SOUTH DAKOTA ASSET PROTECTION TRUST:
Protecting Your Assets in The New Normal World

If you are looking to protect your assets and shield from future estate taxes, look no further then South Dakota. While most states try to draw attention to themselves, whether it be Wyoming and its "Cowboy Cocktail" or Nevada's "No Exception" protection from creditors for even divorcing spouses or child support, South Dakota doesn't like to brag or draw attention to itself. And although we aren't afraid of working hard and getting our hands dirty, we take a "white glove" approach to our asset protection laws.

South Dakota has business friendly laws. South Dakota has no inheritance tax, no capital gains tax, and no income taxes. South Dakota prides itself in our pioneering spirit, self-reliance, ingenuity, hard work, and stability. Yes, we have been social distancing since statehood, but we are still the land of opportunity. While other states saw their economies plunge with the coronavirus storm and aftermath, South Dakota has remained strong.

When you are looking to set up a Domestic Asset Protection Trust, here are some reasons why you should have a South Dakota Asset Protection Trust

- South Dakota has the top-rated trust, tax, asset protection and privacy laws in the United States (#1 trust jurisdiction in all categories by Trusts & Estates magazine in 2020);
- South Dakota has no income tax, so your trust can grow free of state income taxation;
- South Dakota is the top state for bank assets and according to the FDIC had $3.27 trillion in 2019;
- South Dakota has a constitutional prohibition against estate and inheritance taxes;
- South Dakota has had a balanced budget since statehood;
- South Dakota is the only state that has 100% funded pension;
- South Dakota has among the lowest unemployment rates in the United States;
- South Dakota doesn't recognize discretionary interests/remainder interests in a trust or limited powers of appointment thereunder as property interests so creditors cannot attach such interests; and
- During COVID-19, South Dakota did not shut down business or commerce and has proven itself fiscally sound and stable when compared to other states.

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However, before we put the cart before the horse, why should you consider setting up a Domestic Asset Protection Trust? Because bad things can happen to good people. The things we have worked so hard for can be lost in a blink of an eye. And because we live in a litigious society where a car accident or slip and fall can result in financial ruin.

You can establish a Domestic Asset Protection Trust (DAPT) and be a permissible beneficiary of your trust. A person might only put between 5% to 45% of their assets in this type of trust. Or if you own a special gem, such as family land, you can decide to just protect that. It's important to understand how a Domestic Asset Protection Trust works before proceeding. This type of trust is an irrevocable trust and there are requirements that must be met. Often you will see limited liability companies or limited partnerships used in conjunction with a DAPT. South Dakota is one of the leading jurisdictions in the United States with the asset protection afforded by LLC and LP statutes. South Dakota allows for "Discretionary Support" and was the first state in the United States to pass this kind of statute in 2007. At Legacy Law Firm, P.C., we were proud to represent a beneficiary In the *Matter of the Cleopatra Cameron Gift Trust*, Dated May 26, 1998, 2019 S.D. 35, in which the South Dakota Supreme Court upheld protecting the trust assets from claims. This case received national attention for South Dakota's staunch trust laws.

Some other beneficial trust statutes in South Dakota include having the most comprehensive privacy statute in the United States for trust matters; families who want to avoid giving beneficiaries too much information can include "quiet" trust provisions. South Dakota is one of only a couple of states that allow attorneys' fees and costs awarded to a prevailing party in a trust contest, and has several other statutes that keep South Dakota at the forefront of trust laws.

To provide an additional layer of liability protection and allow you to have even more control, you can also use a South Dakota entity in combination with the DAPT. Your assets are transferred to an entity such as an LLC or limited partnership which are then solely owned by the DAPT. You can serve as a manager of the entity allowing greater flexibility and control of the assets. In addition, using a South Dakota entity helps reinforce your ties to the state and further bolsters asset protection. Finally, a creditor's sole remedy against a South Dakota LLC or limited partnership is a charging order which means that a creditor does not obtain any rights in the entity and cannot force a distribution.

The uncertainties that surround us of volatile markets, oil wars, political and election concerns, and a pandemic highlight the need for planning. Many believe right now is a good planning opportunity with taxes being low and a looming deficit to pay. Planning to protect the people and things that matter to us has never been more important.

If you are considering establishing a Domestic Asset Protection Trust, deciding on which state to situs your trust is the second most important decision you can make after the first decision of deciding to safeguard some of your assets.

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