Effective 9/1/2024
Superseded 5/7/2025
75B-1-302 Asset protection trust.

(1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (3) are satisfied, a creditor of the settlor may not:
  (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;
  (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or
  (c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.

(2) Notwithstanding Subsection (1), nothing in this section:
  (a) prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary; or
  (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with respect to property that is transferred to the trust.

(3)
  (a) In order for Subsection (1) to apply, the conditions in this Subsection (3) shall be satisfied.
  (b) Where this Subsection (3) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (3).
  (c) An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.
  (d) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.
  (e) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.
  (f)
    (i) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary.
    (ii) The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).
  (g) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor:
    (i) to revoke, amend, or terminate all or any part of the trust; or
    (ii) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power, under the trust agreement, to substitute assets of substantially equivalent value.
  (h) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (5)(g).
  (i)
    (i) The trust instrument shall require that, at least 30 days before paying and delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a domestic support obligation against the settlor.

(ii) The trust instrument shall require that the notice state the date the distribution will be paid and delivered and the amount of the distribution.

(j) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under a domestic support obligation.

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

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

(m) Assets transferred to the trust may not be derived from unlawful activities.

(nn) With respect to each transfer of assets to the trust, the settlor shall sign a sworn affidavit stating that at the time of the transfer of the assets to the trust:

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

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

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

(iv) there is no pending or threatened court action against the settlor, except for a court action identified by the settlor on an attachment to the affidavit;

(v) the settlor is not involved in an administrative proceeding that is reasonably expected to have a material adverse effect on the financial condition of the settlor, except an administrative proceeding identified on an attachment to the affidavit;

(vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a domestic support obligation;

(vii) the settlor does not contemplate filing for relief under the provisions of United States Code, Title 11, Bankruptcy; and

(viii) the assets being transferred to the trust were not derived from unlawful activities.

(4) Failure to satisfy the requirements of Subsection (3) shall result in the consequences described in this Subsection (4).

(a) If any requirement of Subsections (3)(b) through (g) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (1).

(b) If the trustee does not send the notice required under Subsection (3)(g), the court may authorize any person with a domestic support obligation against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:

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

(ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

(c) If any requirement described in Subsections (3)(i) through (l) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (1).

(d) If the requirement described in Subsection (3)(h) is not satisfied, the property transferred to the trust that does not satisfy the requirement does not have the benefit of the protections described in Subsection (1) with respect to any person with a domestic support obligation.

(e) A creditor of the settlor has the burden of proving that the requirement in Subsection (3)(i) or (j) is not satisfied by clear and convincing evidence.

(5) The provisions of Subsection (1) may apply to a trust even if:

(a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;

(b) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:
(i) requesting a distribution from the trust;
(ii) consulting with the trustees regarding whether a discretionary distribution will be made;
(iii) exercising a right to consent to or veto the distribution under a power described in Subsection (5)(e);
(iv) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or
(v) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation.
(c) the settlor has the authority under the terms of the trust instrument to appoint a nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;
(d) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;
(e) the trust instrument gives the settlor the power to consent to or veto a distribution from the trust;
(f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;
(g) the trust instrument gives the settlor the right to receive the following types of distributions:
(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;
(ii) principal, subject to an ascertainable standard set forth in the trust;
(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. Sec. 664;
(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec. 643(b);
(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;
(vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. Sec. 2702; and
(vii) income from a trust intended to qualify for the federal estate tax or gift tax marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
(h) the trust instrument authorizes the settlor to use real or personal property owned by the trust; or
(i) with respect to the property held in the trust, the settlor may:
(i) give a personal guarantee on a debt or obligation secured by the property;
(ii) make payments, directly or indirectly, on a debt or obligation secured by the property;
(iii) pay property taxes, casualty and liability insurance premiums, homeowner association dues, maintenance expenses, or other similar expenses on the property; or
(iv) pay income tax on income attributable to the portion of property held in the trust, of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678, which payments will not be considered additional transfers to the trust for purposes of this section.

(6)
(a) If a trust instrument contains the provisions described in Subsections (3)(b) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling,

drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a fraudulent conveyance or another voidable transfer, participation in the trust transaction, or similar cause of action or claim for relief.

(b) For purposes of this Subsection (6), counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust.

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

(i) the trust and the trust assets; and

(ii) the settlor, to the extent otherwise allowed in this section.

(7)

(a) A cause of action or claim for relief under Subsection (3)(i) or (j) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.

(b) Except as provided in Subsection (7)(a), a cause of action or claim for relief under this section is not a cause of action or claim for relief under Sections 25-6-101 through 25-6-407.

(c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:

(i) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

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

(B) files another action, other than an action alleging a fraudulent conveyance or other voidable transfer against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in Subsection (7)(c) is filed within two years after the transfer; or

(ii)

(A) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that the creditor is required to bring the creditor's cause of action or claim for relief against the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

(B) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, or is published on a public legal notice website as defined in Section 45-1-101, which notice shall state the name of the settlor or the settlor's representative, the address of the settlor or the settlor's representative, the name of the trustee or the trustee's representative, the address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets.

(8)

(a) The notice required in Subsection (7)(c)(ii)(B) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to bring a cause of action or claim for relief within 120 days from the first publication of the notice or be forever barred.

(b) Failure to give the notice required in Subsection (7)(c)(ii) to a creditor does not prevent the shortening of the limitations period under Subsection (7)(c)(ii) with respect to another creditor who properly received notice by mail or publication.

(9)

(a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

(b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

(10)

(a) With respect to a trust that is subject to this section, a claim brought by a creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.

(b) With respect to an irrevocable trust that is not subject to this section, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection 75-7-505(2).

(11) If a provision in this section conflicts with a provision in Sections 25-6-101 through 25-6-407, the provision of this section shall supersede the conflicting provision in Sections 25-6-101 through 25-6-407.

(12) Nothing in this section alters rights vested or created under this section before May 14, 2019.