

Offshore Trusts

So what's a trust? And who really needs one anyway?

Stripped to bare bones, a trust is a three-way legal device. It's a contract of sorts, that allows one person (the trustee) to take title and possession of cash or property and hold, use or manage those assets for one or more other persons (the beneficiaries).

The person who creates the trust (the grantor) decides what it will do and donates the property to fund it. You actually create the trust by writing and signing a trust declaration, usually as part of an overall estate plan.

Before I go further, let me say: Setting up a trust requires expert advice and a careful review of existing arrangements that affect your estate.

One special kind of trust that I often recommend, the offshore asset protection trust (APT), can place your wealth well beyond the easy reach of claimants, creditors, an irate ex-spouse and even the government of your home country. More about that in a moment.

Trusts, Like Governments, Are All About Who Has the Power

Most offshore asset protection trusts are *discretionary* trusts, a form that allows lots of planning flexibility.

Discretionary may mean the trustee is given power to decide how much will be distributed to beneficiaries and, in some cases, who qualifies as a beneficiary. A trustee often is given the authority to recognize beneficiaries in a class of persons ("my children and their heirs"). Or the trust could contain what is known as a "power of appointment." This allows the trustee to choose beneficiaries from a class of eligible persons. A trust may be created for any purpose that's not illegal or against public policy.

A trust can own title to, and invest in, real estate, cash, stocks, bonds, negotiable instruments, and personal property. Trusts can provide care for minor children or the elderly; or pay medical, educational, or other expenses.

A trust can provide financial support in an emergency. They can also help with an older person's retirement, pay for a young person's education, administer financial plans during marriage or divorce, or even carry out premarital agreements.

The Farther Away the Better

One of the most popular asset-protection devices in trust form is the foreign asset protection trust (APT), a personal trust created and based in a foreign nation.

This kind of APT shields your assets far better than any domestic trust, because it is located outside the United States or your home country. Distance makes the trust grow stronger. This trust shields business and personal assets against demanding creditors, litigation and other unpleasant financial liabilities in your home country.

The key to creating such a trust is simple: planning. You must plan and create your offshore asset protection trust long before you really need it, at a time of personal financial calm.

You can't use an asset protection trust as a last-minute response to a sudden financial crisis - it won't work. In fact, if you try to set up an offshore trust when you're in the middle of financial upheaval, you could face civil liability for concealing assets or fraud under the fraudulent conveyance laws.

In litigation-crazed America, you shouldn't wait for trouble before taking offshore precautionary measures. As a practical matter, placing title to property in the name of an offshore APT cannot really protect assets if they physically remain within an American court's jurisdiction.

Assets actually transferred to the APT's foreign jurisdiction, like funds moved to an offshore bank account, are usually safe from a U.S. creditor, even if he knows the account exists.

Seven Reasons Why Trusts Are So Darn Useful

A few reasons why offshore APTs have proven to be so effective:

1. Start-Over: In many cases, the courts of foreign "asset haven" nations will not recognize the U.S. or other nations' domestic court orders. A foreign judgment creditor seeking collection must re-litigate the original claim in the local asset haven's courts after hiring local lawyers. He may be required to post a bond and to pay legal expenses for all parties if he loses. The legal complexity and cost of such an international collection effort is likely to stop all but the most determined adversaries and promote quick settlement.

2. Minimal Requirements: An offshore trust does not need to be complicated. You can create one by signing the formal documents and opening a trust account managed by your local trustee in a foreign bank of your choice. Respected offshore banks traditionally provide experienced trust officers to handle offshore trust matters. U.S. asset protection attorneys routinely work directly with such offshore banks and trust companies. Most international banks have U.S. dollar denominated accounts, often with better interest rates than American banks offer.

3. Greater Protection: Under the laws of asset haven nations, assets placed in an offshore asset protection trust have far more protection than under domestic U.S. trust law. The law in such countries provides an asset protection "safe harbor" that is unavailable in the U.S. and many other nations. With an offshore APT, foreign-held trust assets are not subject to the jurisdiction of your local or home country judicial system.

4. Fast Acting: The statute of limitations imposed on initiating a foreign creditor's suit varies. In many asset haven nations, the statute begins to run from the date you establish the asset protection trust. Some haven nations, such as the Cook Islands, have a limit of one year for initiation of claims. Others impose a claims filing limit for certain creditors of two years after APT formation. As a practical matter, it may take a creditor longer than that just to discover you have a foreign asset protection trust.

5. Confidentiality: The offshore APT can provide greater privacy and confidentiality, minimization of domestic, home country inheritance taxes, and helps your heirs avoid the probate tax process after your death. It provides increased flexibility in conducting affairs in case of personal disability, allows easy transfer of asset titles, and avoids domestic currency controls in your home nation.

6. Estate Planning: An offshore APT can serve the same traditional estate planning goals achieved by domestic strategies. These include using bypass trust provisions to minimize estate taxes for a husband and wife, trusts that allow maximum use of gift tax exemptions through planned giving, and trusts that provide for maintenance and tax free income for a surviving spouse. An APT also avoids the problems, delays and costs of the domestic probate process in the U.S. and other nations.

7. Profitable Investments: An offshore APT is an excellent platform to use to diversify investments and benefit from global tax savings. The asset protection trust permits access to some of the world's best investment opportunities, without concern for your home nation's legal restrictions. Offshore foreign stock, bond, and mutual fund trading are not covered by laws such as the U.S. Securities and Exchange Act or its administrative arm, the SEC. An offshore APT can also purchase attractive life insurance and annuity products not available in the U.S. and other nations.