



JOSH N. BENNETT ESQ., P.A.

[WWW.JOSHBENNETT.COM](http://WWW.JOSHBENNETT.COM)

440 NORTH ANDREWS AVENUE | FT. LAUDERDALE, FLORIDA 33301  
954 779.1661 | FAX 954 767.9989

## How to Create a Shield for Your Assets with an Offshore Trust

In the United States, Suze Orman is a popular financial guru on public television. Typical of her advice: “A big part of financial freedom is having your heart and mind free from worry about the what-ifs of life.”

One of the best ways to minimize the “what-ifs” and the worry that goes with them is with a trust. With an inventory of your possessions, a few hours’ planning, and the help of a good attorney, anyone with wealth and assets can create one and they are among the most fool-proof, iron-clad legal entities known to man.

One popular trust form, the offshore asset protection trust (APT), can place your wealth beyond the reach of certain types of claimants that don’t run afoul of applicable Federal and state fraudulent conveyance laws. That “offshore” distance creates an added layer of protection that thwarts attacks and promotes compromise.

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## What is a Trust?

You may have heard about “trusts,” but what are they, really? Something rich people set up for their spendthrift kids? In the 1958 Broadway hit musical Auntie Mame, a mean banker controls a trust for Mame’s beloved orphan nephew, Patrick. But trusts have actually been around in various forms for thousands of years, dating back to ancient Egypt, the Roman Empire, and medieval England.

The basic trust is simply a legal arrangement recognized by the laws and courts of every country. It has three parties: a person (variously called the “grantor” or “settlor”) who creates the trust and donates assets to fund it; a trustee who administers the trust; and the beneficiaries who receive benefits from the trust.

All this is accomplished by the grantor’s signing a formal trust declaration that sets forth the purpose of the trust, and then funding the trust.

The key protection a trust provides is this: All cash and property correctly donated to the trust are then owned by the trust rather than by the donor. To make the arrangement even more useful, a

trust's creator (or grantor, if you will) can usually also be a beneficiary of the trust, reaping the rewards of his or her former property.

But what a trust creator cannot do is control the trust; that is the role of an independent trustee. If a trust creator treats the trust as his own thing, courts will rule it a "sham" trust and dissolve it.

A trust can be created to carry out just about any purpose that is not illegal. A trust can hold title to, and invest in, real estate, cash, stocks, bonds, and personal property. Trusts can provide for care for minor children or for the elderly, or pay medical, educational, or other expenses. A trust can provide financial support in an emergency, give help for an older person's retirement, pay for a young person's education, administer financial plans during marriage or divorce, or even carry out premarital agreements.

But a major role of a trust is to invest its assets to produce income that will fund the trust's goals. Meaning an offshore trust can be an excellent platform for international investment.

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## How a Trust Protects Wealth

In modern times, asset protection has become a major goal of trust creation. Through taxation and regulation, government excels in attacks on wealth. In the U.S. and Europe, there is now official talk of wealth and retirement-plan confiscation. Last year a large chunk of every bank account in Cyprus was subject to "bail-in" tax overnight.

The judicial system also has become a threat to prosperity. Especially in the U.S. and the U.K., courts are clogged with thousands of civil suits demanding enormous sums for sometimes-imagined injuries for alleged victims of harassment, disability, or discrimination. With TV commercials seeking plaintiffs, contingent-fee lawyers whip up billion-dollar class-action suits against persons or corporations they see as ripe targets, seeking outrageous jury awards and fat fees for attorneys. These real threats have increased the popularity of the offshore asset protection trust.

The offshore asset protection trust (APT) is especially useful because it is, in fact, based in a foreign nation. That shields your assets better than any domestic trust ever can, simply because it is located outside the jurisdiction of your home country. Distance makes the trust grow stronger. The offshore APT shields business and personal assets against creditors, litigation, and disputed financial liabilities.

With the help of an experienced trust attorney, an offshore APT can be accomplished by little more than the signing of formal documents, transferring property, and opening a trust account managed by a local trustee in a bank in a foreign country you choose. Offshore multinational and local banks provide experienced trust officers and staff. For example, a simple trust registered in the Cook Islands (which I recommend) can cost less than \$25,000.00 USD.

Other jurisdictions that specialize in trust creation and administration include Belize, the Channel Islands of Guernsey and Jersey, Cayman Islands, Nevis and Bahamas.

Offshore APTs have proven so effective because: 1) courts of some foreign “asset-haven” countries will not recognize U.S. or other domestic court orders, so a plaintiff must re-try his case in a foreign court at great expense; 2) claims against a trust in such countries must be brought within a limited time. In the Cook Islands, the statute of limitations can be one or two years from the time the APT was created; 3) foreign trust laws allow a “duress clause” that allows the foreign trustee to shut down the trust if it is threatened legally in any way.

The key to creating an APT is simple: planning. The trust must be created long before it is needed, at a time of personal financial calm. As a belated response to a pending financial crisis, trust creation creates more problems. Last-minute attempts to create an offshore trust can lead to civil liability for concealing assets. So if you think you may need a trust, act now.

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## A Word About Taxes

The United States imposes taxes on all worldwide income earned by its citizens and all income of persons with permanent U.S.-resident status and/or fail the US Substantial Presence Test pursuant to the Internal Revenue Code.

Under U.S. tax law, for the trust grantor, APTs are “income-tax neutral,” as are domestic trusts. That means all offshore trust income is treated as the grantor’s personal income, reportable annually as gross income on IRS Form 1040 and Form 3520 and Form 3520A and FinCen 114, Form 8938, etc.; and taxed at applicable personal income-tax rates. There are also other IRS reporting requirements for trusts, trustees, and beneficiaries. US tax residents are required to report their world wide income.

In a world of expanding global trade and investment, the offshore asset protection trust offers advantages unavailable in any domestic asset-protection device. It has been tested by time and found to be a solid choice of intelligent investors. For those who want to protect their hard-earned wealth, the offshore asset protection trust is well worth adopting.

