

# TENNESSEE IS A TOP STATE FOR SELF-SETTLED ASSET PROTECTION TRUSTS

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With the passage of the Tennessee Investment Services Act in 2007, Tennessee was placed on the short-list of states permitting the creation of “self-settled” asset protection trusts (“APTs”). A self-settled APT is one where the grantor is also a beneficiary of the trust. While the Tennessee APT initially saw much interest from Tennessee residents seeking to protect their assets, Pendleton Square Trust Company has found that more and more out-of-state

residents are now selecting Tennessee as the jurisdiction for their APTs. Regardless of your state of residence, utilizing a Tennessee APT to protect certain assets may be a smart addition to your estate plan, especially for wealthy business owners and those in high-risk professions.

In order to set up a Tennessee APT, the Tennessee Investment Services Act contains several requirements to follow, including:

1. Appointing a “qualified trustee,” which is typically a Tennessee resident or a regulated Tennessee bank or trust company;
2. Making the trust irrevocable, and ensuring that Tennessee law governs its validity, construction and administration;
3. Including a “spendthrift clause” in the trust, which essentially prevents creditors from attaching the interests of a beneficiary prior to the beneficiary’s distribution; and,
4. Signing a “qualified affidavit,” attesting that (i) the transfer will not render the grantor insolvent; (ii) the grantor does not intend to defraud any creditors; (iii) no court or administrative proceedings are pending against the grantor, other than as identified in the affidavit; and, (iv) the grantor is not contemplating bankruptcy.

Even though an APT includes a transfer of assets into an irrevocable trust, there are certain rights and privileges a grantor can retain. These include that the trustee can, in its discretion, make income and (limited) principal payments to the grantor; that the grantor can remove and appoint trustees; and, that the grantor can act as the investment advisor to the trust. In addition, the APT can be set up as a “Grantor Trust,” so that the trust’s income is taxed to the grantor using the grantor’s social security number, thus alleviating the need to file a separate federal tax return for the trust.

Even while allowing the grantor to have the above rights and privileges, Tennessee provides strong asset protection. So long as a creditor does not seek assets transferred to the trust within the later of two years after transfer or six months after the creditor knows or reasonably knows of the transfer, the creditor is barred from reaching the assets. These favorable qualities have not escaped the notice of estate planners around the country. In fact, Tennessee’s Investment Services Act was **ranked 3rd** by Nevada attorney Steve Oshins in his 7th Annual Domestic Asset Protection Trust State Rankings Chart dated April, 2016.

As a regulated trust company in Tennessee, Pendleton Square Trust Company, LLC is authorized under Tennessee law to serve as the “qualified trustee” of a Tennessee APT. With its model of independence, Pendleton Square will work with the investment advisor selected by the grantor to prudently administer the trust assets. Pendleton Square does not provide tax or legal advice, and this article is not intended to address every situation. For advice as to whether a Tennessee APT is right for your situation, you should speak with a Tennessee estate planning attorney. If you don’t already have an attorney, we are happy to introduce you to a few.