Syndicate Legal Advisory Services

Asset Protection Trusts

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1. DOMESTIC SECURITY TRUST ("DST")

The **Domestic Security Trust ("DST")** is an irrevocable trust, domiciled within the United States, used for the purposes of basic asset protection, estate planning, and estate tax and gift tax considerations. As with any other irrevocable asset protection trust, the goal in using a DST is to remove ownership over your assets. Whoever owns asset "A" can lose asset "A" to a creditor. By establishing a DST, the Settlor removes ownership by creating a legally recognized "ultimate owner" (the DST). This means that the trust can own assets, and no individual or entity can own the trust.

The DST stands alone.

Since the DST stands alone and cannot create liability, a judgment cannot be attached to the trust itself and certainly is protected from your personal creditors. The only way for a creditor to attack the trust is to claim fraudulent conveyance. Of course, this can be easily avoided if a trust is established before a Settlor has any known creditors or judgments against him/her.

Because no one wants to lose control over their assets, another entity, such as an LLC, FLP, or Corporation, is often used in conjunction with a DST so that the Settlor can have a legal right to control the assets transferred into the trust. This way, the Settlor can legally remove ownership over the asset without losing control of that asset. This type of structure removes ownership from the Settlor and renders the assets lawsuit proof.

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2. MASTER PROTECTION TRUST ("MPT")

The **Master Protection Trust** is very similar to the Domestic Security Trust detailed on the previous page, with a primary distinction. The MPT has provisions that allow it to decant to an offshore jurisdiction at a future date. This trust is ideal for someone who wants the additional protections, under U.S. Law, of an Offshore Asset Protection Trust, but is unable to establish one at the present time due to timing or budgetary constraints. The MPT can be established in the United States and later transferred to an offshore jurisdiction such as the Isle of Man, Gibraltar, Nevis or the Cook Islands.

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3. DOMESTIC ASSET PROTECTION TRUST ("DAPT")

The **Domestic Asset Protection Trust** is a self-settled spendthrift trust that allows the Settlor to be the Primary Beneficiary during his or her lifetime. This is the only type of domestic irrevocable trust that allows for this, and it is modeled after the Offshore Asset Protection Trust. This is very new law; legislation recently passed and is currently available in twenty states (as of August 2024).

Alabama, Alaska, Connecticut, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia and Wyoming.

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4. OFFSHORE ASSET PROTECTION TRUST ("OAPT")

The **Offshore Asset Protection Trust ("OAPT")** is an irrevocable trust domiciled in a jurisdiction outside of the United States. ***It is the strongest asset protection tool available*** and is often used in conjunction with a Limited Liability Company (LLC), Family Limited Partnership (FLP), or Corporations to provide even stronger protection, flexibility, and control for the Settlor of the trust.

Favorable Offshore Asset Protection Trust Jurisdictions:
There are multiple jurisdictions where the Offshore Asset Protection Trust can be domiciled. Jurisdictions that have specifically passed very favorable Offshore Asset Protection Trust laws include the *Cook Islands, Isle of Man, Belize, Nevis, Cyprus, Caymans, Bahamas, Gibraltar, and St. Vincent*. Certain jurisdictions have distinct legal advantages over others, which we match against your needs and desires. We will assess your situation and select the most appropriate jurisdiction to maximize advantages for you.

Strongest Asset Protection Tool:
The Offshore Asset Protection Trust is the strongest asset protection tool because it removes your assets from United States Court jurisdiction, under U.S., Law and places ownership of your assets in the trust, in the jurisdiction that your trust is domiciled. This change of ownership does not mean that you will lose control of your assets. By combining entities (OAPT plus FLP or LLC), you can remain in complete control over your assets.

We typically recommend to our clients to keep their assets here in the United States. Essentially, we are importing foreign law without exporting your assets. Because you are removing U.S. Court jurisdiction, it becomes extremely difficult for an adverse party to gain access to the assets that are owned by your Offshore Trust.

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OFFSHORE ASSET PROTECTION TRUST ("OAPT") - *Continued*

Fraudulent Conveyance:
The only way your adversary can have access to those assets is to prove fraudulent conveyance. In the commonly used offshore jurisdictions, the statute of limitations for fraudulent conveyance is often as short as two years from the date of the transfer of the assets into the trust. This is not a long time in the legal world. Your adversary will likely run out of time and will either have to settle with you or pursue steadily mounting legal costs with no guarantee of success.

Offshore Asset Protection Trust Legal Advantages:
If your adversary does wish to bring a lawsuit against your Offshore Asset Protection Trust alleging fraudulent conveyance, they will have to start the legal process over in the trust's legal domicile offshore. Since most lawyers outside of the United States are generally not allowed to take contingency fees, the plaintiff will have to pay real money to hire them. Since the United States is the only country that does not have a "loser-pays" system, the court of the trust's domicile will most likely require a cash bond of up to $150,000 just to file a lawsuit in that jurisdiction.

Burden of Proof:
Once a lawsuit has begun, and depending on the jurisdiction, the burden of proof lies with the plaintiff. Not only do they have to prove fraudulent conveyance within the statute of limitations, they have to prove it beyond a reasonable doubt, which is an extremely high standard of proof and difficult to attain. As you can see, your adversary will have to jump through numerous hoops just to begin and pursue a lawsuit against your trust. This process is both time-consuming and costly and usually deters adversaries from pursuing a lawsuit against your Offshore Asset Protection Trust.

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OFFSHORE ASSET PROTECTION TRUST ("OAPT") - *Continued*

Offshore Asset Protection Trust Tax Advantages & Disadvantages:
It should be noted that the Offshore Asset Protection Trust is a tax-neutral entity. It is a "grantor trust" for tax purposes and is deemed a "disregarded entity." This makes the administrative burden minimal. The OAPT is purely an asset protection and estate planning tool and provides no tax advantages or disadvantages. All income from the Offshore Trust must be reported and paid annually. The IRS has specialized reporting forms specifically for this purpose (Forms 3520 and 3520-A), that must be filed when establishing and maintaining an Offshore Asset Protection Trust. Not only is the 3520-A filing required by law, but staying in compliance by filing it annually can be some of your best evidence of the legality and legitimacy of your Offshore Trust if faced with a skeptical judge during a lawsuit.

Combining Entities:
The best way to receive the ultimate in asset protection and gain the most out of your estate planning is by using a Family Limited Partnership (FLP), Limited Liability Company (LLC), or Corporation in conjunction with your Offshore Asset Protection Trust. The FLP is the most commonly used entity with the Offshore Trust because it allows the trust to be the 99% owner (or 98%, depending on how many General Partners there are). You, as the General Partner, will have all the control and decision-making power over the assets in the trust, but you have very little (only 1%) ownership in the FLP, allowing for the best in personal protection.

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OFFSHORE ASSET PROTECTION TRUST ("OAPT") - *Continued*

Importing Law Without Exporting Your Assets:
A typical structure that we employ goes back to the idea of importing law without exporting your assets. You have the advantage of your assets being under the laws of an offshore jurisdiction, without physically moving your assets offshore. The structure removes your legal ownership of your assets while allowing you to maintain control of your assets.

For example, the offshore trust would be the legal owner of your assets by being the Limited Partner of a FLP (99% ownership), while you would maintain control over those assets by being the General Partner of the FLP (1% ownership). The jurisdiction for the FLP might be Nevada or California, and it would own your assets. By making the offshore trust the Limited Partner of the FLP, the majority of ownership would be in an entity that is offshore, under those laws, but your assets would remain in the United States in the FLP that is domiciled in the United States under your control, hence, importing law without exporting your assets.

Simply put, this structure removes you as the legal owner, and if you are not the legal owner of an asset, the United States courts do not have the legal support to take that asset away and give ownership to your creditor.

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