

# THE NEVADA ASSET PROTECTION TRUST

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In most cases, when an individual who creates and transfer assets to a Trust (the maker or “settlor” of the Trust), is also a beneficiary of that Trust, the Trust provisions will not protect the settlor/beneficiary’s creditors from reaching the assets of the Trust. On the other hand, as we have discussed in another article dealing with Offshore Asset Protection, the law of many foreign jurisdictions provides that when a Settlor transfers assets to an Offshore Asset Protection Trust that Trust can protect the assets of the Trust even though the Trustor is a beneficiary of the Trust.

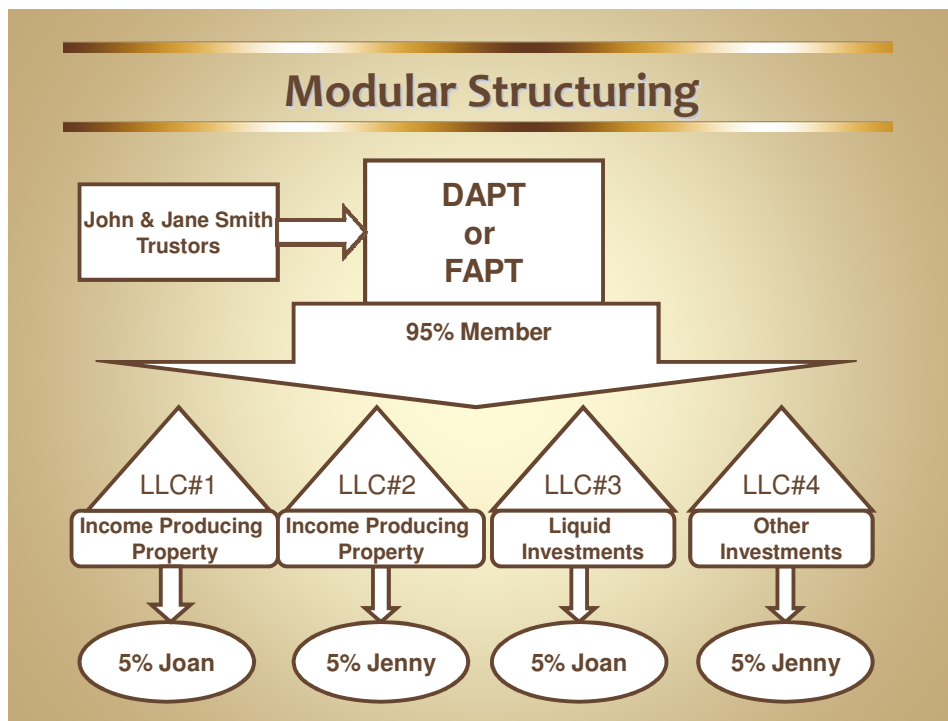
In the late 1990s, several states began to reverse the general rule concerning self settled Spend Thrift Trusts and statutorily modified their laws accordingly. Delaware and Alaska along with Nevada are among the 11 states that have adopted such legislation. The Nevada legislation was enacted in 1999 and allows the Trustor or creator of the Trust to protect the principal of the Trust from outside creditors even though the Trustor is a beneficiary of the Trust.

This legislation is extremely important and critical to Asset Protect Planning. For many people, the typical revocable living trust that they have set up in California or elsewhere provides zero protection against the creditors of the settlors of the Trust whether they have a claim arising prior to establish the Trust or after its set up.

Under the relevant provisions of the Nevada law, at least one Trustee must be a Nevada resident. Wealth Strategies Counsel recommends that a Trust company organized under the laws of Nevada be the Trustee of the Nevada Asset Protection Trust. The major advantage of the Nevada laws is the shorter period of time required for protection between the date an asset is transferred to the Trust and the date the protection begins from the creditors of the Trustor. The Nevada statute of limitation in this is only two years where as the other principal states have a much longer statute of limitations.

Again, it should be emphasized that only a minority of states permit self settled Asset Protection Trusts. The benefits of using the Nevada Asset Protection Trust are obvious not only from the standpoint of high net worth individuals who want to protect their large property holdings, but also for many younger people who are in the process of building their estate and who face high liability exposure such as doctors, lawyers, other professionals and many other type of business owners and executives.

One of the best ways to utilize the Nevada Asset Protection Trust is to create a modular structure combining the Nevada Asset Protection Trust with a limited liability company (“LLC”). Basically, the member interest of the owner of the LLC is transferred to the Nevada Asset Protection Trust which holds the interest, more or less, as a custodian. For example, a husband or wife can be the Settlor or the maker of the Nevada Asset Protection Trust. The LLCs can then be set up to hold real property and other assets and the member interests of the LLCs can be transferred to the Nevada Asset Protection Trust. It is recommended that a third party own at least 5% of the LLC because the efficacy of the Charging Order remedy limitation of creditors of the LLC is greatly reduced and even eliminated when the LLC is a single member LLC. A diagram of the structure is set forth below:



For greater understanding of the Charging Order and LLC, please see the Article “Asset Protection Utilizing Asset Protection Trusts and Limited Liability Companies” by Jeffrey R. Matsen.

*Jeffrey R. Matsen is the founder of Wealth Strategies Counsel and a partner in the Southern California law firm of Bohm, Matsen, Kegel & Aguilera, LLP. Attorney Matsen's knowledge, professionalism, responsiveness and integrity have vaulted him to the top of his field culminating in his designation by Worth Magazine as one of "America's Top 100 Attorneys", by Los Angeles Magazine as one of California's "Super Lawyers" and by OC Metro Magazine as one of "O.C.'s Top Lawyers." The Nationally Renowned Attorney Rating Service, 'AVVO' has rated Mr. Matsen a perfect "10/10 Superb", he has continued to achieve the highest "AV rating" and has been designated a "Preeminent Lawyer" by the only other prestigious attorney rating directory, Martindale Hubble. He has been a Professor of Law at Western State University and Adjunct Professor of Law at Chapman University School of Law and an instructor at the Golden Gate Program of Advanced Taxation. He is a member of the American Bar Association Sub Committee on Asset Protection Planning and has written several course materials and delivered continuing education programs to other attorneys and advisors in the areas of estate and asset protection planning, limited liability companies, family limited partnerships and business formations. Matsen is an internationally recognized authority in these areas. Simply put, Mr. Matsen Structures his client's personal and business assets in the best way possible to preserve, protect, and transfer them in the most efficient and tax saving manner.*