

Integrating Asset Protection Planning Into Your Estate Planning Practice

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Douglass is the Co-Founder and the managing partner of **Lodmell & Lodmell, P.C. a Leading Asset Protection Law Firm since 1997.** Douglass is a leader in the Asset Protection community and the creator of the breakthrough concept of The Bridge Trust®. He has helped protect thousands of client's assets and is the published author of many articles and the book, *The Lawsuit Lottery: The Hijacking of Justice in America*.



Asset Protection Council®

Founded by Douglass Lodmell, the Asset Protection Council® (APC) is a nationwide network of Attorneys, CPAs and Financial Advisors dedicated to providing clients with a consistent and effective approach to protecting their wealth.

www.lodmell.com



Why does Asset Protection Work?



***What does Asset Protection
look like today?***



TOOLS



Limited Liability Company (LLC)



Asset Management Limited Partnership (AMLPL)



The Asset Protection Trust (APT)



Limited Liability Company (LLC)

- Protection for Risky Assets
- Segregate Assets into separate LLC's
- Has Charging Order protections



Asset Management Limited Partnership (AMLPTM)

- Family Holding Company
- Holds LLC's, and other companies
- Strengthen Charging Order Protection
- Include Family and APT
- Privacy to your assets



The Asset Protection Trust

- Assets ultimately reside in Irrevocable Discretionary Trust
- Enhances Domestic Asset Protection Structures
- Not limited to specific risk
- Privacy and Protection for your assets



What **Clients** Want

1. EFFECTIVENESS ✓
2. CONTROL ✓
3. COSTS ✓
4. COMPLIANCE ✓





Asset Protection Trust (APT)

SSST

Self-Settled Spendthrift Trust



Two Schools of Thought



International



Domestic



The Cook Islands Trust Act



1. Created in 1984
2. Statutory Non-Recognition
3. Start Case Over
4. Beyond a Reasonable Doubt
5. No contingent fees
6. Non-amendable
7. Losers Pays
8. Statute of Limitations



The **International** Option (Pro's)

- Effectiveness ✓





The **International** Option (Pro's)

Significant cases that support the effectiveness of the FAPT

- FTC v. Affordable Media (1999) (*Anderson Case*) – This is the original seminal case in which the FTC attempted to break a Cooks Trust. The FTC attempted 3 separate attacks in the Cooks without success. The best they could do was a Mareva Injunction. The case was ultimately settled for .10 cents on the dollar and the Andersons succeeded in protecting their assets.
- United States v. Grant (2008) (*Grant Case*) – IRS attacked Trust for \$36M tax debt. Round 1 unqualified success for Trust. Round 2 Grant prohibited from accessing trust assets in the U.S., assets still safe.
- SEC v. Solow (2010) (*Solow Case*) – SEC attacks wife's trust for fines of husband. TBE assets used to fund Trust and court found fraudulent transfer and held Solow in contempt. Assets protected nevertheless.



The **International** Option (Con's)

- Client's have challenges getting comfortable offshore
- IRS Reporting:
 - FORM 3520 & 3520A
 - FBAR
 - FATCA
- Fees & Costs





The **International** Option (Con's)

- Control **X**
- Compliance **X**
- Cost **X**





Domestic Options

- Domestic Self-Settled Spendthrift Asset Protection Trust (DAPT)
 - ✓ Newer (1998)
 - ✓ **17 States:** Alaska, Colorado, Delaware, Hawaii, Mississippi, Missouri, Ohio, Oklahoma, Nevada, New Hampshire, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wyoming and now Michigan
 - ✓ Often paired with LLC or LP, providing Charging Order protection
- Hybrid DAPT / 3rd Party DAPT
- Use of Special Power of Appointments



The **Domestic** Option (Pro's)

- No Offshore comfort component
- Minimal IRS reporting
- “May” be less Expensive





The **Domestic** Option (Pro's)

- Compliance ✓
- Cost (maybe) ✓



The Domestic Option (Con's)

- **Article IV, Section 1 of the U.S. Constitution states:**

“Full faith and credit shall be given
in each state to the public acts, records,
and judicial proceedings of every other state.”



- **Conflicts of Law issues:**
 - ✓ Venue jurisdiction may ignore the trust jurisdiction and undo protection
 - ✓ Federal and Bankruptcy law issues



The **Domestic** Option (Con's)

- **Statutory Exceptions:**
 - ✓ **Certain Tort Claims**
 - ✓ **Alimony and Child Support**
 - ✓ **Property Division**
 - ✓ **Pre-existing Claims**
 - ✓ **Liability from fraud**
 - ✓ **Liability from criminal activity**
 - ✓ **Tax evasion**





The Domestic Option (Con's)

Significant cases that question the effectiveness of the DAPT

- Battley v. Mortensen (2011) – Mortensen, an Alaska resident, established an Alaska DAPT when he was solvent. Funded with \$60K property and \$100K gift from mother. Later due to medical expense declared BK. Court used **548(e)'s 10 yr claw back provision** to include DAPT assets – Result was complete Trust failure.
- In re Huber (2013) – Huber, a R.E. developer, settled an Alaska DAPT in 2008 when failure of company was likely. Client Filed BK and court used 548(e) to include all the assets of the Trust. Alaska USA Trust company folded immediately. Result was Complete Trust Failure.
- Kilker v. Stillman (2012) – Stillman, a soil engineer, established a Nevada DAPT when he had no claims or liabilities. CA court later concluded that funding of Trust was a FT under CUFTA because liability in his industry was '*reasonably foreseeable*'. Result Complete Trust Failure.
- Dahl v. Dahl (2015) – Utah Supreme Court (A DAPT Jurisdiction!). H and W from Utah fund Nevada DAPT with home and investments. Post divorce, H claims trust assets are not marital assets. W sues to apply UT law to invalidate the protective features of the trust. UT ignores NV choice of law provisions, applies UT law on public policy arguments in favor of W. Trust totally failed.



The **Domestic** Option (Con's)

- Effectiveness **X**
- Control **X**



The Bridge Trust[®]

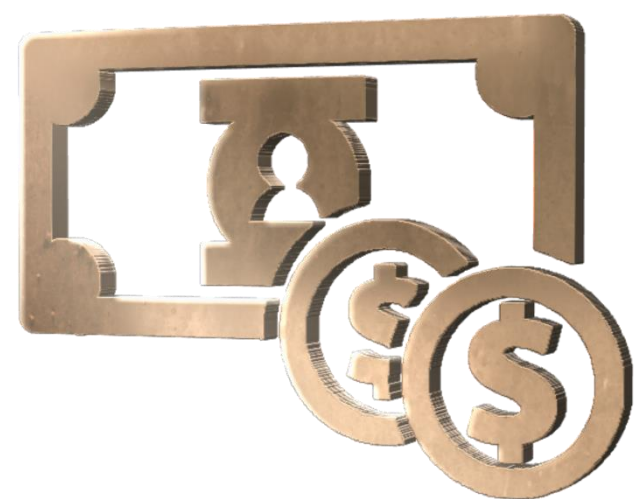
“Offshore Protection with Domestic Simplicity”

1. Tax-neutral Domestic Grantor Trust
2. No IRS Form 3520 or 3520A
3. No IRS FinCEN or FATCA Disclosures
4. No IRS filing requirements
5. Asset can remain in the US with Current Bank
6. No Initial Foreign Trustee
7. Client may begin as Trustee



The Bridge Trust[®]

1. EFFECTIVENESS ✓
2. CONTROL ✓
3. COSTS ✓
4. COMPLIANCE ✓



The Bridge
Trust®

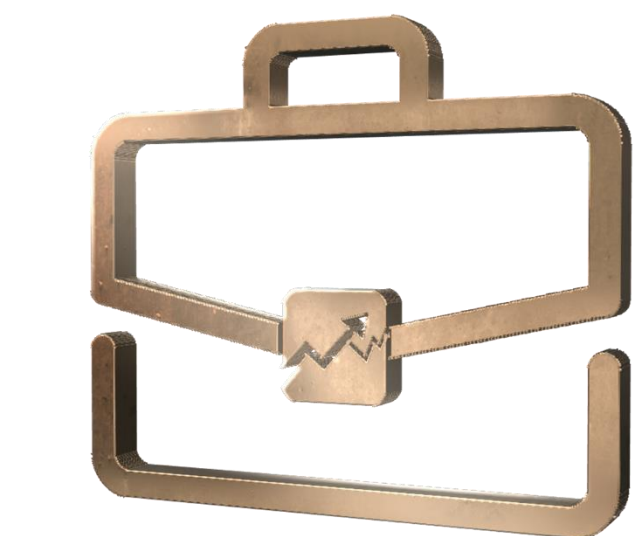
✓ **Distribute Assets**

✓ **Maximize
Exemptions**

✓ **Avoid Probate**

✓ **Smoothly Pass**

Assets



Limited Liability
Companies



Revocable
Living Trust

Asset Management
Limited Partnership™
Management
Limited
Partnership™



Questions





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If you would like to continue to get more information, study cases, research information, then visit our website to learn more about our Affiliate Member Program.



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Complete the Application and become a Member.



ASSET
PROTECTION
COUNCIL®



UPCOMING EVENTS

November 15-17

54th Annual NAEPC

Advanced Estate Planning Strategies Conference

New Orleans, LA

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