

Table 3
Non-Uniform Trust Code States with Asset Protection Trust Legislation

State	Citation	Statutory Provisions
Alaska	A.S. §34.40.110	<p>(a) A person who in writing transfers property in trust may provide that the interest of a beneficiary of the trust, including a beneficiary who is the settlor of the trust, may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. Payment or delivery of the interest to the beneficiary does not include a beneficiary’s use or occupancy of real property or tangible personal property owned by the trust if the use or occupancy is in accordance with the trustee’s discretionary authority under the trust instrument. A provision in a trust instrument that provides the restrictions described in this subsection is considered to be a restriction that is a restriction on the transfer of the transferor’s beneficial interest in the trust and that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. 541(c)(2) (Bankruptcy Code), as that paragraph reads on September 15, 2004, or as it may be amended in the future. In this subsection,</p> <p>(1) “property” includes real property, personal property, and interests in real or personal property;</p> <p>(2) “transfer” means any form of transfer, including deed, conveyance, or assignment.</p> <p>(b) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the beneficiary’s interest in the trust, unless the creditor is a creditor of the settlor and</p> <p>(1) the creditor establishes by clear and convincing evidence that the settlor’s transfer of property in trust was made with the intent to defraud that creditor, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section; however, a settlor’s expressed intention to protect trust assets from a beneficiary’s potential future creditors is not evidence of an intent to defraud;</p> <p>(2) the trust, except for an eligible IRA trust, provides that the settlor may revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph, “revoke or terminate” does not include a power to veto a distribution from the trust, a testamentary nongeneral power of appointment or similar power, or a right to receive a distribution of income or principal under (3)(A), (B), (C), or (D) of this subsection;</p>

		<p>(3) the trust, except for an eligible IRA trust, requires that all or a part of the trust's income or principal, or both, must be distributed to the settlor; however, this paragraph does not apply to a settlor's right to receive the following types of distributions, which remain subject to the restriction provided by (a) of this section until the distributions occur:</p> <ul style="list-style-type: none"> (A) income or principal from a charitable remainder annuity trust or charitable remainder unitrust; in this subparagraph, "charitable remainder annuity trust" and "charitable remainder unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on October 8, 2003, and as it may be amended; (B) a percentage of the value of the trust each year as determined from time to time under the trust instrument, but not exceeding the amount that may be defined as income under AS 13.38 or under 26 U.S.C. 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003, and as it may be amended; (C) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of 26 U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on September 15, 2004, or as it may be amended in the future; or (D) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal Revenue Code) as that section reads on September 15, 2004, or as it may be amended in the future; or <p>(4) at the time of the transfer, the settlor is in default by 30 or more days of making a payment due under a child support judgment or order.</p> <p>(c) The satisfaction of a claim under (b)(1)--(4) of this section is limited to that part of the trust for which a transfer restriction is not allowed under (b)(1)--(4) of this section, and an attachment or other order may not be made against the trustee with respect to a beneficiary's interest in the trust or against property that is subject to a transfer restriction, except to the extent that a transfer restriction is determined not to be allowed under (b)(1)-(4) of this section.</p> <p>(d) A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets under (b)(1) of this section is extinguished unless the action under (b)(1) of this section is brought by a creditor of the settlor who</p> <ul style="list-style-type: none"> (1) is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under (b)(1) of this section is brought within the later of <ul style="list-style-type: none"> (A) four years after the transfer is made; or (B) one year after the transfer is or reasonably could have been discovered by the creditor, if the creditor
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		<ul style="list-style-type: none"> (i) can demonstrate, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer; or (ii) files another action, other than an action under (b)(1) of this section, 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 this sub-subparagraph is filed within four years after the transfer; or <p>(2) becomes a creditor subsequent to the transfer into trust, and the action under (b)(1) of this section is brought within four years after the transfer is made.</p> <p>(e) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created, a person who subsequently becomes a creditor, or another person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the preparation or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, or participation in the trust transaction. Preparation or funding of the trust includes the preparation and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief are limited to recourse against the trust assets and the settlor to the extent allowed under AS 34.40.010.</p> <p>(f) A transfer restriction allowed under (a) of this section and enforceable under (b) of this section applies to a settlor who is also a beneficiary of the trust even if the settlor serves as a co-trustee or as an advisor to the trustee under AS 13.36.375 if the settlor does not have a trustee power over discretionary distributions.</p> <p>(g) A transfer restriction allowed under (a) of this section and enforceable under (b) of this section applies to a beneficiary who is not the settlor of the trust, whether or not the beneficiary serves as a sole trustee, a co-trustee, or an advisor to the trustee under AS 13.36.375 .</p> <p>(h) A transfer restriction is allowed under (a) of this section and is enforceable under (b) of this section even if the settlor has the authority under the terms of the trust instrument to</p> <ul style="list-style-type: none"> (1) appoint a trustee, a trust protector under AS 13.36.370, or an advisor under AS 13.36.375; (2) remove a trustee or trust protector and appoint a replacement trustee or trust protector who is not a related or subordinate party; in this paragraph, “related or subordinate party” has the meaning given in 26 U.S.C. 672(c) (Internal Revenue Code); or (3) remove an advisor and appoint a replacement advisor. <p>(i) A settlor whose beneficial interest in a trust is subject to a transfer restriction that is allowed under (a) of this section may not benefit from, direct a distribution of, or use trust</p>
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		<p>property except as may be stated in the trust instrument. An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.</p> <p>(j) A settlor who creates a trust that names the settlor as a beneficiary and whose beneficial interest is subject to a transfer restriction allowed under (a) of this section shall sign a sworn affidavit before the settlor transfers assets to the trust. The affidavit must state that</p> <ol style="list-style-type: none"> (1) the settlor has full right, title, and authority to transfer the assets to the trust; (2) the transfer of the assets to the trust will not render the settlor insolvent; (3) the settlor does not intend to defraud a creditor by transferring the assets to the trust; (4) the settlor does not have any pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit; (5) the settlor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit; (6) at the time of the transfer of the assets to the trust, the settlor is not currently in default of a child support obligation by more than 30 days; (7) the settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and (8) the assets being transferred to the trust were not derived from unlawful activities. <p>(k) Notwithstanding another provision of the law of this state, an action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may not be brought at law or in equity for an attachment or other provisional remedy against property of a trust subject to this section or to avoid a transfer of property to a trust that is the subject of this section unless the action is brought under (b)(1) of this section and within the limitations period of (d) of this section. A court of this state has exclusive jurisdiction over an action brought under a cause of action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.</p> <p>(l) If a trust has a transfer restriction allowed under (a) of this section, in the event of the divorce or dissolution of the marriage of a beneficiary of the trust, the beneficiary's interest in the trust is not considered property subject to division under AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this subsection does not apply to a settlor's interest in a self-settled trust with respect to assets transferred to the trust:</p> <ol style="list-style-type: none"> (1) after the settlor's marriage; or (2) within 30 days before the settlor's marriage unless the settlor gives written notice to the other party to the marriage of the transfer.
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		<p>(m) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the interest of a beneficiary, including a beneficiary who is the settlor of the trust, even if</p> <ol style="list-style-type: none"> (1) the beneficiary has the right to receive through the exercise of a person's discretion, whether or not the exercise of the discretion is governed by a standard, a distribution of income, principal, or both principal and interest, from the trust; in this paragraph, "person" includes a trustee who is the settlor, unless the settlor is the beneficiary; or (2) the settlor potentially will receive or actually receives income or principal to pay, in whole or in part, income taxes due on the income of the trust, if the potential or actual receipt of income or principal will be or is made under a provision in the trust instrument that expressly provides for the payment of the taxes and if the potential or actual receipt of income or principal would be the result of a trustee's acting in the trustee's discretion or under a mandatory direction in the trust instrument; a distribution to pay income taxes that is made under a discretionary or mandatory provision in a governing instrument under this paragraph may be made by direct payment to a taxing authority. <p>(n) In this section,</p> <ol style="list-style-type: none"> (1) "eligible individual retirement account trust" means an individual retirement account under 26 U.S.C. 408(a) or an individual retirement plan under 26 U.S.C. 408A(b) (Internal Revenue Code), as those sections read on September 13, 2006 or as they may be amended in the future, that is in the form of a trust, if a trust company or bank with its principal place of business in this state is the trustee or custodian; (2) "settlor" means a person who transfers real property, personal property, or an interest in real or personal property, in trust.
Colorado	C.R.S.A. §38-10-111 This provision is not contained in Colorado's Probate, Trust, and Fiduciaries statutes, but in the Statute of Frauds.	<p>All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for the use of the person making the same shall be void as against the creditors existing of such person.</p> <p>The Colorado statute was construed by the 10th Circuit as providing protection against a settlor's own creditors who were not existing at the time of the creation of the trust. <i>Connolly v. Baum</i>, 22 F.3d 1014 (10th Cir. 1994), <i>but see In Matter of Cohen</i>, 8 P.3d 429 (Colo. 1999) where the Colorado Supreme Court questioned the validity of such protection.</p>
	Del. Code Ann. tit.12, §3536	<p>(c) (1) Except as provided in subchapter VI of this Chapter 35 of this title, if the trustor is also a beneficiary of a trust, a provision that restrains the voluntary or involuntary transfer of the trustor's beneficial interest shall not prevent such trustor's creditors from satisfying their respective claims from the trustor's interest in the trust to the extent that such interest is attributable to the trustor's contributions to the trust. The preceding sentence shall have no application to a trustor if such trustor's sole retained beneficial interest is a right to</p>

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		<p>receive discretionary distributions to reimburse the trustor's income tax liability attributable to the trust. Further, a beneficiary of a trust shall not be considered a trustor of a trust merely because of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property if the value of the property that could have been withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of the lapse, waiver, or release the greater of the amount specified in:</p> <ol style="list-style-type: none"> a. Section 2041(b)(2) or § 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(2) or § 2514(e)), or any successor provision thereto; or b. Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 2503(b)), or any successor provision thereto. <p>(2) For the purposes of this section, property contributed to an inter vivos marital trust that is treated as qualified terminable interest property under § 2523(f) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(f)], as amended, or to an inter vivos marital trust that is treated as a general power of appointment trust for which a marital deduction would be allowed under § 2523(a) and (e) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(a) and(e)], as amended, over which the settlor's spouse holds either a general power of appointment exercisable in favor of the settlor's spouse's estate or a limited power of appointment, or both, shall not be deemed to have been contributed by the settlor even if the settlor would be a beneficiary of the trust subsequent to the death of the settlor's spouse.</p>
	Del. Code Ann. tit.12, §3570	<p>As used in this subchapter:</p> <ol style="list-style-type: none"> (1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. (2) "Creditor" means, with respect to a transferor, a person who has a claim. (3) "Debt" means liability on a claim. (4) "Disposition" means a transfer, conveyance or assignment of property (including a change in the legal ownership of property occurring upon the substitution of 1 trustee for another or the addition of 1 or more new trustees), or the exercise of a power so as to cause a transfer of property, to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition. (5) "Person" has the meaning ascribed to it in § 302(16) of Title 1. (6) "Property" includes real property, personal property, and interests in real or personal property. (7) "Qualified disposition" means a disposition by or from a transferor (or multiple transferors in the case of property in which each such transferor owns an undivided interest) to 1 or more trustees, at least 1 of which is a qualified trustee, with or without consideration, by

		<p>means of a trust instrument.</p> <p>(8) “Qualified trustee” means a person who:</p> <ol style="list-style-type: none"> a. In the case of a natural person, is a resident of this State other than the transferor or, in all other cases, is authorized by the law of this State to act as a trustee and whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor thereto; and b. Maintains or arranges for custody in this State of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or otherwise materially participates in the administration of the trust. c. For purposes of this subchapter, neither the transferor nor any other natural person who is a nonresident of this State nor an entity that is not authorized by the law of this State to act as a trustee or whose activities are not subject to supervision as provided in paragraph (8)a. of this section shall be considered a qualified trustee; however, nothing in this subchapter shall preclude a transferor from appointing one or more advisers, including but not limited to: <ol style="list-style-type: none"> 1. Advisers who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisers; 2. Advisers who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and 3. Advisers described in § 3313 of this title, whether or not such advisers would meet the requirements imposed by paragraphs a. and b. of this subsection. <p>For purposes of this subsection, the term “adviser” includes a trust “protector” or any other person who, in addition to a qualified trustee, holds 1 or more trust powers.</p> d. A person may serve as an investment adviser described in § 3313 of this title, notwithstanding that such person is the transferor of the qualified disposition, but such a person may not otherwise serve as adviser of a trust that is a qualified disposition except with respect to the retention of the veto right permitted by paragraph (11)b. of this section. e. In the event that a qualified trustee of a trust ceases to meet the requirements of paragraph (8)a. of this section, and there remains no trustee that meets such requirements, such qualified trustee shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust, or in the absence of any successor qualified trustee provided for in the trust instrument, the Court of Chancery shall, upon application of any interested party, appoint a successor
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		<p>qualified trustee.</p> <p>f. In the case of a disposition to more than 1 trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees.</p> <p>(9) “Spouse” and “former spouse” means only persons to whom the transferor was married at, or before, the time the qualified disposition is made.</p> <p>(10) “Transferor” means a person who, as an owner of property, as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder’s creditors, the holder’s estate or the creditors of the holder’s estate, or as a trustee, directly or indirectly makes a disposition or causes a disposition to be made.</p> <p>(11) “Trust instrument” means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:</p> <ol style="list-style-type: none"> a. Expressly incorporates the law of this State to govern the validity, construction and administration of the trust; b. Is irrevocable, but a trust instrument shall not be deemed revocable on account of its inclusion of 1 or more of the following: <ol style="list-style-type: none"> 1. A transferor’s power to veto a distribution from the trust; 2. Except as otherwise provided in paragraph (11)b.10 of this section, a power of appointment (other than a power to appoint to the transferor, the transferor’s creditors, the transferor’s estate or the creditors of the transferor’s estate) exercisable by will or other written instrument of the transferor effective only upon the transferor’s death; 3. The transferor’s potential or actual receipt of income, including rights to such income retained in the trust instrument; 4. The transferor’s potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 and any successor provision thereto; and the transferor’s right, at any time and from time to time by written instrument delivered to the trustee, to release such transferor’s retained interest in such a trust, in whole or in part, in favor of a charitable organization that has or charitable organizations that have a succeeding beneficial interest in such trust; 5. The transferor’s potential or actual receipt of income or principal from a grantor-retained annuity trust or grantor-retained unitrust as such terms are defined in § 2702 of the Internal Revenue Code of 1986 (26 U.S.C. § 2702) and any successor provision thereto or the transferor’s receipt each year of a percentage (not to exceed 5 percent) specified in the governing instrument of the initial value of the trust assets (which may be described either as a percentage or a fixed amount) or their value determined from time to time
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		<p>pursuant to the governing instrument.</p> <ol style="list-style-type: none"> 6. The transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a trustee's acting: <ol style="list-style-type: none"> A. In such trustee's discretion; B. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or C. At the direction of an adviser described in paragraph (8)c. of this section who is acting: I. In such adviser's discretion; or II. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt of or use of principal; <p style="margin-left: 40px;">For purposes of this paragraph, a trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to such trustee by the terms of the trust instrument.</p> 7. The transferor's right to remove a trustee or adviser and to appoint a new trustee or adviser; 8. The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in § 2702(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 2702(c)] and any successor provision thereto or the transferor's possession and enjoyment of a qualified annuity interest within the meaning of such term as described in Treasury Regulation § 25.2702-5(c)(8) [26 C.F.R. 25.2702-5(c)(8)] and any successor provision thereto; 9. The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting: <ol style="list-style-type: none"> A. In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or B. At the direction of an adviser described in paragraph (8)c. of this section who is acting in such adviser's a discretionary or mandatory provision; and 10. The ability, whether pursuant to discretion , direction or the grantor's exercise of a testamentary power of appointment, of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the
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		<p>transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and</p> <p>c. Provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any successor provision thereto.</p> <p>A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of paragraph (11)a. of this section. Distributions to pay income taxes made under a discretionary or mandatory provision included in a governing instrument pursuant to paragraph (11)b.3., paragraph (11)b.6., or paragraph (11)b.9. of this section may be made by direct payment to the taxing authorities.</p>
	Del. Code Ann. tit. 12, §3571	<p>A qualified disposition shall be subject to §3572 of this title notwithstanding a transferor's retention of any or all of the powers and rights described in § 3570(11)b of this title and the transferor's service as investment adviser pursuant to § 3570(8)d of this title. The transferor shall have only such powers and rights as are conferred by the trust instrument. Except as permitted by §§ 3570(8)d and 3570(11)b of this title, a transferor shall have no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.</p>
	Del. Code Ann. tit. 12, §3572	<p>(a) Notwithstanding any other provision of this Code, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless such action shall be brought pursuant to the provisions of § 1304 or § 1305 of Title 6 and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was made with actual intent to defraud such creditor. The Court of Chancery shall have exclusive jurisdiction over any action brought with respect to a qualified disposition.</p> <p>(b) A creditor's claim under subsection (a) of this section shall be extinguished unless:</p> <p>(1) The creditor's claim arose before the qualified disposition was made, and the action is brought within the limitations of § 1309 of Title 6 in effect on the later of the date of the qualified disposition or August 1, 2000; or</p> <p>(2) Notwithstanding the provisions of § 1309 of Title 6, the creditor's claim arose concurrent with or subsequent to the qualified disposition and the action is brought</p>

		<p style="text-align: center;">within 4 years after the qualified disposition is made.</p> <p>In any action described in subsection (a) of this section, the burden to prove the matter by clear and convincing evidence shall be upon the creditor.</p> <p>(c) For purposes of this subchapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time (whether before, on or after July 1, 1997) the property that is the subject of the qualified disposition was originally transferred to the transferor (or any predecessor trustee) making the qualified disposition in a form that meets the requirements of § 3570(11)b. and c. of this title. If a trustee of an existing trust proposes to make a qualified disposition pursuant to the provisions of this subsection (c) of this section but the trust would not conform to the requirements of § 3570(11)b.2. of this title as a result of the original transferor's nonconforming powers of appointment, then, upon the trustee's delivery to the qualified trustee of an irrevocable written election to have this subsection apply to the trust, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with § 3570(11)b.2. of this title. For purposes of this subchapter, the irrevocable written election shall include a description of the original transferor's powers of appointment as modified together with the original transferor's written consent thereto, but no such consent of the original transferor shall be considered a disposition within the meaning of § 3570(4) of this title.</p> <p>(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only such rights with respect to a qualified disposition as are provided in this section and §§ 3573 and 3574 of this title, and no such creditor nor any other person shall have any claim or cause of action against the trustee, or advisor described in § 3570(8)c of this title, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition.</p> <p>(e) Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, or advisor described in § 3570(8)c. of this title, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under this section.</p> <p>(f) In circumstances where more than 1 qualified disposition is made by means of the same trust instrument, then:</p> <p>(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b) of this section; and</p> <p>(2) Any distribution to a beneficiary shall be deemed to have been made from the latest</p>
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		<p>such qualified disposition.</p> <p>(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby such court declines to apply the law of this State in determining the validity, construction or administration of such trust, or the effect of a spendthrift provision thereof, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Court of Chancery, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon such trustee's ceasing to be trustee, such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the Court of Chancery in accordance with this section.</p>
	<p>Del. Code Ann. tit. 12, §3573</p>	<p>With respect to the limitations imposed by § 3572 of this title, those limitations on actions by creditors to avoid a qualified disposition shall not apply:</p> <p>(1) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse or children, or for a division or distribution of property in favor of such transferor's spouse or former spouse, but only to the extent of such debt; or</p> <p>(2) To any person who suffers death, personal injury or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury or property damage is at any time determined to have been caused in whole or in part by the tortious act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable but only to the extent of such claim against such transferor or other person for whom such transferor is or was vicariously liable.</p>
	<p>Del. Code Ann. tit. 12, §3574</p>	<p>Paragraph (1) of this section shall not apply to any claim for forced heirship, legitime or elective share.</p> <p>(a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorneys' fees, as the court may allow.</p> <p>(b) In the event any qualified disposition shall be avoided as provided in subsection (a) of this section, then:</p> <p>(1) If the court is satisfied that a trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:</p> <p>a. Such trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by such trustee in the defense of the action or proceedings to avoid the qualified disposition;</p>

		<ul style="list-style-type: none"> b. The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of such trustee (and of any predecessor trustee that has not acted in bad faith); and c. For purposes of this paragraph (1) of this subsection, it shall be presumed that such trustee did not act in bad faith merely by accepting such property; and <p>(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of such beneficiary to retain any distribution made prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p> <ul style="list-style-type: none"> (c) A creditor shall have the burden of proving that a trustee or beneficiary acted in bad faith as required under subsection (b) of this section by clear and convincing evidence except that, in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove that the transferor--beneficiary acted in bad faith by a preponderance of the evidence. The preceding sentence provides substantive not procedural rights under Delaware law. (d) For purposes of this subchapter, attachment, garnishment, sequestration, or other legal or equitable process shall be permitted only in those circumstances permitted by the express terms of this subchapter. (e) Notwithstanding any other provision of this subchapter, a creditor shall have no right against the interest of a beneficiary in a trust solely because such beneficiary has the right to authorize or direct the trustee to pay all or part of the trust property in satisfaction of estate or inheritance taxes imposed upon or with respect to the beneficiary's estate, or the debts of the beneficiary's estate, or the expenses of administering the beneficiary's estate unless such beneficiary actually directs the payment of such taxes, debts or expenses and then only to the extent of such direction. (f) Where a husband and wife make a qualified disposition of property and, immediately before such qualified disposition, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entireties, then notwithstanding such qualified disposition and except where the provisions of the trust instrument may expressly provide to the contrary, that property and any accumulation thereto shall, while held in trust during the lifetime of both spouses, be treated as though it were tenancy by the entireties property and be dealt with in a manner consistent with that applicable law but in every other respect shall be dealt with in accordance with the terms of the trust instrument. Furthermore, in any action concerning whether a creditor of either or both spouses may recover the debt from the trust, upon avoidance of the qualified disposition, the sole remedy available to the creditor with respect to trust property treated as though it were tenancy by the entireties property shall be an order directing the trustee
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		<p>to transfer the property to both spouses as tenants by the entireties.</p> <p>(g) Subject to all of the foregoing provisions of this section, and except as otherwise expressly provided in subsection (f) of this section, upon avoidance of a qualified disposition to the extent permitted under subsection (a) of this section, the sole remedy available to the creditor shall be an order directing the trustee to transfer to the transferor such amount as is necessary to satisfy the transferor's debt to the creditor at whose instance the disposition has been avoided.</p>
	Del. Code Ann. tit. 12, §3575	This subchapter shall apply to qualified dispositions and dispositions by transferors who are trustees made on or after July 1, 1997.
Hawaii	Haw. Rev. Stat. § 554G-2 (Definitions)	<p>As used in this chapter:</p> <p>“Cash” means United States currency.</p> <p>“Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.</p> <p>“Creditor” means, with respect to a transferor, a person who has a claim.</p> <p>“Debt” means liability on a claim.</p> <p>“Former spouse” means a person to whom the transferor was married where the marriage was dissolved before the time of the permitted transfer.</p> <p>“Grantor trust” means a trust described in sections 671 through 679 of the Internal Revenue Code of 1986, as amended.</p> <p>“Marketable securities” means securities that are:</p> <ol style="list-style-type: none"> (1) Exchanged on a governmentally regulated exchange within the United States including, common stocks, bonds, mutual funds, or exchange traded funds; and (2) Permitted to be held by a fiduciary under Hawaii state law; <p>provided that “marketable securities” does not include real estate or any interests in corporations, partnerships, and limited liability companies that are not publicly traded.</p> <p>“Non-grantor trust” shall refer to any trust that is not a “grantor trust” as defined in this chapter.</p> <p>“Permitted property” means cash, marketable securities, life insurance contracts, and non-private annuities.</p> <p>“Permitted transfer” means a transfer of permitted property by or from a transferor to a permitted trustee by means of a trust instrument, regardless of whether consideration is exchanged.</p> <p>“Permitted trustee” means a person, other than the transferor, who is a resident of this State, or a bank or trust company authorized to do business in this State that possesses and exercises trust powers and has its principal place of business in this State.</p>

		<p>“Person” means a natural person.</p> <p>“Spouse” means a person to whom the transferor is married at the time of the permitted transfer.</p> <p>“Transfer” means the disposition, conveyance, or assignment of permitted property to a permitted trustee or the exercise of a power that causes the disposition, conveyance, or assignment of permitted property to a permitted trustee.</p> <p>“Transfer tax” means the tax described in section 554G-12.</p> <p>“Transferor” means an owner of permitted property; a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate,</p> <p>or the creditors of the holder's estate; or a trustee who directly or indirectly makes a disposition of permitted property.</p> <p>“Trust instrument” means an irrevocable instrument appointing a permitted trustee for the permitted property that is the subject of a disposition.</p>
	<p>Haw. Rev. Stat. § 554G-3 (Completed transfers)</p>	<p>The transfer of permitted property under this chapter shall be deemed completed following the completion of all of the following:</p> <ol style="list-style-type: none"> (1) The delivery of permitted property by the transferor to the permitted trustee and the written acceptance of the permitted property by the permitted trustee; (2) The delivery by the transferor to the permitted trustee of a signed and notarized certificate of solvency that states that the amount of the transfer is equal to or less than twenty-five per cent of the transferor's net worth and that the transfer will not result in delay, defrauding, or hindrance of a creditor who is known or knowable to the transferor at the time of the permitted transfer with a claim against the property that is subject to the transfer; and (3) The filing of the appropriate form by the transferor with the department of taxation and payment of the attendant transfer tax.
	<p>Haw. Rev. Stat. § 554G-4 (Permitted transferees)</p>	<ol style="list-style-type: none"> (a) A permitted trustee means a person, other than the transferor, who is a resident of this State, or a bank or trust company authorized to do business in this State that possesses and exercises trust powers and has its principal place of business in this State. (b) If a permitted trustee of a trust ceases to meet the requirements of subsection (a) and there remains no trustee that meets the requirements, the permitted trustee shall be deemed to have resigned as of the time that the trustee no longer meets the requirements of subsection (a). At that time, the successor permitted trustee provided for in the trust instrument shall become the permitted trustee of the trust. In the absence of any successor permitted trustee provided for in the trust instrument, a trust advisor or protector provided for in the trust instrument shall appoint a successor permitted trustee. In the absence of an appointed trust advisor or protector, a Hawaii court of competent jurisdiction shall, upon application of any interested party, appoint a successor permitted trustee.

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		<p>(c) A permitted trustee may appoint an investment advisor to manage the assets of the trust fund; provided that administrative and non-administrative fiduciary responsibility shall remain vested, as against beneficiaries of the trust, with the permitted trustee.</p>
	<p>Haw. Rev. Stat. § 554G-5 (Trust instrument)</p>	<p>(a) A trust instrument shall be irrevocable and shall expressly incorporate the laws of this State governing the validity, construction, and administration of the trust.</p> <p>(b) The trustee, in its discretion, may terminate any trust if and when its fair market value has declined to the extent that would make it uneconomical, imprudent, or unwise to continue to retain the trust, and shall pay and distribute the trust to the persons entitled to mandatory or discretionary income distributions as the trustee in the trustee's absolute discretion shall decide.</p> <p>(c) A trust instrument shall not be deemed revocable on account of the inclusion of:</p> <ol style="list-style-type: none"> (1) A transferor's power to veto a distribution from the trust; (2) A power of appointment other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate that may be exercised by will or other written instrument of the transferor effective only upon the transferor's death; (3) The transferor's potential or actual receipt of income, including rights to income retained in the trust instrument; (4) The transferor's annual receipt of a percentage not to exceed five per cent of the initial value of the trust assets or its value determined from time to time pursuant to the trust instrument or of a fixed amount that on an annual basis does not exceed five per cent of the initial value of the trust assets; (5) The transferor's potential or actual receipt or use of the trust's principal due to the discretionary action of a permitted trustee or to a provision in the trust instrument that governs the distribution of principal; provided that any included provision shall not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; (6) The transferor's right to remove a permitted trustee or advisor and to appoint a new permitted trustee or advisor; (7) The transferor's potential or actual receipt of income or principal to pay income taxes due on income of the trust if the trust instrument includes a provision allowing or directing the use of trust funds to pay income taxes due, or if the permitted trustee acts in the trustee's discretion to allow payment of income taxes due on the trust income; or (8) A permitted trustee's authority pursuant to discretion, direction, or the transferor's exercise of a testamentary power of appointment to pay all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or

		<p style="text-align: center;">with respect to the transferor's estate.</p> <p>(d) A trust instrument may provide that the interest of a beneficiary of the trust, including a beneficiary who is the transferor of the trust, may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the permitted trustee actually distributes the property or income to the beneficiary. Any provision of this type contained in the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 United States Code Section 541(c)(2) of the Bankruptcy Code or any successor provision.</p> <p>(e) A transferor may appoint, through the trust instrument, one or more advisors or protectors, including the following:</p> <ol style="list-style-type: none"> (1) Advisors who have authority under the terms of the trust to remove and appoint permitted trustees, advisors, or protectors; (2) Advisors who have authority under the terms of the trust to direct, consent to, or disapprove of distributions from the trust; and (3) Advisors, including the transferor beneficiary of the trust, who serve as investment advisors to the trust. <p>(f) Whenever there shall be a dispute, deadlock, or difference of opinion between a permitted trustee and an advisor, the transferor may direct that the determination of the advisor shall be binding upon the permitted trustee, but that the permitted trustee shall bear no liability or accountability for any act or transaction entered into as a result of the enforcement of the advisor's privilege if the permitted trustee dissents in writing.</p> <p>(g) If a trustee of a trust existing prior to the enactment of this chapter proposes to make a permitted transfer, but the trust instrument does not contain a power of appointment that conforms to section 554G-5(c)(2), the trustee may deliver an irrevocable written election to have section 554G-5(c)(2) apply to the trust, and the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with section 554G-5(c)(2). The irrevocable written election shall include a description of the original transferor's powers of appointment as modified, and the original transferor's written consent to the modification. Consent of the original transferor to a modification of powers of appointment shall not be considered to be a permitted transfer.</p> <p>(h) If, in any action brought against a trustee of a trust that results from a permitted transfer, a court declines to apply the law of this State in determining the validity, construction, or administration of the trust, or the effect of a spendthrift provision of the trust, the trustee, immediately upon the court's action and without the further order of any court, shall cease to be trustee of the trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument. If the trust instrument does not provide for a successor trustee or does not provide for an advisor or protector with powers to appoint successor trustees, a Hawaii court of competent jurisdiction shall appoint a successor permitted trustee upon the application of any beneficiary of the trust under any terms and conditions that the court determines to be consistent with the purposes of the</p>
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		trust and with this chapter. Upon the removal of a trustee pursuant to this section, the trustee who has been removed shall have no power or authority other than to convey the trust property to the successor trustee.
	Haw. Rev. Stat. § 554G-6, (Investments)	Nothing in this chapter shall prohibit a permitted trustee from diversifying trust assets; provided that a permitted trustee shall be authorized to invest only in permitted property, as defined in this chapter.
	Haw. Rev. Stat. § 554G-7 (Retained interests of transferor)	<p>(a) A permitted transfer shall be subject to this chapter notwithstanding a transferor's retention of any or all of the powers and rights described in section 554G-5(c) and notwithstanding the transferor's service as investment advisor pursuant to section 554G-5(e)(3).</p> <p>(b) The transferor shall have only the powers and rights specifically conferred by the trust instrument. Except as permitted by sections 554G-5(c) and 554G-5(e), a transferor shall have no rights or authority with respect to the property that is the subject of a permitted transfer or to the income from property that is the subject of a permitted transfer. Any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.</p>
	Haw. Rev. Stat. § 554G-8 (Avoidance of permitted transfers in trust)	<p>(a) No claim, including an action to enforce a judgment entered by a court or other body having adjudicative authority, by a creditor against property that is subject to a permitted transfer that arises after a permitted transfer and no claim by a creditor to avoid a permitted transfer shall be brought at law or in equity for attachment or other provisional remedy unless the permitted transfer was made with actual intent to defraud, hinder, or delay the creditor.</p> <p>(b) An allowable claim under subsection (a) of this section shall be extinguished unless:</p> <p>(1) The creditor's claim arose before the permitted transfer was made and the action is brought on the latter of the date of the permitted transfer or the date of the enactment of this section; or</p> <p>(2) The creditor's claim arose concurrent with or subsequent to the permitted transfer, and the action is brought within two years after the permitted transfer is made.</p> <p>(c) In any action described in subsection (a), the burden to prove intent to defraud, hinder, or delay by clear and convincing evidence shall be upon the creditor.</p> <p>(d) For purposes of this section, a permitted transfer that is made by a transferor who is a trustee shall be deemed to have been made as of the date that the property that is the subject of the permitted transfer was originally transferred via a trust instrument that meets the requirements of this chapter to the transferor or the transferor's predecessor in interest.</p> <p>(e) Notwithstanding any law to the contrary, a creditor or other person who purports to have a claim against property that is the subject of a permitted transfer shall have only the rights, with respect to a permitted transfer, as are provided in this section and sections 554G-9 and 554G-10.</p>

		<p>(f) No creditor or any other person shall have any claim or cause of action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, against a trustee or advisor described in section 554G-4(c) or against any person involved in drafting, preparing, executing, or funding a trust or in counseling the parties to a trust that is the subject of a permitted transfer if, as of the date of the action, the action would be barred under this section.</p>
	<p>Haw. Rev. Stat. § 554G-9 (Limitations on permitted transfers)</p>	<p>The limitations contained in section 554G-8 on actions by creditors to avoid permitted transfers shall not apply to:</p> <ol style="list-style-type: none"> (1) Any person to whom the transferor is indebted on account of a family court-supervised agreement or family court order for the payment of support or alimony to the transferor's spouse, former spouse, or children, or for a division or distribution of property to the transferor's spouse or former spouse, but only to the extent of the debt and not to any claim for forced heirship, legitime(sic), or elective share; (2) Any person who suffers death, personal injury, or property damage on or before the date of a permitted transfer; provided that the death, personal injury, or property damage is determined to have been caused in whole or in part by the tortious act or omission of either the transferor or another person for whom the transferor is or was vicariously liable to the extent of the transferor's liability or vicarious liability; (3) Any lender who extends a secured or collateralized loan to the transferor based on the transferor's or the transferor's agent's express or implied representation that the assets of a trust established under this chapter would be available as security against the loan in the event of the transferor's default thereon; or (4) The State of Hawaii to the extent that a transfer results in the transferor being unable to meet the transferor's tax liabilities, but only to the extent necessary to extinguish the outstanding tax liabilities.
	<p>Haw. Rev. Stat. § 554G-10 (Effect of avoidance of permitted transfers)</p>	<ol style="list-style-type: none"> (a) A creditor may avoid a permitted transfer pursuant to section 554G-8 only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the transfer has been avoided, together with costs, including attorney's fees, as allowed by a court. (b) In an action pursuant to subsection (a) to avoid a permitted transfer: <ol style="list-style-type: none"> (1) If a court finds that a trustee has not acted with intent to defraud, hinder, or delay the creditor in accepting or administering the property that is the subject of the permitted transfer: <ol style="list-style-type: none"> (A) The trustee shall have a first and paramount lien against the property that is the subject of the permitted transfer in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the permitted transfer; and (B) The permitted transfer shall be avoided, subject to payment of proper fees, costs, preexisting rights, claims, and interests of the trustee and of any predecessor trustee who has not acted with intent to defraud, hinder, or

		<p style="text-align: center;">delay the creditor; and</p> <p>(2) If the court is satisfied that a beneficiary of the trust has not acted with intent to defraud, hinder, or delay the creditor, the permitted transfer shall be avoided subject to the beneficiary's right to retain any distribution made prior to the creditor's commencement of an action to avoid the permitted transfer. For purposes of this paragraph, it shall be presumed that a beneficiary did not act with intent to defraud, hinder, or delay the creditor merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p> <p>(c) A creditor who brings an action pursuant to section 554G-8 to avoid a permitted trust shall have the burden of proving by clear and convincing evidence that a trustee or beneficiary acted with intent to defraud, hinder, or delay the creditor; provided that in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove by a preponderance of the evidence that the transferor-beneficiary acted with intent to defraud, hinder, or delay the creditor. Mere acceptance of permitted property by a trustee shall not constitute evidence of intent to defraud, hinder, or delay a creditor.</p> <p>(d) Notwithstanding any other provision of this chapter, a creditor shall have no right against the interest of a beneficiary to a trust based solely on the beneficiary's right to authorize or direct the trustee to use all or part of the trust property to pay:</p> <ol style="list-style-type: none"> (1) Estate or inheritance taxes imposed upon or due to the beneficiary's estate; (2) Debts of the beneficiary's estate; or (3) Expenses of administering the beneficiary's estate unless the beneficiary actually directs the payment of taxes, debts, or expenses and then only to the extent of that direction.
	Haw. Rev. Stat. § 554G-11 (Multiple transfers)	<p>If more than one permitted transfer is made by means of the same trust instrument:</p> <ol style="list-style-type: none"> (1) The making of a subsequent permitted transfer shall be disregarded in determining whether a creditor's claim with respect to a prior permitted transfer is extinguished as provided in section 554G-8; and (2) Any distribution to a beneficiary shall be deemed to have been made from the latest permitted transfer.
	Haw. Rev. Stat. § 554G-12 (Taxation)	<ol style="list-style-type: none"> (a) The State shall levy a one-time one per cent excise tax on the fair market value of all permitted transfers. This one-time excise tax shall be administered by the department of taxation with all of its authorities under title 14, including all rights relating to the assessment, collection, and enforcement of the tax laws. The department of taxation shall be authorized to implement the tax under this section, including the timing, collection, and appeal rights of persons affected, by rule, including temporary rule. (b) A non-grantor trust established under this chapter shall be subject to income tax in Hawaii; provided that to the extent that the beneficial interest in the non-grantor trust shall be held by a beneficiary or beneficiaries residing outside this State, any income or capital gains accumulated for the benefit of the non-resident beneficiary or beneficiaries shall be

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		<p>excluded from Hawaii income tax for that year.</p> <p>(c) A trustee of a non-grantor trust established under this chapter shall not be required to track accumulated income or gains attributable to a nonresident beneficiary.</p> <p>(d) Notwithstanding any discretionary distribution provisions to the contrary, where the percentage interests of the beneficiaries are indeterminable based on the provisions of the trust, the trustee shall allocate accumulated income and gains equally among all beneficiaries then entitled to distributions of income.</p> <p>(e) Hawaii resident taxpayers who receive actual or constructive distributions of income or principal from trusts shall be subject to all applicable taxes on that income.</p>
	Haw. Rev. Stat § 525-4 (Exclusions from statutory rule against perpetuities)	<p>Section 525-1 shall not apply to: . . .</p> <p>(6) A trust described in chapter 554G.</p>
Nevada	N.R.S. §166.040	<p>1. Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for the benefit of:</p> <p>(a) A person other than the settlor;</p> <p>(b) The settlor if the writing is irrevocable, does not require that any part of the income or principal of the trust be distributed to the settlor, and was not intended to hinder, delay or defraud known creditors; or</p> <p>(c) Both the settlor and another person if the writing meets the requirements of paragraph (b).</p> <p>2. For the purposes of this section, a writing meets the requirements of paragraph (b) of subsection 1 even if under the terms of the writing:</p> <p>(a) The settlor may prevent a distribution from the trust;</p> <p>(b) The settlor holds a special lifetime or testamentary power of appointment that cannot be exercised in favor of the settlor, the settlor's estate, a creditor of the settlor or a creditor of the settlor's estate;</p> <p>(c) The settlor is a beneficiary of a trust that qualifies as a charitable remainder trust pursuant to 26 U.S.C. § 664, or any successor provision, even if the settlor has the right to release the settlor's retained interest in such a trust, in whole or in part, in favor of one or more of the remainder beneficiaries of the trust;</p> <p>(d) The settlor is authorized or entitled to receive a percentage of the value of the trust each year as specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument but not exceeding:</p> <p>(1) The amount that may be defined as income pursuant to 26 U.S.C. § 643(b); or</p>

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		<p>(2) With respect to benefits from any qualified retirement plan or any eligible deferred compensation plan, the minimum required distribution as defined in 26 U.S.C. § 4974(b);</p> <p>(e) The settlor is authorized or entitled to receive income or principal from a grantor retained annuity trust paying out a qualified annuity interest within the meaning of 26 C.F.R. § 25.2702-3(b) or a grantor retained unitrust paying out a qualified unitrust interest within the meaning of 26 C.F.R. § 25.2702-3(c);</p> <p>(f) The settlor is authorized or entitled to use real property held under a qualified personal residence trust as described in 26 C.F.R. § 25.2702-5(c) and any successor provision, or the settlor may possess or actually possess a qualified annuity interest within the meaning of that term as described in 26 C.F.R. § 25.2702-3(b), and any successor provision;</p> <p>(g) The settlor is authorized to receive income or principal from the trust, but only subject to the discretion of another person; or</p> <p>(h) The settlor is authorized to use real or personal property owned by the trust.</p> <p>3. Except for the power of the settlor to make distributions to himself or herself without the consent of another person, the provisions of this section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers.</p> <p>4. As used in this section, “remainder beneficiary” has the meaning ascribed to it in NRS 164.785</p>
	<p>N.R.S. §166.170</p>	<p>1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:</p> <p>(a) If the person is a creditor when the transfer is made, unless the action is commenced within:</p> <p>(1) Two years after the transfer is made; or</p> <p>(2) Six months after the person discovers or reasonably should have discovered the transfer, whichever is later.</p> <p>(b) If the person becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.</p> <p>2. A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement pursuant to chapter 104 of NRS.</p> <p>3. A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a</p>

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		<p>legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such proof, the property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property.</p> <ol style="list-style-type: none"> 4. If property transferred to a spendthrift trust is conveyed to the settlor or to a beneficiary for the purpose of obtaining a loan secured by a mortgage or deed of trust on the property and then reconveyed to the trust, for the purpose of subsection 1, the transfer is disregarded and the reconveyance relates back to the date the property was originally transferred to the trust. The mortgage or deed of trust on the property shall be enforceable against the trust. 5. A person may not bring a claim against an adviser to the settlor or trustee of a spendthrift trust unless the person can show by clear and convincing evidence that the adviser acted in violation of the laws of this State, knowingly and in bad faith, and the adviser's actions directly caused the damages suffered by the person. 6. A person other than a beneficiary or a settlor may not bring a claim against a trustee of a spendthrift trust unless the person can show by clear and convincing evidence that the trustee acted in violation of the laws of this State, knowingly and in bad faith, and the trustee's actions directly caused the damages suffered by the person. As used in this subsection, "trustee" includes a cotrustee, if any, and a predecessor trustee. 7. If more than one transfer is made to a spendthrift trust: <ol style="list-style-type: none"> (a) The subsequent transfer to the spendthrift trust must be disregarded for the purpose of determining whether a person may bring an action pursuant to subsection 1 with respect to a prior transfer to the spendthrift trust; and (b) Any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust. 8. Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer to the spendthrift trust would be barred pursuant to this section. 9. For purposes of this section, if a trustee exercises his or her discretion or authority to distribute trust income or principal to or for a beneficiary of the spendthrift trust, by appointing the property of the original spendthrift trust in favor of a second spendthrift trust for the benefit of one or more of the beneficiaries as authorized by NRS 163.556, the time of the transfer for purposes of this section shall be deemed to have occurred on the date the settlor of the original spendthrift trust transferred assets into the original spendthrift trust, regardless of the fact that the property of the original spendthrift trust may have been transferred to a second spendthrift trust.
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Oklahoma	31 Okl.St. Ann. §11	<p>5. “Preservation trust” means a trust:</p> <p>a. established by a grantor under Oklahoma law,</p> <p>b. having at all times as a trustee or cotrustee an Oklahoma-based bank that maintains a trust department or an Oklahoma-based trust company,</p> <p>c. having as beneficiaries only qualified beneficiaries or a qualified beneficiary,</p> <p>d. having a majority in value of its assets comprised of Oklahoma assets, except that if any asset which qualifies, or is intended to qualify, as an Oklahoma asset ceases or fails to qualify as an Oklahoma asset, the trustee shall have a reasonable period of time following discovery thereof to convert such nonqualifying asset into an Oklahoma asset, and</p> <p>e. reciting in its terms that the income generated from the corpus of the trust is subject to the income tax laws of this state; and</p>
	<p><i>Note: Although the Oklahoma statutes do not allow the grantor to be the beneficiary of a Preservation Trust, the grantor’s spouse may be a beneficiary.</i></p>	<p>6. “Qualified beneficiary” or “qualified beneficiaries” means:</p> <p>a. the lineal ancestors and lineal descendants of the grantor or the grantor’s spouse, including adopted lineal descendants if they were under the age of eighteen (18) at the time of the adoption,</p> <p>b. the spouse of the grantor,</p> <p>c. a nonprofit organization qualified under the provisions of the Internal Revenue Code of 1986, 26 U.S.C., Section 501(c)(3), or</p> <p>d. a trust settled for the sole benefit of one or more qualified beneficiaries.</p>
	31 Okl.St. Ann. §12	<p>Notwithstanding [other statutory provisions to the contrary], the corpus and income of a preservation trust shall be exempt from attachment or execution and every other species of forced sale and no judgment, decree, or execution can be a lien on the trust for the payment of debts of a grantor, except a child support judgment, except for any additional property contributed to the preservation trust by the grantor having an aggregate fair market value, determined as of the date of each contribution, minus liabilities to which the property is subject, in excess of One Million Dollars (\$1,000,000.00).¹ Any incremental growth derived from income or an increase in value of the corpus of a preservation trust shall also be considered protected by this section. Transfer of an asset to a preservation trust does not affect any mortgage,</p>

¹ Proposed legislation would increase the exemption to \$2,000,000.00. (2007 OK H.B. 2757).

		security interest or lien to which that asset is subject.
	31 Okl.St. Ann. §17	Any transfer of monies or property by a grantor to a preservation trust shall be subject to the provisions of the Uniform Fraudulent Transfer Act.
Rhode Island	R.I. Gen. Laws §18-9.2-2	<p>As used in this chapter:</p> <p>(1) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal equitable, secured or unsecured.</p> <p>(2) “Creditor” means, with respect to a transferor, a person who has claim.</p> <p>(3) “Debt” means liability on a claim.</p> <p>(4) “Disposition” means a transfer, conveyance or assignment of property (including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees), or the exercise of a power so as to causes a transfer of property, to a trustee or trustees, but shall not include the release or relinquishment of an interest that theretofore was the subject of a qualified disposition.</p> <p>(5) “Property” includes real property, personal property, and interests in real or personal property.</p> <p>(6) “Qualified disposition” means a disposition by or from a transferor to a trustee, with or without consideration, by means of a trust instrument.</p> <p>(7) “Spouse” and “former spouse” means only persons to whom the transferor was married at, or before the time the qualified disposition is made.</p> <p>(8) “Transferor” means a natural person who, or entity which, as an owner of property or as a holder of a general power of appointment, which authorizes the holder to appoint in favor of the holder, the holder’s creditors, the holder’s estate or the creditors of the holder’s estate, or as a trustee, directly or indirectly, makes a disposition or causes a disposition to be made.</p> <p>(9) “Qualified trustee” means a person who:</p> <p>(i) In the case of natural person, is a resident of this state other than the transferor, or, in all other cases, is authorized by the provisions of the general or public laws to act as a trustee, and whose activities are subject to supervision by the department of business regulation, The Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor to them; and</p> <p>(ii) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or otherwise materially participates in the administration of the trust.</p> <p>(iii) For the purposes of this chapter, neither the transferor nor any other natural person</p>

		<p>who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in subparagraph (l) of this subsection shall be considered a qualified trustee; however, nothing in this chapter shall preclude a transferor from appointing one or more advisors, including, but not limited to:</p> <ul style="list-style-type: none"> (A) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors; and (B) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust. For purposes of this section, the term “advisor” includes a trust “protector” or any other person who, in addition to a qualified trustee, holds one or more trust powers. (iv) A person may serve as an advisor, notwithstanding that such person is the transferor of the qualified disposition, but such a person may not otherwise serve as advisor of a trust that is a qualified disposition except with respect to the retention of the veto right permitted by subsection (10)(ii) of this section. (v) In the event that a qualified trustee of a trust ceases to meet the requirements of subparagraph (l) of this subsection, and there remains no trustee that meets such requirements, such qualified trustee shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust, or in the absence of any successor qualified trustee provided for in the trust amendment, the superior court shall, upon application of any interested party, appoint a successor qualified trustee. (vi) In the case of a disposition to more than one trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees. <p>(10) “Trust instrument” means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:</p> <ul style="list-style-type: none"> (i) Expressly incorporates the general or public laws of this state to govern the validity, construction, and administration of the trust; (ii) Is irrevocable; provided, that a trust instrument shall not be deemed revocable due to its inclusion in one or more of the following: <ul style="list-style-type: none"> (A) a transferor’s power to veto a distribution from the trust; (B) a power of appointment (other than a power to appoint to the transferor, the transferor’s creditors, the transferor’s estate or the creditors of the transferor’s estate) exercisable by will or other written instrument of the transferor effective only upon the transferor’s death;
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		<ul style="list-style-type: none"> (C) the transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument; (D) the transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in section 664 of the Internal Revenue Code of 1986 [26 U.S.C. section 664] and any successor provision thereto; and the transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release such transferor's retained interest in such a trust, in whole or in part, in favor of a charitable organization that has or charitable organizations that have a succeeding beneficial interest in such trust; (E) the transferor's receipt each year of a percentage (not to exceed five percent (5%)) specified in the trust instrument of the initial value of the trust assets on their value determined from time to time pursuant to the trust instrument or of a fixed amount that on an annual basis does not exceed five percent (5%) of the initial value of the trust assets; (F) the transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting: <ul style="list-style-type: none"> (1) in such qualified trustee's or qualified trustees' discretion; (2) pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or (3) at the direction of an adviser described in subsection (9) (iii) of this section who is acting: <ul style="list-style-type: none"> (a) in such advisor's discretion; or (b) pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt of or use of principal. For purposes of this subsection, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to such trustee by the terms of the trust instrument; (G) the transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor (other than a person who is a related or subordinate party with respect to the transferor within the meaning of section 672(c) of the Internal Revenue Code of 1986 [26 U.S.C. 672(c)] and any successor provision thereto); (H) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in
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		<p>section 2702(c) of the Internal Revenue Code of 1986 [26 U.S.C. section 2702(c)] and any successor provision thereto or the transferor's possession and enjoyment of a qualified annuity interest within the meaning of such term as described in Treasury Regulation section 25.2702-5(c)(8) [26 C.F.R. section 25.2502-5(c)(8)] and any successor provision thereto;</p> <p>(l) the transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting:</p> <p>(1) in such qualified trustee's or qualified trustees' discretion; or</p> <p>(2) at the direction of an advisor described in subsection (9) (iii) of this section who is acting in such advisor's discretion. Distributions to pay income taxes made under discretion included in a governing instrument pursuant to subparagraph (C), subparagraph (F) or this subparagraph (l) of subsection (10)(ii) of this section may be made by direct payment to the taxing authorities.</p> <p>(iii) Provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of section 541(c)(2) of the Bankruptcy Code (11 U.S.C. section 541(c)(2)) or any successor provision thereto; and</p> <p>(iv) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of subparagraph (l) of this section.</p>
	R.I. Gen. Laws §18-9.2-3	A qualified disposition shall be subject to §18-9.2-4 of this chapter notwithstanding a transferor's retention of any or all of the powers and rights described in subdivision 18-9.2-2(10)(ii) and the transferor's service as investment advisor pursuant to subdivision 18-9.2-2(9)(iv). The transferor shall have only such powers and rights as are conferred by the trust instrument. Except as permitted by subdivisions 18-9.2-2(9)(iv) and 18-9.2-2(10)(ii), a transferor shall have no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.
	R.I. Gen. Laws §18-9.2-4	(a) Notwithstanding any other provision of the general laws, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for

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		<p>avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of [the Uniform Fraudulent Transfer Act].</p> <p>(b) Notwithstanding the [statutes of limitations of the Uniform Fraudulent Transfer Act], a creditor may not bring an action under subsection (a) of this section if:</p> <ol style="list-style-type: none"> (1) The creditor's claim against the transferor arose before the qualified disposition was made, unless the action is brought within four (4) years after the qualified disposition is made or, if later, within one year after the qualified disposition was or could reasonably have been discovered by the creditor; or (2) The creditor's claim against the transferor arose subsequent to the qualified disposition, unless the action is brought within four (4) years after the qualified disposition is made. <p>In any action described in subsection (a) of this section, the burden to prove the matter by clear and convincing evidence shall be upon the creditor.</p> <p>(c) For purposes of this chapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time the property that is the subject of the qualified disposition was originally transferred to the transferor (or any predecessor trustee) making the qualified disposition in a form that meets the requirements of subdivisions 18-9.2-2(10)(ii) and (iii). If a trustee of an existing trust proposes to make a qualified disposition pursuant to the provisions of this subsection (c) of this section but the trust would not conform to the requirements of subparagraph 18-9.2-2(10)(ii)(B) as a result of the original transferor's nonconforming powers of appointment, then, upon the trustee's delivery to the qualified trustee of an irrevocable written election to have this subsection apply to the trust, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with subparagraph 18-9.2-2(10)(ii)(B). For purposes of this chapter, the irrevocable written election shall include a description of the original transferor's powers of appointment as modified together with the original transferor's written consent thereto, but no such consent of the original transferor shall be considered a disposition within the meaning of subsection 18-9.2-2(4).</p> <p>(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only such rights with respect to a qualified disposition as are provided in this section and §§ 18-9.2-5 and 18-9.2-6, and no such creditor nor any other person shall have any claim or cause of action against the trustee, or advisor described in subdivision 18-9.2-2(9)(iii), of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition.</p> <p>(e) Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, or advisor described in subdivision 18-9.2-2(9)(iii), of a trust that is the subject of the qualified disposition, or</p>
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		<p>against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under this section.</p> <p>(f) In circumstances where more than one qualified disposition is made by means of the same trust instrument, then:</p> <p>(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b) of this section; and</p> <p>(2) Any distribution to a beneficiary shall be deemed to have been made from the latest such qualified disposition.</p> <p>(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby such court declines to apply the law of this state in determining the validity, construction or administration of such trust, or the effect of a spendthrift provision thereof, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be a trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Superior Court, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon such trustee's ceasing to be trustee, such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointment by the Superior Court in accordance with this subsection.</p>
	R.I. Gen. Laws §18-9.2-5	<p>Notwithstanding the provisions of § 18-9.2-4, this chapter shall not apply to defeat a claim brought by:</p> <p>(a) Any person to whom the transferor is indebted on or before the date of a qualified disposition on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of the debt; or</p> <p>(b) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury, or property damage is at any time determined to have been caused in whole or in part by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable but only to the extent of such claim against such transferor or other person for whom such transferor is or was vicariously liable.</p>
	R.I. Gen. Laws §18-9.2-6	<p>(a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with any costs, including attorney's fees, that the court may allow.</p>

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		<p>(b) In the event any qualified disposition is avoided as provided in subsection (a) of this section, then:</p> <p>(1) If the court is satisfied that the trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:</p> <p>(i) Such trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the qualified disposition;</p> <p>(ii) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interest of the trustee (and of any predecessor trustee that has not acted in bad faith); and</p> <p>(iii) For purposes of subdivision (1) of this subsection, it shall be presumed that the trustee did not act in bad faith merely by accepting the property;</p> <p>(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the trustee of the trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p> <p>(c) A creditor shall have the burden of proving that a trustee or beneficiary acted in bad faith as required under subsection (b) of this section by clear and convincing evidence except that, in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove that the transferor-beneficiary acted in bad faith by a preponderance of the evidence. The preceding sentence provides substantive nonprocedural rights under Rhode Island law.</p> <p>(d) For purposes of this chapter, attachment, garnishment, sequestration, or other legal or equitable process shall be permitted only in those circumstances permitted by the express terms of this chapter.</p>
	R.I. Gen. Laws §18-9.2-7	This chapter applies to qualified dispositions made on or after July 1, 1999.
South Dakota	SDCL § 55-16-1	<p>Terms used in this chapter mean:</p> <p>(1) "Claim," a right to payment, whether or not the right is reduced to judgment liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;</p> <p>(2) "Creditor," with respect to a transferor, a person who has a claim;</p>

		<ul style="list-style-type: none"> (3) "Debt," liability on a claim; (4) "Disposition," a transfer, conveyance, or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power so as to cause a transfer of property to a trustee or trustees. The term does not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition; (5) "Property," real property, personal property, and interests in real or personal property; (6) "Qualified disposition," a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a trust instrument; (7) "Spouse" and "former spouse," only persons to whom the transferor was married at, or before, the time the qualified disposition is made; (8) "Transferor," any person as an owner of property; as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or as a trustee, directly or indirectly, makes a disposition or causes a disposition to be made.
	SDCL § 55-16-2	<p>For the purposes of this chapter, a trust instrument, is an instrument appointing a qualified person for the property that is the subject of a disposition, which instrument:</p> <ul style="list-style-type: none"> (1) Expressly incorporates the law of this state to govern the validity, construction, and administration of the trust; (2) Is irrevocable, but a trust instrument may not be deemed revocable on account of its inclusion of one or more of the following: <ul style="list-style-type: none"> (a) A transferor's power to veto a distribution from the trust; (b) An inter vivos power of appointment, other than an inter vivos power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death; (c) A testamentary power of appointment; (d) The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument; (e) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986, 26 U.S.C. § 664, as of January 1, 2009; (f) The transferor's receipt each year of a percentage of the value as determined from time to time pursuant to the trust instrument, but not exceeding the amount that may be defined as income under § 643(b) of the Internal Revenue Code of 1986, 26

		<p>U.S.C. § 643(b), as of January 1, 2009;</p> <p>(g) The transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a qualified person or qualified persons, including a qualified person or qualified persons acting at the direction of a trust advisor described in this section, acting either in such qualified person's or qualified persons' sole discretion or pursuant to an ascertainable standard contained in the trust instrument;</p> <p>(h) The transferor's right to remove a trustee or trust advisor and to appoint a new trustee or trust advisor, other than a person who is a related or subordinate party with respect to the transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 672(c), as of January 1, 2009;</p> <p>(i) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in § 2702(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 2702(c), as of January 1, 2009;</p> <p>(j) A pour back provision that pours back to the transferor's will or revocable trust all or part of the trust assets;</p> <p>(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified person or qualified persons actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code, 11 U.S.C. § 541(c)(2), as of January 1, 2009;</p> <p>(4) A disposition by a trustee that is not a qualified person to a trustee that is a qualified person may not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of subdivision (1) of this section.</p>
	SDCL § 55-16-3	For the purposes of this chapter, a qualified person is any person who qualifies as a qualified person under § 55-3-41 and who meets all the requirements of § 55-3-39 other than the transferor.
	SDCL § 55-16-4	<p>Neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in § 55-16-3 may be considered a qualified person. However, nothing in this chapter precludes a transferor from appointing one or more co-trustees, trust advisors, trust protectors, or other fiduciaries as defined in subdivision 55- 1B-1(4), including:</p> <p>(1) A fiduciary who has authority under the terms of the trust instrument to remove and appoint qualified persons or trust advisors;</p> <p>(2) A fiduciary who has authority under the terms of the trust instrument to direct, consent to, or disapprove distribution from the trust; and</p>

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	(3) A fiduciary whether or not such fiduciary would meet the requirements imposed by § 55-16-3.
SDCL § 55-16-5	Any individual may serve as an investment trust advisor described in subdivision 55-1B-1(6), notwithstanding that such individual is the transferor of the qualified disposition, but such an individual may not otherwise serve as a fiduciary of a trust that is a qualified disposition except with respect to the retention of the veto right permitted by subdivision 55-16-2(2).
SDCL § 55-16-6	If a qualified person of a trust ceases to meet the requirements of § 55- 16-3, and there remains no trustee that meets such requirements, such qualified person shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified person provided for in the trust instrument shall become a qualified person of the trust, or in the absence of any successor qualified person provided for in the trust instrument, the circuit court shall, upon application of any interested party, appoint a successor qualified trustee.
SDCL § 55-16-7	In the case of a disposition to more than one trustee, a disposition that is otherwise a qualified disposition may not be treated as other than a qualified disposition solely because not all of the trustees are qualified persons.
SDCL § 55-16-8	A qualified disposition is subject to §§ 55-16-9 to 55-16-14, inclusive, notwithstanding a transferor's retention of any or all of the powers and rights described in subdivision 55-16-2(2) and the transferor's service as trust advisor pursuant to § 55-16-5. The transferor has only such powers and rights as are conferred by the trust instrument. Except as permitted by §§ 55-16-2 and 55-16-5, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.
SDCL § 55-16-9	Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless the settlor's transfer of property was made with the intent to defraud that specific creditor.
SDCL § 55-16-10	A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets under § 55-16-9 is extinguished unless the action under § 55-16-9 is brought by a creditor of the settlor who meets one of the following requirements: (1) Is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under § 55-16-9 is brought within the later of: (a) Three years after the transfer is made; or (b) One year after the transfer is or reasonably could have been discovered by the creditor if the creditor: (i) Can demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or

	<p>(ii) Files another action, other than an action under § 55-16-9, 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 this sub-subsection is filed within three years after the transfer; or</p> <p>(2) Becomes a creditor subsequent to the transfer into trust, and the action under § 55-16-9 is brought within three years after the transfer is made.</p> <p>In any action described in § 55-16-9, the burden to prove the matter by clear and convincing evidence is upon the creditor.</p>
SDCL § 55-16-11	A qualified disposition that is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of the time, whether before, on, or after July 1, 2005, the property that is the subject of the qualified disposition was originally transferred to the transferor, or any predecessor trustee, making the qualified disposition in a form that meets the requirements of subdivisions 55-16-2(2) and (3).
SDCL § 55-16-12	Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person has only such rights with respect to a qualified disposition as are provided in §§ 55-16-9 to 55-16-16, inclusive, and no such creditor nor any other person has any claim or cause of action against the trustee, or advisor, described in § 55-16-4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition.
SDCL § 55-16-13	Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee, or advisor described in § 55-16-4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under §§ 55-16-9 to 55-16-12, inclusive. A court of this state has exclusive jurisdiction over an action brought under a claim for relief that is based on a transfer of property to a trust that is the subject of this section. A court of this state may award attorneys' fees and costs to the prevailing party in such an action.
SDCL § 55-16-14	<p>If more than one qualified disposition is made by means of the same trust instrument:</p> <p>(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in § 55-16-10; and</p> <p>(2) Any distribution to a beneficiary is deemed to have been made from the latest such qualified disposition.</p>
SDCL § 55-16-15	Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does not apply in any respect:

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		<p>(1) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse, or children, or for a division or distribution of property in favor of such transferor's spouse or former spouse, to the extent of such debt; or</p> <p>(2) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury, or property damage is at any time determined to have been caused in whole or in part by the act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable. Subdivision (1) does not apply to any claim for forced heirship or legitime.</p>
	SDCL §55-16-16	<p>A qualified disposition is avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorney's fees, as the court may allow. If any qualified disposition is avoided as provided in this section, then:</p> <p>(1) If the court is satisfied that a qualified person has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:</p> <p>(a) Such qualified person has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by such qualified person in the defense of the action or proceedings to avoid the qualified disposition. It is presumed that such qualified person did not act in bad faith merely by accepting such property; and</p> <p>(b) The qualified disposition is avoided subject to the proper fees, costs, preexisting rights, claims, and interests of such qualified trustee, and of any predecessor qualified person that has not acted in bad faith; and</p> <p>(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition is subject to the right of such beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified person or qualified persons of such trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. It is presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p>