Protect Your Cake

A New Statute Makes Utah Very Attractive for Asset Protection

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You've heard the phrase "having your cake and eating it, too." If "cake" is an important asset, whether it be a business, an investment or even the family home, the objectives of most people go beyond just "eating" it.

Most families and business owners want to enjoy their assets, but they also want to control them, decide who else gets to enjoy them, protect them from creditors and predators, save them from as many taxes as possible, and even pass them along in some form or another to the next generation(s).

Innovative lawyers have worked for years to design strategies that allow clients to protect assets while simultaneously enjoying and controlling the assets as much as possible. Some offshore jurisdictions have long had laws allowing trusts for personal benefit (a self-settled trust) that still achieve certain protections of the trust assets from creditors. Several states later created laws to accomplish the same purposes, and certain states have become quite popular for this type of planning—most notably Alaska, Nevada, South Dakota and Delaware.

And, thanks to a recently enacted law, Utah now offers attractive asset protection and enhancement options like few other jurisdictions. As of May 14, 2013, Utah residents can now find some of the best protections available right at home.

While Utah is technically not new to the asset protection trust world, the new Domestic Asset Protection Trust statute (the DAPT law) significantly changes the way Utah residents can protect their "cake." Previous Utah law allowed self-settled trusts with some creditor protection, but it was subject to so many restrictions and exceptions that practitioners rarely relied on it.

The new law, conversely, brings welcome changes that allow a comforting blend of asset protection, enjoyment and control. It also gives the creative planner tremendous flexibility to tailor a strategy to the individual's specific needs, objectives and assets.

Benefits of a DAPT Trust

- Assets in the trust are immediately protected from all future creditors of the settlor.
- Assets are 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 the property to creditors.
- The settlor can be a co-trustee 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 choose individuals to remove and appoint trustees who can make discretionary distributions.
- The settlor can veto distributions, effectively retaining final say over who gets the cake and when.

Practical Uses of the Trust

- To hold a paid-off 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, whether with modest or rapid appreciation. In the latter case, a DAPT trust can be drafted 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. The result would be to shield future growth from estate tax erosion, currently imposed on value in excess of $5.25 million with a top tax rate of 40 percent.
- As an augmentation for revocable trust plans. Assets in excess of debts might be placed in a Utah DAPT, while the rest might be placed in revocable trust.
- To hold life insurance in ways allowing the settlor to accomplish leveraged giving while protecting and still retaining access to the insurance's cash value.

Planning with a well-drafted DAPT trust can yield tremendous benefits formerly reserved to the residents of other states. Amidst these benefits, however, are many traps for the unwary—both of the tax and creditor protection variety—so planning must be done with great care. Consulting with a competent and experienced attorney can help you not only keep your cake from being pillaged or spoiling, but also allow you to protect, preserve and enjoy it for generations to come. UB