

# Domestic Asset Protection Trusts 101 and More

**D. Scott Robinson, Esq.**

**Berg Hill Greenleaf Ruscitti LLP**  
1712 Pearl Street  
Boulder, CO 80302  
(303) 402-1600  
[dsr@bhgrlaw.com](mailto:dsr@bhgrlaw.com)

**Lydia A. Holzman, Esq.**

**Hutchinson Black and Cook LLC**  
921 Walnut Street | Suite 200  
Boulder, CO 80302  
(303) 442-6514  
[lydia.holzman@hbcboulder.com](mailto:lydia.holzman@hbcboulder.com)

**Boulder County Estate Planning Council**  
January 7, 2025

# What is Asset Protection?

- Asset Protection is organizing asset ownership to protect and shelter assets and wealth from the risks to which they are or may be subject.
- Considerations:
  1. Who is Debtor?
  2. What are the Potential Claims?
  3. Who are the Potential Creditor?
  4. What Assets are at Risk?

# Fraudulent Transfer

- Asset protection planning must be done in advance of a claim.
- Otherwise, risk that the creditor claims it is a “fraudulent transfer”
- “Fraudulent Conveyance” is a transfer made with the intent to hinder, delay or defraud a creditor.

## **Sources of fraudulent transfer law:**

- Uniform Fraudulent Transfer Act (UFTA) – applies in most states.  
Colorado’s Uniform Fraudulent Transfer Act, C.R.S. § 38-8-101, et seq.
- Uniform Voidable Transactions Act (UVTA) (formerly, the Uniform Fraudulent Transfer Act (UFTA))
- Common law
- Title 11 of the US Code – the Bankruptcy Code.

# Common Tools for Asset Protection:

- Give it Away
- Fractional Ownership (e.g., Tenants-in-Common)
- Insurance
- Limited Liability Entities
- Trusts
- Domestic Asset Protection Trusts....

# Domestic Asset Protection Trusts (DAPTs)

- An irrevocable trust that allows a settlor to protect trust assets from the settlor's creditors and to retain the ability to benefit from the trust assets.
- Typically, there is an independent trustee who has absolute discretion to make distributions to a class of beneficiaries which includes the grantor.
- DAPTs are governed by state statutes in the various states that allow these trusts.
- Twenty-one (21) states that have passed statutes authorizing DAPTs.
- These statutes set out the rules for creating, funding, and administering an asset protection trust.

# 21 U.S. States Offering DAPT

- Alabama
- **Alaska**
- Arkansas
- Connecticut
- Delaware
- Hawaii
- Indiana
- Michigan
- Mississippi
- Missouri
- Nevada
- New Hampshire
- Ohio
- Oklahoma
- Rhode Island
- South Dakota
- Tennessee
- Utah
- Virginia
- West Virginia
- Wyoming



# DAPT – Fraudulent Conveyance & Nonresident Settlor Issues

- Settlor's State of Residence or DAPT State Fraudulent Conveyance Statute Apply?
- Settlor's State of Residence Law
  - Treatment in Divorce Context
  - Contempt

# DAPT – Taxation

- **General:**
  - Income Tax = Grantor Trust
  - Gift & Estate Tax = Incomplete Gift
- **Advanced:**
  - **Hybrid DAPT:**
    - Gift & Estate Tax = Completed Gift
    - Income Tax = Grantor or Nongrantor
  - **Incomplete Gift, Nongrantor (ING):**
    - Gift & Estate Tax = Incompleted Gift
    - Income Tax = Nongrantor

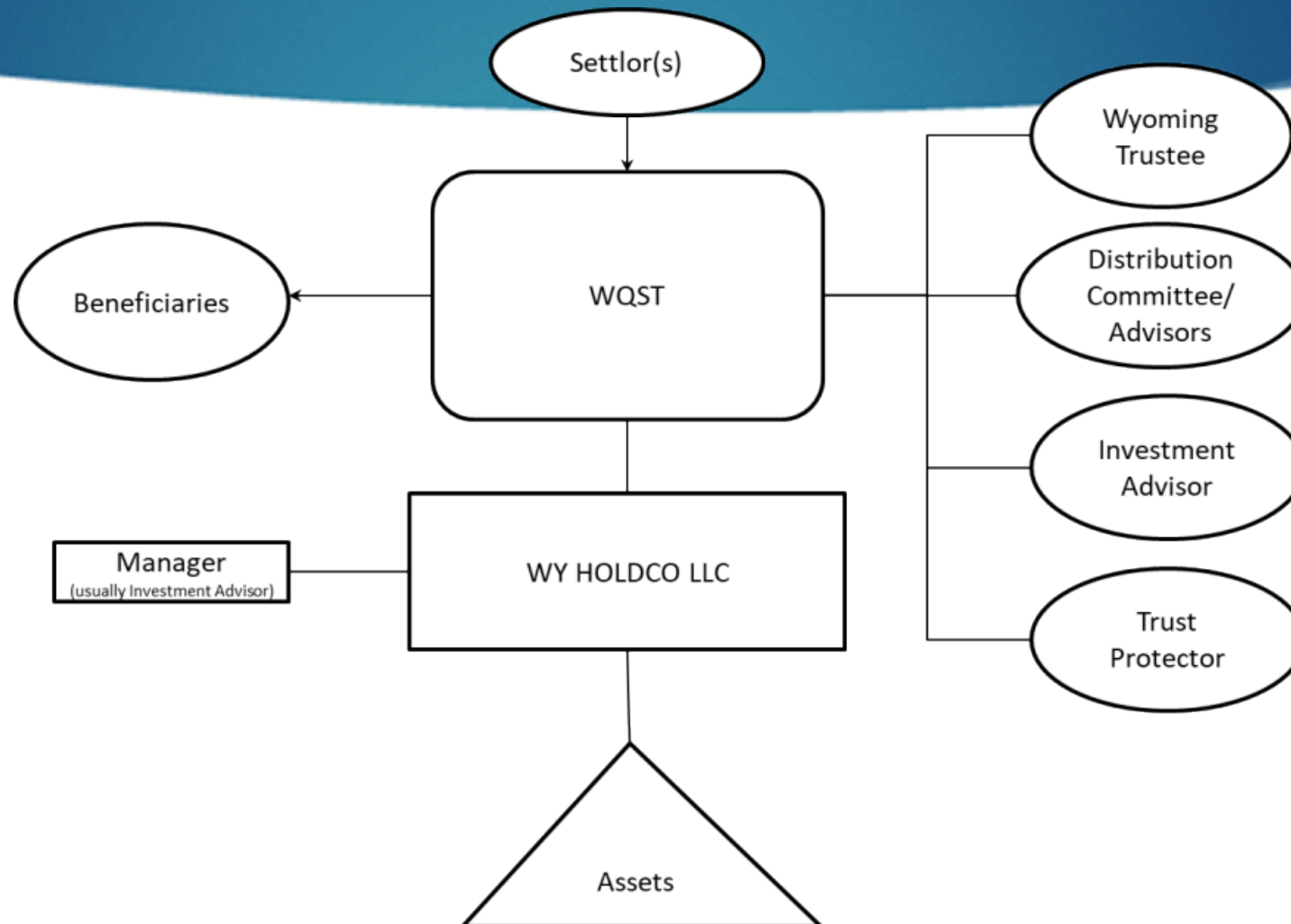


# DAPT – Establishment and Common Structuring

(Example Using Wyoming Law)

- The Basic Requirements for Establishing a Wyoming Qualified Spendthrift Trust (WQST) are as Follows:
  - Trust Agreement
  - Wyoming Trustee
  - Appropriate Assets for Funding the Trust
  - Qualified Transfer Affidavit

# WQST – Establishment and Structuring



# Opportunities and Uses of DAPTs

## Common Uses

- Investment Portfolio
- Enhancing Holding Company Structure
- Holding of Business Interests
- Holding Personal Use Assets
- Premarital Planning

# Opportunities and Uses of DAPTs -Cont.-

## Enhancement of Other Estate Planning Trusts

- Grantor Retained Annuity Trust (GRAT)
- Qualified Personal Residence Trust (QPRT)
- Charitable Remainder Annuity Trust (CRT)

# Opportunities and Uses of DAPTs -Cont.-

## Income Tax Mitigation - WING

- Primarily State Income Tax Savings Tool
- Traditional Investment Portfolio
- Preliquidity Event Planning
- Qualified Small Business Stock

# Opportunities and Uses of DAPTs -Cont.-

## Hybrid Completed Gift Trusts

- Spousal Lifetime Access Trusts
  - Grantor Trust = Spousal Lifetime Access Trust (SLAT)
  - Nongrantor Trust = Spousal Lifetime Access Nongrantor Trust (SLANT)
  
- Children and/or Family Gift Trust
  - Grantor
  - Nongrantor



THANK YOU!

QUESTIONS?