Asset Protection Trust Jurisdictions

Side-by-Side Comparison

Top trust jurisdictions have adopted laws keeping their substantial creditor protections in balance with a strong public policy of preserving private property rights. Below are a number of key planning considerations and how the laws of some leading trust jurisdictions stack up.

	UT	NV	SD	WY
Year APT Adopted	2003	1999	2005	2007
Limitations Period				
• Known Creditor – Notice	120 days	6 months	6 months	2 years
• Creditor – No Notice / Discovery	2 years / 1 year	2 years / 6 mos.	2 years / 6 mos.	4 years / 1 year
• Unknown – Publication	120 days	N/A	N/A	N/A
• Unknown – No Publication	2 years	N/A	N/A	N/A
• Post-transfer / Future Creditors	0 months	Same as others	Same as others	Same as others
Defraud, Hinder, or Delay	D / H / D[1]	D / – / –	D / – / –	D / – / –
DHD Intent Standard	General	Specific	Specific	Specific
Burden of Proof	Clear & Convincing	Clear & Convincing	Clear & Convincing	Clear & Convincing
Exception Creditors	DSO in default[2]	None	DSO in default[3]	Child Support & Loan App Property
Voidable Transfer Law	UVTA[4]	UFTA	UFTA	UFTA
Force Transfer Challenge to State	Yes	Yes	Yes	Yes
Choice of Law to APT State	Yes	Yes	Yes	Yes
Solvency Affidavit	Optional	Optional	Optional	Mandatory
Participant Liability	None[5]	Knowing/Bad Faith	Potentially None	Silent
LIFO Distributions	Yes	Yes	Yes	No
Disregarded Collateral Transactions	Yes	Real Estate only	No	No
Rule Against Perpetuities	1,000 years	365 years	Perpetual	1,000 years
Directed Trusts	Yes	Yes	Yes	Yes
Decanting Statute	Best in class	Best in class	Best in class	Good

1 Does not apply to claims arising post-transfer
2 If in default at transfer, only to extent of default
3 Notice of transfer to trust required
4 Exception for transfer to APT included
5 With signed solvency affidavit

Plan Smart. Live Well.

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