Title

The Domestic Asset Protection Trust (DAPT) and the Full Faith and Credit Clause: Some practical considerations

Text

Assume that a debtor has established with all his property a trust in a DAPT state. Assume also that the creditor owns a judgment against the debtor that has emanated from the court of a non-DAPT sister state. Is the creditor entitled under the Full Faith and Credit Clause of the U.S. Constitution to have the judgment satisfied from the assets of the DAPT via a secondary action brought in the courts of the DAPT state? It would seem that it depends upon whether the action in the non-DAPT state had been a transitory one, see generally appendix below, such as whether the DAPT had been funded via a fraudulent conveyance. If there is an out-of-state judgment to that effect then the property ostensibly in the DAPT would be accessible to the settlor's out-of-state judgment creditors. Moreover, a unilateral effort by the legislature of the DAPT state to grant its courts exclusive jurisdiction over such out-of-state fraudulent-conveyance claims would not be entitled to respect under the Full Faith and Credit Clause.

On the other hand, had the property lawfully found its way into the hands of the DAPT trustee, then, going forward, a judgment out of the DAPT jurisdiction that the property in the DAPT trust is unreachable by the settlor's creditors. both domestic and out-of-state, would likely be entitled to the respect of the out-of-state courts by virtue of the Full Faith and Credit Clause.

Bottom line: The debtor-friendly terms of a statutory DAPT are likely enforceable, provided (1) funding had not been via a fraudulent conveyance, (2) the settlor-debtor was and is a resident of the DAPT state, (3) the settlor-debtor is not subject to another state's personal jurisdiction, and (4) the Bankruptcy court is not in the picture. Otherwise, *caveat emptor*. See generally Chapter 2 of the free-standing 169-page mid-year supplement to the 2021 Edition of *Loring and Rounds: A Trustee's Handbook,* which supplement, released June 22, 2021, is entitled *Trust-Related Property Rights and the U.S. Constitution: Some Critical Areas of Intersection*. Chapter 2 is reproduced in its entirety in the appendix immediately below.

Appendix

Chapter 2 [Chapter 2 of the free-standing 169-page mid-year supplement to the 2021 Edition of *Loring and Rounds: A Trustee's Handbook,* which supplement, released June 22, 2021, is entitled *Trust-Related Property Rights and the U.S. Constitution: Some Critical Areas of Intersection*.]

Vindicating the contractual rights of out-of-state judgment creditors of a settlor/beneficiary of a Domestic Asset Protection Trust (DAPT): Is the U.S. Constitution's Full Faith and Credit Clause here a paper tiger?

§2.1 The Constitution's Full Faith and Credit Clause generally

> *Justice Jackson once referred to the Full Faith and Credit Clause as the "Lawyer's Clause" of the Constitution. And so it is, for its concern is with litigation, and it is unlikely that many members of the general public have heard of it. After all, what are they likely to know of choice of law or preclusive effect? Yet the Framers thought it important enough to include in the wonderfully concise document they drafted in 1787.*[1]

Article IV, Section 1 of the U.S. Constitution, which deals with relations between and among the states, provides as follows: "Full faith and credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The framers intended that the Full Faith and Credit Clause, which establishes a rule of evidence rather than jurisdiction, close off an area of likely domestic cross-border friction, namely the full re-litigation out-of-state of matters that had been duly litigated to final judgment in-state.[2] It was all about trammeling the "runaway judgment debtor." The court of the sister state must defer to the rendering court's valid resolution of a matter, even if to do so would violate the public policy of the jurisdiction in which the court of the sister operates.[3] "[I]n other words, the judgment of the rendering State gains nationwide force."[4] Money judgments at law and in equity are particularly sacrosanct.[5] All the judgment creditor need do is submit to the court of the sister state a copy of the judgment along with a proper seal and attestation from the rendering court. Simple. This is the case even if the judgment is the product of a mistake of law.[6] There is a critical exception to this rule of judicial deference, namely if the procedures followed by the rendering court had violated the Due Process Clause of the 14th Amendment.[7]

Nor does the Full Faith and Credit Clause mandate that sister states adopt the practices of judgment-rendering states regarding the time, manner, and mechanisms for enforcing judgments.[8] In other words, enforcement measures do not "travel" out of state along with a judgment.[9] Accordingly, a judgement relating to out-of-state real estate may be ineffective to pass legal title, though effective in sorting out the rights, duties and obligations of the parties, assuming there is personal jurisdiction.[10] Thus there *may be* more than one constitutional way to skin the debtor cat in a multijurisdictional setting: "It may not be doubted that a court of equity in one State in a proper case could compel a defendant before it to convey property situated in another State."[11] In the case of the debtor-settlor-beneficiary of a domestic

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[1] William L. Reynolds, *The Story of the Full Faith and Credit Clause*, 41-DEC Md. B. J. 34 (2008)

[2] *See* Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888) (Confirming that the Full Faith an Credit Clause establishes a rule of evidence rather than jurisdiction).

[3] *See* Baker v. General Motors Corp., 522 U.S. 222 (1998).

[4] Baker v. General Motors Corp., 522 U.S. 222 (1998).

[5] *See* Baker v. General Motors Corp., 522 U.S. 222 (1998).

[6] *See* Fauntleroy v. Lum, 210 U.S. 230 (1908).

[7] *See generally* William L. Reynolds, *The Story of the Full Faith and Credit Clause*, 41-DEC Md. B. J. 34 (2008)

[8] *See* Baker v. General Motors Corp., 522 U.S. 222 (1998).

[9] *See* Baker v. General Motors Corp., 522 U.S. 222 (1998).

[10] *See* Baker v. General Motors Corp., 522 U.S. 222 (1998).

[11] Robertson v. Howard, 229 U.S. 254 (1913).

asset protection trust (DAPT), however, legal title to the underlying property *and the right/power to convey it* are not in the debtor-settlor-beneficiary but in the trustee.

§2.2 Domestic asset protection trusts in a multijurisdictional setting: Does the Full Faith and Credit Clause have any application?

Introduction. Since time immemorial it has been a bedrock principle of equity that one may not impress a trust on one's own property for one's own benefit and in so doing deprive one's creditors of access to that property. Even in the face of a spendthrift clause or full, exclusive discretion in the trustee, the maximum amount that *could* be distributed to or for the benefit of the settlor is accessible to the settlor's creditors immediately and going forward. This is the case whether or not the entrustment was fraudulent, and whether or not the trust is revocable. For an extensive discussion of the robust common law jurisprudence that has evolved from this bedrock equitable principle see §5.2.1.1 of this supplement.

The federal Employee Retirement Income Security Act of 1973 (ERISA) worked a limited federal preemption of this equitable doctrine, namely in the context of trusts that are associated with employee benefit plans that are private and federally tax-qualified. The constitutionality of the ERISA preemption is taken up in in Chapter 5 of this supplement. Since ERISA is of national application, the Full Faith and Credit Clause is not implicated. In 1987, however, Alaska via a state-specific piece of legislation, authorized the establishment and administration within its borders of domestic asset protection trusts (DAPTs). A DAPT is a type of trust the underlying property of which is insulated by statute from the reach of the settlor's creditors notwithstanding the fact that the settlor is the initial and primary beneficiary. In other words, by statute a DAPT's spendthrift provision is enforceable even as against the settlor's creditors. There is one critical exception: The funding of a DAPT may not be the product of a fraudulent conveyance. Following Alaska's lead, a number of the states, but by no means all of them, have gotten into the DAPT business. That some but not all of the states are DAPT states potentially implicates the Full Faith and Credit Clause of the U.S. Constitution. What if, for example, a debtor has established with all his property a trust in a DAPT state and the creditor owns a judgment against the debtor that has emanated from the court of a non-DAPT sister state? Is the creditor entitled under the Full Faith and Credit Clause to have the judgment satisfied from the assets of the DAPT via a secondary action duly brought in the courts of the DAPT state?

A full-faith-and-credit primer. Again, Article IV of the U.S. Constitution provides as follows: "Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State." The doctrine of comity is distinguished from full faith and credit "in that the latter is an explicit constitutionally based provision involving relationships only among the states, whereas comity is based, not on a constitutional provision, but on concepts such as harmony, accommodation, policy, and compatibility." [12] Still, a judgment out of a court of one state, call it the judgment state, is subject to collateral attack in a sister state if there was no subject-matter or personal jurisdiction to render the judgment under the judgment state's internal law or if the judgment state's assertion of jurisdiction over the defendant violated the Due Process Clause. Could the sister state by statute effectively limit the judgment state's jurisdiction over a particular type of cause of action? Not in the case of transitory causes of action.[13] "If the transaction on which [an] action is founded could have taken place anywhere, the action is generally regarded as transitory; but if the transaction could only have happened in a particular

[12] 16B Am. Jur. 2d Constitutional Law §1018.

[13] *See* Tenn. Coal, Iron, & R.R. Co. v. George, 233 U.S. 354, 34 S.Ct. 587 (1914).

place,,,the action is local."[14] An action to set aside a fraudulent conveyance is a transitory action properly cognizable wherever jurisdiction can be obtained over the defendant. A proceeding *in rem* to settle title to a parcel of real estate *per se* would be an example of a local action.

A primer on the DAPT. For a general discussion of the subject of conflict of laws in the trust context, particularly how public policy can influence which state's law shall govern a matter in dispute, the law of the litigation forum or some other law, the reader is referred to §8.5 of *Loring and Rounds: A Trustee's Handbook*.[183] Here, however, our focus is the self-settled trust with a spendthrift provision, particularly the trust whose property is sited and administered in a state that no longer has a public policy that would categorically prevent enforcement of the provision as against *the settlor's* creditors.[184] "All United States jurisdictions permit creditors to set aside fraudulent transfers."[185] A U.S. domestic asset protection trust (DAPT) jurisdiction is a jurisdiction that seeks by legislation to protect the assets of a self-settled trust from attack by the settlor's *future* creditors, provided the establishment of the trust is not the result of a fraudulent conveyance and the provisions of the trust meet certain statutory requirements.[186]

In 1997, Alaska enacted a statute that may insulate certain self-settled discretionary trusts created after April 1, 1997, from the reach of the settlor's creditors.[187] The reserved contingent equitable interest may be unavailable to the settlor's creditors if (1) the trust is irrevocable,[188] (2) the trust is fully discretionary as to income and principal at its inception, (3) the trustee with the discretionary authority is someone other than the settlor, (4) the transfer in trust is not established to defraud preexisting creditors[189] and the settlor so swears in an affidavit,[190] (5) at the time of transfer, the settlor is not in default by thirty or more days of making payment due under a child support judgment or order, and (6) the trust is sited in Alaska.[191] The Alaska statute rejects the public policy at the heart of §156(2) of the Restatement (Second) of Trusts, namely

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[14] *Action*, Black's Law Dictionary (10th ed. 2014).

[183] *See also* 7 Scott & Ascher §45.7.1.2 (Inter Vivos Trusts/Spendthrift Clauses/Conflict of Laws).

[184] *See also* 7 Scott & Ascher §45.7.1.2 (Inter Vivos Trusts/Spendthrift Clauses/Conflict of Laws).

[185] Richard W. Nenno, *Planning with Domestic Asset-Protection Trusts: Part I*, 40 Real Prop. Prob. & Tr. J. 263, 276–286 (Summer 2005). *See generally* Jeffrey A. Schoenblum, 1 Multistate and Multinational Estate Planning 1461 (1999) (The Onshore Alternative: Alaska and Delaware Asset Protection Trusts). *See also* John E. Sullivan III, *Gutting the Rule Against Self-Settled Trusts: How the New Delaware Trust Law Competes with Offshore Trusts*, 23 Del. J. Corp. L. 423 (1998); Gideon Rothschild, *Asset Protection Trusts*, in Trusts in Prime Jurisdictions 424 (Alon Kaplan ed., 2000).

[186] *See generally* 3 Scott & Ascher §15.4.3.

[187] Alaska Stat. §§34.40.010 to 34.40.130, 13.36.390, 34.40.110.

[188] Note that Alaska Stat. §13.36.360(b) provides that, unless there is an express provision to the contrary in the governing trust instrument, an irrevocable trust may not be modified or terminated under §13.36.360 while a settlor is also a discretionary beneficiary of the trust.

[189] *Cf.* Breitenstine v. Breitenstine, 2003 WY 16, 62 P.3d 587 (Wyo. 2003) (holding that an "intent to hinder or delay creditors," a phrase that has been excised from the Alaska statute, is enough to consider a conveyance fraudulent even if there is no actual fraud). *See generally* Henry J. Lischer, Jr., *Professional Responsibility Issues Associated with Asset Protection Trusts*, 39 Real Prop. Prob. & Tr. J. 561 (2004).

[190] Alaska Stat. §34.40.110(k). The affidavit requirement may afford some protection to the lawyer who drafts the trust.

[191] Alaska Stat. §34.40.110(k). The settlor, however, may serve as a cotrustee, may serve as an adviser, and/or may appoint a trust protector. *See* Alaska Stat. §§34.40.110(g), 34.40.110(i). An implied agreement, however, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument would be void as a matter of law. *See* Alaska Stat. §34.40.110(j).

"that a settlor cannot place property in trust for his own benefit and keep it beyond the reach of creditors."[192]

Effective July 1, 1997, Delaware responded by enacting a similar but not identical statute.[193] In 1999, Rhode Island and Nevada did the same.[194] Utah has since joined the group,[195] as has South Dakota.[196] Oklahoma's DAPT legislation, known as the Family Wealth Preservation Act, was enacted June 9, 2004, effective for trusts settled thereafter.[197] Oklahoma, however, has placed a cap on the amount that can be sheltered in a self-settled trust from attack by the settlor's creditors. Missouri's DAPT legislation was signed into law July 9, 2004, as part of its Uniform Trust Code legislation.[198] It is effective for all trusts created on, before, or after January 1, 2005. In 2007, Tennessee and Wyoming followed suit.[199] On January 1, 2009, New Hampshire came on board.[200] Hawaii has done so as well, effective July 1, 2010.[201] As has Virginia, effective July 1, 2012;[202] Ohio, effective March 27, 2013;[203] Mississippi, effective July 1, 2014;[204] West Virginia, effective June 8, 2016;[205] and Michigan, effective March 8, 2017.[206] Effective July 1, 2019, Indiana became the 18th state to have DAPT-enabling legislation.[207] Effective January 1, 2020, Connecticut also got into the DAPT business.[208]

Colorado may or may not be a domestic asset protection jurisdiction.[209] On the books is a statute dating back to the time before Colorado was a state, which reads as follows: "All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for the use of the person making the same shall be void as against the creditors existing of such person."[210] Some have suggested that because the statute only mentions "existing" creditors of the

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[192]Ware v. Gulda, 331 Mass. 68, 117 N.E.2d 137 (1954).

[193]12 Del. Code §§3570–3576.

[194]R.I. Gen. Laws §§18-9.2-1 to 18-9.2-7; Nev. Rev. Stat. §§166.010 to 166.170. *See, e.g.*, Klabacka v. Nelson, 394 P.3d 940 (Nev. 2017) (concluding that a Nevada self-settled spendthrift trust is protected by statute against the court-ordered child-support or spousal-support obligations of the settlor/beneficiary that are not known at the time the trust is created).

[195]Utah Code Ann. §25-6-14.

[196]S.D. Cod. Laws §§55-16-1 to 55-16-17.

[197]Okla. Stat. Ann. tit. 31, §§10 to 18.

[198]Mo. Rev. Stat. §456.5-505.

[199]Tenn. Code Ann. §35-16-101; Wyo. Stat. §§4-1-505, 4-10-510 to 4-10-523.

[200]N.H. Rev. Stat. Ann. §564-D: 1-18.

[201]Haw. Rev. Stat. §§554G-1 to 554G-12.

[202]Va. Code §§55-545.05, 55-545.03:2, 55-545.03:3. There must be a Virginia trustee who maintains custody within Virginia of some or all of the trust property, maintains records within Virginia, prepares within Virginia fiduciary income tax returns for the trust, or otherwise materially participates within Virginia in the administration of the trust.

[203]Ohio Rev. Code Ann. §§5816.01 to 5816.14.

[204]Miss. Code §§91-9-701 to 91-9-723, 91-9-503, 91-9-505, 91-9-507.

[205]W. Va. Code §§44D-5-503a–44D-5-503c.

[206]Mich. Comp. Laws §§700.1041–700.1050.

[207]Ind. Code §30-4-8.

[208]*See* H.B. 7104, *an Act Concerning the Connecticut Uniform Trust Code*, enacted June 5, 2019. H.B. 7104 was signed into law by the state's governor on July 12, 2019.

[209]*See* Colo. Rev. Stat. §38-10-111; 3 Scott & Ascher §15.4.3 n.20 and accompanying text (observing that though the Colorado statute seems to be the exact opposite of an "asset protection" statute, it is open to interpretation that self-settled spendthrift limitations are effective as to posttransfer creditors). *See generally* David G. Shafter, *Comparison of the Twelve Domestic Asset Protection Statutes* (updated through November 2008*)*, 34 ACTEC L.J. 293, 294 (2009) (accompanying the Colorado entry are some case and commentary citations).

[210]Colo. Rev. Stat. §38-10-111.

settlor, by implication a settlor's future creditors would not have access to the entrusted property. A number of experienced Colorado trusts and estates lawyers are not so sure. We know of no trial or appellate court decision that has yet addressed the issue.

Generally, existing creditors may attack a transfer by the later of four years from the transfer or one year from the time the transfer was or could reasonably have been discovered by the creditor.[211] Future creditors must make a claim within the four-year period. Nevada is the exception: Its periods are two and six months, respectively. Query: Might a trustee, under certain circumstances, have a duty to relocate the trust's principal place of administration to one of these DAP jurisdictions? The UTC provides that "[a] trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries."[212]

One hope is that this asset-protection legislation will save estate taxes. Here is how: The property of a fully discretionary "self-settled" irrevocable inter vivos trust has been subject to estate tax upon the death of the settlor-beneficiary *not* because the settlor died with a reserved contingent equitable interest[213] but because the property was reachable by the settlor's creditors such that §2038 of the Internal Revenue Code is implicated.[214] The legislation aims to eliminate what makes such arrangements tax-sensitive, namely, creditor accessibility.[215] The hope is that even if a gift tax should be owed at the time the trust is established, any subsequent appreciation in the value of the trust property would escape estate tax upon the settlor's death.

The Full Faith and Credit Clause is irrelevant to bankruptcy proceedings, bankruptcy being a federal matter. For more on the origins and reach of the Federal Bankruptcy Code, see generally Chapter 6 of this supplement. Here, creditor accessibility is likely to hinge on whether the court recognizes the "applicable nonbankruptcy law" transfer restrictions of the DAPT jurisdiction.[219] It should be noted that Congress

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[211]*But see* Alaska Stat. §34.40.110(d) (narrowly defining a preexisting creditor as someone who demonstrates by a preponderance of the evidence that he or she asserted a specific claim against the settlor before the settlor transferred assets to the trust).

[212]UTC §108(b).

[213]For a discussion of whether a self-settled fully discretionary trust might implicate I.R.C. §2036(a)(1) as a retained right to income or enjoyment, *see* David G. Shaftel, *Domestic Asset Protection Trusts: Key Issues and Answers*, 30 ACTEC L.J. 1024 (2004).

[214]A general inter vivos power of appointment is the power to appoint to oneself *or* one's creditors. If the property of an irrevocable discretionary self-settled trust is reachable by the settlor's creditors, then the settlor has reserved a general inter vivos power of appointment exercisable by the incurring of debts. *See generally* §8.9.4 of *Loring and Rounds: A Trustee's Handbook* (tax-sensitive powers).

[215]*See* Blattmachr, *Practice Alert: Alaska Trusts Offer New Estate Planning Opportunities*, 1997 RIA Estate and Financial Planners Alert, June 1997, at 3 (discussing how the Alaska asset protection legislation might enhance the attractiveness of *Crummey* Trusts; Life Insurance Trusts; Unified Credit and GST Exemption Trusts; GRATs, GRUTs, and GRITs; QPRTs; Charitable Lead Trusts; and Charitable Remainder Trusts and also discussing how non-U.S. persons might find an Alaska Trust advantageous). *See also* Douglas J. Blattmachr & Jonathan G. Blattmachr, A New Direction in Estate Planning: North to Alaska, Trusts & Estates, Sept. 1997, at 48 (suggesting that an Alaska asset protection trust can afford a settlor both protection from creditors and estate tax reduction).

[219]Under the Federal Bankruptcy Code, the bankruptcy estate does not include any beneficial interest of the debtor in a trust where the interest is subject to a restriction on alienation that is enforceable under "applicable nonbankruptcy law." 11 U.S.C.A. §541(c)(2). *See generally* Richard W. Nenno, *Planning with Domestic Asset-Protection Trusts: Part I*, 40 Real Prop. Prob. & Tr. J. 263, 292–319 (Summer 2005); §5.3.3.3(d) of *Loring and Rounds: A Trustee's Handbook* (trusteed employee benefit plans and IRAs). *See also* Restatement (Second) of Conflict of Laws §270 (1971) (suggesting that with respect to an

amended the Bankruptcy Code in 2005 to allow a bankruptcy trustee to reach certain transfers to a DAPT made by the debtor going back ten years from the filing of the bankruptcy petition.[220] One federal bankruptcy court has voided the transfer of assets into an Alaska DAPT with an Alaska choice-of-law provision, the trust having been established by a resident of Washington, a state that has a strong public policy against self-settled asset protection trusts. There were simply too few Alaska contacts: "In the instant case, it is undisputed that at the time the Trust was created, the settlor was not domiciled in Alaska, the assets were not located in Alaska, and the beneficiaries were not domiciled in Alaska. The only relation to Alaska was that it was the location in which the Trust was to be administered and the location of one of the trustees, AUSA."[221]

Finally, it does not necessarily follow that a creditor who is foreclosed from reaching into a DAPT also would be foreclosed from obtaining a judicial charging order. Such an order would snare any distributions actually made by the trustee.[222]

In any case, let there be no misunderstanding: Domestic asset protection legislation is controversial. Some feel that placing one's assets in a DAPT is fraught with risk.[223] Others are adamant that a state should not be enabling a debtor to eat his cake and have it too:

> Interestingly, the Uniform Trust Code flatly rejects the notion of an "asset protection trust." Likewise, the Third Restatement adheres unapologetically to the traditional rule. So also, the scholarly reaction to asset protection trusts has been almost universally negative...In any event, the concept of the asset protection trust has already generated an immense amount of commentary.[224]

Some non-U.S. jurisdictions also have rejected the creditor-friendly policy of §156(2) of the Restatement of Trusts. This has given rise to the so-called Offshore Asset Protection Trust discussed briefly in §9.10 of *Loring and Rounds: A Trustee's Handbook.* For a discussion of how DAPTs compare with offshore asset protection trusts, readers are referred to Jeffrey A. Schoenblum.[225]

A DAPT full-faith-and-credit practice tip. So let us return to the question we posited at the beginning of this sub-section: What if a debtor has established with all his property a trust in a DAPT state and the creditor owns a judgment against him that has emanated from the court of a non-DAPT sister state? Is the creditor entitled under the Full Faith and Credit Clause to have the judgment satisfied from the assets of the DAPT via a secondary action brought in the courts of the DAPT state? It would seem that it depends upon whether the action in the non-DAPT state had been a transitory one, in this case whether the DAPT had been funded via a fraudulent conveyance. If there is an out-of-state judgment to that effect then the property ostensibly in the DAPT would be accessible to the settlor's out-of-state judgment creditors. Moreover, a unilateral effort by the legislature of the DAPT state to grant its courts

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inter vivos trust of movables, a court should look to the law of the state designated by the settlor in the governing instrument as the law that is to govern the validity of the trust).

[220]*See* 11 U.S.C. §548(e)1. *See, e.g.*, Waldron v. Huber (*In re* Huber), 493 B.R. 798 (Bankr. W.D. Wash. 2013).

[221]Waldron v. Huber (*In re* Huber), 493 B.R. 798 (Bankr. W.D. Wash. 2013).

[222]*See, e.g.*, Hamilton v. Drogo, 241 N.Y. 401, 150 N.E. 496 (1926). *See also* UTC §501 (allowing for attachment under certain circumstances of "future distributions").

[223]*See, e.g.*, Michael A. Passananti, *Domestic Asset Protection Trusts: The Risks and Roadblocks Which May Hinder Their Effectiveness*, 32 ACTEC L.J. 260, 271 (2006).

[224]3 Scott & Ascher §15.4.3.

[225]1 Multistate and Multinational Estate Planning 1467 (1999).

exclusive jurisdiction over such out-of-state fraudulent-conveyance claims would not be entitled to respect under the Full Faith and Credit Clause.[15]

On the other hand, had the property lawfully found its way into the hands of the DAPT trustee, then, going forward, a judgment out of the DAPT jurisdiction that the property in the DAPT trust is unreachable by the settlor's creditors domestic and out-of-state, itself, would likely be entitled to the respect of the out-of-state courts by virtue of the Full Faith and Credit Clause.

Here is the practice tip: The debtor-friendly terms of a statutory DAPT are likely enforceable, provided (1) funding had not been via a fraudulent conveyance, (2) the settlor-debtor was and is a resident of the DAPT state, (3) the settlor-debtor is not subject to another state's personal jurisdiction, and (4) the Bankruptcy court is not in the picture. Otherwise, *caveat emptor*.

[15] *See, e.g.*, Toni 1 Trust, by Tangwall v. Wacker, 413 P.3d 1199 (2018).