

March 2026

Understanding Asset Protection Trusts: Shielding Wealth While Preserving Access

How South Dakota Law Enhances Trust Structures for Long-Term Security

High-net-worth families and their advisors often seek ways to preserve wealth not only from taxation, but also from unforeseen liabilities. This is where **Asset Protection Trusts (APTs)** become a powerful tool—providing a legal structure that separates personal assets from creditor exposure while preserving access for future generations.

South Dakota law offers one of the most favorable environments for this strategy, making APTs an increasingly important part of modern estate and risk planning.

What Is an Asset Protection Trust?

An **Asset Protection Trust** is an irrevocable trust designed to protect assets from claims of future creditors, litigation, and liability. Once assets are transferred into the trust, the grantor relinquishes legal ownership, but may retain a beneficial interest—depending on how the trust is structured and the jurisdiction in which it's established.

Unlike revocable trusts, which offer no creditor protection, APTs create a legal separation between the grantor and the assets. In the right jurisdiction, this separation is honored by courts, even when the grantor is a discretionary beneficiary.

Key Features of Asset Protection Trusts:

- Irrevocable structure that separates legal ownership from the grantor
- Can allow discretionary distributions back to the grantor
- Often includes a spendthrift clause protecting assets from beneficiary creditors
- Requires a qualified trustee in a favorable jurisdiction (e.g., South Dakota)
- Designed to shield against **future** creditors—not preexisting obligations

Why South Dakota Offers Superior Protection

Not all states permit self-settled asset protection trusts, and among those that do, **South Dakota stands out** for its modern statutes and favorable legal environment. Its **Domestic Asset Protection Trust (DAPT)** framework is recognized as one of the strongest in the country.

Key advantages include:

- No state income tax
- Short statute of limitations for creditor claims (two years, or even less under certain conditions)
- Strong protection against claims from divorcing spouses, judgments, or lawsuits
- High bar for creditors to challenge transfers as fraudulent
- The ability to appoint a **trust protector** to enhance flexibility and oversight

South Dakota law permits the grantor to remain a discretionary beneficiary of the trust, which offers unique balance—allowing continued indirect access to assets while still maintaining protection.

When to Consider an Asset Protection Trust

Asset Protection Trusts are especially valuable for individuals or families in high-risk professions, business owners, or those with significant personal exposure to litigation. They are also useful in long-term wealth preservation strategies, shielding family assets from claims that could arise over time.

Common use cases include:

- Business owners separating personal assets from enterprise risk
- Professionals (e.g., physicians, attorneys) concerned about malpractice exposure
- Families with multigenerational wealth seeking to protect against divorce or spendthrift heirs
- Individuals relocating to or domiciled in South Dakota for trust purposes

It is important to note that APTs are **not** intended to shield assets from known creditors or active litigation. Timing matters, and the structure must be carefully executed to avoid fraudulent transfer claims.

What Makes a Trust “Asset Protected”

An effective APT goes beyond simply moving assets out of reach. It relies on the synergy of careful drafting, the right fiduciary partner, and jurisdictional strength. Key elements include:

- **Irrevocability:** Once created, the trust terms and transfers cannot be easily changed or undone.
- **Qualified Trustee:** A trustee located in the protective jurisdiction (e.g., Sterling Trustees in South Dakota) is required.
- **Spendthrift Clause:** Prevents beneficiaries from assigning or pledging their interest—and blocks creditors from accessing it.
- **Discretionary Distributions:** Trustees must have full discretion over distributions to avoid asset claims being treated as entitlements.
- **Trust Protector Role:** An independent third party may be granted powers to modify terms, add beneficiaries, or relocate the trust if laws change.

Sterling's Role in Administering South Dakota Asset Protection Trusts

As a fully independent, conflict-free trustee headquartered in South Dakota, **Sterling Trustees** is ideally positioned to administer APTs. We do not manage investments or sell products—allowing advisors to retain full control over asset management while we focus solely on fiduciary trust administration.

Our services include:

- Supporting attorneys and planners with technical trust implementation
- Operating under South Dakota's DAPT statutes for maximum protection
- Using proprietary Salesforce-based tools to ensure fast, transparent service
- Offering ongoing compliance oversight and discretionary distribution management

Whether the trust is part of a broader estate strategy or a standalone risk protection vehicle, Sterling brings deep experience and operational excellence to every APT we administer.

Summary: Asset Protection Trusts at a Glance


Feature	Details
Trust Type	Irrevocable, self-settled (in qualifying jurisdictions)
Asset Protection	Strong shield against future creditors and litigation
Access to Funds	Discretionary distributions to grantor possible
Jurisdictional Strength	South Dakota offers among the best statutory protections
Ideal Users	Professionals, entrepreneurs, HNW individuals with risk exposure

Learn More

Sterling Trustees works closely with advisors, attorneys, and clients to structure and administer **South Dakota Asset Protection Trusts** that align with long-term goals. If you're seeking to enhance asset security without sacrificing flexibility, contact our team today:

STERLING | TRUSTEES

THE POWER OF INDEPENDENT THINKINGSM

Antony Joffe, Chairman | (605) 593-8950 |  | sterlingtrustees.com