

ASSET PROTECTION TRUST AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Asset Protection Trust Act and adds new provisions relating to registration, limits on protected amounts, and child support, alimony, and domestic property.

Highlighted Provisions:

This bill:

- ▶ creates the Asset Protection Trust Act;
- ▶ defines terms;
- ▶ requires registration of the trust with the Department of Commerce;
- ▶ limits protected trust assets to \$250,000;
- ▶ provides a special exemption for child support, alimony, and property division; and
- ▶ creates an exemption for Medicaid reimbursement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-2-205, as last amended by Laws of Utah 2003, Second Special Session, Chapter 3

75-7-107, as renumbered and amended by Laws of Utah 2004, Chapter 89



28 [75-7-301](#), as repealed and reenacted by Laws of Utah 2004, Chapter 89

29 [75-7-501](#), as repealed and reenacted by Laws of Utah 2004, Chapter 89

30 [75-7-505](#), as enacted by Laws of Utah 2004, Chapter 89

31 [75-7-816](#), as enacted by Laws of Utah 2004, Chapter 89

32 ENACTS:

33 [25-6-201](#), Utah Code Annotated 1953

34 [25-6-202](#), Utah Code Annotated 1953

35 [25-6-203](#), Utah Code Annotated 1953

36 [25-6-204](#), Utah Code Annotated 1953

37 [25-6-205](#), Utah Code Annotated 1953

38 [25-6-206](#), Utah Code Annotated 1953

39 [25-6-207](#), Utah Code Annotated 1953

40 REPEALS:

41 [25-6-14](#), as repealed and reenacted by Laws of Utah 2013, Chapter 284



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section [25-6-201](#) is enacted to read:

Part 2. Asset Protection Trust Act

[25-6-201](#). Title.

47 This part is known as the "Asset Protection Trust Act."

48 Section 2. Section [25-6-202](#) is enacted to read:

[25-6-202](#). Definitions.

50 As used in this chapter:

51 (1) "Creditor" means:

52 (a) a creditor or other claimant of the settlor existing when the trust is created; or

53 (b) a person who subsequently becomes a creditor, including, whether or not the claim

54 is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

55 disputed, undisputed, legal, equitable, secured, or unsecured:

56 (i) who holds or seeks to enforce a judgment entered by a court or other body having

57 adjudicative authority; or

58 (ii) who has a right to payment.

59 (2) "Insolvent" has the same meaning as in Section 25-6-3.

60 (3) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use
61 or occupancy of real property or tangible or intangible personal property owned by the trust if
62 the use or occupancy is in accordance with the trustee's discretionary authority under the trust
63 instrument.

64 (4) "Property" means real property, tangible or intangible personal property, and
65 interests in real property or tangible or intangible personal property.

66 (5) "Settlor" means a natural person who transfers property in trust.

67 (6) "Special creditor" means the holder of a judgment or court order against the settlor
68 of a trust for child support, alimony, or domestic property division.

69 (7) "Transfer" means any form of transfer of property, including gratuitous transfers,
70 whether by deed, conveyance, or assignment.

71 (8) "Trust" has the same meaning as in Section 75-1-201.

72 (9) "Trust protector" means a person who has the authority to:

73 (a) appoint or remove trustees;

74 (b) direct, approve, or disapprove distributions or withdrawals; or

75 (c) amend, revoke, or terminate all or any portion of the trust.

76 Section 3. Section **25-6-203** is enacted to read:

77 **25-6-203. Trust protections -- Creditor restrictions -- Special creditor exemption.**

78 (1) If the settlor of an irrevocable trust is also the sole beneficiary of the trust during
79 the settlor's life, and if the requirements of Section 25-6-204 are satisfied, a creditor of the
80 settlor may not:

81 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's
82 transfer to the trust or the settlor's beneficial interest in the trust;

83 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

84 (c) require the trustee to pay any distribution directly to the creditor, or otherwise
85 attach the distribution before it has been paid or delivered by the trustee to the settlor, as
86 beneficiary.

87 (2) This section does not apply to:

88 (a) a special creditor; or

89 (b) a claim for reimbursement arising under the Medicaid Benefits Recovery Act in

90 accordance with Subsection [25-6-5\(1\)\(b\)](#).

91 (3) The provisions of this chapter do not apply to trust assets in excess of \$250,000.

92 (4) Notwithstanding Subsection (1), nothing in this section prohibits a creditor from
93 satisfying a claim or liability from the distribution once it has been paid or delivered by the
94 trustee to the settlor, as beneficiary.

95 Section 4. Section **25-6-204** is enacted to read:

96 **25-6-204. Trust requirements.**

97 In order for Subsection [25-6-203\(1\)](#) to apply, the conditions in this section shall be
98 satisfied. Where this section requires that a provision be included in the trust instrument, no
99 particular language need be used in the trust instrument if the meaning of the trust provision
100 otherwise complies with this section.

101 (1) The trust instrument shall be in writing and provide that the trust is governed by
102 Utah law and this chapter.

103 (2) The trust instrument shall require that at all times the trust protector and at least one
104 trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined
105 in Section [7-5-1](#).

106 (3) The trust instrument shall provide that neither the interest of the settlor, as
107 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily
108 transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction
109 on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable
110 nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).

111 (4) The settlor may not have the ability under the trust instrument to revoke, amend, or
112 terminate all or any part of the trust, or to withdraw property from the trust.

113 (5) The trust instrument may not provide for any mandatory distributions of either
114 income or principal to the settlor, as beneficiary, except as provided in Subsection
115 [25-6-206\(2\)\(f\)](#).

116 (6) The settlor may not benefit from, direct a distribution of, or use trust property
117 except as stated in the trust instrument. An agreement or understanding, express or implied,
118 between the settlor and the trustee that attempts to grant or permit the retention of greater rights
119 or authority than is stated in the trust instrument is void.

120 (7) The trust instrument shall require that, at least 30 days before paying or delivering

121 any distribution to the settlor, as beneficiary, the trustee notify in writing every special creditor.
122 The trust instrument shall require that the notice state the date the distribution will be made and
123 the amount of the distribution.

124 (8) The trust assets consist solely of cash, cash equivalents, publicly traded securities,
125 and real property title in fee simple.

126 (9) At the time that the settlor transfers any assets to the trust, the settlor may not be in
127 default of making any payments due under any court order or judgment regarding child support,
128 alimony, or domestic property division.

129 (10) A transfer of assets to the trust may not render the settlor insolvent.

130 (11) At the time the settlor transfers any assets to the trust, the settlor may not intend to
131 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's
132 expressed intention to protect trust assets from the settlor's potential future creditors is not
133 evidence of an intent to hinder, delay, or defraud a known creditor.

134 (12) Assets transferred to the trust may not be derived from criminal activities.

135 (13) At the time the settlor transfers any assets to the trust, the settlor shall sign a
136 sworn affidavit stating that:

137 (a) the settlor has full right, title, and authority to transfer the assets to the trust;

138 (b) the transfer of the assets to the trust will not render the settlor insolvent;

139 (c) the settlor does not intend to hinder, delay, or defraud a known creditor by
140 transferring the assets to the trust;

141 (d) there are no pending or threatened court actions against the settlor, except for those
142 court actions identified by the settlor on an attachment to the affidavit;

143 (e) the settlor is not involved in any administrative proceedings that would reasonably
144 be expected to have a materially adverse financial effect on the settlor, except those
145 administrative proceedings identified on an attachment to the affidavit;

146 (f) at the time of the transfer of the assets to the trust, the settlor is not in default on an
147 obligatory payment for child support, alimony, or division of property pursuant to a divorce or
148 separation;

149 (g) the settlor does not contemplate filing for relief under the provisions of 11 U.S.C.
150 Sec. 101, et seq.; and

151 (h) the assets being transferred to the trust were not derived from criminal activities.

152 (14) The trust shall be registered with the Department of Commerce within 10 days of
153 the trust's creation, with the following information available to the public through a search:

154 (a) the name of the trust;

155 (b) the name and address of the settlor;

156 (c) the name and address of all trust protectors;

157 (d) the name and address of all trustees; and

158 (e) a designation that the trust is an asset protection trust.

159 Section 5. Section **25-6-205** is enacted to read:

160 **25-6-205. Consequences.**

161 Failure to satisfy the requirements of Section 25-6-204 shall result in the consequences
162 described in this section.

163 (1) If any requirement of Subsections 25-6-204(1) through (7) is not satisfied, none of
164 the property held in the trust will at any time have the benefit of the protections described in
165 Section 25-6-203.

166 (2) If the trustee does not send the notice required under Subsection 25-6-204(7), the
167 trustee shall be personally liable to the holder of the judgment or order to the extent of the
168 distribution.

169 (3) If any requirement set forth in Subsections 25-6-204(9) through (13) is not
170 satisfied, the property transferred to the trust that does not satisfy the requirement may not have
171 the benefit of the protections described in Section 25-6-203.

172 (4) Failure to register as required in Subsection 25-6-204(14) shall deprive the trust of
173 the protections described in Section 25-6-203.

174 Section 6. Section **25-6-206** is enacted to read:

175 **25-6-206. Settlor limitations.**

176 (1) A settlor may not create more than one trust under the provisions of this part.

177 (2) The following provisions will not disqualify a trust from the protections described
178 in Section 25-6-203 if the requirements of this chapter are otherwise satisfied:

179 (a) the settlor serves as a cotrustee or as an advisor to the trust protector or a trustee,
180 provided that any determination as to whether a discretionary distribution will be made to the
181 settlor is made by trustees other than the settlor;

182 (b) the settlor has the authority under the terms of the trust instrument to appoint

183 nonsubordinate trust protectors who can remove and appoint trustees and who can direct,
184 consent to, or disapprove distributions;

185 (c) the settlor has the power under the terms of the trust instrument to serve as an
186 investment director or to appoint an investment director under Section 75-7-906;

187 (d) the trust instrument gives the settlor the power to consent to or veto a distribution
188 from the trust;

189 (e) the trust instrument gives the settlor an inter vivos or testamentary nongeneral
190 power of appointment or similar power;

191 (f) the trust instrument gives the settlor the right to receive the following types of
192 distributions:

193 (i) income, principal, or both in the discretion of a person, including the trust protector
194 or a trustee, other than the settlor;

195 (ii) principal, subject to an ascertainable standard set forth in the trust;

196 (iii) income or principal from a charitable remainder annuity trust or charitable
197 remainder unitrust, as defined in 26 U.S.C. Sec. 664;

198 (iv) a percentage of the value of the trust each year as determined under the trust
199 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec.
200 643(b);

201 (v) the transferor's potential or actual use of real property held under a qualified
202 personal residence trust, or potential or actual possession of a qualified annuity interest, within
203 the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations; and

204 (vi) income or principal from a grantor retained annuity trust or grantor retained
205 unitrust allowed under 26 U.S.C. Sec. 2702;

206 (g) the trust instrument authorizes the settlor to use real or personal property owned by
207 the trust;

208 (h) (i) the settlor gives a personal guarantee with respect to any debt or obligation
209 secured by property that is held in the trust and the settlor directly or indirectly pays or makes
210 payments on the debt or obligation; or

211 (ii) the settlor directly pays property taxes, casualty and liability insurance premiums,
212 maintenance expenses, homeowners association dues, or other similar expenses with respect to
213 property held in the trust; or

214 (i) the settlor pays income tax with respect to items of income attributable to that
215 portion of the trust of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671
216 through 678, which payments do not constitute additional transfers to the trust for purposes of
217 this chapter.

218 Section 7. Section **25-6-207** is enacted to read:

219 **25-6-207. Limitations on claims for relief.**

220 (1) If a trust instrument contains the provisions described in Subsections 25-6-204(1)
221 through (7), the transfer restrictions prevent a creditor or other person from asserting any cause
222 of action or claim for relief against a trustee of the trust or against others involved in the
223 counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit
224 fraudulent conveyance, aiding and abetting a fraudulent conveyance, participation in the trust
225 transaction, or similar cause of action or claim for relief.

226 (2) The creditor and other person prevented from asserting a cause of action or claim
227 for relief may assert a cause of action against, and are limited to recourse against, only:

228 (a) the trust and the trust assets; and

229 (b) the settlor, to the extent otherwise allowed in this chapter.

230 (3) A cause of action or claim for relief regarding a fraudulent transfer of a settlor's
231 assets under Subsection 25-6-204(11) is extinguished unless the action under Subsection
232 25-6-204(11) is brought by a creditor of the settlor who was a creditor of the settlor before the
233 assets referred to in Subsection 25-6-204(11) were transferred to the trust and the action under
234 Subsection 25-6-204(11) is brought within the earlier of:

235 (a) the later of:

236 (i) two years after the transfer is made; or

237 (ii) one year after the transfer is or reasonably could have been discovered by the
238 creditor if the creditor:

239 (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a
240 specific claim against the settlor before the transfer; or

241 (B) files another action, other than an action alleging a fraudulent transfer, against the
242 settlor that asserts a claim based on an act or omission of the settlor that occurred before the
243 transfer, and the action described in this Subsection (3) is filed within two years after the
244 transfer; or

245 (b) with respect to a creditor known to the settlor, 120 days after the date on which
246 notice of the transfer is mailed to the creditor, which notice shall state the name of the settlor,
247 the address of the settlor or the settlor's representative, the name of the trustee, and the address
248 of the trustee or the trustee's representative, and also describe the assets that were transferred,
249 but does not need to state the value of those assets if the assets are other than cash, and which
250 shall inform the creditor of the requirement to bring an action or claim for relief within 120
251 days from the mailing of the notice or be forever barred.

252 Section 8. Section **75-2-205** is amended to read:

253 **75-2-205. Decedent's nonprobate transfers to others.**

254 Unless excluded under Section **75-2-208**, the value of the augmented estate includes the
255 value of the decedent's nonprobate transfers to others, not included under Section **75-2-204**, of
256 any of the types described in this section, in the amount provided respectively for each type of
257 transfer:

258 (1) Property owned or owned in substance by the decedent immediately before death
259 that passed outside probate at the decedent's death. Property included under this category
260 consists of the property described in this Subsection (1).

261 (a) (i) Property over which the decedent alone, immediately before death, held a
262 presently exercisable general power of appointment.

263 (ii) The amount included is the value of the property subject to the power, to the extent
264 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
265 to or for the benefit of any person other than the decedent's estate or surviving spouse.

266 (b) (i) The decedent's fractional interest in property held by the decedent in joint
267 tenancy with the right of survivorship.

268 (ii) The amount included is the value of the decedent's fractional interest, to the extent
269 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
270 tenant other than the decedent's surviving spouse.

271 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
272 co-ownership registration with the right of survivorship.

273 (ii) The amount included is the value of the decedent's ownership interest, to the extent
274 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
275 person other than the decedent's estate or surviving spouse.

276 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the
277 decedent, if the decedent owned the insurance policy immediately before death or if and to the
278 extent the decedent alone and immediately before death held a presently exercisable general
279 power of appointment over the policy or its proceeds.

280 (ii) The amount included:

281 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
282 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

283 (B) may not exceed the greater of the cash surrender value of the policy immediately
284 prior to the death of the decedent or the amount of premiums paid on the policy during the
285 decedent's life.

286 (2) Property transferred in any of the forms described in this Subsection (2) by the
287 decedent during marriage:

288 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
289 possession or enjoyment of, or to the income from, the property if and to the extent the
290 decedent's right terminated at or continued beyond the decedent's death.

291 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
292 decedent's interest as settlor and beneficiary as described in [~~Section 25-6-14~~] Title 25, Chapter
293 6, Part 2, Asset Protection Trust Act.

294 (iii) The amount included is the value of the fraction of the property to which the right
295 or restriction related, to the extent the fraction of the property passed outside probate to or for
296 the benefit of any person other than the decedent's estate or surviving spouse.

297 (b) (i) Any transfer in which the decedent created a power over income or property,
298 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
299 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
300 estate, or creditors of the decedent's estate.

301 (ii) The amount included with respect to a power over property is the value of the
302 property subject to the power, and the amount included with respect to a power over income is
303 the value of the property that produces or produced the income, to the extent the power in
304 either case was exercisable at the decedent's death to or for the benefit of any person other than
305 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
306 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than

307 the decedent's estate or surviving spouse.

308 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
309 produces different amounts, the amount included is the greater amount.

310 (3) Property that passed during marriage and during the two-year period next preceding
311 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
312 types described in this Subsection (3).

313 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
314 power over, property that would have been included in the augmented estate under Subsection
315 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
316 until the decedent's death.

317 (ii) The amount included is the value of the property that would have been included
318 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the
319 right, interest, or power terminated, and is included only to the extent the property passed upon
320 termination to or for the benefit of any person other than the decedent or the decedent's estate,
321 spouse, or surviving spouse.

322 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
323 interest in property, occurs when the right or interest terminated by the terms of the governing
324 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
325 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
326 otherwise.

327 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
328 the power terminated by exercise or release, but not otherwise.

329 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
330 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
331 the transfer not occurred.

332 (ii) The amount included:

333 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
334 the decedent's death to or for the benefit of any person other than the decedent's estate or
335 surviving spouse; and

336 (B) may not exceed the greater of the cash surrender value of the policy immediately
337 prior to the death of the decedent or the amount of premiums paid on the policy during the

338 decedent's life.

339 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
340 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

341 (ii) The amount included is the value of the transferred property to the extent the
342 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

343 Section 9. Section ~~75-7-107~~ is amended to read:

344 **75-7-107. Governing law.**

345 (1) For purposes of this section:

346 (a) "Foreign trust" means a trust that is created in another state or country and valid in
347 the state or country in which the trust is created.

348 (b) "State law provision" means a provision that the laws of a named state govern the
349 validity, construction, and administration of a trust.

350 (2) If a trust has a state law provision specifying this state, the validity, construction,
351 and administration of the trust are to be governed by the laws of this state if any administration
352 of the trust is done in this state.

353 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
354 law provision, the validity, construction, and administration of the trust are to be governed by
355 the laws of this state if the trust is administered in this state.

356 (4) A trust shall be considered to be administered in this state if:

357 (a) the trust states that this state is the place of administration, and any administration
358 of the trust is done in this state; or

359 (b) the place of business where the fiduciary transacts a major portion of its
360 administration of the trust is in this state.

361 (5) If a foreign trust is administered in this state as provided in this section, the
362 following provisions are effective and enforceable under the laws of this state:

363 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
364 to ~~[Section 25-6-14]~~ Title 25, Chapter 6, Part 2, Asset Protection Trust Act;

365 (b) a provision that allows the trust to be perpetual; or

366 (c) a provision that is not expressly prohibited by the law of this state.

367 (6) A foreign trust that moves its administration to this state is valid whether or not the
368 trust complied with the laws of this state at the time of the trust's creation or after the trust's

369 creation.

370 (7) Unless otherwise designated in the trust instrument, a trust is administered in this
371 state if it meets the requirements of Subsection (4).

372 Section 10. Section **75-7-301** is amended to read:

373 **75-7-301. Basic effect.**

374 (1) Notice to a person who may represent and bind another person under this part has
375 the same effect as if notice were given directly to the other person.

376 (2) The consent of a person who may represent and bind another person under this part
377 is binding on the person represented unless the person represented objects to the representation
378 before the consent would otherwise have become effective.

379 (3) Except as otherwise provided in [~~Sections~~] Section 75-7-411 and [~~25-6-14~~] Title
380 25, Chapter 6, Part 2, Asset Protection Trust Act, a person who under this part may represent a
381 settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

382 Section 11. Section **75-7-501** is amended to read:

383 **75-7-501. Rights of beneficiary's creditor or assignee.**

384 To the extent a beneficiary's interest is not protected by a spendthrift provision or
385 [~~Section 25-6-14~~] Title 25, Chapter 6, Part 2, Asset Protection Trust Act, the court may
386 authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by
387 attachment of present or future distributions to or for the benefit of the beneficiary or other
388 means. The court may limit the award to relief as is appropriate under the circumstances.

389 Section 12. Section **75-7-505** is amended to read:

390 **75-7-505. Creditor's claim against settlor.**

391 (1) Whether or not the terms of a trust contain a spendthrift provision, the following
392 rules apply:

393 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the
394 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or
395 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
396 the trust attributable to that settlor's contribution.

397 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the
398 requirements of [~~Section 25-6-14~~] Title 25, Chapter 6, Part 2, Asset Protection Trust Act, a
399 creditor or assignee of the settlor may reach the maximum amount that can be distributed to or

400 for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or
401 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
402 the trust attributable to that settlor's contribution.

403 (c) After the death of a settlor, and subject to the settlor's right to direct the source from
404 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
405 not property received by the trust as a result of the death of the settlor which is otherwise
406 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
407 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
408 of remains, and statutory allowances to a surviving spouse and children to the extent the
409 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

410 (2) For purposes of this section:

411 (a) during the period the power may be exercised, the holder of a power of withdrawal
412 is treated in the same manner as the settlor of a revocable trust to the extent of the property
413 subject to the power; and

414 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
415 the trust only to the extent the value of the property affected by the lapse, release, or waiver
416 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section
417 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

418 Section 13. Section **75-7-816** is amended to read:

419 **75-7-816. Recitals when title to real property is in trust -- Failure.**

420 (1) When title to real property is granted to a person as trustee, the terms of the trust
421 may be given either:

422 (a) in the deed of transfer; or

423 (b) in an instrument signed by the grantor and recorded in the same office as the grant
424 to the trustee.

425 (2) If the terms of the trust are not made public as required in Subsection (1), a
426 conveyance from the trustee is absolute in favor of purchasers for value who take the property
427 without notice of the terms of the trust.

428 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
429 under Subsection (1)(b) shall include:

430 (a) the name of the trustee;

- 431 (b) the address of the trustee; and
- 432 (c) the name and date of the trust.
- 433 (4) Any real property titled in a trust which has a restriction on transfer described in
- 434 [~~Section 25-6-14~~] Title 25, Chapter 6, Part 2, Asset Protection Trust Act, shall include in the
- 435 title the words "asset protection trust."
- 436 Section 14. **Repealer.**
- 437 This bill repeals:
- 438 Section **25-6-14, Asset Protection Trust.**

Legislative Review Note
as of 2-24-14 8:31 AM

Office of Legislative Research and General Counsel