



Will Power

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DOMESTIC ASSET PROTECTION TRUST STATUTE

Twelve states have now adopted domestic asset protection trust (DAPT) laws that allow a person to create their own trust, transfer assets into that trust, and have that trust protected from the claims of creditors. Without a DAPT law, the assets you place into your own trust are generally subject to the claims of creditors. Florida is not one of the twelve states that have a DAPT law on the books, but I am here to report that I sit on a Florida Bar committee to help change that.

DAPTs first became popular in Delaware, Alaska and Nevada. If your occupation is in a high risk profession like medicine, law, accounting and engineering, if you sit on the board of a publicly traded corporation, or own property that might subject you to personal liability, the ability to transfer wealth into a protected trust is appealing.

Imagine working your entire career, only to have your life savings wiped out by a lawsuit. This is a very real threat to many. Therefore, some states adopted laws that allow a person to create a DAPT. This is good for the economy of that state, as the laws usually require a trustee in that state to serve as trustee of a DAPT created in that state for the trust to be effective.

So where is Florida? Why haven't we created a DAPT statute that will compete with Delaware, Alaska, Nevada and others? The answer is in politics. Bankers are wary of DAPT statutes for the fear that someone who has personally guaranteed a loan would, shortly after the loan has closed,

transfer assets into a DAPT. Trial lawyers are afraid that uninsured or underinsured defendants will get off from paying the claims of the wronged and injured. Divorce lawyers are afraid that a divorcing spouse will use a DAPT to shield assets from the claims of a divorcing spouse or from child support.

If those who object to DAPT laws read the statutes that are being proposed, they will find that the statute protects bankers, divorcing spouses and children. The statutes usually provide that if one claims to have certain assets on a loan application, then regardless as to whether those assets have been subsequently transferred to a DAPT, the bank will be able to recover against those assets in the event of a default. Similarly, DAPT laws usually exclude the protection against certain divorcing spouses or children.

Bankers may want to think twice over any of their objections. If there are other easy choices to place one's money, and one of those choices is in a trust being administered in a state with favorable asset protection laws, it is likely that consumers will place their money where it is best protected.

The statute is just now on the drawing board. As it progresses I will keep you informed. If you have a moment, email me your feedback and thoughts on whether Florida should have a domestic asset protection trust statute.

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