



**REI Mastery U**



**GETTING  
STARTED**

**THE  
ASSET PROTECTION  
TRUST**

**A GUIDE TO  
ASSET PROTECTION  
TRUSTS**

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# GETTING STARTED

in

## ASSET PROTECTION TRUSTS

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## PRELIMINARY NOTES

Thanks for taking some time to read through this Getting Started eBook. We've organized it in FAQ format as these are the questions I typically get from clients. Asset protection trusts are not for everyone. They are an advanced asset protection structure. But, when recommended, they are a fantastic tool to protect your assets for the long term.

Happy Investing!

Jeff

## **1. What is the Utah Asset Protection Trust?**

The Utah Domestic Asset Protection Trust (or “U-DAPT” as we will call it from here on) is an irrevocable, highly protective trust designed to hold assets for a lengthy time period. It is one of the most protective—if not *the* most protective—tool for most of our clients. While anyone can create this trust at any time, due to the cost and the complexity of the additional layer of protection, it is something we recommend to clients with significant assets that they want to protect for a long time.

Here is the key: YOU can create this irrevocable trust AND be a beneficiary of it! This is how it’s different from all other kinds of trusts.

Only a handful of states authorize domestic asset protection trusts (usually called “DAPTs”). Utah is one of them. If you don’t live in a state that allows for a DAPT, you may create one in another state. You should, however, consult with your local attorney about how these will work as all protections may not be available to you.

Of all the states that allow DAPTs, Utah does have some of the best (most protective) laws regarding them. See below for a simple comparison.

## **2. I’m not familiar with liability and protection, can you help?**

Sure. But this is a big topic. You do need to understand there are different kinds of liability and different kinds of protections. Not all “vehicles” protect from all kinds of liability.

Please read our LLC Guidebook and our Advanced Asset Protection Guidebook! These go over these differences and how entities can help protect you from liability. But, entities are not the best way to protect everything. They are a great first step but are not perfect. The U-DAPT is the best.

## **3. Is this like a family living trust?**

NO! We recommend that everyone (single people included) have a family living trust, while we recommend the U-DAPT for clients with significant assets. These two trusts are created differently, function differently and serve different purposes. You can read our Family Legacy Guidebook for more information on the family living trust.

## **4. What do you mean by “significant” assets?**

This is a personal question and only you can really determine when a U-DAPT is right for you. We’re happy to discuss with you your asset level, the pros and cons, and costs and administration of the U-DAPT to help you make this determination. As you will see below, the sooner you set this up the better.

## 5. I'm confused. What are the differences in the trusts you offer?

Great question! We know it gets confusing. Here's a simple summary. We also have more information on our website and guidebooks.

**Privacy: The Asset Holding Trust:** This is also called a “real estate” trust, a “property” trust, or a “land” trust (in some states). It is a very simple, revocable trust to hold title to property for privacy purposes only. While there are a few other benefits, there is VERY LITTLE protection in this trust as privacy is its main purpose. You can read more about this trust in our Asset Holding Trust Guidebook available on our website.

**Control: The Family Living Trust:** The family living trust is a revocable trust designed to control and allocate your estate (assets) *after you die*, as well as avoiding probate and keeping your estate private. It's normally part of a set of “estate planning” documents that include wills, powers of attorney, health care directives and other documents. There is VERY LITTLE protection in this trust as its main purpose is control. You can read more about the family living trust and estate planning documents in our Family Legacy Guidebook available on our website.

**Protection: The Utah Domestic Asset Protection Trust:** The U-DAPT is an irrevocable trust designed to protect assets *while you are living*. Irrevocable means it cannot be amended or revoked (except in certain circumstances), which is where the true protection comes from. There are further rules and restrictions with this trust in order to get that protection. It can also provide for the allocation of assets after you die. This is where this Guidebook comes in.

Further, there are differences in 1) who the grantors are, 2) who the trustees are and can be, and 3) who the beneficiaries are. They are also different in construction because the *serve different purposes*. That's why we have 3 guidebooks on our 3 kinds of trusts.

## 6. Got it, but who are all those people you just mentioned?

Another great question. Here you go with a quick summary of these roles in trust. We will get more detailed below on how these relate to the U-DAPT.

**Grantor:** Also called a “trustor” or “settlor” on trust documents. This is the person (or persons, entity or entities) that *create* the trust and put assets in it (transfer assets to trust ownership). This is you.

**Trustee:** This is the person with legal title (legal ownership) to manage and control the trust assets. Think of this person as the “manager” of the trust. They do all the work. While they have “legal” ownership, they do not have “equity” ownership (rights to the value or benefit of trust assets). Sometimes the trustee will also be a beneficiary. Sometimes this can also be you, but depends on the type of trust.

**Beneficiary:** This is the person (or persons, children, entities, charities, churches) that have the equity ownership in the trust assets. In other words, the assets are “held” by the trustee “in trust” for the benefit of the beneficiaries. In the end, the beneficiaries get the assets.

So, the grantor creates the trust and gives ownership of the assets to the trustee to manage for a time period until distribution to the beneficiaries.

You will see these words throughout this Guidebook, as well as our other guidebooks.

## 8. What is the main benefit of the DAPT?

Easy. Protection! It will protect the assets inside it from lawsuits, bankruptcies, creditors and (possibly) from future ex-spouses. I never say anything is bullet proof (yes, I know some providers do say that). But the U-DAPT is one of the most protective vehicles we have, and we’re lucky that Utah provides for them and is one of the best.

More specifically, it’s a way to transfer assets to a trustee (that’s where the protection comes from) but still enjoy the fruits (money value!) of those assets. Only DAPTs allow this!

## 9. There’s got to be a downside, right?

Well, downsides are relative to you. But it is an appropriate question. First, it is generally more expensive to establish than, say, a business entity (which provides good, but not great protection). Because it really adds a “layer” of protection (to your business entities, assets or family estate plan), there is a bit more administrative hoop jumping to comply with (some paperwork and understanding of how these work). Most people who need a U-DAPT are comfortable with these hoops.

But, here are the THREE biggest inconveniences. Remember these, as I will refer back to them!

1. **Long Term Holding:** The U-DAPT (all DAPTs really) is designed to hold assets for extended periods of time. It is NOT meant to generate monthly living income for you like a typical business would. So, you cannot take regular distributions for monthly living expenses. You should have other sources of income for that (outside of the assets in the trust). If you rely on the income generated from these assets to live on, then they are not designed to go into a DAPT.
2. **Distribution Control:** You (as the creator and beneficiary of this trust, more on that below) cannot be in control of distributions to yourself. You will need someone else to fill that role. It really can be anybody (who is not a creator of the trust). Some clients will make their attorney, CPA or other trusted person to fill this role. And to make a distribution, it needs to be reasonably necessary and with written approval.

So, yes, you can take a distribution for a family vacation to Europe as long as you jump through some legal hoops. But, if you truly understand Inconvenience #1, this is OK because you don't intend on making a lot of distributions to yourself. (But note, you can still control and invest the assets, more on that below.)

3. **Grantor Solvency:** You must be solvent (not even close to filing a bankruptcy), have the ability to live off income from non-trust assets (see, Inconvenience #1) and not subject to—or even aware of any possible!—lawsuit, claim, judgment, etc. You cannot set this up to avoid payment or liability on something outstanding or something you think may be coming down the road. So, as long as you establish the U-DAPT prior to any kind of problem (financial or otherwise), you're fine. The sooner the better. You will have to sign a "Solvency Statement" with your documents that attests that you comply with this inconvenience.

## 10. Who is the Grantor of a U-DAPT?

You. You are creating this trust to protect your assets. If you are married, you may also include your spouse. But you don't have to. If your spouse isn't a grantor, he/she can be the distribution trustee. We will discuss with you the decision of whether to include a spouse in our meeting.

## 11. If I'm the Grantor, what else can I be with the U-DAPT?

First, the big benefit is that you can also be the beneficiary. This is huge because most irrevocable trusts (in states that do not have a DAPT), you cannot be the beneficiary. That's the key difference in a DAPT and any other irrevocable trust. Why is this big? The point of an irrevocable trust is to "irrevocably give" (in trust) the asset to someone else. You no longer own that asset. So it can't be used to satisfy a judgment against you. It's not yours! That's why irrevocable trusts are so protective. But with a DAPT, you get the protection and the benefit of the assets!

As you will see, there are a few "kinds" trustees with the U-DAPT. You can be the "Investment" trustee making all the decisions about how to invest trust assets. This means you can buy & sell real estate, invest in stocks and bonds, and whatever. You are still in control of the assets inside the trust just like you are managing them now.

You cannot be (see, Inconvenience #2) the distribution trustee. So, you cannot be the one to authorize a distribution back to yourself. More on this below.

## 12. Can you tell me more about the Trustees of the U-DAPT?

Of course. There are TWO MAIN trustees of the U-DAPT.

1. The Investment Trustee: This trustee has legal authority to manage trust assets. This means make and effectuate all investments with trust assets. Make a loan. Sell real estate. Buy stocks. And etc. This trustee does not have the authority to distribute income or principal of the trust to the beneficiaries. You CAN be this trustee.

**Note on Asset Holding LLCs**: If you have an LLC with rental properties (long term assets not needed for monthly living expenses), then that LLC will be funded into the trust (the trust will become the sole member/owner of that LLC). But, you will still be the *manager* of that LLC! That doesn't change. So your day-to-day operating of that LLC will not change at all! You don't change bank accounts, signing leases or anything. The ***only difference*** (and it is a big one!) is when you move money out of that LLC, it will go to the trust bank account instead of your personal bank account (remember, Inconvenience #1).

So, from an “investing” standpoint, nothing really changes except the flow of money. And you'll learn how that works.

This trustee has no authority to make distributions.

2. The Distribution Trustee: This trustee has the legal authority to make a distribution (income or principal) of trust assets to a beneficiary (remember, that beneficiary is you). Because you are allowed to be the grantor and a beneficiary (the uniqueness of DAPTs), there is a limitation on making distributions to the beneficiaries: You (grantor) cannot be in charge of that! So, you'll have to come up with someone else. We will discuss this more with you in our meeting.

Remember, the Distribution Trustee acts at the direction of the beneficiary (you)! So, really, you do still dictate when and how much to distribute to yourself. It's just that you cannot “authorize” and “make it happen.” The law requires someone else to actually do it and sign the written document making the distribution.

This trustee has no authority to make investments.

Note: At least one trustee must be a Utah resident, bank or trust company. But, since you live in Utah and you, most likely, will be the Investment Trustee, this is covered.

### **13. What is a Trust Protector?**

The Trust Protector is someone who is granted some listed powers under the trust, but is not a trustee or beneficiary. It is usually an “advisor” that can help the trustee (and any successor trustee) in making appropriate decisions. It is also someone to “keep control” over the Investment and Distribution Trustees to make sure they aren't doing something outside their authority. But the powers granted to the Protector are important, including making changes to the trust to keep the intentions of the Grantor.

This role becomes important if something happens to you. Successor trustees that step into your shoes may not understand your investments or your intentions in setting up the trust. Most clients setting up DAPTs appoint their attorney, CPA, financial advisor or other trusted financial advisor.

The U-DAPT includes provisions for a Trust Protector. And while we can leave the name blank, we HIGHLY RECOMMEND appointing someone to this role. We can go over the details in our meeting.

#### **14. Who are the beneficiaries?**

Really, this should be easy. It should be you! This is NOT an estate planning trust. You're setting this up to protect your assets without giving them away yet! You may name "successor" beneficiaries to receive these assets in the event of your death. BUT, you should have a family trust set up with all of that (naming your children, charity, church or whatever as beneficiaries), and make your U-DAPT fund your family living trust. That's why we always recommend creating a family living trust as well. We even offer significant discounts when doing both because it is so important to have both!

Summary: Have a family living trust established and connect your U-DAPT to the family trust in the event of your death.

#### **15. What assets go into the U-DAPT?**

Any asset can go in. But remember our 3 Inconveniences! So, most likely you will transfer assets that you don't need for monthly income or that would make you personally insolvent. Here are some tips:

Primary Residence: Yes. This is the *only* place to protect your primary residence (or secondary residence, family vacation home, etc.). You can put your home in a family living trust for estate planning purposes (and you should definitely do that if you don't go with a U-DAPT) but there is no protection there.

Cash Accounts: Yes. This is the *best* place to protect holding cash (not your personal checking out). Keeping cash in LLCs is good, but not great. Remember, those LLCs can be sued and the cash subject to that lawsuit! And remember how charging order protection works (see our LLC Guidebook for that). So, entities alone are not the best. The U-DAPT is!

Stock & Brokerage Accounts: Yes. This is a great place to protect stocks, bonds, mutual funds and any brokerage type asset.

Business Entities: Depends. This depends on the purpose of the business.

If it generates your income for living expenses, then no. We will this entity alone so you have monthly income outside the U-DAPT.

If it holds long-term assets (like rentals), then yes (as long as you don't need the net rents for living expenses). We will make the U-DAPT the sole owner of that LLC for maximum protection of the assets (rentals) inside of it. Remember, that you will still be the manager of that LLC, doing everything as you did before.

**Retirement Accounts:** Probably not. Retirement accounts automatically come with really good protection. So, generally, there is no need for additional protections. Preferably, your family living trust will account for and control these kinds of assets. We can discuss this more with you in our meetings.

**Life Insurance:** Yes. Your U-DAPT can be the beneficiary of your life insurance policies. We prefer that your family living trust (if you don't have a U-DAPT) receive any life insurance proceeds. You can, however, leave the insurance beneficiary as your spouse, child or anyone or thing else. If you do that, the proceeds will bypass the trust and go directly to whomever you've named.

**Cars:** No. Unless they are antique or have some unusually significant value and you don't use it. The reason is that cars cause a lot of liability (accidents) and depreciate in value. And, the state makes it easy to transfer ownership of cars if you die. So, typically we leave those out of trusts.

## **16. OK, if I set up a U-DAPT, how to I fund it?**

Funding means transferring assets into the trust (so that the trust is the legal owner and you get the protection). We will help transfer your business entities (LLCs) and any family residence with the appropriate transfer documents. For other assets, you will need to contact the custodian (the entity that "holds" the asset) and inquire as to how to make your trust the owner or beneficiary of those accounts.

For example, if you have stocks at Merrill Lynch you will call them up and tell them you have a trust that is to be the owner of those accounts. They will have forms for you to fill out. You need to fill those out and name the trust as the account owner. In your trust documents, you will be provided with the exact way to name the trust as the owner. Some types of assets, like insurance policies, you'll name the trust as the beneficiary, not the owner. Most of these "custodians" are very familiar with helping their clients make the necessary changes with trusts. The process is the same as if it were a family living trust.

## **17. What are the tax consequences of using a U-DAPT?**

None. The U-DAPT is pass-through for tax purposes to the social security number of the grantor

(you).

Now, that doesn't mean there won't be changes on your tax return or with your CPA. For example, if you have an LLC with you and your spouse as members, then that LLC filed a partnership tax return and issued K1s to you and your spouse, who then reported that on your personal tax return. Once the U-DAPT owns that LLC, it will no longer file a partnership tax return (saving you filing fees with your CPA!) and it will get reported directly on your personal return. Wow, you get protection and save money!

**Summary:** Make sure your CPA or tax preparer is aware that you have a U-DAPT and made some changes to how your assets are held.

That's about it. While the U-DAPT can seem a bit daunting, once you're familiar with the process of running it, it mostly stays in the background and you rarely think about it. There's just a learning curve to get comfortable in the first place. We have more materials—especially when it comes to moving money around—on our website. So, please refer back there any time you have a question. And, of course, we're here to help out with questions or other needs.