BLAKE HARRIS LAW

Offshore VS Domestic Asset Protection

What you need to know

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Overview of asset protection

- ***Asset protection involves implementing legal strategies to safeguard one's wealth and assets from potential risks, liabilities, and legal claims. The primary goal is to shield assets from creditors, lawsuits, divorce, and other unforeseen circumstances.***

- ***Asset protection can encompass both domestic and international considerations and is crucial in today's litigious society to mitigate risks and ensure the preservation of financial well-being.***

Legal Practices in the U.S.

1. Contingency Fees:

- *Used in all 50 states.*
- *Allows access to legal representation without upfront fees.*

2. Attorney Advertising:

- *Permitted across various channels.*
- *Regulated by ethical guidelines.*

3. Fishing Expeditions:

- *Plaintiffs can amend claims after discovery.*
- *Allowed in litigation for information gathering.*
- *Conducted during the discovery phase.*
- *Encourages settlement of bogus claims*

4. Bogus Claims:

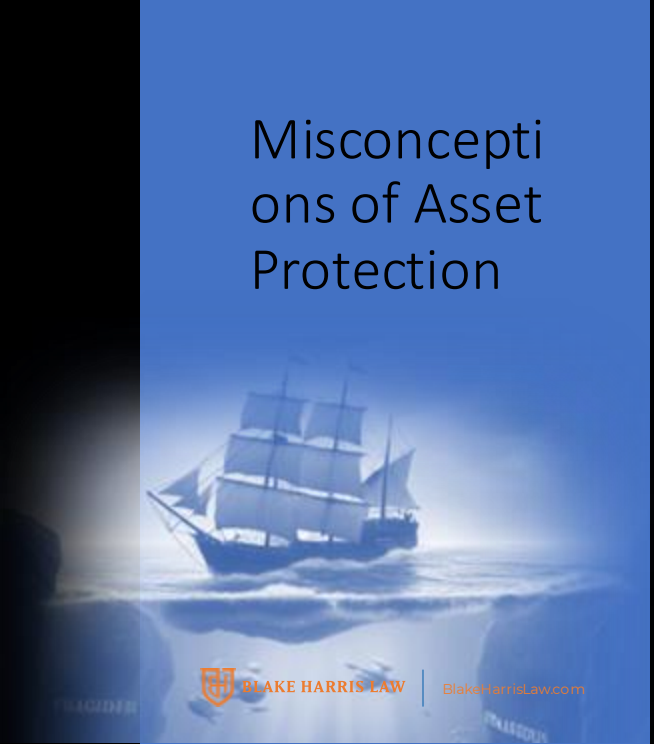
- *Model rules amended in the 1980s*
- *Allows for claims based on a change to the law*

Why do we need asset protection?

Avg. Time to Complete a Lawsuit	45 months
Avg. Cost of a Defense Lawyer	$400 p/h
Avg. Cost for Expert Testimony (per expert)	$5,000-$10,000
Avg. Cost to Defend BEFORE TRIAL	$46,000
Avg. Cost of a TRIAL	$180,000
Avg. Cost to SETTLE a claim	$260,000
57% of all malpractice fees go toward paying attorneys	
43% of all insurance defense costs go toward claims that have NO MERIT	

- **Over 10 million lawsuits are filed annually in the U.S.**
  - **This amounts to 10,000+ lawsuits daily.**
  - **U.S. judgments result in $200 billion payouts every year.**

Misconceptions of Asset Protection



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It is Illegal:

- *Asset protection is a legal and an ethical financial strategy, involving legitimate methods to safeguard wealth.*

It is for Tax Evasion:

- *Asset protection focuses on lawful methods to protect assets from lawsuits, not evading taxes. It aligns with tax planning within legal boundaries.*

It is for Hiding Assets:

- *Asset protection is about structuring assets strategically, not hiding them. It emphasizes transparency and compliance with legal frameworks.*

It is Only for the Super Wealthy:

- *Asset protection is relevant for individuals across various financial levels. It provides tailored strategies for protecting assets based on individual circumstances.*

Consequences of insufficient asset protection

1. **Financial Losses:**

   - Without proper asset protection, individuals and businesses risk significant financial losses in the event of lawsuits, creditor claims, or other legal actions.

2. **Harm to Reputation:**

   - The mere allegation of wrongdoing can hurt a business.

3. **Distraction and Stress:**

   - Legal battles can be costly, time-consuming, and emotionally draining.

Does a client need Asset Protection?

- **Assets:** It's a misconception that only the super-wealthy need protection.
- **Risk Profile:** Determined by both professional choices and lifestyle.
- **Client's Comfort:** Understanding an individual's risk tolerance is crucial.
- **Optics:** Is now an appropriate time to engage in planning?

Exempt Assets in Lawsuits

Retirement Accounts:

- *Shield long-term savings, such as 401(k)s and IRAs, from potential losses in legal actions.*

Homestead Protection:

- *Safeguard your primary residence through homestead protection laws, providing a secure haven for homeowners.*

Tangible Personal Property:

- *Preserves essential personal items, like furniture and household belongings, which may be exempt from seizure.*

Tools of a Trade:

- *Protect essential tools necessary for your profession or trade, ensuring continuity despite legal challenges.*

Wildcard Exemption:

- *Leverage a wildcard exemption in some jurisdictions to safeguard a chosen value of assets from legal claims.*

The most common tools for asset protection



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1. Family Limited Partnership (FLP) and Limited Liability Company (LLC)

- *Provides a level of liability protection for owners and can be used to transfer wealth within a family.*

2. Domestic Asset Protection Trusts (DAPT)

- *Allow the grantor to be a discretionary beneficiary while offering some protection from creditors.*

4. Foreign Asset Protection Trusts (DAPT)

- *Allow the grantor to be a discretionary beneficiary while providing the highest level of protection from creditors.*

5. Gifting and Family Wealth Transfers

- *Strategic gifting of assets can be used to reduce the size of an estate and transfer wealth to heirs.*

6. Retirement Accounts policies

- *Qualified retirement accounts often have creditor protection features, making them valuable tools for asset protection.*

7. Insurance Policies

- *Can provide a crucial layer of protection against unexpected events*

nsurance and Its Limitations

Coverage Limitations:

- *Insurance policies may only cover specific types of claims, leaving certain risks unprotected.*

Claims Beyond Policy Limits:

- *Some claims may surpass policy limits, leaving individuals or businesses responsible for additional costs.*

Numerous Exclusions:

- *Policies often come with extensive exclusions, specifying scenarios or events not covered by the insurance, potentially leaving policyholders exposed.*

Common Lawsuits

Car Accidents:

- *Commonly involve claims for personal injury or property damage. Legal proceedings may focus on determining fault, assessing damages, and securing fair compensation.*

Business Disputes:

- *Arise from disagreements between parties involved in commercial transactions. Legal actions may include contract disputes, partnership disagreements, or breaches of business agreements.*

Divorce:

- *Involves legal processes for the dissolution of marriage. Lawsuits may cover issues such as asset division, alimony, child custody, and support, requiring legal resolution.*

Domestic Asset Protection Jurisdiction

- ***Definition:*** *Domestic Asset Protection Jurisdictions are states within the United States that have enacted laws favorable to individuals seeking to protect their assets from creditors.*

- ***Characteristics:*** *These seventeen jurisdictions have specific statutes that allow for the creation of Domestic Asset Protection Trusts (DAPTs) and provide favorable legal environments for asset protection planning.*

Common Domestic Asset Protection Jurisdictions

- *a.* ***Alaska***
  - ***Key Features:*** *Alaska has been a pioneer in DAPT legislation, allowing individuals to create self-settled trusts for their own benefit with protection from creditors.*
- *c.* ***Nevada***
  - ***Highlights:*** *Nevada provides robust asset protection statutes, allowing the creation of DAPTs and favorable treatment of LLCs and corporations.*
- ***d. South Dakota***
  - ***Benefits:*** *South Dakota is known for its favorable trust laws, including no limit on the duration of a trust and strong privacy provisions.*

Case Law on Domestic Asset Protection 1/2

- ***a. Battley v. Mortensen (Alaska)***
  - ***Importance:*** *Where federal bankruptcy law is applicable, the result in Mortensen is essential that DAPTs will not protect assets from creditors for the first ten years after the trust is settled.*
- ***b. Kilker v. Stillman (California)***
  - ***Importance:*** *This case underscores the significance of upholding federal protections in asserting the exemption of Social Security payments from levy, contributing to the broader context of Domestic Asset Protection strategies.*
- ***c. In re Huber (Alaska)***
  - ***Significance:*** *The Huber case upheld the validity of self-settled trusts in Alaska, establishing a precedent for the effectiveness of DAPTs.*

Case Law on Domestic Asset Protection 2/2

- ***d. Dahl v. Dahl (Utah)***
  - ***Remarks:*** *The Dahl case shows that even in state court, where there is no federal matter to be resolved or federal law applied, a court in a different state can apply its own state law over a trust formed outside of the state.*
- ***e. Toni 1 Trust v. Wacker (Alaska)***
  - ***Remarks:*** *The Toni 1 Trust v. Wacker case highlights the complexities and uncertainties surrounding DAPT statutes and their protection claims.*
- ***f. De Prins v. Michaeles (Massachusetts)***
  - ***Significance:*** *Addressed the enforceability of spendthrift provisions in self-settled trusts and established parameters for creditors to reach and apply trust assets in satisfaction of judgments, offering insights into the interplay between state laws and asset protection strategies.*

Trust Challenges in Domestic Case Law

1. Limited Asset Protection:
- *Domestic case law may restrict the effectiveness of asset protection provided by trusts.*

2. Creditor Scrutiny:
- *Increased scrutiny and challenges from creditors in domestic jurisdictions.*

3. Legal Inconsistencies:
- *Varying state laws lead to inconsistencies and potential gaps in protection.*

4. Court-Ordered Access:
- *Courts may order access to trust assets, reducing protection levels.*

4. Fraudulent Transfer Risks:
- *Closer scrutiny of asset transfers to trusts, raising fraudulent conveyance concerns.*

5. Legal Landscape Changes:
- *Evolving case law may impact trust effectiveness over time.*

6. Privacy Concerns:
- *Lack of privacy compared to offshore jurisdictions exposes asset details in public records.*

Common dapt statutory exceptions

Statutory Exception	States
Child support claims	AL, AK, CT, DE, HI, IN, MI, MS, MO, NH, OH, OK, RI, SD, TN, VA, WV, WY
Alimony	CT, DE, HI, MS, MO, NH, OH, RI, SD, TN
Property division upon divorce	AL, AK, CT, DE, HI, IN, MI, MS, NH, OH, RI, SD, TN
Tort claims	CT, DE, HI, MS, RI

nternational Asset Protection Jurisdictions

- ***Definition:*** ***International asset protection involves utilizing legal structures and jurisdictions outside one's home country to safeguard assets from potential risks and creditors.***

- ***Objectives:*** ***Individuals often seek international jurisdictions for enhanced privacy, legal advantages, and protection against forced heirship laws and political or economic instability.***

Common International Asset Protection Jurisdictions

- ***A. Cook Islands***
  - ***Features:*** ***The Cook Islands are known for their robust asset protection laws, including Cook Islands Asset Protection Trusts (CIAPTs), offering a high level of protection against creditors.***
- ***b. Nevis***
  - ***Benefits:*** ***Nevis provides strong asset protection through its offshore structures, including Nevis International Exempt Trusts (NIETs) and Nevis Limited Liability Companies (LLCs).***
- ***C. Belize***
  - ***Advantages:*** ***Belize excels in providing a comprehensive package of tax advantages, legal security, and financial privacy for effective asset protection.***

Legal Contrasts: Cook Islands vs. U.S.

1. No Contingency Fees:

- *In contrast to the U.S., the Cook Islands prohibit contingency fees.*

2. Limited Fishing Expeditions:

- *The Cook Islands restrict extensive fishing expeditions during discovery, differing from U.S. practices.*

4. Highest Standard of Proof:

- *A case can only be won by proving a transfer was improper by a "beyond a reasonable doubt" standard.*

4. Bond Requirement:

- *Stricter controls in the Cook Islands discourage baseless or fraudulent claims, contrasting with the more permissive U.S. legal environment.*

Case Law on International Asset Protection 1/3

- ***a. FTC v. Affordable Media, LLC ("Anderson Case")***
  - ***Significance:*** *The Anderson case underscores the importance of timing and intent in international asset protection, particularly with offshore trusts, highlighting that establishing such trusts with awareness of impending litigation may lead to legal consequences.*
- ***b. Branch Banking & Trust Co. v. Hamilton Greens, LLC et al ("Bellinger Case")***
  - ***Importance:*** *This case shows the exploration of ancillary jurisdiction principles, potentially influencing cross-border cases involving fraudulent transfers and the enforcement of judgments.*
- ***c. FTC v. Kevin Trudeau***
  - ***Remarks:*** *This case highlights the challenges individuals may face when dealing with regulatory agencies and the potential implications on their assets and reputation across borders.*

Case Law on International Asset Protection 2/3

- ***d. Bank of America v. Brian and Elizabeth Weese***
  - ***Significance:*** *This case shows the exploration of legal nuances surrounding involuntary bankruptcy petitions, offshore trusts, and the dismissal of joint petitions, potentially influencing strategies for safeguarding assets across jurisdictions.*
- ***e. The Russian Federation***
  - ***Significance:*** *This case reveals the critical importance of presenting compelling evidence and demonstrating trustee awareness in international asset protection, highlighting a precedentt that underscores the stringent burden of proof required in claims related to alleged fraudulent transfers.*
- ***f. Andrew Grossman v. Fannie Mae***
  - ***Importance:*** *This case underscores the challenges and potential effectiveness of Cook Islands Asset Protection Trusts in shielding assets from legal claims, demonstrating their resilience even in court-ordered repayment and contempt proceedings.*
- ***g. In re Smith***
  - ***Remarks:*** *In re Smith emphasizes the importance of legal compliance and highlights potential challenges and consequences in fraudulent transfer cases involving Cook Islands Trusts.*

Case Law on International Asset Protection 3/3

- ***g. Rush University Medical Center v. Sessions ("Sessions")***
  - ***Significance:*** *This case demonstrates the complexities and challenges in international asset protection, particularly in the context of enforcing pledges and navigating legal conflicts involving offshore trusts, offering insights into the limitations and potential conflicts that may arise in such scenarios.*
- ***h. Elena and Dmitry Rybolovlev***
  - ***Importance:*** *This case involves jurisdictional complexities and legal considerations surrounding the acquisition of assets, emphasizing the need for careful structuring and understanding of cross-border implications in wealth management.*
- ***i. Sarah Pursglove and Robert Oesterland***
  - ***Remarks:*** *The Pursglove-Oesterland case contributes to international asset protection case law by highlighting the significance of jurisdictional considerations, fraudulent transfer implications, and the resource-intensive nature of legal battles in shaping strategies for safeguarding assets on a global scale.*

Key advantages in International Case Law

1. Stronger Asset Protection:

- Offshore jurisdictions offer robust protection against domestic legal challenges.

2. Creditor Resistance:

- Designed to resist scrutiny and challenges from creditors, providing heightened security.

3. Legal Stability:

- More stable legal environment minimizes uncertainties and potential legal gaps.

4. Enhanced Privacy:

- Prioritizes privacy, keeping asset details confidential from public records.

5. Consistent Legal Frameworks:

- Offers jurisdictional consistency, reducing variations across regions.

6. Trustee Flexibility:

- Greater flexibility in choosing trustees for strategic decision-making.

7. Resistance to Court Orders:

- May resist court-ordered access, maintaining a higher level of protection.

8. Strategic Legal Structures:

- Allows for the implementation of legal structures enhancing asset protection.

Offshore Banking Overview

1. Switzerland:

- *Renowned for its long-standing tradition of financial stability and privacy.*
- *Offers a secure banking environment with strict confidentiality laws.*
- *Attractive for asset protection, wealth management, and international business transactions.*
- *Offers FDIC type program*
- *$1M Minimum*

2. Cook Islands:

- *A jurisdiction known for robust asset protection and privacy laws.*
- *Offshore banking in the Cook Islands provides a secure environment for safeguarding wealth and financial privacy.*
- *$250,000 minimum*

3. Singapore:

- *A major offshore financial hub with a well-established banking infrastructure.*
- *Known for tax-neutral status and a comprehensive legal framework.*
- *Ideal for international business transactions, investment management, and wealth preservation.*

Funding your trust

Diversifying Assets for Offshore Trust Success

1. Stocks, Bonds, Cash:

- *Transfer financial portfolios, including stocks and bonds, along with liquid assets like cash, into the offshore trust for comprehensive management.*

2. Real Estate:

- *Safeguard real property assets by placing them within the offshore trust, ensuring protection and strategic management.*

3. Business Interests:

- *Safeguard business assets and ownership stakes by placing them in the trust, providing a structured and protected environment for business holdings.*

4. Cryptocurrency:

- *Enhance privacy and security by including cryptocurrency holdings in the offshore trust, shielding these digital assets from potential risks.*

RS and FinCEN reporting requirements

1. 3520 & 3520-A

- *Transactions with foreign trusts*

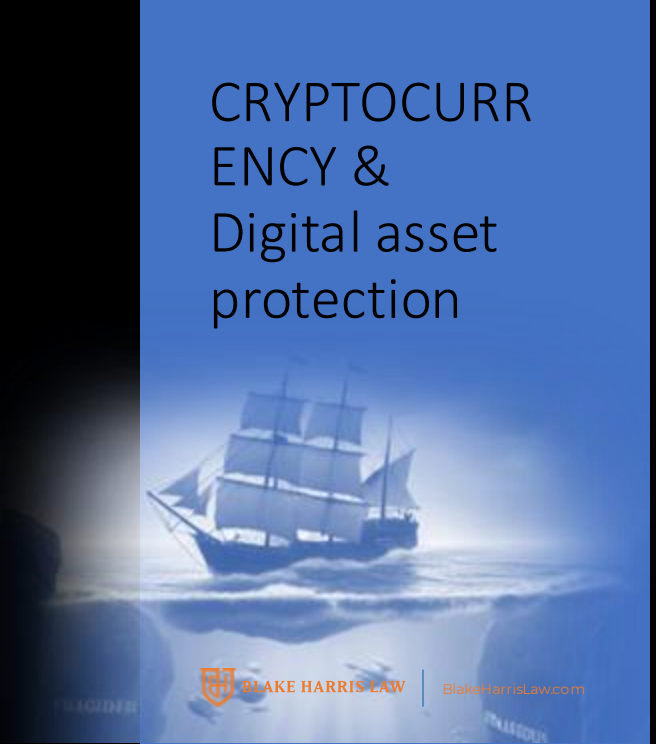
2. FINCEN Form 114 (also known as FBAR)

- *The aggregated value in foreign banks is greater than $10,000 at anytime during the calendar year*

2. Other reporting requirements may apply

- *For real estate, cryptocurrency, and other assets*

CRYPTOCURRENCY & Digital asset protection



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1. Definition of Digital Assets

- ***Digital Assets:*** *Digital assets encompass a wide range of valuable information stored electronically, including cryptocurrencies, digital documents, intellectual property, and online accounts.*
- ***b. Smart Contracts***
  - ***Automated Execution:*** *Smart contracts enable self-executing agreements with predefined rules, enhancing the efficiency and security of digital asset transactions.*

2. Challenges in Digital Asset Protection

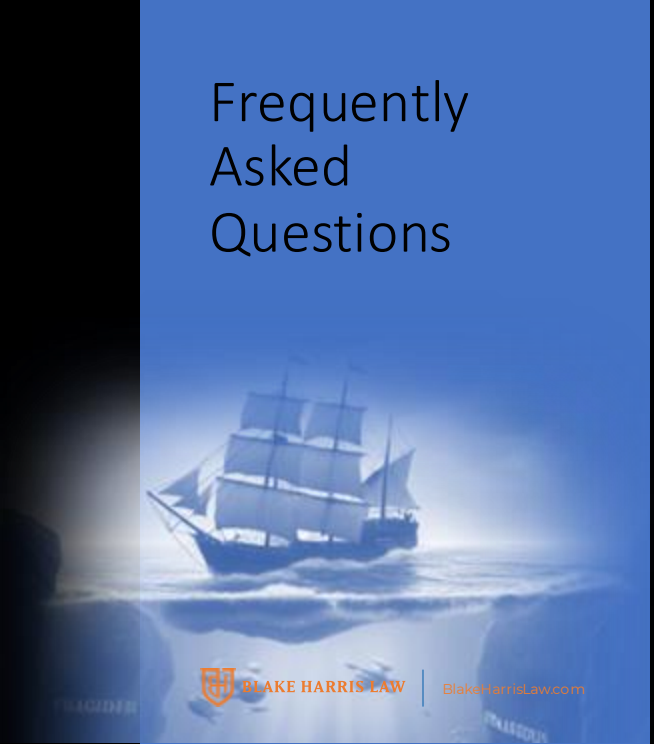
- ***a. Cybersecurity Threats***
  - ***Increasing Sophistication:*** *With technological advancements, cyber threats have become more sophisticated, posing risks to the security and privacy of digital assets.*

3. Tools and Strategies for Digital Asset Protection

c. Multi-Factor Authentication (MFA)

- ***Enhanced Security:*** *MFA adds an extra layer of protection by requiring users to provide multiple forms of identification before accessing digital assets.*

Frequently Asked Questions



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- *How is an asset protection trust taxed?*
- *Does a revocable living trust protect assets?*
- *Can I still access my assets in an offshore trust?*
- *Can I get a passport with an offshore trust?*
- *Do I need to visit the Cook Islands?*
- *Can I relocate a domestic Trust?*
- *Can I relocate a foreign Trust?*
- *Can I trust a foreign trustee?*
- *How long does it take to establish an offshore trust?*
- *What is your rate of success?*
- *How much does an offshore trust cost?*
- *Is it ethical to set up an offshore trust?*
- *Do I have to liquidate my brokerage account?*
- *Can I use a Panama foundation instead?*

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