

## NEW HAMPSHIRE'S ASSET PROTECTION TRUST

BY: MICHAEL L. WOOD, ESQ.

In 2009, the state of New Hampshire enacted its own version of the domestic asset protection trust, or DAPT. These irrevocable trusts provide a level of protection from creditors once available only through offshore trusts.

Prior to 2009, many of our clients used the Delaware Trust to shield assets. New Hampshire is now one of nine jurisdictions in the U.S. that specifically authorize the use of the domestic asset protection trust (DAPT). For our clients with assets vulnerable to liens and other attachments, it eliminates the need to place assets outside of the United States.

Assets in a domestic asset protection trust are held at arm's length from your estate for creditor protection, but are still available to you (or your spouse or children). The catch is that you cannot dictate distributions. Payments of income or principal for your benefit are solely at the trustee's discretion.

Under the Qualified Dispositions Act, the trustee must be a trust company or Attorney licensed to do business in New Hampshire.

A New Hampshire trust has many applications, but especially makes sense for professionals, contractors, corporate officers and others who could be personally liable for business-related judgments. After a specified period, most creditors cannot reach the DAPT assets. The few exceptions include court orders for child support or alimony, or civil judgments for a personal injury or death.

What is a Domestic Asset Protection Trust ("DAPT")? A DAPT is a special type of trust established under the laws of one or more states that specifically authorize the use of a DAPT. New Hampshire (effective January 1, 2009) authorizes the use of Domestic Asset Protection Trusts. These DAPTs were encouraged by state legislatures in an attempt to provide investors and business owners the protection of offshore trust planning within the United States in large part to attract businesses and assets to their states. Most state DAPT statutes have several common features and work as follows:

When you establish the trust, also known as a grantor trust, the trustee of the trust must be a trust company or an Attorney licensed to do business in New Hampshire and the document should specifically reference the domestic asset protection statute (also known as the Qualified Dispositions Act). You then transfer assets to the trust to be held by the trustee.

The trust provides that income and/or principal from the trust is payable to you and/or your spouse and issue, but only in the trustee's discretion. You cannot demand distributions of either income or principal. Even though the trustee has the discretion to use the trust money for your benefit, the assets in the trust will not be subject to your creditors. This technique is particularly appropriate for high risk individuals, such as doctors, lawyers, accountants, self-employed,

contractors, and those that may have personal liability attributable to their position serving on one or more boards of directors.

It is important that the provisions of the applicable state law be followed since a trust established under a jurisdiction other than one which specifically authorizes the use of a DAPT will not provide similar protection. All states provide protection against spousal claims, except with respect to a spouse to whom the individual was married at the time the trust was established.

If you are concerned about whether the trustee will actually make distributions to you, you are permitted to appoint a "trust protector" and specifically designate the trust protector as the person who directs investments and/or distributions or both. A trust protector is usually a close associate, such as an attorney or your certified public accountant.