

Avoid Fatal Errors

For your offshore trust to be effective, it must be correctly structured and administered. Several celebrated cases have illustrated that offshore trusts can fail. Those few cases highlighted fatal planning errors that you must avoid.

- **Rule #1:** Don't retain control. If a U.S. court determines that your trust is only a sham, you'll lose your protection. Your trustee must control your trust both in form and in practice.
- **Rule #2:** Keep your trust assets offshore, not within the United States. Trust assets located within or tied to the U.S. can be seized by a U.S. court if your transfer to the trust is fraudulent.
- **Rule #3:** Your trust must include every protective safeguard. A trust that is improperly drafted can be technically defective. You need a trust prepared by an experienced professional.

In those few cases of failed trusts, one or more of these basic rules were not followed. The debtor-grantor was then ordered by a U.S. court to repatriate the trust assets for the benefit of the creditor. Several grantors who failed or refused to do so were jailed for contempt. This court ruled correctly when the grantor had *de facto* control over their trust. One defendant set up his trust only days before his trial. But ordinarily a court won't hold you in contempt if you can't repatriate your trust funds because you truly lack the power or authority to comply with the court order. That's why you need a properly structured and administered trust, not a last-minute effort to place your assets beyond the court's reach.

Timing and relinquishing control over your assets are both vital to offshore success. Don't wait until the last moment to protect yourself. Set up your offshore entities before you incur liability, and certainly before you are sued. Nor should you control your trust, or the court may conclude that you can repatriate your money and force you to turn over the money to your creditor.