

## REAL PROPERTY, PROBATE & TRUST LAW SECTION

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**Date:** January 30, 2024  
**To:** Assembly Committee on Judiciary  
**Re:** AB 648/SB 667– Domestic Asset Protection Trusts

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The Real Property, Probate and Trust (RPPT) Section of the State Bar of Wisconsin continues to study and review AB 648/SB 667 dealing with domestic asset protection trusts. Members of RPPT support the ongoing review of Wisconsin's trust laws to both determine beneficial trends in the various states that would be prudent to follow and to provide Wisconsin residents with estate and trust planning strategies that allow appropriate benefits. RPPT has been generally supportive on the concept of a domestic asset protection trusts, but believe that the language AB 648/SB 667 as currently drafted and its application need significant further study and review before we can recommend the legislature adopt it.

Over the past decade, RPPT attorneys with extensive trust law knowledge established a study committee of broad expertise to review various trust changes that would modernize and update our state's laws. The product of that working group was the adoption of the Uniform Trust Code in 2014 and now an additional legislative effort that is pending that would update Chapter 701 further and additionally adopt the Uniform Powers of Appointment Act and the Uniform Trust Decanting Act. That legislation (AB 803) unanimously passed out of committee and is awaiting approval by the State Assembly. Additional study committees have already started work to review supplementary trust laws including the Uniform Directed Trust Act, Uniform Principal and Income Act and finally a review of Domestic Asset Protection Trusts (DAPT). All these new review projects need to be in alignment so that all this language and trust application can work in collaboration to get a policy and approach that works for everyone.

The DAPT Committee working on the bill recognizes that while it is important, this new trust concept is a significant departure from centuries old trust principles. AB 648/SB 667 requires additional deliberation and if passed as drafted would create several unintended issues. In reviewing the current bill a few of the items that our committee has concerns with include:

- 1.) Definitions – These all need reviewed and compared from Chapter 701, AB 803/SB 759 and from the DAPT legislation (AB 648/SB 667).
- 2.) Portability - Rules regarding out of state DAPTs and determination of which provisions may not be (federal) constitutionally “portable” into or out of Wisconsin.
- 3.) Creditor Claims Language – When assets within a DAPT are attachable or not is very important to their effectiveness, but also strikes a certain balance. The creditor claims statutes included in the revisions to Chapter 701 are not aligned with DAPTs, whether during or after a trust creator's lifetime.
- 4.) Spendthrift Provisions – This language does not align with both Chapter 701 and AB 803
- 5.) Spousal Support Issues/Post-Nuptial Agreements/Child Support – The present bill presents the opportunities for abuse by those seeking to avoid spousal and child support and additional dislocations are likely given our marital property system and the sourcing of the draft legislation from a non-marital property system. As to the latter, the Bar has had a long-standing practice of referring such matters to the academic and professional participants in Marital Property Law in Wisconsin.



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As with all trusts, there are pros and cons that need to be appropriately weighed and discussed as part of the estate planning process. DAPTs are still a relatively new trust concept (first state adopted DAPT in 1997) and have only been partially tested to date in courts around the United States. This legislation could have very meaningful implications both positive and negative on trust creators, trust companies and even potentially on the financial services industry that provides credit and capital to attract individuals and businesses to the state. Our Trust Committee is more than willing to review these issues and provide further recommendations. But again, this is a complicated area of trust law and that should include the multiple professionals and perspectives.

With respect to the economic impact of the proposed DAPT language, the assumption presented to the legislature is that there would be a significant inflow of assets to Wisconsin trusts. The DAPT experience in other states would suggest otherwise. Larger trust institutions, for instance, which would be the primary drivers of large-scale asset placements, continue to advocate for DAPTs in Delaware and South Dakota even as DAPT statutes are present. That would suggest that the primary use of Wisconsin DAPTs would be within the state itself – and therefore not creating a net inflow of capital for investment in the state.

We have appreciated the authors' openness to dialogue and RPPT is open to ongoing dialogue, but will withhold making a final judgment on the legislation until we are able to further evaluate any proposed amendments.

If you have any questions, please contact Cale Battles, Government Relations Coordinator at the State Bar of Wisconsin, at [cbattles@wisbar.org](mailto:cbattles@wisbar.org) or (608) 695-5686.

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