

Offshore Asset Protection Trust

The traditional offshore protective entity is the offshore asset protection trust (OAPT). You may have heard other names – creditor protection trust, offshore trust, international trust, asset conservation trust, foreign trust, or foreign grantor trust.

The offshore trust is a comparatively new twist to the trust's long heritage. Only in the 1980s have certain foreign countries enacted laws creating the asset protection trust. That's why offshore trusts have only within the past decade or so become one of the most popular trusts. This reflects the increased need and demand for asset protection.

You can use an offshore trust for reasons other than lawsuit protection. They can avoid forced heirship laws, protect premarital assets, be useful for estate planning, Medicaid planning, international business planning, and for regulatory avoidance purposes.

The offshore trust compares to the domestic irrevocable trust (DAPT), though for many reasons the offshore trust is considerably more protective. Where your irrevocable U.S. trust is vulnerable to your existing creditors and the U.S. courts, your OAPT is immune. The offshore trust has other uniquely protective features:

1. The debtor-friendly laws of the OFC govern its enforcement,
2. If a U.S. court orders you to repatriate the trust assets, the offshore trustee must refuse your demand. Your trust funds will not be turned over to your creditor,
3. Your trustee can relocate the trust assets to another OFC if your trust becomes endangered, and
4. Your trustee can, if necessary, withhold distributions to a beneficiary who has creditors.

In other respects, the OAPT compares to the U.S. irrevocable trust (DAPT) which is widely used for estate planning. For example, offshore trusts have a grantor who creates and funds the trust, appoints the trustees and protector, and names the beneficiaries. The trustee manages the trust for the benefit of the beneficiaries. (This is ordinarily a foreign trustee firm.) The beneficiaries receive the trust's income and/or assets.

Unlike most U.S. trusts, the OAPT has a protector who oversees the trustee. The protector has the power to replace the trustee and must approve major trustee actions. The grantor appoints the initial protector (who should not be an American resident subject to U.S. court directives).

Any adult or legal entity can be the trust grantor and create and fund the trust. Parents or grandparents oftentimes create an OAPT to protect their wealth for their families. Or spouses can be the co-grantors and combine their wealth into one trust. Or each spouse may establish separate trusts. Who becomes the grantor depends upon tax, asset protection, estate planning, business, and personal considerations.

For confidentiality purposes, an offshore corporation or foreign LLC may be imposed as the trust's nominee grantor. And offshore trusts in some OFCs do not require you to name the grantor or that you publicly record the trust. This also helps protect the grantor's identity.