page	OK RI SD Page	TN UT VA Page	WV WY Page
1.	What requirements must trust meet to come within protection of statute?	1	17	31	44	61	74	87
2.	May a revocable trust be used for asset protection?	1	17	31	44	61	74	88
3.	Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	1	17	31	44	62	74	88
4.	What contacts with state are suggested or required to establish situs?	2	18	32	45	62	75	89
5.	What interests in principal and income may settlor retain?	3	18	32	46	63	75	90
6.	What is trustee's distribution authority?	4	19	33	47	63	76	90
7.	What powers may settlor retain?	4	19	33	47	64	76	91
8.	Who must serve as trustee to come within protection of statute?	4	19	34	48	64	76	91
9.	May non-qualified trustees serve?	5	19	34	48	64	76	92
10.	May trust have distribution advisor, investment advisor, or trust protector?	5	20	34	48	65	77	92

AL AK CT | DE HI IN | MI MS MO | NV NH OH | OK RI SD | TN UT VA | WV WY

STATE SUBJECT PAGE REFERENCE

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STATE SUBJECT PAGE REFERENCE

NO.	SUBJECT	AL AK CT Page	DE HI IN Page	MI MS MO Page	NV NH OH Page	OK RI SD Page	TN UT VA Page	WV WY Page
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	10	25	38	54	69	81	97
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	10	26	38	54	69	82	97
28.	**Are due diligence procedures required by statute?**	10	26	39	54	69	82	97
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	10	26	39	54	69	82	98
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	10	26	39	55	70	82	98
31.	**Is the trustee given "decanting" authority to modify the trust?**	11	26	39	55	70	83	98
32.	**What is allowable duration of trusts?**	11	27	39	55	70	83	98
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	11	27	40	56	70	83	99

AL AK CT | DE HI IN | MI MS MO | NV NH OH | OK RI SD | TN UT VA | WV WY

STATE SUBJECT PAGE REFERENCE

NO.	SUBJECT	AL AK CT Page	DE HI IN Page	MI MS MO Page	NV NH OH Page	OK RI SD Page	TN UT VA Page	WV WY Page
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	12	27	40	56	70	83	99
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	12	28	40	56	70	84	100
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	13	28	41	57	71	84	100
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	14	29	41	57	71	84	100
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	14	29	41	58	71	85	101
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	14	29	41	59	72	85	101
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	15	29	41	59	72	85	101

AL AK CT | DE HI IN | MI MS MO | NV NH OH | OK RI SD | TN UT VA | WV WY

STATE SUBJECT PAGE REFERENCE

NO.	SUBJECT	AL AK CT	DE HI IN	MI MS MO	NV NH OH	OK RI SD	TN UT VA	WV WY
		Page	Page	Page	Page	Page	Page	Page
41.	**Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?**	16	30	42	59	73	85	102
42.	**Does state require any filings that give notice to third parties that the trust exists?**	16	30	43	60	73	86	102

AL AK CT	DE HI IN	MI MS MO	NV NH OH	OK RI SD	TN UT VA	WV WY

SUBJECT	ALABAMA	ALASKA	CONNECTICUT
	Citation: Ala. Code § 19-3E-1 **Effective Date:** April 18, 2021 **URL:** http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/Coatoc.htm	**Citation:** Alaska Stat. §§ 13.36.310, 34.40.110 **Effective Date:** April 2,1997 **URL:** http://www.legis.state.ak.us	**Citation:** P.A. 19-137 **Effective Date:** January 1, 2020 **URL:** https://www.cga.ct.gov/current/pub/title_45a.htm
1. What requirements must trust meet to come within protection of statute?	The trust instrument must (1) expressly incorporate AL law to govern the validity, construction, and administration of the trust, (2) be irrevocable, and (3) contain a spendthrift provision. Ala. Code § 19-3E-2(28).	Trust instrument must: (1) be irrevocable; (2) expressly state AK law governs validity, construction, and administration of trust (unless trust is being transferred to AK trustee from non-AK trustee); (3) contain spendthrift clause. AS 34.40.110(a)	Trust instrument must: (1) be irrevocable; (2) provide that the laws of CT govern its validity, construction and administration; (3) provide that the interest of the transferor/beneficiary not be able to be transferred, assigned, pledged or mortgage prior to distribution by the trustee. C.G.S. 45a-487k (10)
2. May a revocable trust be used for asset protection?	No. Ala. Code § 19-3E-2(28).	No. AS 13.36.368; AS 34.40.110(b)(2).	No, C.G.S. 45a-487k (10)(B).
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	The statute is new (2021). The Alabama legislature has generally been amenable to amendments to estate, trust, and probate law promulgated by the Standing Trust Committee of the Alabama Law Institute.	Yes, amendments enacted in: 1998, 2000, 2001, 2003, 2004, 2006, 2008, 2010, 2013, and 2014. .	Yes, amendment enacted in 2021.

ALABAMA	ALASKA	CONNECTICUT

SUBJECT	ALABAMA	ALASKA	CONNECTICUT
4. What contacts with state are suggested or required to establish situs?	Required. (1) at least one AL trustee (an individual who is an AL resident or an organization authorized to act as a trustee in AL and supervised by the Alabama State Banking Department, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision), (2) the AL trustee must maintain or arrange for custody in AL of some or all trust assets, (3) the AL trustee must administer all or part of the trust in AL and (4) the AL trustee must have an usual place of business in AL (for a corporate trustee, primary trust officer's business location must be in AL). Ala. Code § 19-3E-2(19).	Suggested: (1) some or all of trust assets deposited in state; (2) AK trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns (can be non-exclusive); (3) part or all of the administration occurs in state, including maintenance of records. AS 13.36.035(c).	Required: (1) at least one qualified trustee—resident of the state or a state or federally chartered bank having a place of business in Connecticut; (2) trustee must maintain at least some or all of the trust assets and records in CT; and (3) trustee must materially participate in the administration of the trust. C.G.S. 34a-487k (9)

| ALABAMA | ALASKA | CONNECTICUT |

| SUBJECT | ALABAMA | ALASKA | CONNECTICUT |

5. What interests in principal and income may settlor retain?	The transferor may retain interests in (1) potential or actual receipt of income, (2) potential or actual receipt of income or principal from a CRUT, CRAT, GRAT or GRUT and release of the transferor's interest in the trust in favor of a succeeding charitable organization, (3) potential or actual receipt of principal if in the trustee's discretion, in accordance with a support provision or at the direction of an advisor, (4) use of real property held under a QPRT, (5) possession and enjoyment of qualified annuity interest, (6) ability to be reimbursed for income taxes, (7) ability to have debts, expenses and taxes of transferor's estate paid from the trust, and (8) required minimum distributions from retirement accounts. Ala. Code § 19-3E-4(b).	Settlor may retain interests in: (1) CRT; (2) total-return trust; (3) GRAT or GRUT; (4) QPRT; (5) IRA; and (6) ability to be reimbursed for income taxes attributable to trust; the distribution of income or principal in the discretion of another person; use or occupancy or real property or tangible personal property if in accordance with trustee's discretion. AS 34.40.110(b)(2) and (3), and (m).	Settlor may retain interests in: (1) income; (2) CRT receiving principal and income as mandated and retaining the right to release the transferor's interest in favor of charity; (3) QPRT, potential or actual use of real property; (4) up to 5% interest in total return trust; (5) receive principal in the discretion of the qualified trustee or a trust director, or based on a standard; (6) potential or actual receipt of income or principal to pay income taxes due on trust income if grantor trust in the discretion of the qualified trustee or a trust director. C.G.S.45a-487n (6) (A),(B) (C); (7) (8) and (9)).

| ALABAMA | ALASKA | CONNECTICUT |

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
6.	**What is trustee's distribution authority?**	(1) Discretionary; (2) Pursuant to a support provision; or (3) Pursuant to the direction of an advisor acting under a discretionary trust provision or support provision. Ala. Code § 19-3E-4(b)(7).	Discretion whether or not governed by a standard, which may be subject to a power to veto a distribution, a testamentary or lifetime non-general power of appointment or similar power. AS 34.40.110(b)(2),(m)(1).	Discretion; pursuant to a standard that does not confer a substantially unfettered right to principal; or at the direction of a director acting in director's discretion or pursuant to a standard if does not confer substantially unfettered right to principal. C.G.S. 45a-487l; 45a-487n.
7.	**What powers may settlor retain?**	The transferor may retain (1) power to direct the investment decisions, (2) power to veto a distribution, (3) a special testamentary power of appointment, (4) removal and replacement of a trustee or advisor. Ala. Code § 19-3E-4(b).	Settlor may retain: (1) power to veto distributions; (2) non-general lifetime and testamentary powers of appointment; (3) right to appoint and remove trustees, trust protector, and advisors; and (4) right to serve as a co-trustee or advisor. AS 34.40.110(b)(2) and (f).	Settlor may retain: power to veto distributions; limited power of appointment effective only upon death by will or other written instrument; remove a trustee or director and appoint new (but not subordinate) trustee or director; right to serve as investment director or advisor. C.G.S. 45a-487n and 487o.
8.	**Who must serve as trustee to come within protection of statute?**	(1) An individual who is an AL resident or (2) an organization authorized to act as a trustee in AL and is subject to supervision by the Alabama State Banking Department, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision. Ala. Code § 19-3E-2(19).	Alaska trustee not required, but suggested to establish situs. Resident individual or trust company or bank that possesses trust powers and has principal place of business in Alaska. AS 13.36.390(3).	Qualified trustee must not be the transferor; must be a state resident if an individual; otherwise a state or federally chartered bank or trust company having a place of business in CT. C.G.S. 45a-487m.
		ALABAMA	ALASKA	CONNECTICUT

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
9.	**May non-qualified trustees serve?**	Yes, as long as there is at least one Qualified Trustee. Ala. Code § 19-3E-2(18).	Yes. AS 34.40.110(f),(g).	Yes, as co-trustee. C.G.S. 45a-487m (b).
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Yes. An Advisor is any person given authority by the trust to (i) remove, appoint, or both, trustees or (ii) direct, consent to, approve, or veto actual or proposed investment or distribution decisions. An Advisor includes a person that may be denominated by another title, such as trust protector. Ala. Code § 19-3E-2(1).	Yes. Trust instrument may provide for the appointment of a trust protector who has the powers, delegations, and functions conferred by the trust instrument. The trust instrument may provide for the appointment of an advisor to the trustee who: is only an advisor and not liable or considered to be a trustee or a fiduciary; or, is designated as a fiduciary and the trustee will be required to follow the directions of the advisor, and the trustee is not liable for the advisor's directions. Settlor may be advisor if does not have trustee power over discretionary distributions. AS 13.36.370, .375; AS 34.40.110(f),(g),(h).	Yes, trust may have distribution advisor (trust directors who have authority to direct, consent to or disapprove distributions); investment advisor or trust protector. Trust director includes all of those terms and functions. A transferor may serve as trust director, limited to retention of veto over trust distributions. C.G.S. 45a-487 l.
11.	**Are fraudulent transfers excepted from coverage?**	For creditor claims arising after a transfer, only a transfer made with the actual intent to hinder, delay or defraud the creditor may be set aside. Ala. Code § 19-3E-5(b)(2).	Yes. Alaska has not adopted Uniform Voidable Transactions Act. Alaska statute only sets aside transfers made with intent to defraud. AS 34.40.110(b)(1).	Only actions brought under CGS 52-552h, the uniform fraudulent conveyance act passed in 1991, may be sustained against trust property. Pre-existing alimony or child support debts on or before date of qualified disposition, and PI tort claims on or before those dates are not defeated by the subsequent qualified disposition. C.G.S.45a-487p.
		ALABAMA	ALASKA	CONNECTICUT

SUBJECT		ALABAMA	ALASKA	CONNECTICUT
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Preponderance of the evidence. Ala. Code § 19-3E-5(b)(3). Existing creditors: two years after transfers or, if the existence of the claim or identity of any person responsible was fraudulently concealed, the earlier of one year after the transfer was or could have been discovered or applicable statute of limitations under Ala. Code § 8-9B-10. Ala. Code § 19-3E-5(c)(1). Future creditors: two years after transfers. Ala. Code § 19-3E-5(c)(2).	Clear and convincing evidence. Existing creditors: Four years after transfer, or one year after transfer was or could reasonably have been discovered. To qualify for the discovery exception, the existing creditor must: (i) demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or (ii) within four years after the transfer file another action against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer. Future creditors: Four years after transfer. AS 34.40.110(b)(1); AS 34.40.110(d).	Clear and convincing evidence; prior creditors, four years after the qualified disposition, or one year after the qualified disposition was or could reasonably have been discovered by the creditor. Subsequent claims – creditor may not bring action unless it is within four years of the qualified disposition. C.G.S. 45a-487p (a) and (b).
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	Yes. The Alabama Uniform Voidable Transactions Act can be found at Ala. Code § 8-9B-1, *et seq*.	No.	No.

SUBJECT		ALABAMA	ALASKA	CONNECTICUT
14.	**Does statute provide an exception (no asset protection) for a child support claim?**[17]	Yes; a transfer is not qualified if the transferor is in arrears on a child support obligation by more than 30 days at the time of the transfer. Ala. Code § 19-3E-2(18).	Yes, if settlor was 30 days or more in default of making payment at time of transfer of assets to trust. AS 34.40.110(b)(4).	Yes, if indebtedness for child support was on or before the date of the qualified disposition, a claim can be pursued, only to the extent of the debt. C.G.S. 45a-487q (1).
15.	**Does the statute provide an exception (no asset protection) for alimony?**	No.	No.	Yes, if indebtedness for alimony, only for alimony indebted on or before the date of the qualified disposition, a claim can be pursued, only to the extent of the debt. C.G.S. 45a-487q (1);)
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	Yes; the statute provides an exception where the settlor transferred assets to the trust 30 days or less before the commencement of the marriage. Ala. Code § 19-3E-5(d)(2).	Yes, if assets were transferred to trust during or less than 30 days prior to marriage. Otherwise, assets are protected. AS 34.40.110(l).	Yes, if indebtedness for division or distribution of property on or before the date of the qualified disposition, a claim can be pursued, only to the extent of the debt. C.G.S. 45a-487q (1); *see also Powell-Ferri v. Ferri*, 326 Conn. 438 (456) (2017) regarding protection of third- party spendthrift trusts from property settlement claims in a divorce.
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	No.	Yes, only for claims that arise as a result of death, personal injury or property damage occurring before the date of transfer. C.G.S. 45a-487q (2).

[17] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

SUBJECT		ALABAMA	ALASKA	CONNECTICUT
18.	**Does statute provide other express exceptions (no asset protection)?**	No.	No.	No.
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	No.	Yes, assets excluded from augmented estate if transfer made more than 30 days before marriage or with spouse's consent. AS 13.12.205(b).	Yes, but Connecticut may have the smallest elective share rules in the country – income interest only, limited to income over one third of the net probate estate, assets in any revocable or irrevocable trust or other assets that pass outside probate (IRAs, life insurance, joint accounts, TOD accounts) are NOT included in the calculation. See *Cherniack v. Home National Bank & Trust*, 151 Conn. 367 (1964).
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes. Ala. Code § 19-3E-5(e).	Yes. AS 13.36.035; AS 13.36.043.	No, there is no express statutory provision for transfer into Connecticut, but see C.G.S. 45a-499h of the new CT trust code which permits relatively easy transfer of a trust's principal place of administration, including moving the location of the trustee or a trust director, and having all or part of the administration occur in a particular sta, including this state].
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	Yes; Ala. Code § 19-3E-2(28)(c).	Yes. AS 34.40.110(a).	Yes. C.G.S. 45a-487k (10)(c).

	ALABAMA	ALASKA	CONNECTICUT

SUBJECT		ALABAMA	ALASKA	CONNECTICUT
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	Yes; Ala. Code § 19-3E-5(i).	No.	Yes. C.G.S. 45a-487m.
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	Yes; Ala. Code § 19-3E-4(a).	Yes. AS 34.40.110(i).	Yes. The statute provides that any express or implied agreement or understanding purporting to grant or permit the retention of rights greater than those permitted in the statute or trust instrument will be void. C.G.S. 45a-487o
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes; Ala. Code § 19-3E-5(g).	Yes, and also provides protection for funding limited partnerships and LLCs. AS 34.40.110(e).	Yes, if the parties have not acted in bad faith C.G.S. 45a-487r.
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	Yes, the statute specifically authorizes the use of real property held in a QPRT. Ala. Code § 19-3E-4(b)(9). Use of real or personal property not specifically authorized may be permitted if the use is the result of the exercise of the trustee's disrection, in accordance with a support provision, or at the direction of an advisor acting in it's discretion or in accordance with a support provision. Ala. Code § 19-3E-4(b)(7).	Yes. AS 34.40.110(a).	Use of real property in a QPRT is authorized; otherwise, use of real property is permissible if based on trustee's discretion. C.G.S. 45a-487n (8).

	ALABAMA	ALASKA	CONNECTICUT

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes. Ala. Code § 19-3E-9.	Yes. AS 34.40.113.	Yes, 2021 amendment clarified payments for the benefit of beneficiaries in C.G.S. 45a-487k (10) (C); allows payment of expenses to a third party on behalf of a beneficiary.
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes. Ala. Code § 19-3E-5(d)(1).	Yes, and may not be considered in property division. AS 34.40.110(1).	A transferor's interest in the trust is protected from property division at divorce if the divorce is brought after the qualified disposition.
28.	**Are due diligence procedures required by statute?**	Yes. The statute requires the settlor to sign a Qualified Affidavit before a Qualified Disposition is made. Ala. Code § 19-3E-6(b).	Yes; affidavit required. AS 34.40.110(j).	No, but the parties may not act in bad faith C.G.S. 45a-487r.
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Yes, where the court is satisfied the Trustee has acted in good faith in accepting or administering the trust assets. Ala. Code § 19-3E-7(b)(1)	Yes. AS 13.36.310(c).	Yes. C.G.S. 45a-487r (b)(1)(A).
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No.	Yes. AS 13.36.330.	There is no statutory authority governing no contest clauses in *inter vivos* trusts in Connecticut, nor is there clear case law. There is case law upholding these clauses in wills subject to a probable clause standard.

	ALABAMA	ALASKA	CONNECTICUT

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes; Ala. Code § 19-3D-11, 12.	Yes. AS 13.36.157, .158, .159.	No, but trustee of a trust or holder of a non-conforming power of appointment may conform same to statute; C.G.S. 45a-499dd; 499ee; and 499ff allows trust modification to support material purpose of trust.
32.	**What is allowable duration of trusts?**	Uniform Statutory Rule Against Perpetuities adopted with respect to a nonvested property interest or a power of appointment that is created on or after January 1, 2012, and 360 years with respect to all property held in trust. Ala. Code § 35-4A-2.	Up to 1,000 years. AS 34.27.051.	Up to 800 years. C.G.S. 45a-491 (f).
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No, execpt for income from property owned or business transacted in AL. Ala. Code § 40-18-2.	No.	No, if CT is not the founder state, i.e., not the state of domicile for the transferor. CT will tax DNI of CT recipients. If CT real estate is in trust, rental income or gains would be taxed.

	ALABAMA	ALASKA	CONNECTICUT

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes; Ala. Code § 10A-5A-5.03 (LLC); Ala. Code § 10A-9A-3.03 (limited partnership).	Yes. Charging order is the exclusive remedy that a judgment creditor of a member or a member's assignee. Other legal and equitable remedies are not available. Applies to single-member LLCs as well as to LLCs with more than one member. AS 10.50.380. Similarly, a charging order provides the exclusive remedy of a judgment creditor of a general or limited partner or assignee. Other legal and equitable remedies are not available. AS 32.11.340.	CT state LLC statutes have not been amended or updated regarding charging orders since passage of this act.
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	Two years after the trustee sends a report that adequately discloses the existence of a potential claim. Ala. Code § 19-3B-1005.	(1) Trustee petition and court discharge; or (2) six months after trustee provides report that adequately discloses claims. If the report fails to adequately disclose, then three years. If no report is provided, then no limitation period. AS 13.36.100.	If accounting is in probate court, appeals period is 30 days after decree. Trust code provides one year for beneficiary to commence a proceeding against a trustee for breach of trust if adequately disclosed and informed of time limits; three-year statute of repose. C.G.S. 45a-499qq.
		ALABAMA	ALASKA	CONNECTICUT

	SUBJECT	ALABAMA	ALASKA	CONNECTICUT
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	No.	Yes. *Battley v. Mortensen*, 2011 WL 5025288 (Bankr. D.C. Alaska 2011), decided May 26, 2011, by the Alaska Bankr. Ct. This was the first reported case to deal with a DAPT. The court held that Mortensen's funding of the trust fell under Sec. 548(e) of the Bankruptcy Code as a fraudulent transfer to a self-settled trust made within 10 years prior to his bankruptcy filing. *Toni 1 Trust v. Wacker*, 413 P.3d 1199 (Alaska Mar. 2, 2018). A Montana state court and an Alaska bankruptcy court had found that transfers made to an AK trust were fraudulent. In an effort to avoid these judgments, the trustee of the AK trust filed a declaratory judgment action in the AK courts and argued that the AK state courts have exclusive jurisdiction over fraudulent transfer actions under AS 34.40.110(k). The Alaska Supreme Court disagreed, holding that the AK statute was not enforceable when courts of another state, or the United States Bankruptcy Court, have jurisdiction over the subject matter and the parties.	The statute was enacted in 2019. There has not been time for case law to develop.
		ALABAMA	ALASKA	CONNECTICUT

SUBJECT		ALABAMA	ALASKA	CONNECTICUT
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No.	Yes. *Waldron v. Huber* (*In re Huber*), 493 B.R. 798, decided by the Bankr. Ct. for the W.D. Wash. on May 17, 2013. The court held the Alaska DAPT invalid under a conflict of laws analysis and concluded that Washington had a strong public policy against asset protection for self-settled trusts.	The statute was enacted in 2019. There has not been time for case law to develop.
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No.	No.	The statute was enacted in 2019. There has not been time for case law to develop.
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No.	No.	The statute was enacted in 2019. There has not been time for case law to develop.

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40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	Yes. Where a non-settlor beneficiary holds a power of withdrawal, such beneficiary "…is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power." Ala. Code § 19-3B-505(c)(1). In addition, "... upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2007, or as later amended. Ala. Code § 19-3B-505(c)(2).	No. AS 34.40.115	No, C.G.S. 45a-487n (2). A beneficiary holding a 5 & 5 withdrawal power or allowing its lapse is expressly protected from creditors. C.G.S. 45a-487n (5).

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SUBJECT	ALABAMA	ALASKA	CONNECTICUT
41. Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?	Maybe. Although Alabama is a UTC state, Alabama did not adopt § 105(b)(8) of the UTC, which provides that a trust may not waive the Trustee's "...duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports." Ala. Code § 19-3B-105.	The settlor may exempt a trustee from giving notice to beneficiaries during the period of time when the settlor is alive and has capacity. AS 13.36.080(b). In addition, AS 13.06.120(a)(2)(G) provides that if a person is designated by a trust instrument to represent and bind a born or unborn beneficiary of the trust and receive a notice, information, accounting, or report for the beneficiary, then the beneficiary is bound by an order binding the designated person.	C.G.S. 45a-499u allows a Settlor to appoint a "designated representative" to receive notice on behalf of specified beneficiaries to binding legal effect. Notice to the designated representative satisfies the trustee's duty to provide notice under the CT UTC. C.G.S. 45a-499i. The designated representative is not liable to the beneficiary represented for actions or omissions made in good faith.
42. Does state require any filings that give notice to third parties that the trust exists?	No.	Yes. The trustee of a trust having its principal place of administration in Alaska is required to register the trust in the court at the principal place of administration. AS 13.36.005.	Yes, C.G.S. 45a-499e (7) for qualified beneficiaries of all trusts, but notice may instead be given to the designated representative selected by the Settlor under 45a-499u in place of specific beneficiaries (see above).
	ALABAMA	**ALASKA**	**CONNECTICUT**

SUBJECT	DELAWARE	HAWAII	INDIANA
	Citation: 12 Del. C. §§ 3570-3576 **Effective Date:** July 9, 1997 **URL:** http://www.delcode.delaware.gov	**Citation:** H.R.S. 554G **Effective Date:** July 1, 2011 **URL:** http://capitol.hawaii.gov/hrscurrent	**Citation:** IC 30-4-8 **Effective Date:** July 1, 2019 **URL:** http://iga.in.gov/legislative/laws/2021/ic/titles/030#30-4-8
1. What requirements must trust meet to come within protection of statute?	Trust instrument must: (1) be irrevocable; (2) expressly state that DE law govern validity, construction, and administration of trust (unless trust is being transferred to DE trustee from non-DE trustee); (3) contain spendthrift clause; and (4) appoint a qualified trustee (unless trust is being transferred to DE trustee from non-DE trustee). 12 Del. C. § 3570(11).	Trust must be irrevocable and expressly incorporate HI law covering the validity, construction, and administration of the trust.	Trust must: (1) be in writing, signed by the Settlor, and designate that it is a Legacy Trust; (2) state that IN law governs the validity, construction, and administration of the trust; (3) be irrevocable. IC 30-4-8.
2. May a revocable trust be used for asset protection?	No. 12 Del. C. § 3536(d)(3).	No.	No. IC 30-4-8-4.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	Yes, amendments enacted in 1998, 1999, 2000, 2002, 2003, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2013, 2014, 2015, 2017, and 2019. .	Statute did not provide an attractive option when first enacted in 2010. As of July 2011, however, the statute is much stronger, reflecting considerable legislative support for DAPTs.	The Legacy Trust is too new for any amendments.
	DELAWARE	**HAWAII**	**INDIANA**

SUBJECT		DELAWARE	HAWAII	INDIANA
4.	**What contacts with state are suggested or required to establish situs?**	Required: (1) some or all of trust assets held in custody in state; (2) DE trustee whose powers include (a) maintaining records (can be nonexclusive), (b) preparing or arranging for the preparation of income tax returns, or (3) otherwise materially participates in the administration of the trust. 12 Del. C. § 3570(8)(b).	There must be at least one trustee who is a HI resident, or a bank or trust company that has HI as its principal place of business, and such trustee must materially participate in administering the trust.	A Qualified Trustee must be appointed and accepted which is either an individual, not the Settlor, who is an IN resident or any other person subject to supervision of the State Department of Financial Institutions or the federal Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or any other successor to these agencies.
5.	**What interests in principal and income may settlor retain?**	Settlor may retain interests in: (1) current income; (2) principal, if paid pursuant to trustee's discretion, a standard or an adviser's direction; (3) CRT; (4) up to 5% interest in total return trust; (5) GRAT or GRUT; (6) QPRT; (7) qualified annuity interest; (8) ability to be reimbursed for income taxes attributable to trust on discretionary or mandatory basis (under DE law, trustee may pay income taxes attributable to grantor trust unless trust provides otherwise); (9) ability to have debts, expenses, and taxes of settlor's estate paid from trust; and (10) option to appoint or serve as designated representative for other beneficiaries. 12 Del. C. § 3570(11)(b); 12 Del. C. § 3344.	Right to current income; up to 5% of principal annually; reimbursement for income taxes on trust income; ability to receive discretionary distributions in any amount. (Settlor may also serve as investment advisor.)	The Settlor may retain interests in: (1) power to veto a distribution; (2) a limited testamentary power of appointment; (3) potential or actual receipt of income or principal distributed by a trustee pursuant to the trustee's discretion, which may be subject to an ascertainable standard; (4) CRAT or CRUT; (5) GRAT or GRUT; (6) right to remove the trustee or trust director and to appoint new trustee or trust director who is not related or subordinate; and (7) QPRT. IC 30-4-8-13(a).

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6.	**What is trustee's distribution authority?**	(1) Discretion; (2) pursuant to a standard; or (3) pursuant to the direction of an adviser who in turn is acting pursuant to the adviser's discretion or a standard. 12 Del. C. § 3570(11)(b).	Discretion to distribute any amount of principal to settlor if trust agreement so authorizes.	1. Discretion; 2. Ascertainable standard; 3. Direction of trust director. IC 30-4-8-13(a)(6).
7.	**What powers may settlor retain?**	Settlor may retain: (1) power to veto distributions; (2) non-general lifetime and testamentary powers of appointment; (3) power to replace trustee/ adviser; and (4) power to reacquire trust assets in nonfiduciary capacity. 12 Del. C. § 3570(11)(b).	Veto power over distributions; non-general testamentary power of appointment; power to remove and replace trustees and advisors; testamentary power of appointment for debts, administration expenses, and estate/ inheritance taxes.	See answer to Subject 5.
8.	**Who must serve as trustee to come within protection of statute?**	Resident individual (other than settlor) or a corporation whose activities are subject to supervision by Delaware Bank Commissioner, FDIC, or Comptroller of Currency. 12 Del. C. § 3570(8)(a).	Individual HI resident(s), other than the transferor, and/or a bank or trust company that has HI as its principal place of business.	Qualified Trustee must either be an individual, not the Settlor, who is an IN resident or any other person subject to the supervision of the State Department of Financial Institutions or the federal Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System or any other successor to these agencies.
9.	**May non-qualified trustees serve?**	Yes, as a co-trustee. 12 Del. C. § 3570(8)(f).	Yes, as long as there is a permitted trustee.	Yes. As long as there is a Qualified Trustee. IC 30-4-8-4(1).

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SUBJECT		DELAWARE	HAWAII	INDIANA
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Yes. Trust may have one or more advisers (other than settlor) who may remove and appoint qualified trustees or trust advisers or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment adviser, including settlor. The term "adviser" includes a protector. 12 Del. C. § 3570(8)(c-d); 12 Del. C. § 3571.	Yes. Settlor may appoint one or more trust advisors or protectors, including advisors with power to (i) remove and appoint trustees, advisors, trust committee members, or protectors, (ii) direct, consent to, or disapprove of distributions from the trust, and (iii) serve as investment advisor.	Yes. IC 30-4-8-14.
11.	**Are fraudulent transfers excepted from coverage?**	Yes. As to creditors whose claims arise after the qualified disposition, only if an action is brought within four years of such qualified disposition and only if the qualified disposition was made with actual intent to defraud. UFTA applies to creditors whose claims exist at time of qualified disposition. 12 Del. C. § 3572(a), (b).	Creditors can set aside only transfers made with actual intent to hinder, delay, or defraud.	Yes. IC 30-4-8-8.

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12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. Existing creditors: Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay, or defraud. Four years after transfer if claim based upon constructive fraud. Future creditors: Four years after transfer. 12 Del. C. § 3572(b).	Claims must arise before the transfer is made and be brought within two years. See #17 regarding certain tort victims. Creditor has burden to show actual fraudulent intent by preponderance of evidence (or clear and convincing evidence in limited circumstances). HRS § 554G-8.	Clear and convincing evidence and the statute of limitations for claims that arose before the disposition is the later of two (2) years after the transfer was made or six (6) months after the transfer was recorded or could have reasonably been discovered. For claims that arose after the disposition, the statute of limitations is two (2) years from the date of transfer. Special rules apply to claims made by the State of Indiana. IC 30-4-8-8.
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	No.	No.	Yes. The 2014 amendments have been adopted for the Uniform Voidable Transactions Act, but a specific statute states that the Comments to the Uniform Act are not to be used. IC 32-18-2-23.

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SUBJECT		DELAWARE	HAWAII	INDIANA
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes. Protection not available with respect to person to whom settlor is indebted on account of agreement or court order for payment of support in favor of settlor's children incident to judicial proceeding involving separation or divorce in favor of settlor's spouse or ex-spouse at time of qualified disposition, but only to extent of such debt. Otherwise, assets are protected. 12 Del. C. § 3573(1).	Yes. Protection is not available regarding family court-supervised agreement or order for child support. HRS § 554G-9(1).	Yes. IC 30-4-8-8(a).
15.	**Does the statute provide an exception (no asset protection) for alimony?**	Yes. Protection not available with respect to person to whom settlor is indebted on account of agreement or court order for payment of alimony in favor of settlor's spouse or ex-spouse at time of qualified disposition incident to a judicial proceeding involving separation or divorce, but only to extent of such debt. Otherwise, assets are protected. 12 Del. C. § 3573(1).	Yes. Protection is not available regarding family court-supervised agreement or order for support or alimony to the transferor's spouse or former spouse. HRS § 554G-9(1).	No. Indiana does not have alimony.

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

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16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	Yes. Protection not available with respect to person to whom settlor is indebted on account of agreement or court order for division or distribution of property in favor of settlor's spouse or ex-spouse at time of qualified disposition incident to judicial proceeding involving separation or divorce, but only to extent of such debt. Otherwise, assets are protected. 12 Del. C. § 3573(1).	Yes. Protection is not available regarding family court-supervised agreement or order for a division or distribution of property to the transferor's spouse or former spouse. HRS § 554G-9(1).	If the Qualified Disposition was made after the date of the marriage, the assets in the Legacy Trust are still subject to division. Also, if the qualified disposition is to be made within thirty (30) days before the date of the Settlor's marriage, the assets are subject to division on dissolution unless the Settlor provided written notice of the Qualified Disposition to the intended spouse at least three (3) days before making the Qualified Disposition. IC 30-4-8-8(a)(3).
17.	**Does statute provide an exception (no asset protection) for tort claims?**	Yes. Protection not available with respect to person who suffers death, personal injury, or property damage on or before qualified disposition caused by tortious act or omission of settlor or another person for whom settlor is or was vicariously liable but only to extent of such claim. Otherwise, assets are protected. 12 Del. C. § 3573(2).	No. But statute does not provide asset protection if the plaintiff suffered death, personal injury, or property damage on or before date of permitted transfer. HRS § 554G-9(2).	No.

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SUBJECT		DELAWARE	HAWAII	INDIANA
18.	**Does statute provide other express exceptions (no asset protection)?**	No.	Yes, secured loans to the transferor based on express or implied representations that trust assets would be available as security in the event of default; also, the transferor's tax liabilities to the State of Hawaii. HRS § 554G-9(3)&(4).	Yes. Assets that are listed on an application or financial statement for a loan are excepted from protection. In addition, if those assets are transferred to a Legacy Trust, the Settlor must send written notice within fifteen (15) days after the transfer to the lender, showing the name of the Settlor, the description of the asset, the name of the trustee and the date the transfer was made. IC 30-4-8-16(b). Also excepted from the Legacy Trust would be any assets that are subject to an agreement where the disposition is prohibited by the terms of that agreement.
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	Yes. 12 Del. C. § 3573.	Yes.	No. Indiana does not recognize forced heirship or legitime and the elective share would not apply to the trust assets.
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes. 12 Del. C. § 3570(10), (11); 12 Del. C. § 3572(c); 12 Del. C. § 3575.	Yes.	No.
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	Yes. 12 Del. C. § 3570(11)(c).	Yes. HRS § 554G-5(d).	Yes. IC 30-4-8-10.

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SUBJECT		DELAWARE	HAWAII	INDIANA
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	Yes. 12 Del. C. § 3572(g).	Yes. HRS § 554G-5(f).	Yes. IC 30-4-8-7(b).
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	Yes. 12 Del. C. § 3571.	Yes. HRS § 554G-7.	No, but Indiana adopted South Dakota language dealing with discretionary support and alter ego at IC 30-4-2.1-14 to 17.
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes. 12 Del. C. § 3572(d),(e).	Yes. HRS § 554G-8(f).	No.
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	Yes. 12 Del. C. § 3570(11)(b)(6).	The statute does not have an express provision, but it is implicit in the trustee's discretion.	Use of real property in a qualified personal residence trust is specifically authorized. IC 30-4-8-13(a)(8). Otherwise, real property is not specifically mentioned but would fall under the trustee's discretion.
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes. 12 Del. C. § 3536(a); 12 Del. C. § 3570(11), flush language.	No.	This issue is not specifically addressed.

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SUBJECT		DELAWARE	HAWAII	INDIANA
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes, but may be considered in property division in certain instances. 12 Del. C. § 3536(a).	Yes, but may be considered in property settlement.	This is not specifically addressed by the Legacy Trust statute, but Indiana case law does recognize that properly drafted trusts are not part of the marital property for division for non-settlor beneficiaries.
28.	**Are due diligence procedures required by statute?**	No.	No.	Yes, affidavit is required, and must cover a number of specific subjects. IC 30-4-8-4.
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Yes. 12 Del. C. § 3574(b)(1)(a).	Yes, if the trustee has not acted with intent to defraud, hinder, or delay the creditor.	If the Court is satisfied the trustee has not acted in bad faith, the trustee has a first and paramount lien against property that is subject to disposition in the amount of the entire costs, including attorney fees. IC 30-4-8-9(c).
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	Yes, unless the court finds that the beneficiary substantially prevails. 12 Del. C. § 3329.	No.	No.
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes. 12 Del. C. § 3528.	No, but trustee of trust or holder of a non-conforming power of appointment may conform to the statute. HRS § 554G-5(e).	Yes. IC 30-4-3-36.

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32.	**What is allowable duration of trusts?**	No limit for personal property, including LLC and LP interests, even if LLC or LP owns real property; otherwise, 110 years for real property. 25 Del. C. § 503.	No limitation. Rule against perpetuities does not apply to qualifying trusts. HRS § 525-4(6).	Uniform Statutory Rule Against Perpetuities. IC 32-17-8.
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No, but does impose income tax on trust that accumulates income for Delaware resident. 30 Del. C. § 1631; 30 Del. C. § 1601(8); 30 Del. C. § 1636.	Trust is subject to HI income taxes generally, but not on income and capital gains accumulated for the benefit of non-residents.	Yes. All trust income is subject to Indiana income tax.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes. Charging is exclusive remedy for judgment creditor of member or member's assignee. Other legal and equitable remedies are not available. Applies to single-member LLCs as well as LLCs with more than one member. Similarly, charging order provides exclusive remedy of judgment creditor of general or limited partner or assignee. Other legal and equitable remedies not available. 6 Del. C. § 17-703; 6 Del. C. § 18-703.	No.	Yes.

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	SUBJECT	DELAWARE	HAWAII	INDIANA
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	Judicial accountings are not required unless governing instrument so provides or are ordered by court. Accountings are not res judicata except as to matters actually contested. Trustee will be discharged one year after report is sent to beneficiary as to matters disclosed in statement. Trustee that resigns, is removed, or otherwise ceases to act will be discharged 120 days after report is sent to beneficiary. Otherwise, claims against trustee are barred five years after (i) death, resignation, or removal of trustee, (ii) termination of the claimant beneficiary's interest or (iii) termination of trust. Del. Ct. Ch. R. 129; 12 Del. C. § 3585; 12 Del. C. § 3522.	Trustee filing and court discharge.	Unless the terms of the trust provide otherwise, or unless waived, the trustee shall deliver a written statement of accounts to each income beneficiary or the income beneficiary's personal representative annually. IC 30-4-5-12(a). The trustee is discharged if all of the beneficiaries approve the accounting in writing or a court proceeding results in an order of the court approving the account. IC 30-4-5-12.
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	Yes. *TrustCo Bank v. Mathews*, 2015 WL 295373 (Del. Ch. Jan. 22, 2015). DE Court of Chancery dismissed as time-barred most of creditor plaintiffs' claims against three DE asset protection trusts. Court applied conflict-of-laws analysis to determine appropriate limitations period.	No.	No.

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37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No.	No.	No.
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No.	No.	No.
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No.	No.	No.
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	No. 12 Del. C. § 3536(a)(4), (d)(2).	There is no HI law on this specific question.	Case law indicates that the creditor may reach assets if it is a retained general power of appointment but may not reach the assets unless exercised if it is a donated general power of appointment. *Irwin Union Bank & Trust v Long*, 312 N.E.2d 908 (Ind. App. 1974).

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SUBJECT	DELAWARE	HAWAII	INDIANA
41. Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?	Yes. The terms of a trust may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time, including but not limited to: (1) A period of time related to the age of a beneficiary; (2) A period of time related to the lifetime of each settlor and/or spouse of a settlor; (3) A period of time related to a term of years or specific date; and/or (4) A period of time related to a specific event that is certain to occur. The foregoing is a non-exclusive list and does not limit the restriction or elimination of notice to the settlor's lifetime. A designated representative (as defined in 12 Del. C. §3339) may be appointed to represent and bind such beneficiary for purposes of any judicial proceeding and for purposes of any nonjudicial matter, and shall have standing to represent any such beneficiary in court. 12 Del. C. § 3303(c), (d).	No.	Indiana's Trust Code did not prohibit silent trusts but did not specifically deal with silent trusts until 2019 when IC 30-4-3-6 was amended to provide a procedure to prevent abuse of the silent trust. A designated representative can now initiate proceedings to determine if trust should remain silent.
42. Does state require any filings that give notice to third parties that the trust exists?	No.	No.	Yes. Indiana allows a designated representative to initiate proceedings to determine if trust should remain silent. IC 30-4-3-6(d).

| DELAWARE | HAWAII | INDIANA |

SUBJECT	MICHIGAN	MISSISSIPPI	MISSOURI
	Citation: Mich. Comp. Laws 700.1041-.1050 **Effective Date:** March 8, 2017 **URL:** http://www.legislature.mi.gov	**Citation:** Miss. Code Ann. §§ 91-9-701—91-9-723 **Effective Date:** July 1, 2014 **URL:** http://www.lexisnexis.com/hottopics/mscode	**Citation:** R.S. Mo. Chapter 456 **Effective Date:** 1989; changes effective August 28, 2022 **URL:** http://revisor.mo.gov/main/OneChapter.aspx?chapter=456
1. What requirements must trust meet to come within protection of statute?	Trust instrument must: (1) be irrevocable, (2) expressly state that MI law governs the validity, construction and administration of the trust, and (3) contain spendthrift clause. MCL 700.1042(aa).	Trust instrument must: (1) be irrevocable; (2) expressly state MS law governs validity, construction and administration of the trust; (3) contain a spendthrift clause.	Trust instrument must: (1) be irrevocable; (2) contain a spendthrift clause; (3) have more than the settlor as a beneficiary; (4) settlor's interest must be discretionary.
2. May a revocable trust be used for asset protection?	No.	No.	No, except for a "qualified spousal trust" (QST), giving tenants by the entirety protection to certain trusts created by spouses. R.S.Mo. § 456.950. *In re Brewer*, 544 B.R. 177 (W.D. Mo. 2015), held that certain language disqualified a trust from QST status, which bar sponsored legislation is expected to overturn at some point.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	The statute was enacted in 2017. In addition, the legislature has generally been amenable to amendments to estate, trust and probate law promulgated by the Michigan State Bar's Probate and Estate Planning Section.	No amendments.	Yes, amendments enacted in 2004, 2006, 2009, 2011, 2012, 2014, 2015, 2016, and 2022.

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SUBJECT		MICHIGAN	MISSISSIPPI	MISSOURI
4.	**What contacts with state are suggested or required to establish situs?**	Required: (1) at least one MI trustee (resident individual or corporation authorized to conduct trust business in MI), (2) the MI trustee's usual place of business must be in MI (for a corporate trustee the primary trust officer's business location must be in MI), (3) some or all trust assets held in custody in MI, and (4) part of the trust administration must occur in MI. MCL 700.1042(r).	Required: (1) some or all of trust assets deposited in state; (2) MS trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.	Principal place of business or residence of trustee in designated jurisdiction, or presence of all or part of the administration in designated jurisdiction; statute includes procedure for transfer of principal place of business. RSMo § 456.1-108. Identifying a corporate trustee's branch in a particular state was sufficient to designate that state as the situs. *Hudson v. UMB Bank, N.A.*, 447 S.W.3d 714 (W.D. Mo. App. 2014).
5.	**What interests in principal and income may settlor retain?**	1) income, 2) CRT, 3) GRAT or GRUT, 4) principal if in the trustee's discretion or in accordance with a support provision, 5) QPRT, 6) ability to be reimbursed for income taxes, 7) ability to have debts, expenses and taxes of the settlor's estate paid from the trust, and 8) required minimum distributions from retirement accounts. MCL 700.1044(2).	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT; (5) ability to be reimbursed for income taxes attributable to trust, and (6) ability to have debts, expenses and taxes of the settlor's estate paid from the trust.	Settlor may be one of a class of beneficiaries of a trust discretionary as to income or principal. RSMo § 456.5-505.3.
		MICHIGAN	MISSISSIPPI	MISSOURI

SUBJECT		MICHIGAN	MISSISSIPPI	MISSOURI
6.	**What is trustee's distribution authority?**	1) Discretion, 2) pursuant to a standard, or 3) pursuant to the direction of an advisor acting pursuant to the advisor's discretion or a standard. MCL 700.1044(2).	(1) Absolute discretion; (2) pursuant to a standard.	(1) Discretion; or (2) pursuant to a standard. RSMo § 456.8-814. Creditor may not compel exercise of discretion. RSMo § 456.5-504.1, relied upon by *In re Reuter*, 499 B.R. 655 (W.D. Mo. 2013). Creditors cannot receive information about discretionary trusts. R.S. Mo. § 456.5-504.5.
7.	**What powers may settlor retain?**	Settlor may retain: 1) Power to direct investment decisions, 2) power to veto distributions, 3) special power of appointment effective upon death, 4) remove and appoint trustees and advisors. MCL 700.1044(2).	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; (3) power to replace trustee/advisor with non-related/nonsubordinate party; and (4) serve as an investment advisor.	Settlor may retain a testamentary limited power of appointment and the power to veto distributions. RSMo § 456.5-505.4. Settlor may serve as trustee without negating spendthrift protection. RSMo § 456.5-504.1. No testamentary power of appointment is subject to creditors. RSMo § 456.5-508.
		MICHIGAN	MISSISSIPPI	MISSOURI

SUBJECT		MICHIGAN	MISSISSIPPI	MISSOURI
8.	**Who must serve as trustee to come within protection of statute?**	1) Resident individual or 2) person authorized to conduct trust business in MI and subject to supervision by department of insurance and financial services, FDIC, Comptroller of the Currency, or OTS. MCL 700.1042(r).	Resident individual, or is authorized by MS law to act as a trustee and whose activities are subject to supervision by the Mississippi Dept. of Banking and Consumer Finance, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto.	Not addressed by statute. RSMo § 456.1-107 describes when MO law controls.
9.	**May non-qualified trustees serve?**	Yes, as a co-trustee.	Yes.	Not addressed by statute.
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Yes Advisor is a person who is given authority by the trust instrument to (i) remove, appoint (or both) trustees, (ii) direct, consent to, approve, or veto investment or distribution decisions. The term advisor includes trust protector. MCL 700.1042(a). The settlor may be an advisor as long as the advisor does not hold the power to direct distributions. MCL 700.1042(p)(iv).	Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) investment advisors. The term "advisor" includes a trust protector.	Yes. RSMo § 456.8-808. A trust protector is a person other than the settlor, a trustee, or a beneficiary. The statute is flexible regarding powers.
11.	**Are fraudulent transfers excepted from coverage?**	Yes. Uniform Voidable Transactions Act applies. For transfers made before the creditor's claim arose, only a transfer made with actual intent to defraud the creditor may be set aside. MCL 700.1045(2)(b). For other creditors, transfers made with constructive fraudulent intent may also be set aside.	Yes. Uniform Voidable Transactions Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with actual intent to defraud the creditor.	Yes. Uniform Voidable Transactions Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. RSMo § 456.5-505.3(1).

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12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. MCL 700.1045(2)(c). Future Creditors: Two years after transfers. Existing Creditors: Two years after transfers or, if longer, one year after transfer was or could have been discovered if the existence of the claim or the identity of any person responsible was fraudulently concealed. MCL 700.1045(3).	Clear and convincing evidence. Existing creditors: Two years after transfer, or six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud with actual intent to defraud the creditor. Future creditors: Two years after transfer if claim based upon intent to hinder, delay or defraud with actual intent to defraud the creditor.	Clear and convincing evidence. Existing creditors and future creditors: Four years after transfer, or one year after transfer to certain insiders. Four years after transfer if claim based upon constructive fraud. RSMo § 428.049.
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	Yes. In 2022 the legislature passed House Bill (HB) 4618, which (pending the Governor's signature) will revise Michigan's Uniform Voidable Transactions Act to specifically address and authorize qualified dispositions under the statute. The legislature subsequently passed HB 4618, which further amended sections 4 and 5 of Michigan's voidable transactions act to specifically provide that "[w]ith respect to a qualified disposition, a creditor has the burden of proving the elements of the claim for relief by clear and convincing evidence." ***(continued …)***	No.	No.

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		(…continued) HB 4618 further provides that the governing law for claims with respect to a qualified disposition is "the local law of the jurisdiction in which the qualified trustee serving at the time the disposition was made was located."		
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes. A transfer is not qualified if the transferor is more than 30 days behind on child support at the time of the transfers. MCL 700.1042(p)(iii).	Yes.	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2
15.	**Does the statute provide an exception (no asset protection) for alimony?**	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	Yes, if assets were transferred to trust during or less than 31 days prior to the marriage unless the spouse consented to the transfer. MCL 700.1045(4)(b).	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	No.
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No.

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

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18.	**Does statute provide other express exceptions (no asset protection)?**	No.	Yes. Claim not extinguished (1) if creditor is state of Mississippi or any political subdivision thereof, (2) for any creditor in an amount not to exceed $1,500,000 if the settlor failed to maintain a $1,000,000 general liability policy.	Yes, regarding governmental claims, if another governing law supersedes. RSMo § 456.5-503.3
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	No, but Michigan does not recognize forced heirship or legitime and the elective share does not apply to trust assets.	Yes.	No.
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes. MCL 700.1045(5).	Yes.	No.
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	Yes. MCL 700.1042(aa)(iii).	Yes.	No.
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	Yes. MCL 700.1045(9).	Yes.	No.
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	Yes. MCL 700.1044(1).	Yes.	Irrelevant, if the trust complies with RSMo § 456.5-505.3

	SUBJECT	MICHIGAN	MISSISSIPPI	MISSOURI
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes. MCL 700.1045(7).	Yes.	No.
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	Real and personal property are not specifically identified, but transferor's actual use of principal permitted is under the trustee's discretion or in accordance with a support provision.	Yes.	No, but a creditor may not force a trustee to exercise discretion, and an interest in a trust does not constitute a property interest. RSMo § 456.5-504.1
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes. MCL 700.1049.	No.	Yes. RSMo § 456.5-504.1
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes. MCL 700.1045(4)(a).	Yes. The Act does not address, but if property is retained in a spendthrift trust for the beneficiary it is protected. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child support.	Yes, but may be considered in property division.
		MICHIGAN	MISSISSIPPI	MISSOURI

	SUBJECT	MICHIGAN	MISSISSIPPI	MISSOURI
28.	**Are due diligence procedures required by statute?**	Yes. Absence of affidavit may be used as evidence but validity of transfer is not affected in any other way. MCL 700.1046.	Yes; affidavit required.	No.
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Yes. MCL 700.1047(2)(a)(i).	Yes.	Yes. RSMo § 456.7-709.
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No. A non-contestability clause is not enforced if the court finds probable cause for instituting the contest. MCL 700.7113.	No.	No. RSMo § 456.4-420 provides, "an interested person may file a petition to the court for an interlocutory determination whether a particular motion, petition, or other claim for relief by the interested person would trigger application of the no-contest clause or would otherwise trigger a forfeiture that is enforceable under applicable law and public policy."
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes. MCL 556.115a and MCL 700.7820A.	No.	Yes. RSMo § 456.4-419. Includes many aspects of uniform decanting law, including authority to decant by distributing or modifying first trust.
32.	**What is allowable duration of trusts?**	No limit for personal property, including entity interests, even if entity owns real property, unless created pursuant to exercise of second power in which case a 360 year limit applies. Uniform Statutory Rule for directly held real estate.	Rule against perpetuities.	Abolished; generally applicable only after August 28, 2001. RSMo § 456.025.1. For trusts subject to RAP, RSMo § 456.026 includes an example of a vested interest.
		MICHIGAN	MISSISSIPPI	MISSOURI

SUBJECT		MICHIGAN	MISSISSIPPI	MISSOURI
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No, except for income from real estate or business sources within MI.	No, if it is a grantor trust.	Yes, but only if from real estate, business, etc., sources within MO. RSMo §§ 143.181, 143.331, 143.371, 143.391, focusing on RSMo §§ 143.181.2.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes. MCL 449.1303(a) and 449.1703 (limited partnership) and MCL 450.4507 (llc).	Charging order is only remedy.	No.
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	One year after trustee provides report that adequately disclosed the existence of potential claim. MCL 700.7905.	One year after trustee provides report that adequately discloses claims.	RSMo § 456.10-1005.1 provides either (1) a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the last to occur of the date the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and the date the trustee informed the beneficiary of the time allowed for commencing a proceeding, or (2) within five years after the first to occur of: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust. See *Gould v. Gould*, 280 S.W.3d 137 (W.D. Mo. App. 2009) re pre-1/1/2005 claims.
		MICHIGAN	MISSISSIPPI	MISSOURI

SUBJECT		MICHIGAN	MISSISSIPPI	MISSOURI
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	No.	No.	See, *In re Reuter*, 499 B.R. 655, 678 (Bankr. W.D. Mo. 2013). This 2013 bankruptcy court opinion upheld the protection of the MO spendthrift statute with respect to a debtor who settled an irrevocable trust jointly with his wife and remained a beneficiary of the trust.
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No.	No.	No.
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No.	No.	No.
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No.	No.	No.
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	Yes, under section 13 of the Powers of Appointment Act of 1967. MCL 556.123.	Possibly. MS is a UTC state but did not adopt Article 5 on creditor issues.	Yes, when exercisable. RSMo § 456.5-505.6. See also RSMo §§ 456.1110 and 456.1120.
		MICHIGAN	MISSISSIPPI	MISSOURI

SUBJECT	MICHIGAN	MISSISSIPPI	MISSOURI
41. Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?	Somewhat. MCL 700.7814(2)(a)-(c) requires, among other items, that the trustee provide notice of the trust's existence to the qualified trust beneficiaries. However, the virtual representation rules, MCL 700.7301 - .7305, signifi-cantly reduce the number of persons to whom the information must be provided and provide a ready avenue to draft around this requirement. In particular, the holder of a power of appointment represents the permissible appointees and takers in default. MCL 700.7302. In addition, HB 4898 would permit a trust instrument to provide for a nondisclosure period of up to 25 years.	Under Section 91-8-105(d) the duties of the trustee to inform and report under Section 91-8-813(a) and (b) may be waived or modified in the trust instrument, or by the settlor of the trust, or by a trust protector or trust advisor that holds the power to so direct, who directs in writing delivered to the trustee, any of the following ways: 1. By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse; 2. By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b), or 3. With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.	Notice to some beneficiary(ies) is required: 1. RSMo § 456.1-105.2(8) prevents a trust instrument from waiving, "subject to subsection 3 of this section, the duty of a trustee of an irrevocable trust to notify each permissible distributee who has attained the age of twenty-one years of the existence of the trust and of that permissible distributee's rights to request trustee's reports and other information reasonably related to the administration of the trust." 2. RSMo § 456.1-105.3 provides, "For purposes of subdivision (8) of subsection 2 of this section, the settlor may designate by the terms of the trust one or more permissible distributees to receive notification of the existence of the trust and of the right to request trustee's reports and other information reasonably related to the administration of the trust in lieu of providing the notice, information or reports to any other permissible distributee who is an ancestor or lineal descendant of the designated permissible distributee."

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SUBJECT	MICHIGAN	MISSISSIPPI	MISSOURI
42. Does state require any filings that give notice to third parties that the trust exists?	No. Note: trustees of certain charitable trusts are required to provide notice to the Michigan Attorney General under the Supervision of Trustees for Charitable Purposes Act. MCL 14.251 *et seq*.	Mississippi requires any trust that owns real estate to file a copy of the trust agreement or a memorandum of trust in the land records are the county or the real estate is located.	The reporter is unaware of any such requirements. The trustee MAY register the trust. RSMo § 456.027. Courts do not oversee trusts unless an interested party invokes their involvement or certain other circumstances arise. RSMo § 456.2-201.

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SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
	Citation: Nev. Rev. Stat. §§ 166.010-166.170	**Citation:** New Hampshire RSA 564-B:5-505A	**Citation:** Ohio Legacy Trust Act, Chapter 5816 of the Ohio Revised Code
	Effective Date: Oct. 1, 1999	**Effective Date:** Sept. 16, 2017 (RSA 564-D (the Qualified Dispositions in Trust Act), was effective Jan. 2, 2009, and was repealed as of Sept. 16, 2017 See RSA 564-B:5-505B regarding the coordination of RSA 564-B:505A and 564-B:505B)	**Effective Date:** March 27, 2013
	URL: http://www.leg.state.nv.us	**URL:** http://www.gencourt.state. nh.us	**URL:** http://www.legislature.state. oh.us/laws.cfm
1. **What requirements must trust meet to come within protection of statute?**	Trust instrument must: (1) be irrevocable; (2) all or part of corpus of trust must be located in NV, domicile of settlor must be in NV, or trust instrument must appoint NV trustee; and (3) distributions to settlor must be approved by someone other than the settlor. NRS 166.040.	Trust instrument must: (1) be irrevocable; and (2) contain a spendthrift clause. RSA 564-B:5-505A(a).	Trust instrument must: (1) be irrevocable; (2) expressly state that OH law wholly or partially governs validity, construction, and administration of trust; (3) contain spendthrift clause that includes the interest of the settlor; (4) appoint at least one qualified trustee. § 5816.02(K)
2. **May a revocable trust be used for asset protection?**	No. NRS 166.040(1)(b).	No. RSA 564-B:505(a).	No.
3. **Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	Yes. The Nevada Legislature approved amendments in 2007, 2009, 2011, 2015, 2017, and 2019, and nothing has been weakened.	Yes. Amendments enacted in 2011, 2014 and 2017 (complete restatement) of the DAPT statute. Further amendments to the NH Trust Code were made in 2019 and 2021.	The vote on the Legacy Trust Act in the 129th Ohio General Assembly was unanimous in both houses. Technical corrections became effective on August 17, 2021.
	NEVADA	**NEW HAMPSHIRE**	**OHIO**

SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
4. **What contacts with state are suggested or required to establish situs?**	Required: (1) all or part of assets are in state; (2) NV trustee whose powers include: (a) maintaining records, (b) preparing income tax returns; (3) all or part of administration in state. NRS 166.015. Identifying a corporate trustee's branch in a particular state was sufficient to designate that state as the situs. *Hudson v. UMB Bank, N.A.*, 447 S.W.3d 714 (W.D. Mo. App. 2014). A corporate trustee – including a family trust company – must maintain an office in Nevada.	The NH Trust Code applies to a trust if the terms of the trust provide that NH's laws govern the trust's validity, interpretation or administration. RSA 564-B:1-102(b). NH law also applies to the administrative matters of a trust that has its principal place of administration in NH, unless the terms of the trust provide otherwise. RSA 564-B:1-102(c). A trust has its principal place of administration in NH if a trustee's principal place of business is in NH, the trustee is a NH resident, or all or part of the administration occurs in NH. RSA 564-B:1-108(a). See also RSA 564-B:1-107 (Governing Law).	Required. OH qualified trustee who maintains or arranges for custody in OH of some or all of the trust estate and whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; or otherwise materially participates in the administration of the trust. § 5816.02(S)
	NEVADA	**NEW HAMPSHIRE**	**OHIO**

SUBJECT		NEVADA	NEW HAMPSHIRE	OHIO
5.	**What interests in principal and income may settlor retain?**	NV law allows the settlor to have a lead interest in a CRT, GRAT, or QPRT, the right to minimum required distributions under a retirement or deferred compensation plan, the right to receive distributions in the discretion of another person, and the right to use real or personal property owned by the trust [NRS 166.040(2)(c), (d), (e), (f), (g), and (h)]. Under NV law, the retained interest is not subject to the claims of creditors while in the hands of the trustee. [NRS 166.120(2)] Instead of making direct distributions to the settlor, the trustee of a spendthrift trust is authorized to make distributions for the settlor's benefit "free, clear, and discharged of and from any and all obligations of the beneficiary whatsoever and of all responsibility therefor. [NRS 166.120(3)]	Statute places no limitations on the settlor's interest. RSA 564-B:5-505A applies to any type of irrevocable trust. Creditors cannot force the settlor to exercise any right that the settlor has (in a fiduciary or non-fiduciary capacity) under the terms of the trust. RSA 564-B:5-505A(l).	Settlor may retain any one or more of these beneficial interests: (1) current income; (2) CRAT or CRUT; (3) beneficiary of distributions of income and principal in discretion of trustee or advisor or according to a standard; (4) use of real or tangible personal property of trust, including QPRT; (5) a qualified interest under I.R.C. § 2702(b), including GRAT, GRUT, CRAT, CRUT or back-end of CLAT OR CLUT; (6) ability to be reimbursed for income tax attributable to trust; (7) ability to have debts, expenses and taxes of settlor's estate paid from trust; and (8) pour-back to estate or trust. § 5816.05.

| NEVADA | NEW HAMPSHIRE | OHIO |

SUBJECT		NEVADA	NEW HAMPSHIRE	OHIO
6.	**What is trustee's distribution authority?**	As provided in the trust agreement, which may include absolute discretion or discretion limited by an ascertainable standard, and it may be subject to approval or veto powers retained by the settlor or given to the trust protector or other advisor. NRS 166.090 (support); 166.100 (income); 166.110 (discretionary).	Statute places no limitations on trustee's distribution authority. RSA 564-B:5-505A applies to any type of irrevocable trust.	Except as provided in trust instrument, trustee or advisor has greatest discretion permitted by law. § 5816.05(G): distributions to settlor may be purely discretionary or according to a standard in the trust instrument (not limited to an ascertainable standard). § 5816.12.
7.	**What powers may settlor retain?**	Nevada law allows the settlor to have any power except the power to make distributions to himself or herself without the consent of another person. Nevada law expressly allows the Settlor to have a veto power over distributions, a limited lifetime or testamentary power of appointment, the power to remove and replace a trustee, direct trust investments, and "other management powers". [NRS 166.040(2) and (3)].	Statute does not place any limitations on powers the settlor may retain. RSA 564-B:5-505A applies to any type of irrevocable trust.	Settlor may retain: (1) power to veto distributions; (2) power to invade trust principal up to 5% annually; (3) non-general power of appointment (lifetime or testamentary); (4) power to remove and replace a trustee or advisor, § 5816.05; and (5) a swap power under IRC § 675.

| NEVADA | NEW HAMPSHIRE | OHIO |

	SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
8.	**Who must serve as trustee to come within protection of statute?**	Resident individual or trust company or bank that maintains office in Nevada. NRS 166.015(2). A Nevada family trust company may serve, but maintaining an office in Nevada is required.	Statute places no limitations on who must serve as trustee.	Qualified Trustee: resident individual or corporation with trust powers under OH law and whose activities are subject to Ohio Superintendent of Banks, FDIC, Comptroller of Currency, or Office of Thrift Supervision. § 5816.02(S). As of August 17, 2021, an Ohio family trust company may serve as a qualified trustee.
9.	**May non-qualified trustees serve?**	Only one trustee must meet the requirements of NRS 166.015(2). There are no restrictions on co-trustees.	Yes.	Yes, but must have at least one qualified trustee. § 5816.02(K).
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Yes. NRS 163.553 *et seq.* [directed trusts]; NRS 163.5553 [trust protectors].	Yes. RSA 564-B:12-1201, *et seq.* (trust advisors and trust protectors) and RSA 564-B:7-711 (divided trusts and directed trusts). See also RSA 564-B:12-1204 (excluded fiduciaries).	Yes. Trust may have one or more advisors who may remove and appoint trustees or who have authority to direct, consent to, or disapprove investments, distributions, or other decisions. The term "advisor" includes a protector. Settlor may be advisor in connection with investments only. §§ 5816.02(A) & 5816.11

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11.	**Are fraudulent transfers excepted from coverage?**	Yes. Uniform Voidable Transactions Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. NRS 166.170(3). See also NRS Chapter 112 [Fraudulent Transfers Act] and NRS 163.5559(2).	Yes. Uniform Voidable Transactions Act applies, and sets aside transfers with actual intent to hinder, delay or defraud, and constructively fraudulent transfers. RSA 564-B:5-505A(m)(3). See also RSA 545-A.	Yes. Creditor may avoid a transfer made with the specific intent to avoid the specific creditor. Only the portion of the qualified disposition necessary to satisfy the creditor's claim is avoided, and the avoided portion is subject to the fees and costs incurred by a trustee in defending the claim (so long as the trustee has not acted in bad faith). §§ 5816.07(A) & 5816.08

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SUBJECT		NEVADA	NEW HAMPSHIRE	OHIO
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. Future creditors: Two years after transfer. Existing creditors: Two years after transfer, or, if longer, six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud (rather than constructive fraud). A transfer is deemed discovered when reflected in a public record. NRS 166.170.	Statute is silent regarding burden of proof. Case law provides that actual fraud must be proved by clear and convincing evidence, *Chagnon Lumber v. DeMulder*, 121 NH 173 (1981), and constructive fraud must be proved by a preponderance of the evidence, *Dahar v. Jackson*, 459 F.3d 117 (NH 2006). See RSA 545-A:4. a. Creditor or assignee cannot commence a judicial proceeding with respect to transfer of property to the trust after the later of: (1) four years after the transfer is made; and (2) if the creditor or assignee is a creditor or assignee of the settlor when the transfer is made, one year after the creditor or assignee discovers or reasonably should have discovered the transfer. RSA 564-B:5-505A(f). b. A creditor or assignee of a settlor must prove that, with respect to the creditor or assignee, the settlor's transfer to the trust was fraudulent. RSA 564-B:5-505A(g).	Clear and convincing evidence. Future creditors: 18 months after qualified disposition. Existing creditors: Later of 18 months after qualified disposition or 6 months after qualified disposition was or could have been discovered, with the limitation that the creditor must make demand on its claim within 3 years after the qualified disposition. The maximum combination of the 3-year demand limitation and the 6-month filing limitation provide an absolute 3.5 year bar. § 5816.07(B)&(C). Furthermore, Ohio Rev. Code § 1301.401 contains a personal property recording mechanism that serves as notice to the world.

SUBJECT		NEVADA	NEW HAMPSHIRE	OHIO
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	No.	No.	No.
14.	**Does statute provide an exception (no asset protection) for a child support claim?**[14]	No.	Yes. RSA 564-B:5-505A(q).	Yes. § 58.16.03(C)
15.	**Does the statute provide an exception (no asset protection) for alimony?**	No.	Yes, but limits the amount reachable by the creditor to "basic alimony," defined as the portion of alimony attributable to the most basic food, shelter, and medical needs of the spouse or former spouse if the judgment or court order expressly specifies that portion. RSA 564-B:5-505A(q)(1)(B)	Yes, if spouse was married to settlor on or before the date of the qualified disposition. §§ 5816.03(C) & 5816.02(U)
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	No.	Yes, but only if: (1) settlor transfers assets to the trust fewer than 30 days before marriage; and (2) the future spouse did not consent to the transfer. RSA 564-B:5-505A(n)(1)	Yes, if spouse was married to settlor on or before the date of the qualified disposition. §§ 5816.03(C) & 5816.02(U). Otherwise, assets are protected. A special provision states that the assets in the Legacy Trust are not subject to an equitable award out of settlor's separate property. §5816.03(E).

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

	SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	No.	No.
18.	**Does statute provide other express exceptions (no asset protection)?**	No.	No.	No.
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	No, but Nevada law does not recognize such claims.	Yes. RSA 564-B:5-505A(n)(2).	Yes. § 5816.03(D)
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes. NRS 166.180.	No.	Yes. § 5816.10(C)(D) & (E)
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	No.	Yes. RSA 564-B:5-505A(p).	Yes. § 5816.03(B)
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	No.	No.	Yes. § 5816.09. Furthermore, to maximum constitutional extent, Ohio court shall exercise jurisdiction over case brought before it and shall not decline adjudication because a court of another state has acquired jurisdiction. § 5816.10(H)

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23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	Yes. NRS 166.045. That said, Nevada law recognizes that a creditor might argue that the settlor controls or is the alter ego of an irrevocable trust or its trustee; however, NRS 163.418 requires "clear and convincing evidence" to establish that the settlor is the trust's alter ego, and .NRS 163.4177 enumerates actions by a settlor or beneficiary that are not considered improper control or dominion over a trust.	No.	Yes. § 5816.04
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes. A trustee or an advisor of the settlor or trustee is liable only if it is established by clear and convincing evidence that damages directly resulted from the advisor's violation of the law knowingly and in bad faith. NRS 166.170(5) and (6).	Yes. RSA 564-B:5-505A(h).	Yes, and also provides protection relating to forming and funding entities that become part of the trust estate. § 5816.07(D),(E)&(G)
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	NRS 166.040(2)(h) allows the trust to permit the settlor to use real and tangible personal property. It does not expressly require approval in the trustee's discretion (but there are good reasons to include such a requirement).	Use or occupancy of real property or tangible personal property not addressed in the statute.	Allowed as a reserved interest of the settlor (not in trustee's discretion. § 5816.05(J)

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SUBJECT		NEVADA	NEW HAMPSHIRE	OHIO
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes. NRS 166.120(3).	Not addressed in statute, although the statute does state that a creditor may not reach a distribution from the trust before its receipt by the settlor. RSA 564-B:5-505A(d). See also RSA 564-B:5-502(d)(2) (creditor cannot reach a distribution from a spendthrift trust before its receipt by the beneficiary).	Yes. Ohio Rev. Code § 5815.24(D)
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes, if property is retained in a spendthrift trust for the beneficiary [NRS 166.120]. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property [NRS 123.130]; however, trust income and assets can be considered a resource for purposes of determining alimony and child support [NRS 125.150(4) and (7); 125B.070(1)(a)].	Yes, if the beneficiary's interest is subject to a spendthrift provision. RSA 564-B:5-502(e). See also RSA 564-B:8-814(b) (beneficiary's interest in a discretionary trust is "neither a property interest nor an enforceable right, but a mere expectancy"); and *Goodlander v. Tamposi*, 161 N.H. 490 (2011).	Yes, a beneficiary does not have a property interest in the property of the trust. § 5816.13
28.	**Are due diligence procedures required by statute?**	No.	No.	Yes, affidavit required. § 5816.06
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	No.	Yes. RSA 564-B:7-709.	Yes. § 5816.08(A)(3)(a)

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30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	Yes and no. NRS 163.00195 contains two distinct provisions on this issue. (a) That statute provides, in part, " . . . a no-contest clause in a trust must be enforced, to the greatest extent possible, by the court according to the terms expressly stated in the no-contest clause without regard to the presence or absence of probable cause for, or the good faith or bad faith of the beneficiary in, taking the action prohibited by the no-contest clause." However, subsection (b) does provide a probable cause exception limited to challenges to the validity of trust related documents.	Yes. RSA 564-B:10-1014.	Case law, not statutory: *Bradford v. Bradford*, Ex'r, 19 Ohio St. 546 (1869); *Irwin v. Jacques*, 71 Ohio St. 395 (1905); *Kirkbride v. Hickok* (1951), 155 Ohio St. 293.
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes. NRS163.556 and 166.170(a).	Yes. RSA 564-B:4-418. The decanting statute is very broad, and the trustee may decant even if the decanted (first) trust imposes a standard on the trustee's discretion to distribute.	Yes. Ohio Rev. Code § 5808.18 and 5816.10(I).
32.	**What is allowable duration of trusts?**	Up to 365 years. NRS 111.1031(2)(b).	Perpetual. New Hampshire abolished the rule against perpetuities in 2004. RSA 564:24 and RSA 564-B:4-402A(b).	Allows opting out of the rule against perpetuities. Ohio Rev. Code § 2131.09.

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	SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No. Nevada State Constitution, Article 10, Section 1, clause 9.	No. New Hampshire does not impose any income tax on trusts.	No, unless the settlor later becomes resident in Ohio and the trust has at least one beneficiary resident in Ohio. Ohio Rev. Code § 5747.01(I)(3)(a)(ii).
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Charging order is exclusive remedy for a creditor of an owner [NRS 86-401 as to LLCs, 87-4342 as to partnerships, and 87A.480 or 88.535 as to limited partnerships].	Yes. RSA 304-C:126, IV. The only exception relates to single member LLCs. If a judgment creditor can show that distributions under a charging order will not satisfy the judgment within a reasonable time, the court may order the sale of the debtor-member's membership rights under an execution sale. RSA 304-C:126, VI. For limited partnerships, a judgment creditor has only the rights of an assignee. RSA 304-B:41.	Yes, charging order is only remedy. Ohio Rev. Code §§ 1776.50 and 1706.342.
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	NRS 165.139 mandates an annual trustee's account upon a beneficiary's request, but NRS 165.145 permits an account to be provided confidentially to a third-party "reviewer" where the trust directs or permits a trustee not to give an account to a beneficiary. Unless the trust instrument provides for a shorter period, a trustee's account is deemed approved if no written objection is given within 120 days or when a petition for approval is granted by court order after notice and hearing.	Either: (1) one year after trustee provides report that adequately discloses the existence of a potential claim and informs the beneficiary of the time allowed for commencing a proceeding, or (2) three years after trustee provides report that adequately discloses the existence of a potential claim. Limitations period cannot be tolled except by agreement of trustee and beneficiaries or by court order. RSA 564-B:10-1005.	Discharge occurs 2 years after delivery of statement that discloses the facts giving rise to the claim. Ohio Rev. Code § 5810.05

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36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	Yes, *Klabacka v. Nelson*, 394 P.3d 940 (2017), held that the assets in a husband's DAPT could not be reached for satisfaction of future child support and spousal support claims. The supreme court of NV relied heavily upon the legislative history of NV's DAPT statute. The court confirmed that NV does not have exception creditors (other than for fraudulent transfers), including spouses and dependent children in a domestic dispute, and expressly rejected the position given in section 59 of the Third Restatement of Trusts.	No.	No.
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	Yes. *Matter of Testamentary Tr. Created Under Will of King,* 295 Or. App. 176, 434 P.3d 502 (2018). The Oregon court decided that Nevada law did not prohibit the successor trustee of a spendthrift trust from applying the predecessor trustee's income interest to compensate for losses for breaches of trust. *Dahl v. Dahl*, 215 Utah 79 (2015) involved a divorce action where the wife challenged the husband's prior transfer of marital assets into a NV DAPT. ***(continued …)***	No.	No.

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		(…continued) However, the UT supreme court found the trust was revocable. The UT court applied UT law, rather than NV law chosen in the trust instrument, based upon UT's strong public policy of equitable distribution of marital assets.		
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No. NOTE: In *United States v. Nelson*, 2018 WL 2390128 (D.S.D. May 25, 2018), the federal district court applied South Dakota law to rule that the Settlor of an irrevocable trust was an alter ego of the trust. This case is of interest to Nevada because South Dakota has a statute relating to the alter ego of a trust with language similar to NRS 163.418 and 163.4177 (mentioned in item 23, above). This case is distinguishable because (a) this is a default judgment case in which allegations were deemed admitted and (b) it was alleged that the settlor had blatantly disregarded the formalities of the trust by using the property in question as if it were his own. The SD statute in question was not really tested.	No.	No.

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39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No.	No.	No.
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	Not unless the power is actually exercised. NRS 162B.510.	No. A creditor or assignee of a beneficiary may not compel the beneficiary to exercise any right or power that, in any fiduciary or nonfiduciary capacity, the beneficiary has under the terms of the trust, including, *inter alia*, any power of appointment. RSA 564-B:5-501(c).	Yes, a creditor may reach the assets during the period of exercise (but not after a lapse, waiver or release of the power). Ohio R.C. 5805.06(B)(1).
41.	**Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?**	Yes, but only if the trust instrument so provides. The trust instrument may excuse the trustee from providing disclosures to one or more beneficiaries. If the trust does not relieve the trustee of the duty to disclose, NRS 165.147 requires that a copy of the trust instrument be provided to a beneficiary who is entitled to a trustee's account.	Yes. RSA 564-B:8-813 (duty to inform and report) is a default rule under the New Hampshire Trust Code, and can be waived in its entirety. See RSA 564-B:1-105. Lack of notice is allowed during the settlor's life and after the settlor's death, regardless of whether a representative is appointed to receive notice. The New Hampshire Trust Code expressly allows the appointment of a represen-tative to represent and bind one or more beneficiaries of the trust as to any matter involving the trust. RSA 564-B:3-303(8).	A settlor may override the trustee's duty to provide notice of the trust and reports to a beneficiary by appointing a beneficiary surrogate to receive such notices and reports on behalf of the beneficiary. Ohio R.C. 5801.04(C). Otherwise, as to beneficiaries under age 25, the settlor may override the trustee's duties to notify them of the existence of the trust, of the identity of the trustee, and of their right to receive reports, but may not waive the trustee's duty to respond to a request of any such beneficiary (who nevertheless learns of the trust) for trustee reports and other information. Ohio R.C. 5801.04(B)(8) & (9).

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SUBJECT	NEVADA	NEW HAMPSHIRE	OHIO
42. Does state require any filings that give notice to third parties that the trust exists?	No. NOTE: The public disclosure of transfers can eliminate an additional six-month extension of the statute of limitations regarding fraudulent transfers. See NRS 166.170(1)(a)(2) and 166.170(2). Such disclosure is optional.	No.	No, and the legislature is not contemplating any such notice requirements.

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SUBJECT	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
	Citation: Family Wealth Preservation Act (the "Act"). Okla. Stat. tit. 31 § 10-18	**Citation:** R.I. Gen. Laws §§ 18-9.2-1 - 18-9.2-7	**Citation:** S.D. Cod. Laws §§ 55-16-1 - 55-16-16
	Effective Date: June 9, 2004	**Effective Date:** July 1, 1999	**Effective Date:** March 2, 2005
	URL: http://www.lsb.state.ok.us Statute at: //www.oscn.net	**URL:** http://www.rilin.state.ri.us	**URL:** http://www.legis.state.sd.us
1. What requirements must trust meet to come within protection of statute?	Trust instrument may be revocable or irrevocable. 31 O.S. § 13. Trust instrument must: (1) expressly state OK law governs; (2) have at all times as a trustee or co-trustee an OK-based bank that maintains a trust department or an OK-based trust company; (3) have only qualified beneficiaries [ancestors or lineal descendants of grantor (including adopted lineal descendants if they were under age 18 when adopted), spouse of the grantor, charities, or trusts for such beneficiaries]; (4) recite that income subject to income tax laws of OK. 31 O.S. § 11.	Trust instrument must: (1) be irrevocable; (2) expressly state RI law governs validity, construction, and administration of trust; (3) contain spendthrift clause.	Trust instrument must: (1) be irrevocable; (2) expressly state that SD law governs validity, construction, and administration of trust (unless trust is being transferred to SD trustee from non-SD trustee); (3) contain spendthrift clause; (4) must have a "qualified person" as a trustee. See SDCL §§ 55-16-1(6) (defining "qualified disposition"), 55-16-2 (defining "trust instrument"), 55-16-3 (defining "qualified person" by cross-reference to other statutes), and 55-16-4 (more regarding qualified persons).
2. May a revocable trust be used for asset protection?	Yes. Settlor may revoke or amend trust and take back assets. No court or other judicial body may compel such revocation or amendment. 31 O.S. § 16.	No.	No.

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SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
3.	**Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	Yes. Substantial amendments were made in 2005 and 2015.	Yes, amendment enacted in 2007 and 2013.	Yes. Amendments enacted in 2011, 2010, 2009, 2008, 2007, 2006, 2012, 2014, 2015, 2016, 2017, 2019, 2020, and 2021.
4.	**What contacts with state are suggested or required to establish situs?**	Required: (1) OK-based trustee; (2) majority of value of assets comprised of OK assets defined at 31 O.S. § 11 to include real or tangible personal property or any interest therein having situs in OK and stocks, bonds, debentures, and obligations of the State, OK-based companies, and accounts in OK-based banks. An OK asset includes an equity interest in an OK-based company regardless of whether the assets owned by the company are located in OK.	Required: (1) some or all of trust assets deposited in state; (2) RI trustee whose powers include: (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in administration of the trust.	Required: SD qualified person designated as trustee meeting requirements of SDCL § 55-3-39. See SDCL § 55-3-41 for definition of "qualified person." Suggested: (1) some or all of trust assets deposited in SD; (2) administration of trust occurring wholly or partly in SD, including (a) physically maintaining records; (b) preparing or arranging for the preparation of income tax returns (can be non-exclusive); (c) or otherwise materially participating in the administration of the trust. See also SDCL § 55-3-39 (dealing with minimum contacts needed to justify choice of law).
		OKLAHOMA	**RHODE ISLAND**	**SOUTH DAKOTA**

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
5.	**What interests in principal and income may settlor retain?**	Irrevocable trusts: Not addressed by the Act. Revocable trusts: See Item 7. If settlor revokes or partially revokes the trust, the exemptions provided do not extend to assets received by settlor. 31 O.S. § 13.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; QPRT; ability to be reimbursed for income taxes attributable to trust.	Settlor may retain interests in: (1) current and retained income; (2) CRT; (3) up to 5% interest annually; (4) GRAT or GRUT; (5) QPRT; (6) pour back to estate or trust; (7) principal, if distributions are made or directed by certain qualified third parties, or pursuant to an ascertainable standard; (8) income or principal to pay income taxes and, after death, debts, expenses of estate administration, and estate or inheritance taxes imposed on the settlor's estate; and (9) power to reacquire principal by substitution of property having equivalent value. SDCL § 55-16-2(2).
6.	**What is trustee's distribution authority?**	Irrevocable trusts: Not addressed by the Act. Revocable trusts: see Item 5, above	Discretion, or pursuant to a standard.	(1) Absolute discretion; (2) pursuant to an ascertainable standard.
		OKLAHOMA	**RHODE ISLAND**	**SOUTH DAKOTA**

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
7.	**What powers may settlor retain?**	Irrevocable trusts: Not addressed by the Act. Revocable trusts: Settlor may revoke or amend, but otherwise powers not addressed by the Act. The Oklahoma Trust Act addresses trustee and co-trustee powers and liabilities. 60 O.S. § 175.1, *et seq*.	Settlor may retain: (1) power to veto distributions; and (2) special testamentary power of appointment.	Settlor may retain: (1) power to veto distributions; (2) lifetime non-general power of appointment (3) testamentary power of appointment (general or non-general); (4) power to remove and replace trustee/advisor with anybody, except that a trustee must not be related or subordinate within the meaning of I.R.C. § 672(c); (5) serve as investment trust advisor; and (6) serve as noncontrolling member of a distribution advisor committee. SDCL § 55-16-2.
8.	**Who must serve as trustee to come within protection of statute?**	At all times, the trustee or co-trustee shall be an OK-based bank or an OK-based trust company chartered under OK law or nationally chartered), and having a place of business in OK. 31 O.S. § 11.	Resident individual (other than the transferor) or corporation whose activities are subject to supervision by RI Dept. of Business Regulation, FDIC, Comptroller of Currency, or Office of Thrift Supervision.	Resident individual (other than settlor) or entity authorized by state law to act as a trustee and whose activities are subject to supervision by SD Division of Banking, FDIC, Comptroller of Currency, or Office of Thrift Supervision. SD trustee automatically ceases to serve if it fails to meet these qualifications.
9.	**May non-qualified trustees serve?**	Yes.	Yes.	Yes.

OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Not addressed by the Act. See Oklahoma Trust Act (60 O.S. § 175.1, *et seq*.) and Oklahoma Prudent Investor Act (60 O.S. § 175.60, *et seq*., esp. § 175.69, which specifically permits investment advisors. Distribution advisors and trust protectors are permitted.	Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor. The term "advisor" includes a protector.	Trust may have one or more advisors who may remove and appoint qualified trustees or trust advisors who have authority to direct, consent to, or approve distributions from trust. Trust may have investment advisor as well. Trustor may only serve as investment advisor or as a noncontrolling member of a distribution advisor committee.
11.	**Are fraudulent transfers excepted from coverage?**	Yes. Uniform Voidable Transactions Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. 31 O.S. § 17.	Yes. Uniform Voidable Transactions Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes, Uniform Voidable Transactions Act applies and sets aside transfers with intent to hinder, delay or defraud specific creditor.

OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

	SUBJECT	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. Existing creditors and future creditors: Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. 24 O.S. § 121.	Clear and convincing evidence. Existing creditors: Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. Future creditors: Four years after transfer.	Clear and convincing evidence. Existing creditors: Two years after transfer, or six months after transfer was or could reasonably have been discovered if creditor (1) asserted specific claim before transfer; or (2) if creditor files another action within two years that asserts claim before transfer. Future creditors: Two years after transfer. Discovery is deemed to have occurred at the time a public record of a transfer is made, including the filing of a deed, financing statement or bill of sale. SDCL § 55-6-10.
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	No.	No.	No.
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes. 31 O.S. § 12.	Yes, if at the time of transfer a court order for child support existed but only to the extent of the debt.	Yes, but only "to the extent of the debt" existing "at the time of transfer." SDCL § 55-16-15.

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

	SUBJECT	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
15.	**Does the statute provide an exception (no asset protection) for alimony?**	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust but only to the extent of the debt.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust, but the exception applies only "to the extent of the debt" existing "at the time of transfer." SDCL § 55-16-15.
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected but only to the extent of the debt.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust, but the exception applies only "to the extent of the debt" existing "at the time of transfer." Further: (i) a settlor's separate property is protected in a divorce, regardless of the date of marriage; and (ii) any marital property transferred to a DAPT is also protected if the settlor's spouse either receives a specified statutory notice, or provides written consent after having received the information required by the notice.
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer but only to the extent of the debt. .	No.

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
18.	**Does statute provide other express exceptions (no asset protection)?**	No.	No.	No.
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	No.	No.	Yes, for forced heirship and legitime. Silent with respect to elective share.
20.	**Are there provisions for moving trust to state and making it subject to statute?**	No.	No.	Yes.
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	Yes. 31 O.S. § 16.	Yes.	Yes. SDCL § 55-16-2(3)
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	No.	Yes.	DAPT statute does not have any such specific provision, but SDCL § 55-3-47 applies such a rule to all South Dakota trusts.
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	No.	Yes.	Yes. SDCL § 55-16-7
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	No.	Yes.	Yes. SDCL § 55-16-12

	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	No. Not addressed in the Act. Oklahoma Trust Act would allow trust agreements to authorize use and occupancy of property with trustee discretion. 60 O.S. § 175.1, *et seq*.	No, except for QPRT residence.	Yes. SDCL § 55-16-2(2)(g)
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	No.	No.	Yes. *But see* SDCL § 55-1-42 and SDCL § 55-1-43 rather than SDCL Chapter 55-16.
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes. The Act does not address, but if property is retained in a spendthrift trust for the beneficiary it is protected. 31 O.S. § 12. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property. 43 O.S. § 121. However, trust income and assets can be considered a resource for purpose of determining alimony and child support.	Yes, but may be considered in property division.	Nothing in DAPT statute. *But see* SDCL §§ 55-1-43 (discretionary interests are not property), 55-1-26 (powers of appointment are not property), 55-1-27 (certain remainders not property), 55-1-30 (distribution and remainder interests irrelevant to divorce).
28.	**Are due diligence procedures required by statute?**	No.	No.	No.
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	No.	Yes.	Yes. SDCL § 55-16-16.

	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No.	No.	No, but see SDCL §§ 55-1-46, *et seq*.
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes, as of November 2021, decanting is permitted. 60 O.S. § 175.701 *et seq*. Additionally, the Oklahoma Trust Act permits courts to construe trusts. 60 O.S. § 175.23.	No.	Yes. SDCL § 55-2-15.
32.	**What is allowable duration of trusts?**	Rule against perpetuities. Abolished rule against perpetuities for trust property when the power of alienation is not suspended. 60 O.S. § 175.47.	Abolished rule against perpetuities.	Abolished rule against perpetuities.
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	Yes. 31 O.S. § 11.	No.	No.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes, charging order is only remedy. 18 O.S. § 2034.	Yes, charging order is only remedy.	Yes, charging order is only remedy. Other legal and equitable remedies expressly barred. SDCL § 47-34A-504.
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	Two years after trustee provides report that adequately discloses claims. 60 O.S. § 175.57.	Trustee application and court discharge.	180 days after trustee provides accounting, or by order of court for supervised trusts. SDCL § 55-3-45 and SDCL Chapter 21-22.

OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

SUBJECT | OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	No.	No.	No.
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No.	No.	No.
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No.	No.	*Matter of Cleopatra Cameron Gift Trust*, 931 N.W.2d 244 (2019) held that a California Court Order requiring direct payment of a trust beneficiary's child support obligations to a former spouse was not entitled to full faith and credit because the California order was an enforcement mechanism. Enforcement mechanisms are not entitled to full faith and credit under the U.S. Constitution. As the Court explained, the forum state is entitled to apply its own enforcement rules. Under South Dakota law the Court could not require direct payments from the trust to the non-beneficiary since the trust instrument included a spendthrift clause. ***(continued …)***

OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

SUBJECT		OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
				(…continued) In *United States v. Nelson,* 2018 WL 2390128, a tax protestor moved real property into a trust of which he was the trustee. Following the transfer of the property to the trust, the tax protestor continued to reside on the property and otherwise dealt with the property as though the trust did not exist, including personally paying property taxes and expenses and individually granting an easement to a third party. The opinion from the United States District Court for South Dakota does not indicate there was any attempt made for the trust to qualify as an APT. On these facts, the Court held that the trust was a taxpayer's nominee and alter ego.
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No.	No.	No.
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	Oklahoma does not have any express statutory authority that allows a creditor to reach assets subject to a presently exercisable general power of appointment.	Rhode Island does not have any statutory authority that allows or prevents a creditor to reach assets subject to a presently exercisable general power of appointment.	No. SDCL 55-1-26.

OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

SUBJECT | OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

41.	**Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?**	Yes.	Rhode Island law is silent on notification to beneficiaries.	SDCL § 55-2-13 governs notice to beneficiaries of the existence of a trust. For an *irrevocable* trust, a settlor, trust advisor or trust protector may, by the terms of the governing instrument, or by providing separate written directions to the trustee, expand, restrict, eliminate or otherwise modify the rights of beneficiaries to information relating to a trust. The period of time during which a beneficiary's right to be informed may be restricted may be related to the age of the beneficiary, the lifetime of the settlor or the settlor's spouse, or both, a specific date or term of years, or the date of a specific event that is certain to occur. See SDCL § 55-2-13.
42.	**Does state require any filings that give notice to third parties that the trust exists?**	No, with exceptions for certain business trusts. 60 O.S. § 172.	Rhode Island law is silent on notification to third parties.	No.

OKLAHOMA | RHODE ISLAND | SOUTH DAKOTA

SUBJECT	TENNESSEE	UTAH	VIRGINIA
	Citation: Tenn. Code Ann. § 35-16-101	**Citation:** Utah Code Ann. § 25-6-501, *et seq.*	**Citation:** Va. Code §§ 64.2-745.1 and 64.2-745.2 (amended 2012)
	Effective Date: July 1, 2007	**Effective Date:** December 31, 2003	**Effective Date:** July 1, 2012
	URL: http://www.legislature. state.tn.u-s	**URL:** http://www.le.utah.gov	**URL:** http://lis.virginia.gov/ cgi-bin/legp604.exe?ses=121&typ=bil&val=SB11&Submit2=Go
1. **What requirements must trust meet to come within protection of statute?**	Trust instrument must: (1) be irrevocable; (2) expressly state TN law governs validity, construction and administration of the trust; (3) contain a spendthrift clause; (4) must have at least one "qualified trustee".	Trust instrument must: (1) be irrevocable; (2) contain spendthrift clause; (3) state that the trust is governed by UT law; (4) require that at least one trustee be resident of UT or UT trust company; and (5) require 30 days' notice to all persons to whom settlor owes a domestic support obligation prior to any distribution to the settlor. Utah Code § 25-6-502(5).	(1) The trust is irrevocable; (2) there must be, at all times when distributions could be made to the settlor pursuant to the settlor's qualified interest, at least one beneficiary other than the settlor; (3) the trust must have at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee; (4) the trust instrument must expressly incorporate the laws of the Commonwealth to govern the validity, construction, and administration of the trust; (5) the trust instrument must include a spendthrift provision. Va. Code § 64.2-745.2.
2. **May a revocable trust be used for asset protection?**	No.	No.	No. Va. Code §§ 64.2-745.2(A) and 64.2-747(A)(1).
3. **Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	Yes. Amendments enacted in 2008, 2010, 2013, 0219 and 2021.	Yes. Enacted in 2003. Repealed and re-enacted in 2013. Amended in 2019.	This statute is the first enactment for broad approval of self-settled spendthrift trusts.
	TENNESSEE	**UTAH**	**VIRGINIA**

SUBJECT	TENNESSEE	UTAH	VIRGINIA
4. **What contacts with state are suggested or required to establish situs?**	Required: (1) some or all of trust assets deposited in state; (2) TN trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.	Required: UT resident or UT trust company as trustee or co-trustee. Utah Code § 25-6-502(5)(c).	Required: The VA qualified trustee must (1) maintain or arrange for custody within the Commonwealth of some or all of the property that has been transferred to the trust by the settlor, (2) maintain records within the Commonwealth for the trust on an exclusive or non-exclusive basis, (3) prepare or arrange for the preparation within the Commonwealth of fiduciary income tax returns for the trust, or (4) otherwise materially participate within the Commonwealth in the administration of the trust. Va. Code § 64.2-745.2(A).
5. **What interests in principal and income may settlor retain?**	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT; (5) ability to be reimbursed for income taxes attributable to trust, and (6) ability to have debts, expenses and taxes of the settlor's estate paid from the trust.	Settlor may retain interest in CRT, GRAT, GRUT, QPRT and use of real or personal property of trust. Utah Code § 25-6-502(7)(g) and (h).	Settlor may retain any interests in: (1) CRT; (2) up to 5% interest in total-return trust; (3) QPRT; (4) GRAT; (5) ability to have debts, expenses and taxes of the settlor's estate paid from the trust; and (6) ability to be reimbursed for income taxes attributable to trust. Va. Code §§ 64.2-745.2(A) and 64.2-745.2(D).
	TENNESSEE	**UTAH**	**VIRGINIA**

	SUBJECT	TENNESSEE	UTAH	VIRGINIA
6.	**What is trustee's distribution authority?**	(1) Absolute discretion; (2) pursuant to a standard.	As provided in the trust instrument, which may be subject to direction from a trust protector, or veto by the settlor or a trust protector. Utah Code § 25-6-502(7)(c) and (e).	Absolute discretion. Va. Code § 64.2-745.2(A).
7.	**What powers may settlor retain?**	Settlor may retain: (1) power to veto distributions; (2) non-general power of appointment (lifetime or testamentary); (3) power to replace trustee/advisor with non-related/nonsubordinate party; and (4) serve as an investment advisor. TCA §§ 35-16-109 and 35-16-111.	Settlor may retain: (1) power to veto distributions; (2) *inter vivos* or testamentary special power of appointment; (3) power to appoint non-subordinate advisors/ protectors; (4) right to serve as investment advisor; (5) right to receive principal of trust subject to ascertainable standard; and (6) use real or personal property of trust. Utah Code § 25-6-502(7).	Settlor may retain: (1) a testamentary special power of appointment; (2) a right to remove a trustee and to appoint a new trustee. Note: The settlor may NOT have the right to disapprove distributions from the trust. Va. Code § 64.2-745.2(A), (D).
8.	**Who must serve as trustee to come within protection of statute?**	Resident individual, or is authorized by TN law to act as a trustee and whose activities are subject to supervision by the Tennessee Dept. of Financial Institutions, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto.	At least one trustee must be UT resident or UT trust company. Utah Code § 25-6-502(5)(c). Settlor can be co-trustee, but may not make distribution decisions. Utah Code § 25-6-502(7)(a). However, settlor may participate in distribution decisions to a limited degree. Utah Code § 25-6-502(7)(b).	There must always be at least one "qualified trustee," who must be a natural person residing within the Commonwealth or a legal entity authorized to engage in trust business within the Commonwealth. Va. Code § 64.2-745.2(A).
9.	**May non-qualified trustees serve?**	Yes.	Yes. Utah Code § 25-6-502(5)(c).	Yes. See Va. Code § 64.2-745.2(A) (using nonexclusive terminology for the requirement of a qualified trustee).

| | | TENNESSEE | UTAH | VIRGINIA |

| | SUBJECT | TENNESSEE | UTAH | VIRGINIA |

10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Yes. Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) investment advisors. The term "advisor" includes a trust protector. TCA § 35-16-108.	Yes. Trust may have non-subordinate advisors/protectors who can remove or appoint trustees; direct, consent to, or disapprove distributions; or serve as investment directors. Settlor may be investment director. Utah Code § 25-6-502(7)(c) and (d).	Not addressed expressly, but it does state that the discretion of a qualified trustee cannot be subject to the direction of someone who, were that person a trustee, could not be a qualified trustee, and protects trust advisers and trust directors from liability. Va. Code § 64.2-745.2(A).
11.	**Are fraudulent transfers excepted from coverage?**	Yes. Uniform Voidable Transactions Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. [Statute needs clarification with respect to actual intent amendment in 2013.]	Yes. Uniform Voidable Transactions Act applies. Utah Code § 25-6-502(9). See Utah Code §§ 25-6-101 through 25-6-407.	Yes. Va. Code § 64.2-745.1(C).

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	SUBJECT	TENNESSEE	UTAH	VIRGINIA
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. Existing creditors: 18 months after transfer, or six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. 18 months after transfer if claim based upon constructive fraud. Future creditors: 18 months after transfer. [See Item 11] TCA § 35-16-104.	Burden is on creditor. Clear and convincing evidence. Utah Code § 25-6-502(6)(e). Limitations period is 2 years after transfer (or one year after transfer is or reasonably could have been discovered by creditor). However, period may be shortened to 120 days after notice is mailed to known creditors or published as to unknown creditors. Utah Code § 25-6-502(9).	Clear and convincing evidence. *Bruce v. Dean*, 140 S.E. 277, 149 Va. 39 (1927); *Mills v. Miller Harness Co., Inc.,* 326 S.E.2d 665, 229 Va. 155 (1985); *In re Coleman,* 285 B.R. 892 (2002). Suit must be brought within five years from recordation of transfer or, if not recorded, within five years from the time the same was or should have been discovered. Va. Code § 64.2-745.1(D).
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	No.	Yes. Utah Code §§ 25-6-101 through 25-6-407.	No.
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes. TCA § 35-16-104.	No, but before distribution to settlor, trustee must give 30 days advance notice to domestic support obligation creditor. Utah Code § 25-6-502(5)(g). "Domestic support obligation" is: a child support order, a spousal support order, or an unsatisfied divorce property division claim. Utah Code § 25-6-502(1)(b).	Yes. Va. Code § 64.2-744(A) protecting rights of a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance).

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

TENNESSEE | UTAH | VIRGINIA

SUBJECT | TENNESSEE | UTAH | VIRGINIA

15.	**Does the statute provide an exception (no asset protection) for alimony?**	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Pre-marital transfers to the trust are protected. TCA § 35-16-104.	No, but see Subject 14, above.	No.
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Pre-marital transfers to the trust are protected. TCA § 35-16-104.	No, but see Subject 14, above.	No.
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	No.	No.
18.	**Does statute provide other express exceptions (no asset protection)?**	No.	No.	Yes. No spendthrift protection against: (A) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust. Va. Code § 64.2-744(B). (B) the United States, the Commonwealth, any city, county, or town. Va. Code § 64.2-744(C). (C) claims under a statute or regulation of the United States or the Commonwealth that requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance. Va. Code § 64.2-745(A).

TENNESSEE | UTAH | VIRGINIA

	SUBJECT	TENNESSEE	UTAH	VIRGINIA
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	Yes.	No.	No.
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes.	Yes, under provisions of the Utah Uniform Trust Code. Utah Code § 75-7-107(5).	Yes. Va. Code § 64.2-745.1(G) states that "The movement to the Commonwealth of the administration of an existing trust, which, after such movement to the Commonwealth, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the settlor on the date of such movement of all of the assets previously transferred to the trust by the settlor."
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	Yes.	Yes. Utah Code § 25-6-502(5)(d).	No.
		TENNESSEE	UTAH	VIRGINIA

	SUBJECT	TENNESSEE	UTAH	VIRGINIA
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	Yes.	No.	No.
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	Yes.	Yes. Utah Code § 25-6-502(5)(a).	No.
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes. TCA § 35-16-104(e).	Yes. Utah Code § 25-6-502(8).	Yes. Va. Code § 64.2-745.1(E).
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	Yes.	Yes. Utah Code § 25-6-502(7)(h).	No.
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes. TCA § 35-15-504.	Yes, because not expressly prohibited in statute.	No.
		TENNESSEE	UTAH	VIRGINIA

	SUBJECT	TENNESSEE	UTAH	VIRGINIA
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes.	Perhaps, but the answer is not clear. Consider *Goggin v. Goggin*, 299 P.3d 1079 (Utah 2013); *Dahl v. Dahl*, 459 P.3d 276 (Utah 2015); *Clearfield State Bank v. Contos*, 562 P.2d 622 (Utah 1977); *Estate of Knickerbocker*, 912 P.2d 969 (Utah 1996); *Endrody v. Endrody*, 914 P.2d 1166 (Utah Ct. App. 1996).	Yes. Va. Code §§ 64.2-743 – 64.2-744.
28.	**Are due diligence procedures required by statute?**	No.	Yes, affidavit required. Utah Code § 25-6-502(5)(l).	No.
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Yes. TCA § 35-16-106(b)(1)(A).	No lien, but costs and fees may be paid from trust. See Utah Code § 75-7-1004(2).	No.
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No. TCA § 35-15-1014(b).	No. See Utah Code § 75-7-112.	No.

| TENNESSEE | UTAH | VIRGINIA |

| SUBJECT | TENNESSEE | UTAH | VIRGINIA |

31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes. TCA § 35-15-816(c).	No, but procedure for modifying trust available under UT Uniform Trust Code. Utah Code §§ 75-7-410 through 417. No express statutory authority for decanting, but decanting may be permissible even without such authority.	Yes. See Va. Code § 64.2-778.1 (effec. July 1, 2012).
32.	**What is allowable duration of trusts?**	Up to 360 years.	Up to 1,000 years. Utah Code § 75-2-1203.	USRAP adopted. Va. Code §§ 55-12.1 to 55-12.6. Rule does not apply to personal property held in trust if the trust instrument, by its terms, provides that the rule shall not apply to such trust. Va. Code § 55-13.3(C).
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No. There is no TN income tax.	Yes, if trust is administered in UT or if trust has UT source income. Utah Code §§ 59-10-201, 205.	Yes. See VA Code Ann. § 58.1-302.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes for LLCs; charging order is only remedy. No for LPs.	Yes, charging order is only remedy. Utah Code § 48-3a-503.	Yes. On LLC, see Va. Code § 13.1-1041.1(D). On Limited Partnership, see Va. Code § 50-73.46.1(D).

| TENNESSEE | UTAH | VIRGINIA |

SUBJECT	TENNESSEE	UTAH	VIRGINIA
35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	One year after the earlier of: (1) the date the beneficiary was sent information (previously it was a report) that disclosed facts indicating the existence of a potential claim against the trustee; or (2) the date the beneficiary possessed actual knowledge of facts indicating the existence of a potential claim against the trustee.	Six months after trustee provides report that adequately discloses claims and informs beneficiary of the six-month period. Utah Code § 75-7-1005.	Rules similar to Sections 411 to 414 of the Uniform Trust Code for termination of trust. See Va. Code §§ 64.2-729 to 64.2-733. No specific procedure for being discharged from liability on a trust.
36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?	No.	*Dahl v. Dahl*, 459 P.3d 276 (Utah 2015), involved a divorce action in which the wife challenged the husband's prior transfer of marital assets into a NV DAPT. However, the UT court applied UT law, rather than NV law, based upon UT's strong public policy in favor of equitable distribution of marital assets on divorce. Based on language in the trust, the court found that the trust was revocable and that the trust assets were subject to equitable distribution in the divorce proceeding.	No.
37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?	No.	No.	No.

| TENNESSEE | UTAH | VIRGINIA |

| SUBJECT | TENNESSEE | UTAH | VIRGINIA |

38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?	No.	No.	No.
39. Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?	No.	No.	No.
40. May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?	No. TCA § 35-15-505(e), including Comments.	Probably, but not clear.	Yes, but only to the extent that the powerholder's property is insufficient. Va. Code Sec. 64.2-2736(A).
41. Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?	No. TCA § 35-15-813(e).	Probably, but the answer is not entirely clear. See Utah Code §75-7-811.	Va. Code § 64.2-775(B)(3) directs the trustee of an irrevocable trust to provide notice to qualified beneficiaries, and upon request of a beneficiary to furnish the beneficiary with a copy of the trust instrument. However, Va. Code § 64.2-703(B) states that "the trust terms shall prevail over any provision of this chapter except [a list of sections that does not include §64.2-775)." Thus, a DAPT instrument executed on or after October 1, 2012, can relieve the trustee of the duty to notify the qualified beneficiaries of the trust's existence and the duty to provide the beneficiaries with copies of the trust instrument.

| TENNESSEE | UTAH | VIRGINIA |

SUBJECT	TENNESSEE	UTAH	VIRGINIA
42. Does state require any filings that give notice to third parties that the trust exists?	No. However, making a public filing (e.g., recording a deed) may accelerate the statute of limitations. TCA § 35-16-104(b)(2).	No.	No.
	TENNESSEE	**UTAH**	**VIRGINIA**

SUBJECT	WEST VIRGINIA	WYOMING
	Citation: W.Va. Code Sections 44D-5-503a, 44D-5-503b, 44D-5-503c and 44D-5-505.	**Citation:** Qualified Spendthrift Trust (QST): W.S. §§ 4-10-502 and 4-10-510 – 523 Discretionary Asset Protection Trust (Discretionary APT): W.S. §§ 4-10-504 and 4-10-506(c)
	Effective Date: June 8, 2016	**Effective Date:** QST: July 1, 2007 Discretionary APT: July 1, 2013
	URL: http:/www.legis.state.wv.us/WVCODE/Code.cfm	**URL:** http://legisweb.state.wy.us
1. What requirements must trust meet to come within protection of statute?	(1) The trust is irrevocable; (2) The trust is created during the grantor's lifetime; (3) The trust instrument expressly incorporates the laws of WV; (4) The trust instrument includes a spendthrift provision; (5) The grantor does not have the right to disapprove distributions from the trust; (6) The grantor executes a "qualified affidavit", essentially certifying that the transfer of property to the trust will not make the grantor insolvent and the transfer is not defrauding any creditor; and (7) There is, at all times when distributions could be made to the grantor at least one beneficiary other than the grantor who can receive income, principal, or both income and principal. W. Va. Code §44D-5-503b(d).	QST: Trust instrument must: (1) state that trust is a "qualified spendthrift trust" under § 4-10-510 of WY statutes; (2) be irrevocable; (3) expressly state WY law governs validity, construction and administration of the trust; (4) contain a spendthrift clause; (5) settlor must have personal liability insurance equal to lesser of $1,000,000 or value of trust assets. W.S. § 4-10-510(a); 4-10-523 Discretionary APT: Trust instrument must: (1) provide for discretionary distributions of trust income and/or principal to the settlor; (2) trust must be governed by WY law. W.S. § 4-10-506(c).
	WEST VIRGINIA	**WYOMING**

SUBJECT		WEST VIRGINIA	WYOMING
2.	**May a revocable trust be used for asset protection?**	No.	See item # 19, Wyoming revocable trusts are not subject to a spousal elective share W.S. § 2-5-101 or a family allowance W.S. § 5-5-103 upon the death of the settlor.
3.	**Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	2016 statute is the first enactment for broad approval of self-settled spendthrift trusts. The statute has not been further amended.	QST and Discretionary APT: Yes. Amendments enacted in 2005, 2007, 2008, 2011, 2013, 2015, 2017, 2019, and 2021.

WEST VIRGINIA | WYOMING

SUBJECT | WEST VIRGINIA | WYOMING

4.	**What contacts with state are suggested or required to establish situs?**	WV qualified trustee must be (1) a natural person who is a resident of WV or an entity that can engage in trust business in WV and (2) must maintain custody within WV of property in the trust, maintain records in WV, prepare fiduciary income tax returns in WV, or materially participate in administration in WV. W. Va. Code §44D-5-503b(a).	QST: Required: WY trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be nonexclusive); (c) prepares or arranges for the preparation of income tax returns; (d) or, otherwise materially participates in the administration of the trust. W.S. § 4-10-510(a) & 4-10-103(a)(xxxv). Discretionary APT: Required: At least one WY trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be non-exclusive); (c) prepares or arranges for the prepara-tion of income tax returns; (d) or, otherwise materially participates in the administration of the trust. W.S. § 4-10-506(c)(ii) & 4-10-103(a)(xxxv).

WEST VIRGINIA | WYOMING

SUBJECT		WEST VIRGINIA	WYOMING
5.	**What interests in principal and income may settlor retain?**	In addition to the grantor's qualified interest in the trust, grantor may retain: (1) the right to receive income or principal pursuant to an ascertainable standard; (2) interest in CRUT or CRAT; (3) up to 5% interest in total-return trust; (4) interest in QPRT; (5) a qualified annuity interest under IRC § 2702; (6) ability to have debts, expenses, and taxes of the grantor's estate paid from the trust; and (7) ability to be reimbursed for income taxes attributable to trust. W. Va. Code §44D-5-503c(c).	QST: Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT, (5) GRAT or GRUT; (6) principal distributions, (7) ability to be reimbursed for income taxes attributable to trust, (8) ability to have debts, expenses and taxes of the settlor's estate paid from the trust. W.S. § 4-10-510(a)(iv). Discretionary APT: Settlor may retain ability to receive discretionary distributions of trust income and principal. W.S. § 4-10-506(c).
6.	**What is trustee's distribution authority?**	Sole discretion. W.Va. Code § 44D-5-503b(c).	QST and Discretionary APT: (1) absolute discretion; (2) pursuant to a standard. W.S. § 4-10-510(a)(iv)(F) & 4-10-103(a)(xxix).

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7.	**What powers may settlor retain?**	Settlor may retain: (1) A testamentary special power of appointment, exercisable by will or lifetime instrument; (2) A right to remove a trustee and to appoint a new trustee; (3) A right to receive income or principal pursuant to an ascertainable standard; (4) A right to receive each year from the trust a percentage of principal, up to 5%, as specified in the trust instrument. Note: The settlor may NOT have the right to disapprove distributions from the trust. W. Va. Code §44D-5-503c; W. Va. Code §44D-5-503b(d)(7).	QST: Settlor may retain: (1) power to veto distributions; (2) *inter vivos* or testamentary general or limited power of appointment; (3) power to add or remove a trustee, trust protector, or trust advisor; (4) serve as an investment advisor. W.S. § 4-10-510(a)(iv). Discretionary APT: Settlor may retain same powers as for QST, except power to veto distributions.
8.	**Who must serve as trustee to come within protection of statute?**	There must always be at least one "qualified trustee," who must be a natural person residing in WV or a legal entity authorized to engage in trust business in WV. W. Va. Code §44d-5-503b(d)(4).	QST: Resident individual or a person authorized by WY law to act as trustee or a regulated financial institution. W.S. § 4-10-510(a) & 4-10-103(a)(xxxv). Discretionary APT: At least one trustee must be resident individual or a person authorized by WY law to act as trustee or a regulated financial institution. Trustee with authority to make distributions to settlor cannot be a trust beneficiary, related to settlor, or subordinate to settlor under I.R.C. § 672(c). W.S. § 4-10-506(c)(iii) & 4-10-103(a)(xxxv).

WEST VIRGINIA | WYOMING

SUBJECT		WEST VIRGINIA	WYOMING
9.	**May non-qualified trustees serve?**	Yes, but the trust must also have at all times at least one other "qualified trustee". *Id.*	QST: Yes, if at least one trustee is a qualified trustee. W.S. § 4-10-510(a). Discretionary APT: Yes, if at least one trustee is a qualified trustee. W.S. § 4-10-506(c)(ii).
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	Not addressed expressly, but the discretion of a qualified trustee cannot be subject to the direction of someone who, were that person a trustee, could not be a qualified trustee. The statute protects trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, the trust. W. Va. Code §44D-5-503a(e).	QST and Discretionary APT: Yes. Trust may have trust protector who can remove or appoint trustees; direct, consent to, or disapprove distributions; change governing law; change beneficiary's interests; and grant or terminate powers of appointment. Trust may have advisors. Settlor may be an advisor. W.S. § 4-10-510(a)(iv); 4-10-710 & 4-10-712.
11.	**Are fraudulent transfers excepted from coverage?**	Yes. W.Va. Code § 44D-5-503a(c).	Yes. Wyoming Uniform Fraudulent Transfers Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. W.S. § 34-14-205(a)(i) & (ii); W.S. § 34-14-206(a) & (b); W.S. § 4-10-506(c)(i); W.S. § 4-10-514

SUBJECT		WEST VIRGINIA	WYOMING
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	Clear and convincing evidence. *Board of Trustees v. Blair*, 45 W. Va. 812 (1899) ("strictly and clearly proved"); *Kesling v. Mick*, 103 W. Va. 485, 138 S.E. 386 (1927). Suit must be brought within four (4) years after the date of the transfer to the trust. W. Va. Code §44D-5-503a(d).	QST clear and convincing evidence W.S. § 4-10-517(a) Discretionary APT clear and convincing evidence W.S. § 4-10-506(c)(i) & 4-10-517(a); QST and Discretionary APT: Statute of limitations for fraudulent transfers is 120 days after notice is mailed to creditor or, if unknown creditor, 120 days after publication notice; transfers without notice later of two years after transfer or six months after could reasonably have been discovered W.S. § 34-14-210.
13.	**Has this state adopted the 2014 amendments and Comments of the Uniform Voidable Transactions Act?**	Yes. W. Va. Code § 40-1A-1, *et seq*. (effec. June 8, 2018).	No.
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes. The spendthrift provision is unenforceable against a beneficiary's child who has a judgment or court order against the beneficiary for child support. Also, grantor's "qualified affidavit" must identify any agreement or order of court for support in favor of the transferor's children. W. Va. Code §44D-5-503b(e)(7).	QST: Yes. W.S. § 4-10-520(a)(i). Discretionary APT: No.

[14] Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in family law area.

SUBJECT		WEST VIRGINIA	WYOMING
15.	**Does the statute provide an exception (no asset protection) for alimony?**	No, but grantor's "qualified affidavit" must identify any agreement or order of court for support or alimony in favor of the transferor's spouse or former spouse. *Id.*	QST and Discretionary APT: No.
16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	No, but grantor's "qualified affidavit" must identify any agreement or order of court for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of the transferor's spouse or former spouse. *Id.*	QST and Discretionary APT: No.
17.	**Does statute provide an exception (no asset protection) for tort claims?**	No.	QST and Discretionary APT: No.
18.	**Does statute provide other express exceptions (no asset protection)?**	Yes. The spendthrift provision is unenforceable against (1) judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; (2) claim of State of WV to the extent a statute so provides; and (3) claim of the United States to the extent federal law so provides. W. Va. Code §44D-5-503(b).	QST: Yes. (1) Financial institution with which the settlor has listed qualified trust property on the financial institution's application or financial statement used to obtain or maintain credit from the financial institution other than for the benefit of the qualified spendthrift trust; (2) property of a qualified spendthrift trust that was transferred to the trust by a settlor who received the property by a fraudulent transfer. W.S. § 4-10-520(a)(ii) & (a)(iii). Discretionary APT: No.

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SUBJECT		WEST VIRGINIA	WYOMING
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	No. Forced heirship or legitime does not exist under WV law. Spousal elective share may apply against the self-settled spendthrift trust, depending on how established.	QST: Yes. W.S. § 4-10-517(b). Discretionary APT: Yes. W.S. § 4-10-506(a)(ii). W.S. § 4-10-506(c) was amended in the 2007 legislative session to delete references to an elective share and statutory allowances as allowed claims against the settlor of a trust upon the settlor's death.
20.	**Are there provisions for moving trust to state and making it subject to statute?**	Yes. The movement to WV of the administration of an existing trust, which, after such movement to the state, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated as a transfer to this trust by the grantor on the date of such movement of all of the assets previously transferred to the trust by the grantor. W. Va. Code §44D-5-503a(g).	QST: Yes, permits transfer of trust property from trust created in another jurisdiction with similar creditor protection for settlor with creditor protection relating back to date of funding of trust created in other jurisdiction. Irrevocable trusts from other states may also elect to become qualified spendthrift trusts if they incorporate law of WY, obtain qualified trustee, and have spendthrift clause. W.S. § 4-10-515(b). Discretionary APT: Yes, if trust meets discretionary distributions standard and acquires at least one WY qualified trustee.
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	No.	QST: Yes. W.S. § 4-10-510(a)(iii). Discretionary APT: No. Spendthrift clause is not required.

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SUBJECT		WEST VIRGINIA	WYOMING
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	No.	QST: Yes. W.S. § 4-10-522. Discretionary APT: No
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	No.	QST: Yes. W.S. § 4-10-517(a) & 4-10-521(a)(ii). APT: Yes, W.S. § 4-10-517(a).
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes. The statute protects trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, the trust. W. Va. Code §44D-5-503a(e).	Yes, QST and Discretionary APT provisions protect the trustee, trust advisers, trust protectors, attorneys, or any person involved in the counseling, drafting, preparation, administration, execution, or funding of the trust W.S. § 4-10-517(a) & (b); A trustee, trust protector, trust advisor or other fiduciary of a trust, whether acting in a fiduciary capacity or not, is not liable for failing to comply with any judgment, decree or order of a court of the United States, a court of another state or any other court other than a Wyoming court, that the trustee, trust protector or trust advisor believes in good faith to be inconsistent with the restrictions and limitations imposed under the terms of the trust or by the Wyoming UTC. W.S. §4-10-507.1(b).

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SUBJECT		WEST VIRGINIA	WYOMING
25.	**Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?**	Not specifically addressed, but the trust instrument shall not be deemed to be revocable on account of the inclusion of a provision allowing the grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code). W. Va. Code §44-5-503c(c)(7).	QST: Yes, W.S. § 4-10-510(a)(iv)(F) & (H). APT: Yes, if the terms of the trust accord the trustee such discretion.
26.	**May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?**	Yes because not expressly prohibited in statute.	QST and Discretionary APT: Yes and a distribution to a third party for the benefit of the beneficiary is specifically protected from a claim of the creditor. W.S. § 4-10-504(b)(iii).
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	Yes; if settlor's assets are transferred into trust, the non-settlor beneficiary's interest in the trust should be treated as separate property of the non-settlor beneficiary. W. Va. Code §48-1-237(4).	Yes, there is no exception to creditor protection for either a QST or an APT for property settlements in a divorce.
28.	**Are due diligence procedures required by statute?**	Yes. The grantor must execute a "qualified affidavit", essentially certifying that the transfer of property to the trust will not make the grantor insolvent and the transfer is not defrauding any creditor. W. Va. Code §44D-5-503b(e).	QST: Yes; affidavit required. W.S. § 4-10-523. Discretionary APT: No.

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SUBJECT		WEST VIRGINIA	WYOMING
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Partially. Any transfer made to the qualified self-settled spendthrift trust which may be set aside as a fraudulent conveyance shall be chargeable first with the entire costs and expenses, including attorney's fees, properly incurred by the trustee in the defense of the action or proceeding to set aside the transfer. W. Va. Code §44D-5-503a(c).	QST and Discretionary APT: Yes. W.S. § 4-10-521(a).
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No.	QST and Discretionary APT: No.
31.	**Is the trustee given "decanting" authority to modify the trust?**	Yes. See, West Virginia Uniform Decanting Act, W. Va. Code §44D-8B-1 (effective July 1, 2020).	QST and Discretionary APT: Yes, if trustee has authority to make mandatory or discretionary distributions of trust income and principal, trustee may distribute in further trust. Trust protector may also have power to decant or modify trust. W.S. § 4-10-816(a)(xxviii).
32.	**What is allowable duration of trusts?**	USRAP adopted.	QST and Discretionary APT: Up to 1,000 years, except for real property. W.S. § 34-1-139.

	WEST VIRGINIA	WYOMING

SUBJECT		WEST VIRGINIA	WYOMING
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	Yes. W.Va. Code § 11-21-7(c).	No, Wyoming has no income tax.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	Yes. For LP, court may charge the debtor's partnership interest with the judgment but judgment creditor only has the rights of an assignee which include the entitlement only to the debtor partner's distribution. W. Va. Code § 47-9-41. For an LLC, charging order only constitutes a lien on the debtor's distributional interest. W. Va. Code § 31B-5-504.	QST and Discretionary APT: Yes; charging order is exclusive remedy for all LPs and LLCs, including single member LLCs. W.S. § 17-29-503.

	WEST VIRGINIA	WYOMING

SUBJECT		WEST VIRGINIA	WYOMING
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	Statute of limitations is one (1) year if the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and was informed of the time allowed for commencing a proceeding. W. Va. Code § 44D-10-1005(a). Otherwise, statute of limitations is five (5) years after the first to occur of (1) The removal, resignation or death of the trustee; (2) The termination of the beneficiary's interest in the trust; (3) The termination of the trust; or (4) The time when the beneficiary knew or should have known of the breach of trust. W. Va. Code § 44D-10-1005(b).	QST and Discretionary APT: Two years after trustee provides report that adequately discloses claims. W.S. § 4-10-1005(a).
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	No.	No.
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No.	No.

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SUBJECT		WEST VIRGINIA	WYOMING
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	Yes. *Jackson v. Brown,* 239 W. Va. 316, 801 S.E.2d 194 (2017), holds that in determining whether a trust is liable in tort for the actions of a trustee, the test is whether the trustee committed the tort in the course of administering the trust.	No.
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	Not to reporter's knowledge.	No.
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	Yes. A presently exercisable general power of appointment (except for a power exercisable by a trustee and limited to an ascertainable standard or exercisable by another person only upon the consent of the trustee or a person holding an adverse interest) is treated as a power of withdrawal. The holder of a power of withdrawal is treated in the same manner as the grantor of a revocable trust, and the property of a revocable trust is subject to the claims of the creditors of the grantor or power holder. W. Va. Code § 44D-5-505(a).	QST and Discretionary APT: No, unless the power holder exercises the power of appointment in favor of himself, his creditors, his estate, or the creditors of his estate. W.S. § 4-10-505.1(a). A creditor of the holder of a power of withdrawal may not reach the trust property subject to the power of withdrawal until the holder withdraws the property from the trust. W.S. § 4-10-505.1(b).

WEST VIRGINIA	WYOMING

SUBJECT	WEST VIRGINIA	WYOMING
41. Does state allow settlor to eliminate or waive notice to beneficiaries of the existence of the trust?	Yes. The provisions of W. Va. Code § 44D-8-813(b) requiring notice by trustee of existence of trust to beneficiaries is not a mandatory requirement under W. Va. Code § 44D-1-105(b) and can be waived by the settlor in the trust agreement.	QST and Discretionary APT: Yes, W.S. §4-10-110(a) and (b).
42. Does state require any filings that give notice to third parties that the trust exists?	No.	No.

WEST VIRGINIA	WYOMING

American College of Trust Estate Counsel
State Law Status of the Uniform Voidable Transactions Act
As of 8/7/2022

	State	Adopted	If Not Adopted, Date Introd. In Legis.	Statutes	Effective Date/ Legislative Status	URL Link	Rejected Comments?	DAPT State?
1	Alabama	Yes		Ala. Code §§ 8-9B-1 through 17	Effective 1/1/18	http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm	Yes - In third-party analysis of legislation	Yes
2	Arkansas	Yes		Ark. Code §§4-59-201 through 215	Effective 4/7/17	http://www.lexisnexis.com/hottopics/arcode Default.asp	Yes - see uncodified Section 2 to A.B. 2139	No
3	California	Yes		Cal. Civil Code §§3439.01 through .14	Effective 1/1/16	https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&divisio=4,&title=2.&part=2.&chapter=1.&article=	No	No
4	Georgia	Yes		Ga. Code Ann. §§18-2-70 through 85	Effective 7/1/15	http://www.lexisnexis.com/hottopics/gacode/Default.asp	No	No
5	Idaho	Yes		Idaho Code Ann. §§55-910 through 922	Effective 7/1/15	https://legislature.idaho.gov/statutesrules/idstat/title55/t55ch9/	No	No
6	Indiana	Yes		Ind. Code §§32-18-2-2 through 23	Effective 7/1/17	http://iga.in.gov/legislative/laws/2016/ic/titles/032/articles/018/	Yes - Ind. Code §32-18-2-23	Yes
7	Iowa	Yes		Iowa Code §§684.1 through 26	Effective 7/1/16	https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=6848&year=2017	No	No
8	Kentucky	Yes		Ky. Rev. Stat. Ann. §§378A.005 through 140	Effective 1/1/16	http://www.lrc.ky.gov/statutes/chapter.aspx?id=43993	No	No
9	Michigan	Yes		Mich. Comp. Laws §§566.31 through 43	Effective 4/10/17	http://www.legislature.mi.gov/(S(hv4yyksxadofitp4pcsw2h1y))/mileg.aspx?page=getObject&objectName=mcl-Act-434-of-1998	No	Yes
10	Minnesota	Yes		Minn. Stat. §§513.41 through 51	Effective 8/1/15	https://www.revisor.mn.gov/statutes/?id=513.41	No	No
11	Nebraska	Yes		Neb. Rev. Stat. §§13-801 - 815	Effective 9/1/19	https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=36	No	No
12	New Jersey	No		N.J. Rev. Stat. §§25:2-20 through 33	8/10/21, which is 90 days after the date of enactment, which was 5/12/21.	https://pub.njleg.state.nj.us/Bills/2020/PL21/92_.PDF	No	No
13	New Mexico	Yes		N.M. Stat. §§56-10-4 through 29	Effective 1/1/16	http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm	No	No
14	New York	Pending		A.5622 / S.4236	120 days after became law; awaiting Gov. Cuomo's signature	https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05622&term=2019&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y&LFIN=Y&Chamber%26nbspVideo%2FTranscript=Y	Yes - NY City Bar Report on Legislation, p.8.	No
15	North Carolina	Yes		N.C. Gen Stat. §§39-23.1 through 12	Effective 10/1/15	http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0039	No	No

1st Col.: Adopted UVTA
Blue Text: Legis./Analysis
Non-Acquiesced to Comments

1

2nd Col.: UVTA Legislation Intro.
Red Text: Also DAPT State

American College of Trust Estate Counsel
State Law Status of the Uniform Voidable Transactions Act
As of 8/7/2022

		State	Adopted	If Not Adopted, Date Introd. In Legis.	Statutes	Effective Date/ Legislative Status	URL Link	Rejected Comments?	DAPT State?
16		North Dakota	Yes		N.D. Cent. Code §§13-02.1-01 through 13-02.1-13	Effective 8/1/15	http://www.legis.nd.gov/cencode/t13c02-1.pdf#nameddest=13-02p1-01	No	No
17		Pennsylvania	Yes		12 Pa. Cons. Stat. §§5101-5114	Effective 2/20/18, or 60 days after passage on 12/22/17	https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=12&div=0&chpt=51	No	No
18		Rhode Island	Yes		6 R.I. Gen. Laws §§6-16-1 through 17	Effective 7/2/2018	http://webserver.rilin.state.ri.us/Statutes/TITLE6/6-16/INDEX.HTM	No	Yes
19		Utah	Yes		Utah Code §§25-6-101 through 405	Effective 5/9/17	https://le.utah.gov/xcode/Title25/Chapter6/25-6.html?v=C25-6_2017050920170509	No	Yes
20		Vermont	Yes		Vt. Stat. Ann. Tit. 9, §§57-2285 through 2299	Effective 7/1/17	http://legislature.vermont.gov/statutes/chapter/09/057	No	No
21		Washington	Yes		Wash. Rev. Code §§19.40.011 through 900	Effective 7/23/17	http://app.leg.wa.gov/RCW/default.aspx?cite=19.40	No	No
22		West Virginia	Yes		W. Va. Code §§40-1A-1 through 15	Effective 5/29/18, or 90 days from passage on 3/10/18	http://www.wvlegislature.gov/wvcode/chapterentire.cfm?chap=40&art=1A&section=1#01	No	Yes
	1	South Carolina	No	5/13/21	HB 4390: Prop. S.C. Code §§27-24-10 through 150	5/13/21 - Referred to Committee on Judiciary	https://www.scstatehouse.gov/billsearch.php?billnumbers=4390&session=124&summary=B		
	2	Massachusetts	No	3/29/21	HB 1832: Amend Chapter 109A	4/19/22 - Reporting date extended to Thursday 6/20/22, pending concurrence, after which the Senate concurred on 6/9/22	https://malegislature.gov/Bills/192/H1832		

1st Col.: Adopted UVTA
Blue Text: Legis./Analysis
Non-Acquiesced to Comments

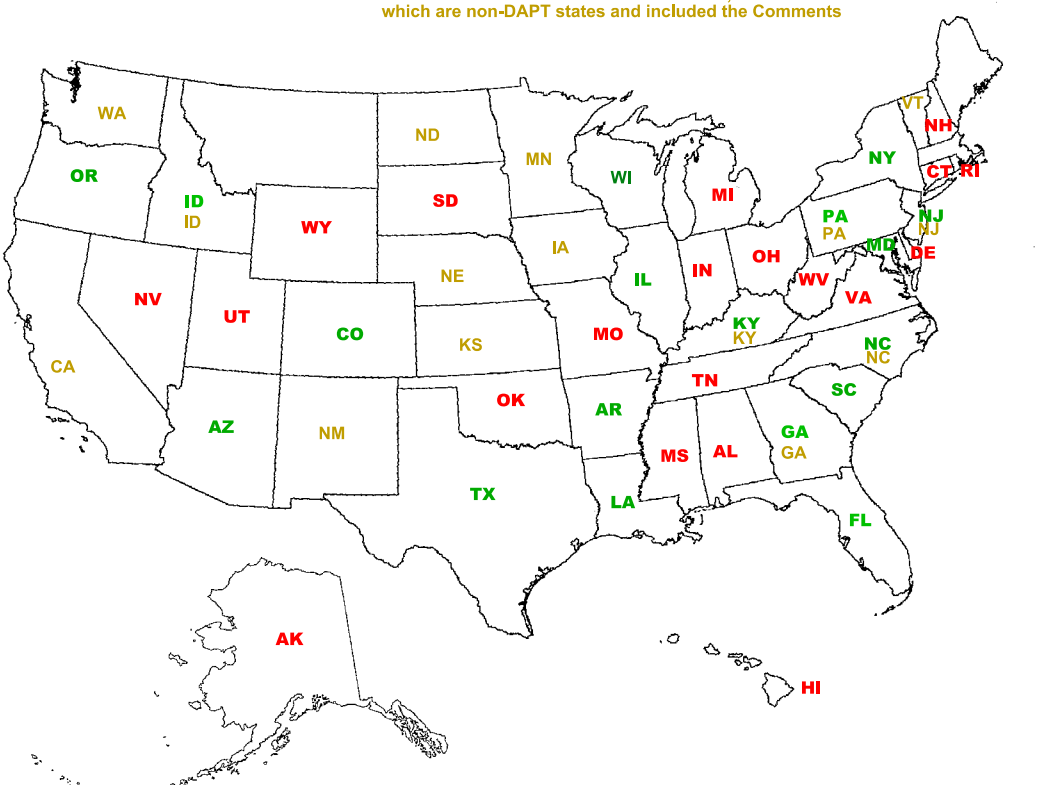
2nd Col.: UVTA Legislation Intro.
Red Text: Also DAPT State

Status as of August 2022:

20 Domestic Asset Protection Trust States

17 Non-DAPT States With Various Self-Settled Techniques

14 Uniform Voidable Transactions Act states, which are non-DAPT states and included the Comments



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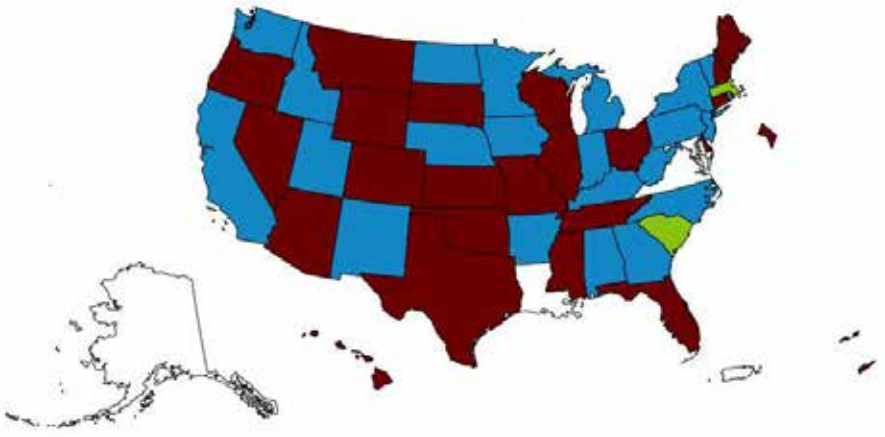
2014 | Voidable Transactions Act

Consumer Protection & Labor | Business Regulation | Civil Procedure & Courts

Map | Bill List | Summary | Enactment History



Enactment Map ■ Introduced ■ Enacted ■ Prior Version Enacted

Description

The Uniform Voidable Transactions Act (UVTA), formerly named the Uniform Fraudulent Transfer Act (UFTA), strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. The 2014 amendments address a few narrowly-defined issues and are not a comprehensive revision of the 1984 act. For further information about the UVTA, please contact Legislative Program Director Katlin Wolff at 212-450-6615 or kwolff@uniformlaws.org.

https://www.uniformlaws.org/committees/community-home?CommunityKey=64ee1ccc-a3ae-4a0e-a18f-a0ba8208bf49

Faculty

David G. Shaftel is a partner with Shaftel Delman, LLC in Anchorage, Alaska. He has been very involved in Alaska's development of new estate-planning vehicles, and has been active in the drafting of new Alaska legislation. Mr. Shaftel has written extensively about Alaska's self-settled discretionary spendthrift trusts, family limited partnerships, family limited liability companies, and Alaska's optional community property system. He has participated as part of the faculty in numerous professional continuing education programs sponsored by the Alaska Bar Association, ALI-ABA, the American College of Trust and Estate Counsel, the University of Miami Heckerling Institute on Estate Planning, Southern California Tax and Estate Planning Forum, the Great Western Tax & Estate Planning Conference, the Anchorage Estate Planning Counsel, and various private groups. Mr. Shaftel is a member and the former Alaska Chair of the American College of Trust and Estate Counsel "ACTEC," and is a member of the American College of Tax Counsel. He also was the founder of the Taxation Section of the Alaska Bar Association and has been a director of the Estate Planning Section of that association. In addition, he is a former president of the Anchorage Estate Planning Council and is a present director and one of the founding members of the Alaska Community Foundation. Mr. Shaftel is a member of the Alaska, California and Washington Bar Associations. He received his A.B. from Stanford University, his J.D. from Berkeley Law and his LL.M. in Taxation from New York University.