

## Could a Domestic Asset Protection Trust Be the Right Trust for You?

There are more ways to create wealth today than ever before. Whether you are working a traditional nine-to-five job and investing in the stock market, a full-time investor taking advantage of online trading platforms and international markets, running an online business that you hope becomes your main income source, or a serial entrepreneur, the landscape of opportunity has never been broader—or more accessible.

But it is not just the prospects for wealth creation that have multiplied. Threats to personal wealth have also increased, from economic volatility and regulatory oversight to business disputes, professional malpractice claims, and divorce. The same online side hustle that supplements your earnings might expose customer data to cybercriminals, leading to a data breach lawsuit that threatens everything you own.

However you make money, you undoubtedly want to hold onto as much of it as possible. And that requires strategic long-term planning. One potential asset protection strategy involves using a *domestic asset protection trust (DAPT)*—a type of irrevocable trust designed to strategically shield wealth within US borders.

### How DAPTs Work

DAPTs came about in the late 1990s as a US-based alternative to offshore trusts traditionally used in jurisdictions such as the Cook Islands. Alaska pioneered the first DAPT statute in 1997,<sup>1</sup> and DAPTs are currently offered in more than 20 states.<sup>2</sup> However, **state laws regarding DAPTs do not offer equally strong protection.**

Here is an illustration of how DAPTs are set up and intended to function:

- Sarah owns a small business. Although her company is thriving, she knows there is an inherent risk of potential future lawsuits. To protect a portion of her personal wealth, she establishes a DAPT in her home state of Nevada, a state with DAPT legislation.
- As the grantor, Sarah transfers assets of investment accounts and real estate into the trust. She appoints a trustee to manage the trust. The trust document names beneficiaries, including Sarah, her children, and other family members.
- **The trust gives the trustee discretionary authority to distribute income and principal to the beneficiaries, including Sarah. This means that Sarah, as a potential beneficiary, does not have a guaranteed right to the trust's assets, making it more difficult for her future creditors to access them directly because technically, the trust—not Sarah—owns the assets.**

Nevada state law permits DAPTs, and, provided certain conditions are met (e.g., the transfer of assets was not done when Sarah knew of actual or potential creditors that might bring a claim against her), these assets within the trust may be shielded from claims by Sarah's future creditors after a certain statutory period has passed.

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<sup>1</sup> Alexander A. Bove, Jr., ed., *Domestic Asset Protection Trusts: A Practice and Resource Manual*, ABA, <https://www.americanbar.org/products/inv/book/415567501>.

<sup>2</sup> Brandon Roe, *What's the Best State for a Domestic Asset Protection Trust?*, Nestmann (Apr. 28, 2025), <https://www.nestmann.com/domestic-asset-protection-trust-states>.

For example, a few years after setting up her DAPT, Sarah's small business faces a lawsuit over a contract dispute. The plaintiff attempts to seize her assets, but because Sarah's investment accounts and real estate are in her Nevada DAPT, they are beyond the plaintiff's reach. **In other words, in the eyes of the court, Sarah is not the legal "owner" of the assets; the trust is.** The court upholds the trust's protections, shielding Sarah's wealth from the claim.

**The push-pull between control and protection is a major factor in determining whether a DAPT's protections can withstand court scrutiny.** Generally, the more control you (the grantor) retain over the trust, such as mandating distributions to yourself or having the ability to remove and replace a trustee, the weaker the asset protection. Conversely, surrendering more control—such as giving an independent trustee full discretion over distributions—enhances the trust's independence and ability to shield assets.

### **Warnings, Caveats, and State Nuances: When a DAPT Might Not Work**

While DAPTs offer strong asset protection, they are not foolproof. They can falter for reasons such as:

- **Timing.** Assets must be transferred to the DAPT before a creditor's claim arises. Transfers made after a lawsuit or debt is known may be deemed fraudulent and reversed by a court.
- **State law variations.** Not all states recognize DAPTs, and non-DAPT states may challenge their validity in court, especially if the grantor resides outside the trust's state.
- **Federal claims.** DAPTs may not protect against federal claims, such as Internal Revenue Service (IRS) tax liens or bankruptcy proceedings.
- **Setup and compliance.** A poorly structured DAPT or a DAPT's noncompliance with state law can leave assets vulnerable. DAPTs require strict adherence to state-specific rules, such as appointing an independent trustee and avoiding impermissible control by the grantor.
- **Evolving case law.** The legal landscape surrounding DAPTs is still developing as courts continue to interpret their scope and limitations. A lack of extensive precedent can create uncertainty.

In light of these limitations, let's revisit the example of the small business owner, Sarah, and how a DAPT could come up short.

Sarah's business faces a lawsuit, and she transfers many of her personal assets into the DAPT just days before the legal claim is filed. The plaintiff challenges the transfer, claiming it was made to evade legitimate creditors. The court finds that the transfer was fraudulent under Nevada's DAPT laws. As a result, the assets are not protected, and Sarah's trust assets are accessible to satisfy a resulting judgment.

Another situation where Sarah's Nevada DAPT may not provide the anticipated protection is if she moves to a state that does not recognize the Nevada DAPT. If a creditor brings a claim in her new state of residence, that state's courts may apply local public policy and decline to honor Nevada's asset protection laws. As a result, the court could allow the creditor to reach assets held in the DAPT, despite the trust's protections under Nevada law.

### **Additional Considerations and Complementary Strategies**

A DAPT might be right for you if any of the following applies:

- You have significant assets and high liability exposure
- You are an influencer, executive, public figure, or someone with a highly public profile
- You own a business or are a professional such as a doctor, lawyer, accountant, real estate developer, or broker, who works in a field with a high rate of malpractice claims
- You are worried about divorce
- You have concerns about future unknown liabilities
- You have sufficient assets to put away in a trust to which you will have limited access

**In addition to shielding assets from future creditors, DAPTs can help avoid probate and may, in limited cases, contribute to estate tax planning—particularly when designed to remove assets from the grantor’s taxable estate. Such benefits make DAPTs a strong complement to your overall financial and estate plans.**

However, DAPTs are not a one-size-fits-all solution. Their setup and ongoing maintenance fees should be part of your cost-benefit analysis. Their protection is also not guaranteed and could be subject to legal challenges. You need to be transparent about what you own and the potential liabilities you face when establishing a DAPT and must relinquish direct control over trust assets, which could hamper your financial flexibility.

**A DAPT is often most powerful within a broader asset protection framework that may also include strategic titling of assets; utilizing state-specific exemptions for certain types of assets (e.g., retirement accounts or homesteads); optimizing insurance coverage; business entity structuring; and other types of trusts such as a spousal lifetime access trust (SLAT) or a qualified personal residence trust (QPRT).**

To explore how a DAPT can be strategically integrated into your financial and estate plans in conjunction with these and other wealth protection strategies, schedule a time to talk.