

## NEWS ALERT

### TRUSTS & ESTATES



*This newsletter is first in a series on the modernization of Connecticut's trust laws by Public Act 19-137, effective January 1, 2020.*

## Asset Protection Trusts: Connecticut Makes History by Enacting a Domestic Asset Protection Trust Law

By Lisa P. Staron | August 8, 2019

At the tail end of the legislative session, the Connecticut General Assembly enacted historic and sweeping trust legislation including the Uniform Trust Code and Directed Trust Act, and extended the rule against perpetuities to allow 800-year dynasty trusts. Public Act 19-137, ["An Act Concerning the Uniform Trust Code"](#) was signed by Governor Lamont on July 12, 2019, and goes into effect on January 1, 2020.

One of the most ground-breaking provisions of the new law is the "Connecticut Qualified Dispositions in Trust Act", which permits the creation and establishment of self-settled domestic asset protection trusts ("DAPTs").<sup>1</sup> DAPTs are irrevocable, self-settled trusts, which permit the person establishing the trust (the "grantor" or "settlor") to fund the trust with his or her own assets and remain a permissible beneficiary of the trust. A properly structured DAPT shields those trust assets from the claims of most future creditors of the grantor, making them particularly attractive planning techniques for business owners and professionals in high risk occupations, such as executives and medical professionals. Connecticut is now the 19th state to have DAPT-enabling legislation.<sup>2</sup>

In order to establish a Connecticut DAPT, the owner of property or the holder of a general power of appointment transfers assets in a "qualified disposition" to an irrevocable trust. To be a "qualified disposition", that irrevocable trust must: (i) have a "qualified trustee" as one of the trustees; (ii) incorporate Connecticut law to govern its validity, construction and administration; and (iii) have a spendthrift clause.<sup>3</sup>

A "qualified trustee" cannot be the transferor, and must be either an individual residing in Connecticut or an entity authorized by Connecticut law to act as a trustee. These qualified trustees must:

1. maintain or arrange for the custody of the property in the trust,
2. maintain records of the trust on an exclusive or nonexclusive basis,
3. prepare or arrange for the preparation of all state and federal tax returns, and
4. materially participate in the administration of the trust.

<sup>1</sup> See generally, Sections 99 – 109 of Public Act 19-37.

<sup>2</sup> The other eighteen states are: Alaska, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

<sup>3</sup> A "spendthrift clause" prohibits the transferor or other beneficiary of the trust property from transferring, assigning, pledging or mortgaging, whether voluntarily or involuntarily, his or her interest in the trust property.

The property held in a Connecticut DAPT will generally be protected against creditor claims, except fraudulent transfer claims under the [Connecticut Uniform Fraudulent Transfer Act](#), certain child support and marital support obligations, and tort claims that arose before the transfer of assets to the Connecticut DAPT. These exceptions are based on public policy concerns and are similar to DAPT statutes in other jurisdictions. Claims that arise after a transfer of property into a Connecticut DAPT are subject to a four-year statutes of limitations period.

Even though the transfer of property to a Connecticut DAPT is irrevocable, grantors can nevertheless maintain significant rights and powers over the Connecticut DAPT. For example, the grantor can retain the rights to: (i) receive income; (ii) receive principal (as a result of the trustee's exercise of discretion or compliance with a distribution standard); (iii) receive up to five percent (5%) of the value of the trust property every year; and (iv) veto a distribution from the trust. The grantor can also have a limited power to appoint (i.e., redirect) the trust assets at death, under the terms of his or her Last Will and Testament. Additionally, the grantor can have the power to remove a trustee or trust director and appoint a replacement trustee or trust director, so long as the replacement is considered "independent" under certain provisions of the Internal Revenue Code.

DAPTs have been available in other jurisdictions for many years. With the enactment of this historic legislation, Connecticut residents can now use Connecticut trustees and Connecticut trusts to protect their hard-earned assets and wealth.

*If you would like more information about this exciting new planning opportunity, please contact one of our attorneys in the Trusts and Estates Department.*

**Richard A. Marone**, Chair  
860.240.6026  
rmarone@murthalaw.com

**Marcel J. Bernier**  
860.240.6087  
mbernier@murthalaw.com

**Alfred R. Casella**  
860.240.6048  
acasella@murthalaw.com

**Patrick D. Coughlin**  
203.653.5409  
pcoughlin@murthalaw.com

**George A. Dagon, Jr.**  
860.240.6039  
gdagon@murthalaw.com

**Christopher S. Fox**  
617.457.4082  
cfox@murthalaw.com

**Shera G. Golder**  
860.240.6188  
sgolder@murthalaw.com

**Robert A. Heinimann, Jr.**  
203.772.7781  
rheinimann@murthalaw.com

**Natale A. Messina**  
860.240.6027  
nmessina@murthalaw.com

**Lisa Newfield**  
203.772.7768  
lnewfield@murthalaw.com

**Lisa P. Staron**  
860.240.6175  
lstaron@murthalaw.com

**Suzanne Brown Walsh**  
860.240.6041  
swalsh@murthalaw.com

**Donna M. White**  
617.457.4133  
dwhite@murthalaw.com

*With more than 100 attorneys in six offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.*

CONNECTICUT + MASSACHUSETTS + NEW YORK

© Murtha Cullina LLP. | This material is intended for general information purposes only

**MURTHA  
CULLINA**  
ATTORNEYS AT LAW

**MURTHALAW.COM**