

SOUTH DAKOTA ASSET PROTECTION TRUSTS

FOR CLIENTS SEEKING TO SAFEGUARD THEIR ASSETS FROM CREDITORS, LAWSUITS, AND OTHER UNFORESEEN CLAIMS, A SOUTH DAKOTA ASSET PROTECTION TRUST (APT) OFFERS EXCEPTIONAL PROTECTION. THANKS TO THE STATE'S RESPECTED TRUST LAWS, SOUTH DAKOTA HAS BECOME A LEADING JURISDICTION FOR ESTABLISHING APTS, PROVIDING BOTH SECURITY AND PEACE OF MIND FOR CLIENTS AROUND THE WORLD.

WHAT IS AN APT?

An APT is a legal structure designed to shield an individual's assets from potential future claims, including those from creditors or lawsuits. Once assets are transferred into an APT, they become irrevocable, meaning the settlor cannot alter or remove them, thereby ensuring the trust's continued protection against any future claims.

South Dakota offers a robust legal framework, allowing settlors from any U.S. state or from abroad to establish an APT and benefit from its strong asset protection provisions.

WHY CHOOSE A SOUTH DAKOTA ASSET PROTECTION TRUST?

South Dakota is renowned for its thoughtfully formulated trust laws and its commitment to providing robust asset protection. Key advantages include:

- > **Comprehensive Creditor Protection:** South Dakota APTs protect against a broad range of creditors, both domestic and international:
 - > General Creditors: Credit card companies, personal loans, business creditors, and others.
 - > Lawsuit Claimants: Protection from claims arising from personal injury, breach of contract, and professional liability.
 - > Future Creditors: Strong safeguards for assets against potential creditors that may arise after the trust is established.
 - > Exception Creditors: Unlike other states, South Dakota does not treat child support or alimony as exceptions to creditor protection, unless these obligations were in place before the transfer to the APT.
 - > Foreign Judgments: South Dakota law prevents the enforcement of foreign judgments that conflict with state law, offering protection even for those from jurisdictions with forced heirship rules.
- > **Estate Planning:** South Dakota APTs serve as an effective estate planning tool, ensuring that assets are passed on to beneficiaries without the threat of being diminished by creditors. For instance, South Dakota allows for the creation of dynastic trusts, which can last for multiple generations without being subject to estate taxes.
- > **Tax Advantages:** South Dakota does not impose state income, capital gains, or estate taxes, making it a highly attractive jurisdiction for establishing a trust.
- > **Enhanced Privacy:** South Dakota provides robust privacy protections, ensuring that beneficiaries' financial information remains confidential.
- > **Attorney's Fees if Contested:** South Dakota is one of the few states that allows the court to require the plaintiff to cover legal fees and court costs in contested cases.

KEY CONSIDERATIONS WHEN ESTABLISHING A SOUTH DAKOTA APT

- > **Qualified Trustee:** The trustee must be a qualified individual resident of South Dakota or a licensed trust company. The settlor cannot serve as the trustee.

- > **South Dakota Governing Law:** The trust must incorporate South Dakota law for validity, construction, and administration. This includes depositing trust assets in South Dakota, appointing a qualified trustee, and having trust administration take place, in part or whole, in the state.
- > **Settlers' Reserved Powers:** While the trust is irrevocable, the settlor can retain certain powers, allowing them to maintain some control over the trust's management and benefits, including:
 - > Investment Advisor: The settlor may serve as an investment advisor, guiding the trustee on asset management.
 - > Appointment of Trustees/Advisors: The settlor may retain the right to remove and appoint trustees, trust advisors, and protectors, subject to certain restrictions.
 - > Beneficial Interest: The settlor may remain a beneficiary with the right to receive principal distributions, at the trustee's discretion, and up to 5% of the trust's income annually.
 - > Distribution Committee and Powers: The settlor may have a role in the distribution committee and retain powers to veto distributions or appoint assets through their will.
 - > Spendthrift Clause: The trust must include a spendthrift provision, preventing the settlor or beneficiaries from transferring their interests in the trust.
- > **Fraudulent Transfer Protections:** South Dakota law offers strong protections against fraudulent transfer claims. Creditors must prove with clear evidence that the transfer was made with the intent to defraud. South Dakota's statute of limitations for fraudulent conveyance is two years from the date assets were transferred to the trust.
- > **Trust Administration:** Effective administration is critical. This includes proper record-keeping, tax filing, and compliance with South Dakota laws.

NEXT STEPS

To learn more about South Dakota APTs or to discuss how they can benefit your asset protection planning, contact your Trident Trust representative or reach out to Jordan Vitek, Head of Client Solutions, at jvitek@tridenttrust.com.

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