

News & Insights

Robert P. Tiplady Plays Key Role in New Michigan Domestic Asset Protection Trust Legislation

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Robert P. Tiplady, Ann Arbor-based member of Dykema's Taxation Group, chaired the Michigan State Bar Probate and Estate Planning Section subcommittee that drafted Domestic Asset Protection Trust (DAPT) legislation for the state of Michigan. Michigan is the 17th state to enact a law permitting creditor-shielded trusts. The law becomes effective March 8, 2017.

DAPTs are irrevocable trusts that, if certain legal requirements are met, can shield assets from the claims of a person's creditors. Individuals who are concerned about possible creditor exposure, such as business owners, executives and physicians, should consider using a DAPT.

Previously, to use a DAPT a person had to transfer assets to an out-of-state trustee in a jurisdiction such as Delaware, Alaska or Nevada. Now assets can be transferred to a person residing in Michigan such as a family member or a Michigan corporate or professional trustee. The transferor cannot be the trustee, but can be a beneficiary of the trust. Among the rights that the transferor may retain are the rights to:

- Direct trust investment decisions;
- Remove and replace trustees;
- Veto distributions from the trust;
- Receive discretionary distributions of income and/or principal;
- Receive the income from the trust;
- Direct how the assets are to be distributed on the transferor's death provided that the assets may not be transferred to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate;
- Receive the annuity or unitrust payments from a charitable remainder trust;
- Receive the annuity or unitrust payments from a grantor retained annuity trust; and
- Receive an annuity from the trust of not more than 5 percent of the trust's initial value.

If properly established and funded, the Act provides that the transferor's creditors may not reach assets transferred to the trust upon expiration of a two-year period beginning with the date the assets are transferred to the trust except in certain instances of fraudulent concealment. For bankruptcy, a longer statute of limitation may apply.

To take advantage of this opportunity, a DAPT should be created and assets transferred before a claim arises.

Tiplady, who has been recognized in *Chambers High Net Worth Guide for Michigan* in the area of Private Wealth Law, spoke about the legislation in the February 10, 2017, *Forbes* article, "Michigan Debuts The Latest State Asset Protection Trust."

In his practice, Tiplady concentrates in the areas of estate planning, wealth preservation, business succession, asset protection and probate, including wills, trusts, powers of attorney, probate and trust administration, and probate litigation. He regularly advises business owners, executives and professionals regarding family/business succession, tax, wills and trusts. Mr. Tiplady also advises families, family offices and fiduciaries regarding will and trust disputes, will and trust interpretation issues, disgruntled beneficiaries and tax issues.

For more information about the new Michigan law or Domestic Asset Protection Trusts, please contact Robert Tiplady at 734-214-7644 or rtiplady@dykema.com.

Robert P. Tiplady Plays Key Role in New Michigan Domestic Asset Protection Trust Legislation (Cont.)

Attorneys

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Practice Areas

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