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## Understanding Asset Protection and using The Bridge Trust®



The Bridge Trust® combines the protection of a fully offshore asset protection trust with the simplicity of a domestic trust. This article explains why our experience has shown that it is almost always better than a purely foreign APT or a purely domestic APT.

## *A Brief History of Asset Protection Trusts*

Foreign Asset Protection Trusts (FAPTs) were first created by the Cook Island Trust Act in 1984. The key component of the Act states that the High Court of the Cook Islands is STATUTORILY PROHIBITED from recognizing any other country's court orders or judicial proceedings, including the United States!

This, combined with a series of high judicial hurdles for civil cases has meant that in the more than 30 years since their inception, FAPTs have proven to be extremely effective in their ability to protect client assets in a crisis.

Domestic Asset Protection Trusts (DAPTs) were first created in Alaska in 1998. They modeled the foreign statutes attempting to create a similar level of protection, however, the US Constitution specifically states:

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

***- Article IV Section 1 U.S. Constitution***

That means Alaska, Nevada, Delaware, or any other state for that matter cannot ignore a judgement from any other state, not to mention the overriding power of the Federal courts. Because of this, domestic APT's have proven to be much less protective and certainly less predictable.

The bottom line is that the FAPT has proven effectiveness, but also comes with more costs, control restrictions and compliance requirements. The DAPT is simpler to setup and maintain, but has what I consider the fatal flaw of creating greater uncertainty of outcome and potentially not working at all.

The *Bridge Trust*® combines the strength of the fully foreign APT and yet is simpler to setup and maintain than even a DAPT. It accomplishes this by reserving the ability to become a fully foreign APT, while initially remaining a simple to use U.S. domestic grantor trust.

Over the past 20 years that we have been using the *Bridge Trust*® I have identified 6 reasons why I consider the *Bridge Trust*® to be a superior planning tool in almost every case than a standalone FAPT or DAPT.

## *Reason #1: Strategy vs. Tactics*

Strategy defines your overall plan and goals and good strategy creates multiple options.

To say it another way, strategy is the big picture plan that is driven by your overall goal (to protect your assets). The better the strategy the more tactical options are created.

Tactics are the skills, maneuvers and tools used to accomplish the goals defined by the strategy.

The *Bridge Trust*® is designed strategically with the goal of protecting your assets. The *Bridge Trust*® creates multiple options to do so, one of which is to become a fully foreign asset protection trust.

The foreign APT itself is a tactical maneuver that may, or may not, be the best move in any particular situation. The *Bridge Trust*® creates options and is supremely Strategic in nature, while the foreign APT is a powerful tactical tool when used appropriately.

It is rarely wise to begin with tactics, which is why beginning with a foreign trust not only limits your options, but at times can put you at a significant strategic disadvantage as we will see.



## *Reason #2: Optics*

Optics refer to how things “appear” in the eyes of a judge or a jury.

Good optics means that your case feels right, your arguments and actions make sense and nothing feels fishy or raises red flags. Good optics improves your negotiating position and you are more likely to find favor with the court, and this creates more settlement leverage in your direction.

Bad Optics are when the actions and facts appear devious or fraudulent or meant to distract or hinder. In other words, they raise red flags. Bad optics are more likely to find an unsympathetic court and thus diminish your leverage and negotiating position.

And like it or not, in today’s world of Panama Papers and headline news of hidden bank accounts, the word OFFSHORE automatically creates bad optics. So use with caution!

### *Reason #3: Flexibility*

A Flexible Asset Protection structure gives you options. And options are what you need most when facing a crisis. One of those options is for the *Bridge Trust*® to become a fully foreign asset protection trust, for example, when you have exhausted your domestic defenses, and doing so doesn't damage your optics.



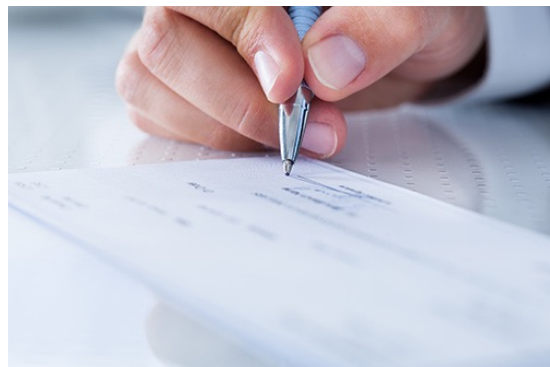
However, in many cases, the domestic defenses are strong enough and it would be a strategic disadvantage for you to be forced to disclose to the court any foreign entities or accounts. In this case, triggering the foreign component of the *Bridge Trust*® would be a tactical failure.

By creating the *Bridge Trust*®, you give yourself the option to legally and ethically move your assets offshore, if this is a tactical advantage, but not the obligation to do so. With a foreign only APT you have reduced your options to just one. And if that turns out not to be the best one, you're stuck.

### *Reason #4: Control*

Asset Protection works in large part by removing control of the assets from the clients. But clients always want control of their assets if given a choice.

The *Bridge Trust*® gives you that choice. When the plan is created, the Trust is on the domestic side of the bridge and the client has full control as the trustee.



Only if the trust is triggered does control pass to the foreign trustee. This, combined with dropping the U.S. jurisdiction and moving fully to a foreign APT, provides the most effective protection for trust assets.

### *Reason #5: Cost*



My experience is that everyone considers cost. There are 2 components of cost, 1) is the acquisition, or setup cost and 2) is the ongoing maintenance cost.

Setup costs vary widely depending on the law firm, the client, and the jurisdiction. However, it is safe to say that foreign based planning is consistently more expensive to initiate than domestic plans.

Foreign plans typically run from \$25,000 - \$50,000 or more, while plans which do not include a foreign component are typically under \$25,000.

Maintenance costs also vary, but again, an offshore based plan is consistently more expensive. I advise clients to budget between \$5,000 - \$10,000 a year to maintain their FAPT structure. This may be cut in half with a domestic only approach.

The *Bridge Trust*® is less than \$25,000 to set up and has a fixed annual maintenance fee of \$2,100 per year. It typically does not require a tax return or any other U.S. filing requirements.

This simplicity of maintenance, combined with a fixed and reasonable annual fee, creates long term sustainability of your plan. And having your planning in place when you need it is one of the best reasons of all to set up the *Bridge Trust*®.

### *Reason #6: Compliance*

None of my clients like filing IRS forms and they like paying extra expenses even less. Foreign trusts have a specific compliance burden. They must file Form 3520 and Form 3520A each year. These forms are full balance sheet disclosures and are extensive, requiring a listing of all the parties involved, trust assets and terms and a may even include a full copy of the trust itself.

Not only does this create additional fees, but it limits the future flexibility of the planning. Given a choice I would recommend avoiding any IRS filing requirements which are not absolutely necessary.

Because the *Bridge Trust*® begins life as a domestic grantor trust, it is not required to file Form 3520 and in fact is not required to file a tax return, or even get a separate tax ID number. This tax simplicity, combined with the ability to serve as your own trustee is what makes the *Bridge Trust*® truly unique.

## Questions

In my experience the *Bridge Trust*® is almost always a superior planning vehicle than either a fully domestic or a fully foreign asset protection trust. There are 3 questions I get most often.



### **Question #1:**

*Could a court in the US invalidate the Trust?*

The answer is yes. It is possible for a court in the U.S. to do almost anything you can imagine, including invalidate any trust. This includes an FAPT or a DAPT and yes the *Bridge Trust*®. There is simply no way to ensure what a U.S. court is going to do.

The more important question is, *what would be the impact?*

If good strategy has triggered the *Bridge Trust*® into a FAPT, then a U.S. court invalidating it would make virtually no difference to the effectiveness of the trust. For all the same reasons that the fully foreign APT is going to withstand a U.S. court challenge, so will a triggered *Bridge Trust*®.

### **Question #2:**

*Does waiting until after the threat has materialized to cross the bridge create a fraudulent conveyance?*

A conveyance occurs with the change of ownership to the assets. When the *Bridge Trust*® crosses the bridge there is NOT a change in ownership, since the *Bridge Trust*® already owns the assets previously held in the U.S. Therefore, by definition, crossing the bridge does not qualify as a “conveyance” and hence would not be a fraudulent conveyance.

Perhaps the more important question is, *What would happen if a court did determine that crossing the bridge was a fraudulent conveyance anyway?*

Again, I would look at what the impact on the trust assets would be, and once the *Bridge Trust*® becomes a FAPT, any challenge to this would have to be heard in the High Court of the Cook Islands. Therefore, the effect would be that even in the case where a judge made such a determination, the *Bridge Trust*® would still be effective.



### Question #3:

*Could assets get stuck in the U.S. and frozen before they can cross the bridge?*

Legal cases take years to unfold and develop. If triggering the *Bridge Trust*® into a FAPT is the right strategic move to make, the inherent delays in the US legal system provide more than enough time. The idea that the average plaintiff can run into court and convince a judge to freeze all your assets before a trial is unfounded.



I have never witnessed any case in which that has occurred or a request for such has even been made. I advise clients that if this is a real risk, then they may be the rare case where beginning with a fully foreign APT should be considered.

#### *The Takeaway*

I have witnessed Asset Protection to be one of the most liberating steps my clients can take to increase confidence in their financial future.

For most of my clients, the flexibility of the *Bridge Trust*® strikes the right balance between the mitigation of the risks, the costs, the control, the compliance and the ultimate effectiveness of the planning.

For more information on the *Bridge Trust*® contact: **Brian T. Bradley, Esq.**

Attorney Bradley is a native from the world famous North Lake Tahoe. He focuses his practice in Asset Protection for Real Estate Investors, as well as, Estate Planning, and Litigation. Mr. Bradley was selected to the Super Lawyers Rising Star List, nominated to Americas Top 100 High Stakes Litigators List, nominated to the 2017 Law Firm 500 Award.

Mr. Bradley is licensed on the entire West Coast, and has practiced in multiple Jurisdictions: (Oregon, Washington, California, and Michigan,) and also is an Oregon Licensed Real Estate Broker.

Mr. Bradley began his legal career as a successful litigation and trial attorney. He has a personal touch and connection with his clients. When you shake his hand that is for life. He prefers to first listen to where you are now and hear your goals, hopes and dreams, and then match a structured plan that is scalable to grow with you. Unique and novelty do not scare him. He relishes in incredibly ambitious goals, and helping his clients solve “how” something can be done. Mr. Bradley’s private practice shifted from purely litigation, to asset protection and teaching the structures and mechanisms he learned along his personal growth and journey as a lawyer and investor, as he started investing in real estate himself. He matched his practice to his passion in investing in real estate, and protecting the legacy he builds to leave for his daughters.

