

Domestic Asset Protection Trusts

Many books and articles on asset protection have hyped Alaska and Delaware trusts. Alaska and Delaware have legislation to encourage special trusts in their jurisdictions. Their trusts promise estate planning and asset protection benefits, and you should explore their estate tax advantages if your state has an inheritance tax. Alaska and Delaware primarily promote their trusts as an alternative to the offshore trust. Undoubtedly, many Americans are more comfortable with a U.S.-based trust, rather than a foreign trust. This is the selling point of the Domestic Asset protection Trust or DAPT.

Alaska and Delaware trusts are highly publicized, but several other states have comparable trust laws including Rhode Island, Colorado, and Nevada. The Nevada trust may be the most protective domestic trust, by comparing laws from these competing trust jurisdictions. For example, Nevada trusts have the shortest statute of limitations for a creditor to file suit. The settlor of a Nevada trust can also be a beneficiary and retain more control without reducing their protection. Still, a key question to answer before you form any domestic asset protection trust in any state is whether their trust laws will give you significantly greater protection than the protection you would get from a comparable trust in your own state?

No domestic trust won't give you adequate protection against a fraudulent transfer claim (even when the DAPT is more protective than an irrevocable trust in your own state). The trust laws from these DAPT states may give you estate planning advantages, but not enough creditor protection. For estate planning, your estate planning attorney might check the benefits of a Nevada, Alaska, or Delaware trust. Since no trust from any of these protective states will protect you against a present creditor, they certainly will be less protective than an offshore trust. Alaska, Delaware, Nevada, and all other states must constitutionally recognize and enforce the judgments and court orders from other states. For example, if you fraudulently transfer assets into a trust set up in another state, it can eventually be recovered by your creditor. Other states will promote trust legislation. Yet, the number of trusts set up for protection purposes in these more protective jurisdictions has not grown dramatically. Conversely, the number of offshore trusts continues to rise because they create a far more formidable barrier against lawsuits and creditors.