TWELFTH
ACTEC COMPARISON
OF THE
DOMESTIC ASSET PROTECTION TRUST STATUTES

Updated through August 2019

Edited by David G. Shaftel

This August 2019 version of the chart updates the prior August 2017 chart and marks the twenty-second anniversary of modern domestic asset protection trusts.

This updated chart includes two new additions to the DAPT community. Indiana enacted its DAPT statute which was effective July 1, 2019, and Connecticut enacted its DAPT statute effective January 1, 2020.

This 2019 chart includes George Karibjanian's updated charts describing the states which have enacted the Uniform Voidable Transactions Act, and those that have excepted the Comments to that Act. Also included is Gray Edmondson's analysis of just what is "self-settled". The Alaska Supreme Court has decided a new DAPT case, and state editors have added helpful citations to their state provisions.

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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, two states, Colorado and Missouri, had statutory provisions which appeared to support the formation of DAPTs. Case law subsequently determined that the Colorado statute was not effective. In 1997, Alaska was the first state to enact a usable DAPT statute. In the twenty-two years since, seventeen other states have followed suit. Indiana and Connecticut's statutes are the most recently enacted additions to our chart. There are now nineteen 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 relevant 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.

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 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 nineteen 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 forty-one percent of the geographical area of the United States and twenty-three percent of the population. 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.

[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.

For example, a new type of partial DAPT statute has emerged and has been referred to as the "Inter Vivos QTIP Trust." These are statutes which specifically abrogate the rule against self-settled spendthrift trusts for lifetime QTIP trusts and, in some cases, for 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, and Texas.[2] In essence, these statutes provide that the assets of an inter vivos QTIP 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.[3]

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 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.[4] Similarly, Arizona protects the assets in a supplemental needs trust from the settlor's creditors.

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[2] 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). 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); Tenn. Code Ann. § 35-15-505(d); Va. Code Ann. § 64.2-747(B)(3); Wyo. Stat. § 4-10-506(f)).

[3] 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).

[4] 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)).

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.[5]

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 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, tax reimbursement provisions, supplemental needs trusts, or section 529 accounts.

In addition to the two choice of law rules provided by the Restatement, a new choice of law rule has been inserted into the Uniform Fraudulent Transfer Act. In 2014, the Uniform Law Commission adopted amendments to the Uniform Fraudulent Transfer 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.

[5] 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.

Section 10 and the Comments of the Uniform Voidable Transactions Act have created considerable controversy.[6] The critics argue it is an inappropriate "back door" attempt to change well-established choice of law rules.[7] 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 states. Five enacting states (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.[8] Four states (Alabama, Arkansas, Indiana, 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 Status of the Uniform Voidable Transactions Act*, as of August 1, 2019, 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 thirteen 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.

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[6] 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.

[7] *Id.*

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

For self-settled trusts, absent DAPT statutes, spendthrift protections are generally not available.[9] 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),[10] 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 provisions applicable upon failure of a powerholder to exercise a power of appointment.[11] A number of states have addressed some of these issues, but the landscape is not at all clear. Some states have addressed a number of these potential situations.[12] 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 the trust may be formed in a non-DAPT state). In such a case, trust assets would be subject to claims of the deemed settlor's creditors. [13]

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

[10] 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.

[11] 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.

[12] 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.

[13] 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.

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

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

NO.	SUBJECT	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
20.	**Are there provisions for moving trust to state and making it subject to statute?**	7	19	29	42	53	65	77
21.	**Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?**	7	19	29	42	53	65	77
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	7	20	29	42	53	65	77
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	8	20	30	43	53	65	77
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	8	20	30	43	54	66	78
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?**	8	20	30	43	54	66	78
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?**	8	20	30	43	54	66	78

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

NO.	SUBJECT	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
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	8	21	31	44	54	66	78
28.	**Are due diligence procedures required by statute?**	8	21	31	44	54	67	78
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	9	21	31	44	54	67	78
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	9	21	31	44	54	67	79
31.	**Is the trustee given "decanting" authority to modify the trust?**	9	21	32	44	55	68	79
32.	**What is allowable duration of trusts?**	9	22	32	45	55	68	79
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	10	22	32	45	55	68	79
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	10	22	32	45	55	68	79
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	10	22	33	45	55	69	79

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

		AK CT DE	HI IN MI	MS MO NV	NH OH OK	RI SD TN	UT VA WV	WY
NO.	**SUBJECT**	**Page**	**Page**	**Page**	**Page**	**Page**	**Page**	**Page**
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	11	23	34	46	55	69	80
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	12	23	34	46	55	70	80
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	12	23	34	46	56	70	80
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	12	23	35	46	56	70	80
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	13	23	35	46	56	70	80

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

SUBJECT	ALASKA	CONNECTICUT	DELAWARE
	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:** [not yet available]	**Citation:** 12 Del. C. §§ 3570-3576 **Effective Date:** July 9, 1997 **URL:** http://www.delcode.delaware.gov
1.	**What requirements must trust meet to come within protection of statute?**	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.	Trust instrument must: (1) be irrevocable; (2) expressly state that DE law governs validity, construction, and administration of trust (unless trust is being transferred to DE trustee from non-DE trustee); (3) contain spendthrift clause. 12 Del. C. § 3570(11).
2.	**May a revocable trust be used for asset protection?**	No AS 13.36.368; AS 34.40.110(b)(2).	No	No 12 Del. C. § 3536(d)(3).
3.	**Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	Yes, amendments enacted in: 2014, 2013, 2010, 2008, 2006, 2004, 2003, 2001, 2000, and 1998.	2020 is CT's first year.	Yes, amendments enacted in: 2019, 2017, 2015, 2014, 2013, 2011, 2010, 2009, 2008, 2007,2006, 2005, 2003, 2002, 2000, 1999, and 1998.
4.	**What contacts with state are suggested or required to establish situs?**	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.	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).

ALASKA	CONNECTICUT	DELAWARE

SUBJECT	ALASKA	CONNECTICUT	DELAWARE
5. What interests in principal and income may settlor retain?	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.	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.
6. What is trustee's distribution authority?	Discretion whether or not governed by a standard, which may be subject to a power to veto a distribution, a testamentary or lifetime nongeneral 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.	(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).

ALASKA	CONNECTICUT	DELAWARE

SUBJECT	ALASKA	CONNECTICUT	DELAWARE
7. What powers may settlor retain?	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.	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).
8. Who must serve as trustee to come within protection of statute?	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.	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).
9. May non-qualified trustees serve?	Yes AS 34.40.110(f),(g).	Yes, as co-trustee.	Yes, as a co-trustee. 12 Del. C. § 3570(8)(f).
10. May trust have distribution advisor, investment advisor, or trust protector?	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 ***(continued …)***	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.	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.

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SUBJECT	ALASKA	CONNECTICUT	DELAWARE
	(…continued) 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).		
11. Are fraudulent transfers excepted from coverage?	Yes Alaska has not adopted Uniform Fraudulent Transfer 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.	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(b).
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. 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. ***(continued …)***	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.	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).

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		(…continued) Future creditors: Four years after transfer. AS 34.40.110(b)(1); AS 34.40.110(d).		
13.	**Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?**	No	No	No
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	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.	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).
15.	**Does the statute provide an exception (no asset protection) for alimony?**	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.	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 ***(continued …)***

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

ALASKA	CONNECTICUT	DELAWARE

SUBJECT	ALASKA	CONNECTICUT	DELAWARE
			(…continued) judicial proceeding involving separation or divorce, but only to extent of such debt. Otherwise, assets are protected. 12 Del. C. § 3573(1).
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 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.	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).
17. Does statute provide an exception (no asset protection) for tort claims?	No	Yes, only for claims that arise as a result of death, personal injury or property damage occurring before the date of transfer.	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).
18. Does statute provide other express exceptions (no asset protection)?	No	No	No

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19. Does statute prohibit any claim for forced heirship, legitime or elective share?	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).	Yes 12 Del. C. § 3573.
20. Are there provisions for moving trust to state and making it subject to statute?	Yes AS 13.36.035; AS 13.36.043.	No, there is no express statutory provision for transfer into Connecticut. [Section 8 of the new CT trust code 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 state, including this state].	Yes 12 Del. C. § 3570(10), (11); 12 Del. C. § 3572(c); 12 Del. C. § 3575.
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes AS 34.40.110(a).	No	Yes 12 Del. C. § 3570(11)(c).
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	Yes 12 Del. C. § 3572(g).

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23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	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.	Yes 12 Del. C. § 3571.
24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	Yes, and also provides protection for funding limited partnerships and LLCs. AS 34.40.110(e).	Yes	Yes 12 Del. C. § 3572(d),(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 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.	Yes 12 Del. C. § 3570(11)(b)(6).
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 AS 34.40.113.	No. There is no express provision that allows payment of expenses to a third party on behalf of a beneficiary other than Section 66 (a) (21), a general trustee power to pay expenses on behalf of a disabled beneficiary.	Yes 12 Del. C. § 3536(a); 12 Del. C. § 3570(11)(b)(9).
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	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.	Yes, but may be considered in property division in certain instances. 12 Del. C. § 3536(a).
28.	**Are due diligence procedures required by statute?**	Yes; affidavit required. AS 34.40.110(j).	No	No

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29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	Yes AS 13.36.310(c).	Yes	Yes 12 Del. C. § 3574(b)(1)(a).
30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	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.	No 12 Del. C. § 3329.
31.	**Is the trustee given "decanting" authority to modify the trust?**	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.	Yes 12 Del. C. § 3528.
32.	**What is allowable duration of trusts?**	Up to 1,000 years. AS 34.27.051.	Up to 800 years.	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.

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33. Does state assert income tax against DAPTs formed by non-resident settlors?	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.	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.
34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	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 since passage of this act.	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.
35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	(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.	Judicial accountings are not required unless governing instrument so provides or are ordered by court. Account-ings 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 ***(continued …)***

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			(…continued) 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.
36. **Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	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 ***(continued …)***	The statute was only enacted in 2019. Therefore, there has not been time for any case law to develop.	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.
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		(…continued) 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.		
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	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 only enacted in 2019. Therefore, there has not been time for any case law to develop.	No
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No	The statute was only enacted in 2019. Therefore, there has not been time for any case law to develop.	No
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No	The statute was only enacted in 2019. Therefore, there has not been time for any case law to develop.	No

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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?	No AS 34.40.115	No. There is no express exception to prevent a creditor from reaching assets subject to a presently exercisable general power of appointment. A beneficiary holding a 5 & 5 withdrawal power or allowing its lapse is expressly protected from creditors.	No. 12 Del. C. § 3536(d)(2).

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	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:** [not available yet]	**Citation:** Mich. Comp. Laws 700.1041-.1050 **Effective Date:** March 8, 2017 **URL:** http://www.legislature.mi.gov
1. **What requirements must trust meet to come within protection of statute?**	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 adminis-tration of the trust; (3) be irrevocable. IC 30-4-8.	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).
2. **May a revocable trust be used for asset protection?**	No	No IC 30-4-8-4.	No
3. **Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	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.	The statute is relatively new (2017). 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.
4. **What contacts with state are suggested or required to establish situs?**	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.	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).
	HAWAII	**INDIANA**	**MICHIGAN**

SUBJECT		HAWAII	INDIANA	MICHIGAN
5.	**What interests in principal and income may settlor retain?**	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).	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).
6.	**What is trustee's distribution authority?**	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).	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).
7.	**What powers may settlor retain?**	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.	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).
		HAWAII	**INDIANA**	**MICHIGAN**

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8.	**Who must serve as trustee to come within protection of statute?**	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.	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).
9.	**May non-qualified trustees serve?**	Yes, as long as there is a permitted trustee.	Yes. As long as there is a Qualified Trustee. IC 30-4-8-4(1).	Yes, as a co-trustee.
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	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.	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).
11.	**Are fraudulent transfers excepted from coverage?**	Creditors can set aside only transfers made with actual intent to hinder, delay, or defraud.	Yes IC 30-4-8-8.	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.
		HAWAII	**INDIANA**	**MICHIGAN**

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12. Fraudulent transfer action: burden of proof and statute of limitations.	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.	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).
13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?	No	Yes. The 2014 amendments have been adopted for the Uniform Fraudulent Transfers Act which remains the Uniform Fraudulent Transfer Act but a specific statute states that the comments to the Uniform Act are not to be used. IC 32-18-2-23.	Yes
14. Does statute provide an exception (no asset protection) for a child support claim?[14]	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).	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).

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

HAWAII	INDIANA	MICHIGAN

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15. **Does the statute provide an exception (no asset protection) for alimony?**	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.	No
16. **Does statute provide an exception (no asset protection) for property division upon divorce?**	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).	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).
17. **Does statute provide an exception (no asset protection) for tort claims?**	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	No

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SUBJECT	HAWAII	INDIANA	MICHIGAN
18. Does statute provide other express exceptions (no asset protection)?	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.	No
19. Does statute prohibit any claim for forced heirship, legitime or elective share?	Yes	No. Indiana does not recognize forced heirship or legitime and the elective share would not apply to the trust assets.	No, but Michigan does not recognize forced heirship or legitime and the elective share does not apply to trust assets.
20. Are there provisions for moving trust to state and making it subject to statute?	Yes	No	Yes MCL 700.1045(5).
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes HRS § 554g-5(d).	Yes IC 30-4-8-10.	Yes MCL 700.1042(aa)(iii).

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SUBJECT	HAWAII	INDIANA	MICHIGAN
22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	Yes HRS § 554g-5(f).	Yes IC 30-4-8-7(b).	Yes MCL 700.1045(9).
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	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.	Yes MCL 700.1044(1).
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes HRS § 554g-8(f).	No	Yes MCL 700.1045(7).
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?	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.	Use of real property in a qualified personal residence trust is specifically authorized. MCL 700.1044(2)(i). Otherwise real or personal property not specifically authorized but the transferor's potential or actual use of principal is permitted if the use is the result of the exercise of the trustee's discretion. MCL 700.1044(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	This issue is not specifically addressed.	Yes MCL 700.1049.

	HAWAII	INDIANA	MICHIGAN

SUBJECT	HAWAII	INDIANA	MICHIGAN
27. **Is a non-settlor beneficiary's interest protected from property division at divorce?**	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.	Yes MCL 700.1045(4)(a).
28. **Are due diligence procedures required by statute?**	No	Yes, affidavit is required, and must cover a number of specific subjects. IC 30-4-8-4.	Yes Absence of affidavit may be used as evidence but validity of transfer is not affected in any other way. MCL 700.1046.
29. **Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	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).	Yes MCL 700.1047(2)(a)(i).
30. **Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No	No	No A non-contestability clause is not enforced if the court finds that probable cause for institute the contest. MCL 700.7113.
31. **Is the trustee given "decanting" authority to modify the trust?**	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.	Yes MCL 556.115a and 700.7820A.

| | HAWAII | INDIANA | MICHIGAN |

SUBJECT		HAWAII	INDIANA	MICHIGAN
32.	**What is allowable duration of trusts?**	No limitation. Rule against perpetuities does not apply to qualifying trusts. HRS § 525-4(6).	Uniform Statutory Rule Against Perpetuities. IC 32-17-8.	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.
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	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.	No, except for income from real estate or business sources within MI.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	No	Yes	Yes MCL 449.1303(a) and 449.1703 (limited partnership) and MCL 450.4507 (LLC).
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	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.	One year after trustee provides report that adequately disclosed the existence of potential claim. MCL 700.7905.

	HAWAII	INDIANA	MICHIGAN

SUBJECT	HAWAII	INDIANA	MICHIGAN
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	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?	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).	Yes, under section 13 of the Powers of Appointment Act of 1967. MCL 556.123.

HAWAII	INDIANA	MICHIGAN

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
	Citation: Miss. Code Ann. §§ 91-9-701—91-9-723	**Citation:** Mo. Rev. Stat. §§ 456.5-505	**Citation:** Nev. Rev. Stat. §§ 166.010-166.170
	Effective Date: July 1, 2014	**Effective Date:** 1989	**Effective Date:** Oct. 1, 1999
	URL: http://www.lexisnexis.com/hottopics/mscode	**URL:** http://revisor.mo.gov/main/OneChapter.aspx?chapter=456	**URL:** http://www.leg.state.nv.us
1.	**What requirements must trust meet to come within protection of statute?**	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.	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.
2.	**May a revocable trust be used for asset protection?**	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.	No NRS 166.040(1)(b).
3.	**Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	No amendments.	Yes, amendments enacted in 2004, 2006, 2009, 2011, 2012, 2014, 2015, and 2016.	Yes. The Nevada Legislature approved amendments in 2007, 2009, 2011, 2015, 2017, and 2019, and nothing has been weakened.
		MISSISSIPPI	**MISSOURI**	**NEVADA**

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
4. What contacts with state are suggested or required to establish situs?	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).	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).
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 be one of a class of beneficiaries of a trust discretionary as to income or principal. RSMo § 456.5-505.3.	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)].

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SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
6. What is trustee's distribution authority?	(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).	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).
7. What powers may settlor retain?	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. 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.	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)].

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT		MISSISSIPPI	MISSOURI	NEVADA
8.	**Who must serve as trustee to come within protection of statute?**	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.	Resident individual or trust company or bank that maintains office in Nevada. NRS 166.015(2).
9.	**May non-qualified trustees serve?**	Yes	Not addressed by statute.	Only one trustee must meet the requirements of NRS 166.015(2). There are no restrictions on co-trustees.
10.	**May trust have distribution advisor, investment advisor, or trust protector?**	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.	Yes NRS 163.553 et seq. [directed trusts]; NRS 163.5553 [trust protectors].
11.	**Are fraudulent transfers excepted from coverage?**	Yes Uniform Fraudulent Transfer 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 Fraudulent Transfer 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).	Yes Uniform Fraudulent Transfer 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).
		MISSISSIPPI	**MISSOURI**	**NEVADA**

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
12. Fraudulent transfer action: burden of proof and statute of limitations.	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.	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.
13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?	No	No	No
14. Does statute provide an exception (no asset protection) for a child support claim?[14]	Yes	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2	No
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.	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2	No

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

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
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. Otherwise, assets are protected.	No	No
17. Does statute provide an exception (no asset protection) for tort claims?	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No	No
18. Does statute provide other express exceptions (no asset protection)?	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	No
19. Does statute prohibit any claim for forced heirship, legitime or elective share?	Yes	No	No, but Nevada law does not recognize such claims.
20. Are there provisions for moving trust to state and making it subject to statute?	Yes	No	Yes NRS 166.180.
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes	No	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	No	No

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes	Irrelevant, if the trust complies with RSMo § 456.5-505.3	Yes NRS 166.045.
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes	No	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).
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	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	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).
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	Yes RSMo § 456.5-504.1	Yes NRS 166.120(3).

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
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. 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.	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)].
28. Are due diligence procedures required by statute?	Yes; affidavit required.	No	No
29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	Yes	Yes RSMo § 456.7-709.	No
30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	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."	Yes and no. Effective October 1, 2019, 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, ***(continued …)***

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
			(…continued) 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.
31. Is the trustee given "decanting" authority to modify the trust?	No	Yes RSMo § 456.4-419 (bar working on revisions)	Yes NRS163.556 and 166.170(a).
32. What is allowable duration of trusts?	Rule against perpetuities.	Abolished; generally applicable only after August 28, 2001. RSMo § 456.025.1	Up to 365 years. NRS 111.1031(2)(b).
33. Does state assert income tax against DAPTs formed by non-resident settlors?	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.	No Nevada State Constitution, Article 10, Section 1, clause 9.
34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Charging order is only remedy.	No	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].

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
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 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.	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.
	MISSISSIPPI	**MISSOURI**	**NEVADA**

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?	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.	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.
37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?	No	No	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.
38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?	No	No	No

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SUBJECT	MISSISSIPPI	MISSOURI	NEVADA
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?	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.	No

MISSISSIPPI	MISSOURI	NEVADA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
	Citation: New Hampshire RSA 564-B:5-505A	**Citation:** Ohio Legacy Trust Act, Chapter 5816 of the Ohio Revised Code	**Citation:** Family Wealth Preservation Act (the "Act"). Okla. Stat. tit. 31 § 10-18
	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	**Effective Date:** June 9, 2004
	URL: http://www.gencourt.state. nh.us	**URL:** http://www.legislature.state. oh.us/laws.cfm	**URL:** http://www.lsb.state.ok.us Statute at: //www.oscn.net
1. **What requirements must trust meet to come within protection of statute?**	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, construc-tion, 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)	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.
	NEW HAMPSHIRE	**OHIO**	**OKLAHOMA**

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
2. May a revocable trust be used for asset protection?	No RSA 564-B:505(a).	No	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.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	Yes. Amendments enacted in 2011, 2014 and 2017 (complete restatement).	The vote on the Legacy Trust Act in the 129th Ohio General Assembly was unanimous in both houses. Key legislators are expected to introduce technical amendments in 2019.	Yes. Most sections of the Act were last amended and superseded effective June 8, 2005. Substantial amendments were also made effective in 2015.
4. What contacts with state are suggested or required to establish situs?	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 adminis-tration. 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)	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, deben-tures, 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.

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
5. What interests in principal and income may settlor retain?	Statute places no limitations on 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.	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.
6. What is trustee's distribution authority?	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.	Irrevocable trusts: Not addressed by the Act. Revocable trusts: see Item 5, above

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
7. What powers may settlor retain?	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	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.
8. Who must serve as trustee to come within protection of statute?	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)	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.
9. May non-qualified trustees serve?	Yes	Yes, but must have at least one qualified trustee. § 5816.02(K)	Yes
10. May trust have distribution advisor, investment advisor, or trust protector?	Yes RSA 564-B:12-1201, et seq. (trust advisors and trust protectors) and RSA 564-B:7-711 (divided trusts and directed trusts).	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	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.

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
11. Are fraudulent transfers excepted from coverage?	Yes Uniform Fraudulent Transfer 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	Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. 31 O.S. § 17.
12. Fraudulent transfer action: burden of proof and statute of limitations.	Statute is silent regarding burden of proof. Case law provides that actual fraud must be proved by clear and convincing evidence, and constructive fraud must be proved by a preponderance of the evidence. 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). ***(continued …)***	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.	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.

NEW HAMPSHIRE	OHIO	OKLAHOMA

		(…continued) 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).		
13.	**Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?**	No	No	No
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	Yes RSA 564-B:5-505A(q).	Yes § 5816.03(C)	Yes 31 O.S. § 12.
15.	**Does the statute provide an exception (no asset protection) for alimony?**	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)	No

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

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
16. Does statute provide an exception (no asset protection) for property division upon divorce?	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).	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	No
19. Does statute prohibit any claim for forced heirship, legitime or elective share?	Yes RSA 564-B:5-505A(n)(2).	Yes § 5816.03(D)	No
20. Are there provisions for moving trust to state and making it subject to statute?	No	Yes § 5816.10(C)(D) & (E)	No
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes RSA 564-B:5-505A(p).	Yes § 5816.03(B)	Yes 31 O.S. § 16.
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 § 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)	No

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	No	Yes § 5816.04	No
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	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)	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?	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)	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.
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?	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)	No

| NEW HAMPSHIRE | OHIO | OKLAHOMA |

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
27. Is a non-settlor beneficiary's interest protected from property division at divorce?	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	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.
28. Are due diligence procedures required by statute?	No	Yes, affidavit required. § 5816.06	No
29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	Yes RSA 564-B:7-709.	Yes § 5816.08(A)(3)(a)	No
30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	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.	No
31. Is the trustee given "decanting" authority to modify the trust?	Yes RSA 564-B:4-418.	Yes Ohio Rev. Code § 5808.18.	No While not addressed in the Act, the Oklahoma Trust Act permits courts to construe trusts. 60 O.S. § 175.23.

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
32. What is allowable duration of trusts?	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	Rule against perpetuities. Abolished rule against perpetuities for trust property when the power of alienation is not suspended. 60 O.S. § 175.47.
33. Does state assert income tax against DAPTs formed by non-resident settlors?	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).	Yes 31 O.S. § 11.
34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes. For LLCs, charging order is the only remedy, with limited exception for single member LLCs. RSA 304-C:126, IV. 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 § 1705.19	Yes, charging order is only remedy. 18 O.S. § 2034.
35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	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	Two years after trustee provides report that adequately discloses claims. 60 O.S. § 175.57.

NEW HAMPSHIRE	OHIO	OKLAHOMA

SUBJECT	NEW HAMPSHIRE	OHIO	OKLAHOMA
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	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. 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:5-504(c).	Yes, see general Ohio Trust law Ohio R.C. 5805.06(B)(1), however there are certain protections provided for five and five powers and annual exclusion amounts under Ohio R.C. 5805.06 (B)(2)(a)(b) and (c). Note, also, the Settlor of an Ohio Legacy Trust is not permitted to retain a general power of appointment see Ohio R.C. 5816.05.	Oklahoma does not have any statutory authority that allows a creditor to reach assets subject to a presently exercisable general power of appointment.

| | NEW HAMPSHIRE | OHIO | OKLAHOMA |

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
	Citation: R.I. Gen. Laws §§ 18-9.2-1 - 18-9.2-7 **Effective Date:** July 1, 1999 **URL:** http://www.rilin.state.ri.us	**Citation:** S.D. Cod. Laws §§ 55-16-1 - 55-16-16 **Effective Date:** March 2, 2005 **URL:** http://www.legis.state.sd.us	**Citation:** Tenn. Code Ann. § 35-16-101 **Effective Date:** July 1, 2007 **URL:** http://www.legislature. state.tn.u-s
1. What requirements must trust meet to come within protection of statute?	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).	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".
2. May a revocable trust be used for asset protection?	No	No	No
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	Yes, amendment enacted in 2007 and 2013.	Yes Amendments enacted in 2011, 2010, 2009, 2008, 2007, 2006, 2012, 2014, 2015, 2016, 2017, and 2019.	Yes Amendments enacted in 2008, 2010, and 2013.
	RHODE ISLAND	**SOUTH DAKOTA**	**TENNESSEE**

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
4. What contacts with state are suggested or required to establish situs?	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).	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.

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
5. What interests in principal and income may settlor retain?	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; and (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. SDCL § 55-16-2(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.
6. What is trustee's distribution authority?	Discretion, or pursuant to a standard.	(1) Absolute discretion; (2) pursuant to an ascertainable standard.	(1) Absolute discretion; (2) pursuant to a standard.
7. What powers may settlor retain?	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); and (5) serve as investment trust advisor. SDCL § 55-16-2.	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.

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
8. Who must serve as trustee to come within protection of statute?	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.	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.
9. May non-qualified trustees serve?	Yes	Yes	Yes
10. May trust have distribution advisor, investment advisor, or trust protector?	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.	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.	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.

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
11. Are fraudulent transfers excepted from coverage?	Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes, Uniform Fraudulent Transfers Act applies and sets aside transfers with intent to hinder, delay or defraud specific creditor.	Yes. Uniform Fraudulent Transfer 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.]
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.	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.	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. Two years after transfer if claim based upon constructive fraud. Future creditors: Two years after transfer. [See Item 11]
13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?	No	No	No

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
14. Does statute provide an exception (no asset protection) for a child support claim?[14]	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.	Yes
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 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.	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.
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. 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.	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.

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

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
17. Does statute provide an exception (no asset protection) for tort claims?	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	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	Yes, for forced heirship and legitime. Silent with respect to elective share.	Yes
20. Are there provisions for moving trust to state and making it subject to statute?	No	Yes	Yes
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes	Yes SDCL § 55-16-2(3)	Yes
22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	Yes	DAPT statute does not have any such specific provision, but SDCL § 55-3-47 applies such a rule to all South Dakota trusts.	Yes
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes	Yes SDCL § 55-16-7	Yes

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes	Yes SDCL § 55-16-12	Yes
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, except for QPRT residence.	Yes SDCL § 55-16-2(2)(g)	Yes
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	Yes *But see* SDCL § 55-1-42 and SDCL § 55-1-43 rather than SDCL Chapter 55-16.	Yes § 35-15-504
27. Is a non-settlor beneficiary's interest protected from property division at divorce?	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).	Yes
28. Are due diligence procedures required by statute?	No	No	Yes; affidavit required.
29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	Yes	Yes SDCL § 55-16-16	Yes
30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	No	No, but see SDCL §§ 55-1-46, et seq.	No

	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
31. Is the trustee given "decanting" authority to modify the trust?	No	Yes SDCL § 55-2-15	Yes
32. What is allowable duration of trusts?	Abolished rule against perpetuities.	Abolished rule against perpetuities.	Up to 360 years.
33. Does state assert income tax against DAPTs formed by non-resident settlors?	No	No	No, if the beneficiaries are non-residents. If the beneficiaries are residents, a tax is levied on dividends and interest.
34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes, charging order is only remedy.	Yes, charging order is only remedy. Other legal and equitable remedies expressly barred.	Yes for LLCs; charging order is only remedy. No for LPs.
35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	Trustee application and court discharge.	180 days after trustee provides accounting, or by order of court for supervised trusts. SDCL § 47-34A-504	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.
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

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	RHODE ISLAND	SOUTH DAKOTA	TENNESSEE
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?**	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.	No. TCA § 35-15-505(e), including comments.

RHODE ISLAND	SOUTH DAKOTA	TENNESSEE

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
	Citation: Utah Code Ann. § 25-6-501, et seq.	**Citation:** Va. Code §§ 64.2-745.1 and 64.2-745.2 (amended 2012)	**Citation:** W.Va. Code Sections 44D-5-503a, 44D-5-503b, 44D-5-503c and 44D-5-505.
	Effective Date: December 31, 2003	**Effective Date:** July 1, 2012	**Effective Date:** June 8, 2016
	URL: http://www.le.utah.gov	**URL:** http://lis.virginia.gov/ cgi-bin/legp604.exe?ses= 121&typ=bil&val=SB11&Submit2=Go	**URL:** http:/www.legis.state. wv.us/WVCODE/Code.cfm
1.	**What requirements must trust meet to come within protection of statute?**	Trust instrument must: (1) be irrevocable; (2) contain spendthrift clause; (3) state that the trust is governed by UT law; and (4) must require that at least one trustee be resident of UT or UT trust company.	(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.	(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).
2.	**May a revocable trust be used for asset protection?**	No	No Va. Code §§ 64.2-745.2(A) and 64.2-747(A)(1).	No
	UTAH	**VIRGINIA**	**WEST VIRGINIA**

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
3. **Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	Yes Repealed and re-enacted in 2013. Amended in 2019.	This statute is the first enactment for broad approval of self-settled spendthrift trusts.	2016 statute is the first enactment for broad approval of self-settled spendthrift trusts, and technical amend-ments were made in 2017.
4. **What contacts with state are suggested or required to establish situs?**	Required: UT resident or UT trust company as trustee or co-trustee.	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-exclu-sive 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).	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).

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
5. **What interests in principal and income may settlor retain?**	Settlor may retain interest in CRT, GRAT, GRUT, QPRT and use of real or personal property of trust.	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).	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).
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.	Absolute discretion. Va. Code § 64.2-745.2(A).	Sole discretion. W.Va. Code § 44D-5-503b(c).

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
7. **What powers may settlor retain?**	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.	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).	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).
8. **Who must serve as trustee to come within protection of statute?**	At least one trustee must be UT resident or UT trust company. Settlor can be co-trustee, but may not participate in distribution decisions.	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).	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. For the grantor's interest to be a "Qualified interest", distributions of income, principal, or both to the grantor must be made in the sole discretion of an "independent qualified trustee". "Independent" means that the trustee is not the grantor or the grantor's spouse, parent, descendant, or sibling. W.Va. Code § 44d-5-503b(d)(4).
	UTAH	**VIRGINIA**	**WEST VIRGINIA**

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
9. **May non-qualified trustees serve?**	Yes	Yes See Va. Code § 64.2-745.2(A) (using nonexclusive terminology for the requirement of a qualified trustee).	Yes, but the trust must also have at all times at least one other "qualified trustee". *Id.*
10. **May trust have distribution advisor, investment advisor, or trust protector?**	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.	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).	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).
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.	Yes Va. Code § 64.2-745.1(C).	Yes W.Va. Code § 44D-5-503a(c).

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
12. Fraudulent transfer action: burden of proof and statute of limitations.	Burden not addressed by statute. Existing creditors: (a) 120 days after notice to known or unknown creditors of settlor of transfer to trust; or (b) without notice then two years after transfer, or one year after transfer was or could reasonably have been discovered. (Limitations period is 2 years under DAPT statute; 4 years under Utah Uniform Voidable Transactions Act.)	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).	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). The State Editors' analysis is that the WV DAPT statute provides a statute of repose and not a statute of limitations. Therefore, actions are barred four years after the transfer, regardless of discovery of the transfer or accrual of a cause of action.
13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?	Yes	No	Yes. W.Va. Code § 40-1A-1, et seq. (effective June 8, 2018).

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
14. Does statute provide an exception (no asset protection) for a child support claim?[14]	No, but before distribution to settlor, trustee must give 30 days advance notice to domestic support obligation creditor. However, even if notice not given, domestic support obligation creditor cannot force distribution from trust or attach trust assets. "Domestic support obligation" is: a child support order, a spousal support order, or an unsatisfied divorce property division claim.	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).	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).
15. Does the statute provide an exception (no asset protection) for alimony?	See Subject 14, above.	No	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.*
16. Does statute provide an exception (no asset protection) for property division upon divorce?	See Subject 14, above.	No	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.*

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

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
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	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).	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).
19. **Does statute prohibit any claim for forced heirship, legitime or elective share?**	No	No	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.

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
20. Are there provisions for moving trust to state and making it subject to statute?	Yes, under provisions of the Utah Uniform Trust Code.	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."	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).
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes	No	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	No	No
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes	No	No

| | UTAH | VIRGINIA | WEST VIRGINIA |

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes	Yes Va. Code § 64.2-745.1(E).	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).
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	No	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).
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 because not expressly prohibited in statute.
27. Is a non-settlor beneficiary's interest protected from property division at divorce?	Yes, UCA § 75-7-502.	Yes Va. Code §§ 64.2-743 – 64.2-744.	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).

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
28. **Are due diligence procedures required by statute?**	Yes, affidavit required.	No	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).
29. **Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	No direct lien, but cost and fees may be paid from trust. See UCA § 75-7-1004.	No	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).
30. **Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	No	No	No

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
31. Is the trustee given "decanting" authority to modify the trust?	No, but procedure for modifying trust available under UT Uniform Trust Code and relatively easy to do if settlor is living. 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)	There is no West Virginia statutory authority to decant. It is unclear whether trustee may have common-law authority to decant if the trust instrument contains appropriate language.
32. What is allowable duration of trusts?	Up to 1,000 years.	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).	USRAP adopted.
33. Does state assert income tax against DAPTs formed by non-resident settlors?	Yes, if trust is administered in UT or if trust has UT source income.	Yes See VA Code Ann. § 58.1-302.	Yes W.Va. Code § 11-21-7(c).
34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes, charging order is only remedy.	Yes On LLC, see Va. Code § 13.1-1041.1(D). On Limited Partnership, see Va. Code § 50-73.46.1(D).	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.

UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	UTAH	VIRGINIA	WEST VIRGINIA
35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	Six months after trustee provides report that adequately discloses claims.	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.	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).
36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?	*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. 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.	No	No
	UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT		UTAH	VIRGINIA	WEST VIRGINIA
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	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.
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	Yes, but only to the extent that the powerholder's property is insufficient. Va. Code Sec. 64.2-2736(A).	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).

	UTAH	VIRGINIA	WEST VIRGINIA

SUBJECT	WYOMING

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: QST: July 1, 2007 Discretionary APT: July 1, 2013
URL: http://legisweb.state.wy.us

1.	**What requirements must trust meet to come within protection of statute?**	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, construc-tion 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 gov-erned by WY law. W.S. § 4-10-506(c).
2.	**May a revocable trust be used for asset protection?**	QST and Discretionary APT: No

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3.	**Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?**	QST and Discretionary APT: Yes. Amendments enacted in 2005, 2007, 2008, 2011, 2013, 2015, 2017, and 2019.
4.	**What contacts with state are suggested or required to establish situs?**	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).

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5.	**What interests in principal and income may settlor retain?**	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?**	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).
7.	**What powers may settlor retain?**	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.

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8.	**Who must serve as trustee to come within protection of statute?**	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).
9.	**May non-qualified trustees serve?**	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?**	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.

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11.	**Are fraudulent transfers excepted from coverage?**	QST and Discretionary APT: Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. W.S. § 4-10-506(c)(i) & 4-10-514.
12.	**Fraudulent transfer action: burden of proof and statute of limitations.**	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).
13.	**Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?**	No
14.	**Does statute provide an exception (no asset protection) for a child support claim?[14]**	QST: Yes. W.S. § 4-10-520(a)(i). Discretionary APT: No
15.	**Does the statute provide an exception (no asset protection) for alimony?**	QST and Discretionary APT: 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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16.	**Does statute provide an exception (no asset protection) for property division upon divorce?**	QST and Discretionary APT: No
17.	**Does statute provide an exception (no asset protection) for tort claims?**	QST and Discretionary APT: No
18.	**Does statute provide other express exceptions (no asset protection)?**	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
19.	**Does statute prohibit any claim for forced heirship, legitime or elective share?**	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.

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20.	**Are there provisions for moving trust to state and making it subject to statute?**	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?**	QST: Yes W.S. § 4-10-510(a)(iii). Discretionary APT: No. Spendthrift clause is not required.
22.	**Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?**	QST: Yes W.S. § 4-10-522. Discretionary APT: No
23.	**Does statute provide that express/implied understandings regarding distributions to settlor are invalid?**	QST: Yes. W.S. § 4-10-517(a) & 4-10-521(a)(ii). APT: Yes, W.S. § 4-10-517(a).

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24.	**Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?**	QST: Yes Discretionary APT: Yes W.S. § 4-10-517(a) & (b).
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?**	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?**	QST and Discretionary APT: Yes W.S. § 4-10-504(b)
27.	**Is a non-settlor beneficiary's interest protected from property division at divorce?**	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?**	QST: Yes; affidavit required. W.S. § 4-10-523. Discretionary APT: No
29.	**Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?**	QST and Discretionary APT: Yes W.S. § 4-10-521(a).

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30.	**Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?**	QST and Discretionary APT: No
31.	**Is the trustee given "decanting" authority to modify the trust?**	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?**	QST and Discretionary APT: Up to 1,000 years, except for real property. W.S. § 34-1-139.
33.	**Does state assert income tax against DAPTs formed by non-resident settlors?**	No, Wyoming has no income tax.
34.	**Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?**	QST and Discretionary APT: Yes; charging order is exclusive remedy for all LPs and LLCs, including single member LLCs. W.S. § 17-29-503.
35.	**What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?**	QST and Discretionary APT: Two years after trustee provides report that adequately discloses claims. W.S. § 4-10-1005(a).

WYOMING

SUBJECT	WYOMING

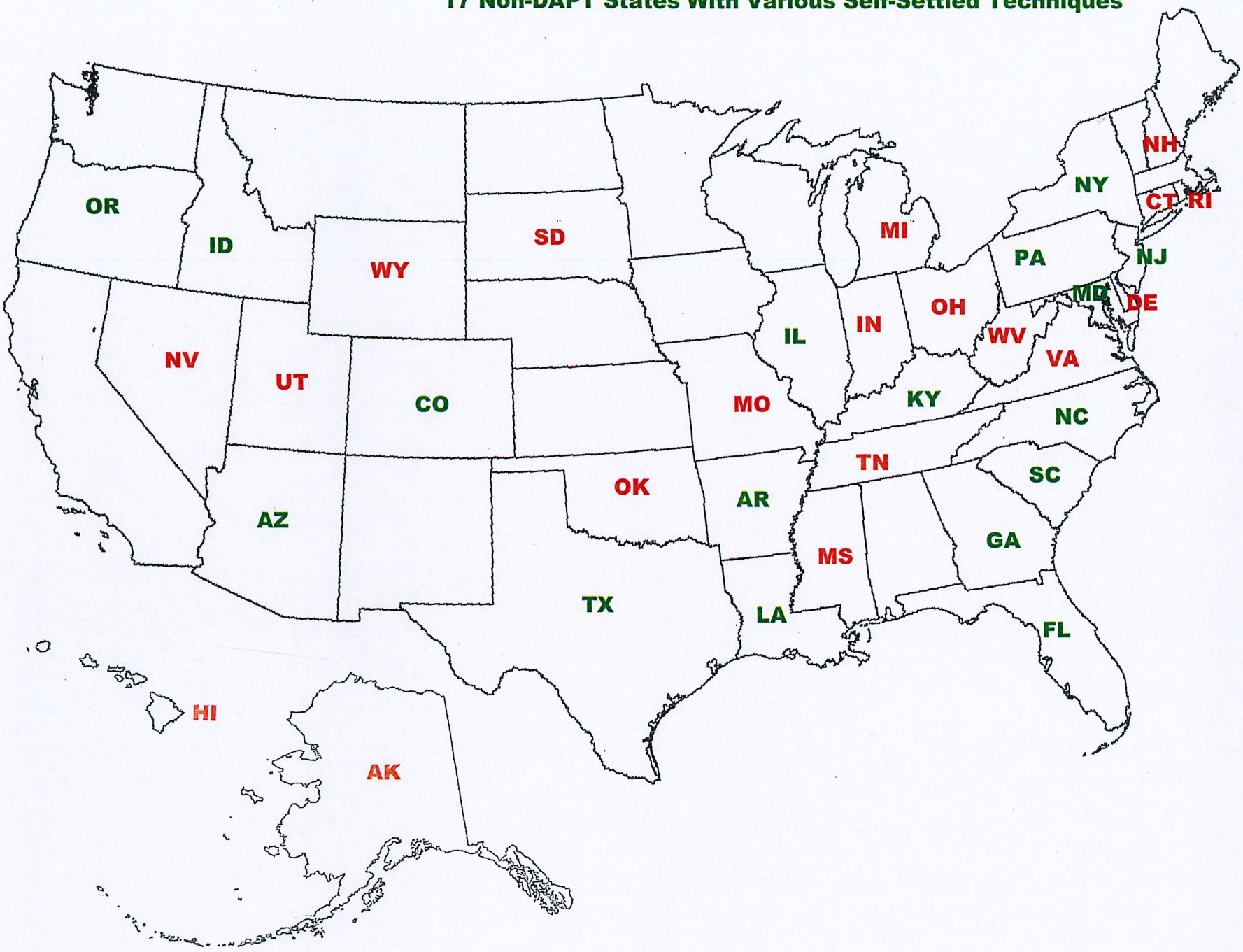
36.	**Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?**	No
37.	**Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?**	No
38.	**Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?**	No
39.	**Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?**	No
40.	**May a creditor reach assets subject to a presently exercisable general power of appointment held by a non-settlor beneficiary?**	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).

WYOMING

Status as of August 2019:

19 Domestic Asset Protection Trust States

17 Non-DAPT States With Various Self-Settled Techniques



Voidable Transactions Act Amendments - Formerly Fraudulent Transfer Act

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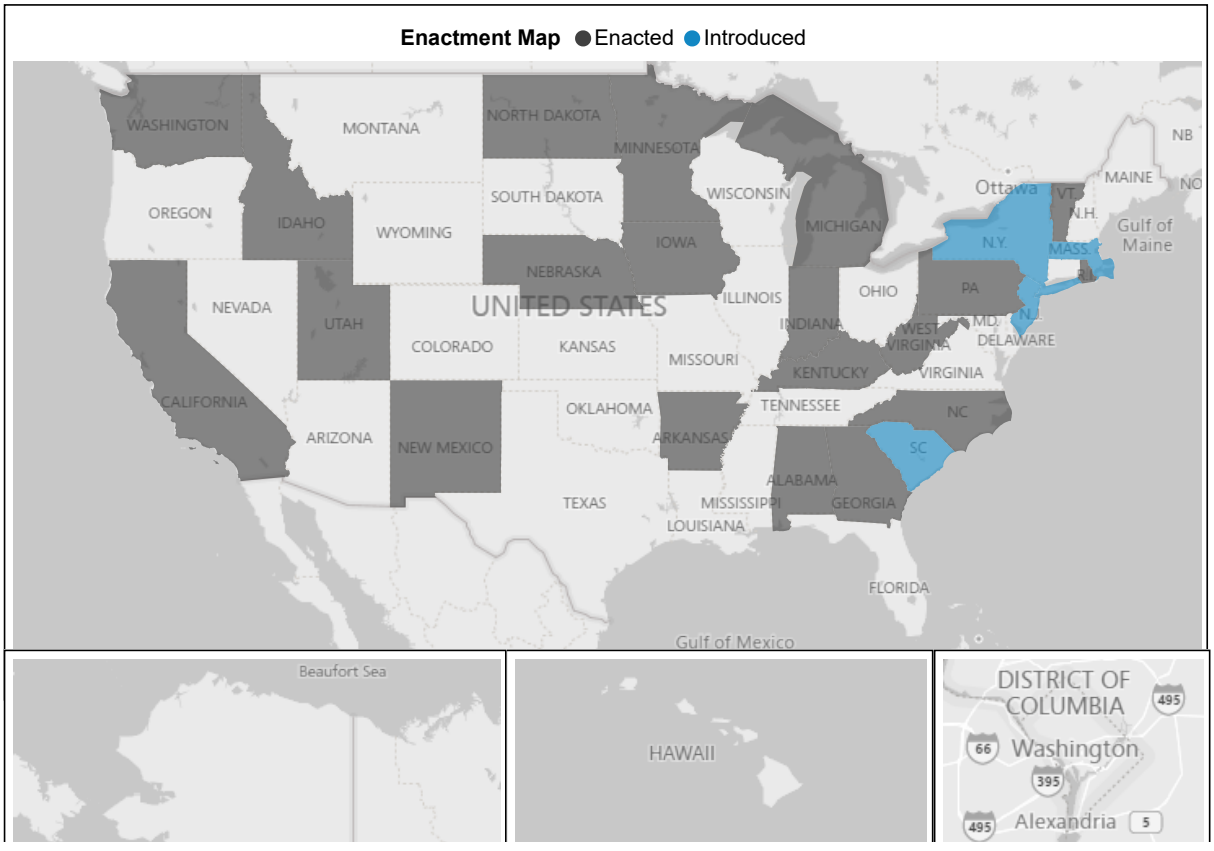
2014 | Voidable Transactions Act Amendments - Formerly Fraudulent Transfer Act

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



Jurisdiction	Year
New Jersey	2019
New York	2019
Massachusetts	2019
Nebraska	2019
South Carolina	2019
West Virginia	2018
Rhode Island	2018
Alabama	2018
Pennsylvania	2018
Arkansas	2017
Vermont	2017
Indiana	2017
Washington	2017
Utah	2017
Michigan	2017
Iowa	2016
North Dakota	2015
New Mexico	2015
Idaho	2015
Minnesota	2015
North Carolina	2015
California	2015
Kentucky	2015
Georgia	2015

American College of Trust Estate Counsel
State Law Status of the Uniform Voidable Transactions Act
As of August 1, 2019

		State	Adopted	If Not Adopted, Date Introd. In Legis.	Statutes	Effective Date/ Legislative Status
1		Alabama	Yes		Ala. Code §§ 8-9B-1 through 17	Effective 1/1/18
2		Arkansas	Yes		Ark. Code §§4-59-201 through 215	Effective 4/7/17
3		California	Yes		Cal. Civil Code §§3439.01 through .14	Effective 1/1/16
4		Georgia	Yes		Ga. Code Ann. §§18-2-70 through 85	Effective 7/1/15
5		Idaho	Yes		Idaho Code Ann. §§55-910 through 922	Effective 7/1/15
6		Indiana	Yes		Ind. Code §§32-18-2-2 through 23	Effective 7/1/17
7		Iowa	Yes		Iowa Code §§684.1 through 26	Effective 7/1/16
8		Kentucky	Yes		Ky. Rev. Stat. Ann. §§378A.005 through 140	Effective 1/1/16
9		Michigan	Yes		Mich. Comp. Laws §§566.31 through 43	Effective 4/10/17
10		Minnesota	Yes		Minn. Stat. §§513.41 through 51	Effective 8/1/15
11		Nebraska	Yes		Neb. Rev. Stat. §§13-801 - 815	Effective 9/1/19
12		New Mexico	Yes		N.M. Stat. §§56-10-4 through 29	Effective 1/1/16

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State Law Status of the Uniform Voidable Transactions Act
As of August 1, 2019

		State	Adopted	If Not Adopted, Date Introd. In Legis.	Statutes	Effective Date/ Legislative Status
13		New York	Pending		A.5622 / S.4236	120 days after became law; awaiting Gov. Cuomo's signature
14		North Carolina	Yes		N.C. Gen Stat. §§39-23.1 through 12	Effecitve 10/1/15
15		North Dakota	Yes		N.D. Cent. Code §§13-02.1-01 through 13-02.1-13	Effective 8/1/15
16		Pennsylvania	Yes		12 Pa. Cons. Stat. §§5101 - 5114	Effective 2/20/18, or 60 days after passage on 12/22/17
17		Rhode Island	Yes		6 R.I. Gen. Laws §§6-16-1 through 17	Effective 7/2/2018
18		Utah	Yes		Utah Code §§25-6-101 through 405	Effective 5/9/17
19		Vermont	Yes		Vt. Stat. Ann. Tit. 9, §§57-2285 through 2299	Effective 7/1/17
20		Washington	Yes		Wash. Rev. Code §§19.40.011 through 900	Effective 7/23/17
21		West Virginia	Yes		W. Va. Code §§40-1A-1 through 15	Effective 5/29/18, or 90 days from passage on 3/10/18
	1	New Jersey	No	5/19/16	AB 2782: Prop. N.J. Rev. Stat. §§25:2-20 through 33	Introduced 2/1/2018; 1/28/19 - Out of Assembly Committee, 2nd Reading

		State	Adopted	If Not Adopted, Date Introd. In Legis.	Statutes	Effective Date/ Legislative Status
	2	South Carolina	No	12/12/18	SB 262: Prop. S.C. Code §§27-24-10 through 150	01/08/19 Senate Referred to Committee on Judiciary

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		State	URL Link
1		Alabama	http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm
2		Arkansas	http://www.lexisnexis.com/hottopics/arcode Default.asp
3		California	https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&divisio=4,&title=2.&part=2. &chap
4		Georgia	http://www.lexisnexis.com/hottopics/gacode/Default.asp
5		Idaho	https://legislature.idaho.gov/statutesrules/idstat/title55/t55ch9/
6		Indiana	http://iga.in.gov/legislative/laws/2016/ic/titles/032/articles/018/
7		Iowa	https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=6848&year=2017
8		Kentucky	http://www.lrc.ky.gov/statutes/chapter.aspx?id=43993
9		Michigan	http://www.legislature.mi.gov/(S(hv4yyksxadofitp4pcsw2h1y))/mileg.aspx?page=getObject&objectName=mcl-Act-4
10		Minnesota	https://www.revisor.mn.gov/statutes/?id=513.41
11		Nebraska	https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=36
12		New Mexico	http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm

		State	URL Link
13		New York	https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05622&term=2019&Summary=Y&Actions=Y&Commit
14		North Carolina	http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0039
15		North Dakota	http://www.legis.nd.gov/cencode/t13c02-1.pdf#nameddest=13-02p1-01
16		Pennsylvania	https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=12&div=0&chpt=51
17		Rhode Island	http://webserver.rilin.state.ri.us/Statutes/TITLE6/6-16/INDEX.HTM
18		Utah	https://le.utah.gov/xcode/Title25/Chapter6/25-6.html?v=C25-6_2017050920170509
19		Vermont	http://legislature.vermont.gov/statutes/chapter/09/057
20		Washington	http://app.leg.wa.gov/RCW/default.aspx?cite=19.40
21		West Virginia	http://www.wvlegislature.gov/wvcode/chapterentire.cfm?chap=40&art=1A&section=1#01
	1	New Jersey	

		State	URL Link
	2	South Carolina	

American College of Trust Estate Counsel
State Law Status of the Uniform Voidable Transactions Act
As of August 1, 2019

		State	Excepted Comments?	DAPT State?
1		Alabama	Yes - In third-party analysis of legislation	No
2		Arkansas	Yes - see uncodified Section 2 to A.B. 2139	No
3		California	No	No
4		Georgia	No	No
5		Idaho	No	No
6		Indiana	Yes - Ind. Code §32-18-2-23	Yes
7		Iowa	No	No
8		Kentucky	No	No
9		Michigan	No	Yes
10		Minnesota	No	No
11		Nebraska	No	No
12		New Mexico	No	No

		State	Excepted Comments?	DAPT State?
13		New York	Yes - NY City Bar Report on Legislation, p.8.	No
14		North Carolina	No	No
15		North Dakota	No	No
16		Pennsylvania	No	No
17		Rhode Island	No	Yes
18		Utah	No	Yes
19		Vermont	No	No
20		Washington	No	No
21		West Virginia	No	Yes
	1	New Jersey		

		State	Excepted Comments?	DAPT State?
	2	South Carolina		