

Is a Domestic Asset Protection Trust Right for Your Clients?

Clients today have more ways than ever to generate wealth. Technology, entrepreneurship, global investing, and digital platforms have created new pathways to financial success that did not even exist a generation ago. The landscape of opportunity has never been broader—or more accessible.

At the same time, the threats to wealth have multiplied. Litigation, economic volatility, cyberattacks, regulatory scrutiny, and a hyperconnected, hyperexposed world where personal missteps and situations can unravel decades of wealth accumulation almost overnight are just some of the risks clients face.

To secure the wealth that clients are working so hard to build, advisors can turn to asset protection solutions such as the *domestic asset protection trust (DAPT)*, a type of irrevocable trust designed to strategically shield wealth within US borders. Used correctly, DAPTs can be one of the strongest lines of defense in a client's financial and estate plans. However, to be effective and withstand legal scrutiny, DAPTs must be carefully structured with precise attention to detail and timing.

Origins of the DAPT

DAPTs emerged in the late 1990s as a US-based alternative to offshore trusts traditionally used in jurisdictions such as the Cook Islands to shield assets from creditors.

States wanted to provide a competitive domestic option for individuals seeking to safeguard their assets from potential creditors. DAPTs gained traction as professional malpractice suits, business disputes, and divorce-driven asset claims surged, providing a more accessible and domestically recognized asset protection strategy.

Alaska pioneered the first DAPT statute in 1997,¹ followed by Nevada, Delaware, and South Dakota. Today, DAPTs are offered in more than 20 states.² However, **state laws regarding DAPTs do not offer equally strong protection.**

How DAPTs Work

A DAPT is created by transferring assets into a trust governed by a DAPT-friendly state's laws. The *grantor* (i.e., creator of the trust) names a trustee, typically somebody who lives in the state where the DAPT is set up, to manage the assets. The trust is structured to shield those assets from future creditors. Depending on the trust's terms and applicable state law, the grantor can still benefit from the trust by receiving income or discretionary distributions.

Core principles adopted by US DAPT statutes include the following:

- **Irrevocability.** DAPTs are irrevocable; the grantor cannot unilaterally change or terminate the trust once it has been established.
- **Discretionary distributions.** DAPTs grant the trustee broad discretion over distributions to beneficiaries, including the grantor in some circumstances.

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

² 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>.

- **Spendthrift provisions.** DAPTs incorporate spendthrift clauses that legally restrict beneficiaries from assigning or alienating their interest in the trust to other parties, including their creditors.
- **Statutory protection.** Specific state laws provide a statutory framework for protecting trust assets from the grantor's future creditors after a certain period (the statute of limitations).

Examples

- Dr. Smith, a California surgeon, faces high malpractice lawsuit risks. He establishes a DAPT in his home state of Nevada, transferring \$2 million in investments and real estate to the trust. A Nevada trustee manages the assets, and Dr. Smith is a discretionary beneficiary. Years later, a malpractice lawsuit results in a \$1.5 million judgment against him. Because the DAPT was properly established before the claim arose, the trust assets are protected, and the creditor cannot access them to satisfy the judgment.
- Prior to launching her tech startup and long before her marriage, Emma transfers some of her savings and a software patent into a South Dakota DAPT. Years later, during a contentious divorce, her ex-spouse attempts to claim a share of those assets. Since they are legally owned by the DAPT and Emma no longer personally "owns" them, the trust shields the assets from division.

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 the following:

- **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 client 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, especially around matters involving DAPT and non-DAPT states, can create uncertainty.

Examples

- Mr. Jones, a real estate developer, created a Delaware-based DAPT to protect \$3 million in assets. However, he transferred the assets after a lender had already initiated foreclosure proceedings on a defaulted loan. The court ruled that the transfer was a fraudulent conveyance because it was intended to hinder the lender's claim. The DAPT protections were voided, and the trust assets were seized.
- Ms. Smith, a high-net-worth individual residing in Florida, established a DAPT governed by the DAPT laws in Delaware to shield her assets, including a multimillion-dollar real

estate and investment portfolio. After a car accident, the injured party sued her for damages. The Florida court, not recognizing Delaware's DAPT protections, determined that the assets in Ms. Smith's trust could be used to pay the debt.

Additional Considerations and Complementary Strategies

DAPTs are tailored for clients with significant assets and high liability exposure. They may be a good fit for high-net-worth individuals; high-profile persons (e.g., influencers, executives, or public figures); business owners; professionals such as doctors, lawyers, and accountants in fields with a high rate of malpractice claims; real estate developers and investors; and clients worried about divorce or any other future unknown liabilities. **DAPTs can also 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.**

However, DAPTs are not a one-size-fits-all solution, and they can come with significant costs. Plan on potentially thousands of dollars for initial legal and setup fees, plus annual trustee, accounting, attorney, and administration fees.

Clients who appear to be a good fit for a DAPT should be advised that protection is not guaranteed and the DAPT is subject to legal challenges. They need to be transparent about what they own and the potential liabilities they face when establishing a DAPT. They must also relinquish direct control over trust assets, which can be a drawback for some clients.

A DAPT is often most powerful when integrated within a broader asset protection framework that might also include strategic titling of assets; utilizing state-specific exemptions for certain types of assets (e.g., retirement accounts or homesteads); optimizing insurance coverages; and business entity structuring.

To explore how a DAPT, in conjunction with these and other wealth protection strategies, can be strategically integrated into a client's financial and estate plans, connect with us.