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Things you should know about Utah's new asset protection law, effective May 14, 2013

Utah is technically not new to the asset protection game—it has had a law allowing for self-settled trusts with some creditor protection on the books since 2003. The protection provided by that statute, however, was subject to so many restrictions and exceptions that practitioners rarely (if ever) relied on it. As of May 14, 2013, Utah will have a new domestic Asset Protection Trust (DAPT) statute authorizing the creation of trusts with such significant asset protection features that Utah should now be considered among the best jurisdictions in the nation for self-settled spendthrift trusts, along with (and perhaps ahead of) Nevada, South Dakota, Alaska and Delaware.

This law creates some very significant planning opportunities. Under the DAPT law, an individual (a settlor) can create a trust and transfer to it assets in excess of the settlor's debts. If the trust is drafted properly and satisfies the requirements of the statute, it will enjoy the following features:

- Those assets will be immediately protected from all future creditors of the settlor
- Those assets will be protected from current unknown creditors of the settlor within two years, and in some cases, as little as 120 days
- The settlor can be a beneficiary of the trust—this is a major departure from previous asset protection options available in Utah.
- The settlor can live in real estate and use other property owned by the trust without exposing that property to creditors
- The settlor can be a cotrustee of the trust
- The settlor can decide how to invest the assets of the trust
- The settlor can have power to amend or revoke the trust with the consent of another beneficiary
- The settlor can appoint individuals to remove and appoint trustees who can make discretionary distributions
- The settlor can veto distributions

A properly drafted DAPT trust has many practical uses, including the following sampling:

- To hold an unencumbered primary residence and make sure it is always available for the family's use. This could be especially important to individuals in high-risk professions, such as medicine.
- To hold existing or new investments, such as investment real estate.

- To hold existing or new business ventures with modest appreciation, such as those tied to the service of the owner (sole proprietorships, dentists, etc.). A DAPT trust can be drafted to accommodate future appreciation, such that if the business interests or other transferred assets begin to appreciate in value, the settlor could invoke certain provisions of the trust to cause the assets (and the future appreciation) to move outside the settlor's taxable estate.
- As an augmentation for revocable trust plans. Assets in excess of a client's debts might be placed in a Utah DAPT, while the rest might be placed in revocable trust.
- To replace spousal-lifetime access trusts or other irrevocable trust strategies where a business interest will be sold in an installment sale.

If you have questions about the requirements or uses of the DAPT law, whether in general or in regards to a specific client situation, please do not hestitate to reach out to me.