

Asset Protection Trust Strategies for US Citizens – Cook Islands Offshore Trust



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Asset Protection Trust Strategies for US Citizens – Cook Islands Offshore Trust



High-risk professionals, business owners, or anyone with an elevated liability risk and accumulated wealth may be considering an asset protection strategy. One widely accepted method of doing this is the domestic asset protection trust, or DAPT, which allows for protection from future creditors and assures that wealth can be passed onto future generations.

A domestic asset protection trust (DAPT) is a self-settled spendthrift trust, which allows settlors to protect their own assets. While this type of trust may seem sufficient at first glance, certain circumstances will still be excluded from its protections, leaving assets vulnerable to legal claims.



Which assets in a DAPT will be within reach of creditors?

It is important to keep in mind that not every asset will be protected from legal actions against the settlor. Several factors, including federal and state laws, may influence a creditors' rights to access trust assets. For example:

- 1 Tax payments may still be required from the trust**
- 2 Child support, alimony, and spousal support may still be accessible by the court**
- 3 Judgments from some courts may be awarded against the settlor, depending on state law, the language of the trust, and the type of judgment.**
- 4 A court's discretion may result in the trust's being used to pay for "necessary services or supplies", such as medical services.**

What are the safest ways to shield assets from creditors?

This is one of the most commonly asked questions by high-net-worth individuals; and for US citizens it might seem like the Domestic Asset Protection Trust (DAPT) is the best option. Qualified disposition statutes in 14 states have made it possible to establish such a trust, but the top tier states are Nevada, Ohio, and South Dakota.

State-based DAPTs offer some generic protections from creditors, but as many people have learned, they are certainly not always bulletproof. Any US-based trust can be vulnerable in certain situations, primarily because US law is designed to protect creditors.



How are DAPTs vulnerable in legal actions?

Because many state and federal laws favor creditors, several US cases have proven that DAPTs are far from impenetrable. Whether because a court exercised its “discretion” to apply federal bankruptcy laws to interpret the fraudulent transfer of assets (*Battley v. Mortensen*, 2011), or the trust assets were vulnerable to equitable distribution in a divorce (*Dahl vs. Dahl*, 2015), it is clear that domestic trusts are not invincible.



A Cook Islands Trust is a more effective form of asset protection

A global pioneer in offshore asset protection, the Cook Islands offers a trust with unparalleled anonymity and security, which is available to US citizens looking to shield assets from legal claims.

While the Cayman Islands, Switzerland and the British Virgin Islands may be known for tax rates that allow the rich to shelter income from the US government, the Cook Islands, a self-governing state associated with New Zealand, offer a different type of secrecy: the long arm of United States law simply does not reach it. The Cooks make it easier to keep assets out of the grasp of creditors, or anyone else, because they generally disregard foreign court orders.

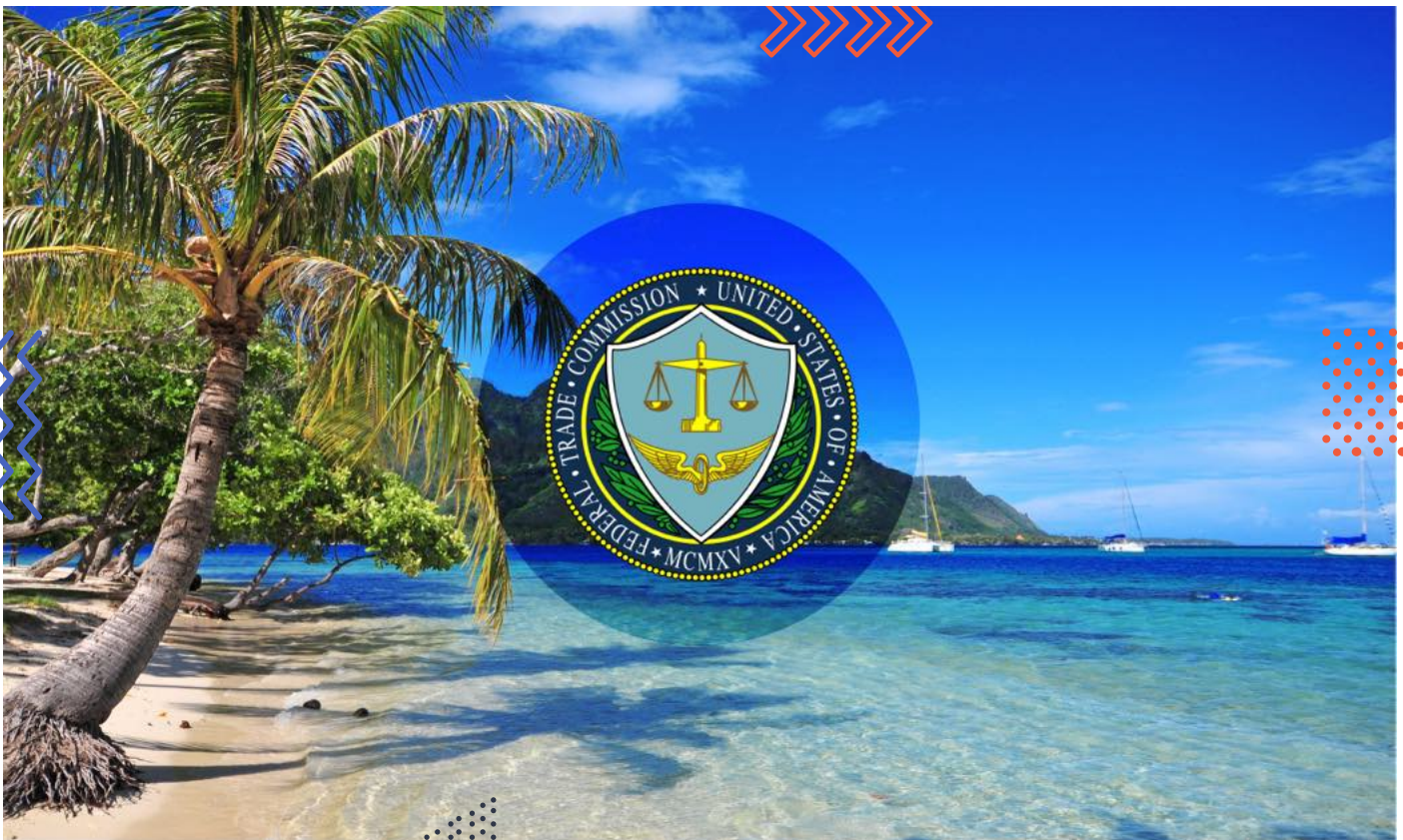
According to a 2015 New York Times article, Cook Islands, a Paradise of Untouchable Assets, these islands are a tropical paradise where wealthy individuals can “hide your hard-earned assets far from the grasp of former or soon-to-be-former spouses, angry business partners or, if you happen to be a doctor, patients who might sue you.”



These stories, which were documented by the New York Times, cite examples of how U.S. courts were unable to dismantle Cook Islands trusts:

- 1 **Nadya Suleman, who became known as the Octomom after giving birth to octuplets in 2009, sued the doctor who implanted the embryos in her. However, Dr. Kamraya’s assets were in a Cook Islands trust and therefore difficult to recover.**
- 2 **The Federal Trade Commission (FTC) has also come up dry, in an attempt to collect a \$37.5 million judgment against Kevin Trudeau, author of The Weight Loss Cure, for “airing blatantly deceptive infomercials.”**
- 3 **Even the United States government has had a hard time going up against a Cook trust. Fannie Mae, a government-sponsored lender, was unable to collect on a \$10 million judgment against Oklahoma real estate investor Andrew Grossman, despite a trial that dragged on for years.**

Without a doubt, public perceptions have prevented some individuals from pursuing this option, but rest assured there is nothing illegal about establishing a Cook Islands trust.



Why do Cook Islands Trusts exist?

Americans have parked more than \$1 trillion in offshore accounts around the globe, and while the US government has tried to regulate it, the Cook Islands trust seems to be relatively immune to US scrutiny. Cooks Trusts are widely used by multinational companies to avoid taxes and have not been linked to money laundering or terrorist financing, and as a result they have garnered very little attention from foreign regulators.

Perhaps it is the stable government and comparatively sophisticated court system (based in English common law), or it could be the seemingly bulletproof level of asset protection, but there is little doubt that the Cook Islands trusts remain in great demand among high-net-worth individuals.

For the Cook Islands, the trust business has been nothing short of a bonanza. According to the New York Times, business generated by the trusts, including registration fees, taxes on trust companies, and various support services, accounts for more than 8 percent of the Cooks economy, just after tourism.

Why is a Cook Islands Trust so attractive for wealthy Americans?

Our litigious society puts high-risk professionals in a precarious position, and they want protection that can be relied upon. The Cook Islands trust laws eliminate some of the less desirable aspects of US asset protection trusts while providing a more robust set of advantages that favor the settlor.



Despite recent efforts to clamp down on tax haven countries, international regulators have paid little attention to the Cook Islands. Interestingly, these trusts may only be held by foreigners, hence the islands' marketing campaigns aimed at "discerning wealthy clients."

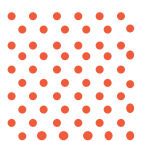
As the Cook Islands Trust became more ubiquitous and increasingly popular with American businesses, they have maintained a great reputation for security. Any individual or business looking for powerful asset protection benefits, particularly those who are worried about future litigation, will want to consider this option.



Here are some of the most compelling reasons to consider a Cook Islands trust

- 1 Cash and investment accounts, as well as real estate holdings and businesses, may be registered in the trusts, but unlike DAPT's none of these are required to be physically located in the Cooks**
- 2 All business related to a Cook Islands Trust may be handled electronically, with no need to travel to the islands**
- 3 The laws surrounding Cook Islands trusts were written with Americans in mind and were actually written by a Colorado asset protection attorney**

The best candidates for a Cook Islands trust would be any high-risk professional with assets exceeding \$1 million. These include lawyers, doctors, accountants, architects, real estate developers, and corporate directors. Even the parents of teenage drivers could be considered "high risk".



The unique benefits of a Cook Islands Trust

The financial and legal benefits of these trusts are numerous, including:

- 1 Protection from lawsuits**
- 2 Strict confidentiality**
- 3 No income taxes**
- 4 No limits on the perpetuity of the trust**
- 5 Flexibility to select managing trustees from one's own country**
- 6 Zero impact from inheritance laws or court judgments from other countries**

A creditor who wishes to extract assets from a Cook Islands trust must re-try the case in the island nation where it was formed, in a jurisdiction known for its unfriendliness to creditors. Even if the plaintiff chooses to go down this road, and many will not have the resources, they must provide proof “beyond a reasonable doubt”, not just the “preponderance of evidence” used in the United States. In addition, the plaintiffs are required to pay legal fees and court costs upfront. It is also likely that the loser of the case will pay their own legal fees as well as the winner's.

Lawyers who set up Cook trusts often use them as a negotiating tool, knowing that if litigation arises many creditors will opt for a cents-on-the-dollar settlement over a long and arduous trial halfway across the globe.

What are the potential drawbacks of a Cook Islands Trust?

With so many advantages for US citizens, it is hard to find many reasons not to move forward with a Cook Islands trust, but there are a few things to consider.

- 1 Any offshore trust will have slightly higher setup and maintenance costs, as well as more complicated IRS filings and federal disclosures**
- 2 The settlor of such a trust will be required to relinquish control of the account to a foreign trustee, but this trustee can be prescreened before the trust is established**
- 3 Despite being fully legal and ethically sound, adverse perceptions inferring impropriety may accompany any offshore account**
- 4 Critics of Cook trusts say they undermine the basic premise of the American legal system, which is to hold people accountable for the consequences of their actions**

Some damage was done to the reputation of Cook Islands trusts because of the high-profile cases where these trusts prevented justice from being served. Despite being settled in favor of the defendant, some Americans came to view offshore trusts in a negative light. As a result, the Cook Islands have proactively tried to dispel any negativity in their US marketing campaigns.

Legal views of the Cook Islands Trust

Many US attorneys echo the sentiments of California lawyer Jay D. Adkisson, who told the New York Times, “U.S. jurisdiction stops at the Pacific and on the beach,” when asked about Cook Islands Trusts.

“Nothing will happen,” said Adkisson. “That’s why those with Cook trusts include a high number of the unscrupulous who have committed fraud and are trying to hide their ill-gotten gains.”

In the same article, attorney Barry Engel, who has established over 1,300 Cooks trusts, said this:

“Lawyers can debate the morality of these trusts. My first duty is to my clients and my clients have a need. This is in response to a legal system that has spun a little out of control and is abused by lawyers for legal extortion and who can throw someone’s life into a tailspin. Trusts are our response to that abuse of the legal system.”

Other options for asset protection

Given the Cook Islands’ success in attracting business, many other countries, plus 14 US states, have enacted some form of asset protection statutes. The first state to offer such protections was Alaska, which enacted its first asset protection law in 1997. Delaware and South Dakota followed soon after, followed by South Dakota, Nevada, and Wyoming.

Most other countries’ asset protection statutes are not as tough as the Cook Islands’ trust, causing many DAPTs to be broken open, or “pierced”, by creditors who were able to collect judgments against fund assets.

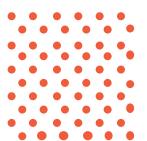


What are the differences between a DAPT and a CI trust?

- 1 Statute of limitations for a Cooks trust is one year**
- 2 Burden of proof is higher for creditors to prove liability against a Cooks trust**
- 3 The plaintiff must prepay all legal fees in the Cook Islands (a deterrent to potential lawsuits)**
- 4 Tax protection is stronger for Cook Islands trusts**
- 5 Strength of asset protection statutes make the Cooks trust impenetrable, even by the federal government**
- 6 The value of the assets is not disclosed, and it is against the law in the Cooks to identify who owns the trusts or to provide any information about them**

When to use a DAPT

- 1 When a settlor resides in one of the fourteen states currently offering a DAPT, a self-settled trust may be a consideration. Nevada offers the shortest windows of time in which one can challenge transfers into the trust**
- 2 Another reason to use a DAPT may be if one expects to avoid federal lawsuits**
- 3 It is also important for settlors in a DAPT to have moved all of their assets into the trust before any problems arise**
- 4 Anyone who does not meet all of the criteria mentioned above should strongly consider a Cook Islands, or offshore, trust**



Conclusion

Most of the commonly known domestic trusts, such as living trusts, land trusts, and title-holding trusts, are not the best asset protection vehicles. A DAPT may protect certain assets, especially when the trust is established in one of the aforementioned states, but nothing exceeds the ability of offshore asset protection trusts, such as the Cook Islands trust, to protect assets from the legal claims of creditors.



Contacts



Dilendorf Law Firm, PLLC

E-mail: md@dilendorf.com

Phone: 212.457.9797

Address: 85 Broad Street, New York, NY 10004



Max Dilendorf, Esq.

Partner

E-mail: md@dilendorf.com



[@dilendorf_law](#)