

# **When it comes to asset protection, a hybrid DAPT offers the best of both worlds**

September 12, 2019

A primary estate planning goal for most people is to hold on to as much of their wealth as possible to pass on to their children and other loved ones. To achieve this, you must limit estate tax liability and protect assets from creditors' claims and lawsuits.

The Tax Cuts and Jobs Act reduces or eliminates federal gift and estate taxes for most people (at least until 2026). The gift and estate tax exemption is \$11.4 million for 2019. One benefit of this change is that it allows you to focus your estate planning efforts on asset protection and other wealth-preservation strategies, rather than tax minimization. One estate planning vehicle to consider is a "hybrid" domestic asset protection trust ("DAPT").

## **What does "hybrid" mean?**

The benefit of a standard DAPT is that it offers creditor protection even if you're a beneficiary of the trust. But there's also some risk: Although many experts believe they'll hold up in court, DAPTs are relatively untested, so there's some uncertainty over their ability to repel creditors' claims. A "hybrid" DAPT offers the best of both worlds. Initially, you're not named as a beneficiary of the trust, which virtually eliminates the risk described above. But if you need access to the funds down the road, the trustee or trust protector can add you as a beneficiary, converting the trust into a DAPT.

## **Do you need this trust type?**

Before you consider a hybrid DAPT, determine whether you need such a trust at all. The most effective asset protection strategy is to place assets beyond the grasp of creditors by transferring them to your spouse, children or other family members, either outright or in a trust, without retaining any control. If the transfer isn't designed to defraud known creditors, your creditors won't be able to reach the assets. And even though you've given up control, you'll have indirect access to the assets through your spouse or children (provided your relationship with them remains strong).

If, however, you want to retain access to the assets in the future, without relying on your spouse or children, a DAPT may be the answer.

## **How does a hybrid DAPT work?**

A hybrid DAPT is initially set up as a third-party trust — that is, it benefits your spouse and children or other family members, but not you. Because you're not named as a beneficiary, the trust isn't a self-settled trust, so it avoids the uncertainty associated with regular DAPTs.

There's little doubt that a properly structured third-party trust avoids creditors' claims. If, however, you need access to the trust assets in the future, the trustee or trust protector has the authority to add additional beneficiaries, including you. If that happens, the hybrid account is converted into a regular DAPT subject to the previously discussed risks.

## **A flexible tool**

The hybrid DAPT can add flexibility while offering maximum asset protection. It also minimizes the risks associated with DAPTs, while retaining the ability to convert to a DAPT should the need arise. Please contact us with any questions.

© 2019

The Law Office of Eugene Gorrin, LLC  
17 Watchung Avenue, Suite 204  
Chatham, NJ 07928  
973.701.9300  
[egorrin@gorrinlaw.com](mailto:egorrin@gorrinlaw.com)  
[www.gorrinlaw.com](http://www.gorrinlaw.com)