



## Legal Note - Choice of Law

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One of the most powerful elements of asset protection planning is the right to choose from the variety of asset protection vehicles offered by the different states. For example, highly protective LLC and trust structures may be utilized outside the particular state offering the protection.

The ability to utilize the protections offered by the various states is derived from the “Full Faith and Credit” clause of the U.S. Constitution. The text of the Full Faith and Credit Clause generally requires the states to give full faith and credit to the public acts, records, and judicial proceedings of every other state.

The language of the clause, however, fails to mention the “laws” or “statutes” of other states. Although the full faith and credit clause forces states to respect the judgments of other states, the constitution is less clear in forcing states to apply the laws enacted outside the state of the presiding court. As the Constitution binds state courts only to “judgments”, other state courts may, under certain circumstances, apply the law of their home state in determining the validity of creditor protections.

A poorly prepared asset protection plan may therefore become subject to the substantive law of a debtor friendly state. However, with the proper drafting, exposure to a court applying unfavorable law to an otherwise protective structure can be minimized. If only to avoid the “choice of law” issue, care should be taken in choosing a seasoned professional to organize an asset protection plan.