

Lawsuit-Proof Your Estate

You can have more debts than assets when you die. An indebted testator may want to bequeath their estate to their heirs free of creditors' claims. Most people fully pay their debts from their estates, but how can you protect yourself if your debts exceed your assets when you die? Or what if you are sued after you die? It happens. Arrange your affairs so that your assets pass to your heirs free of lawsuits or creditor claims:

- Title your property jointly with right of survivorship to your intended heir (or as tenancy-by-the-entirety). Jointly owned property passes to the surviving joint owner free of creditor claims against the deceased owner. (This is one exception to my prior advice not to own property jointly.)
- Title your property to an irrevocable trust funded during your lifetime (*before* you have creditors).
- Accelerate your lifetime gifts to deplete your estate (but avoid fraudulent gifts).
- Invest in fixed annuities or other financial investments, which will transform your wealth into an income stream which will pass debt-free to your survivors.
- While your living trust won't insulate your estate from your creditors, your living trust can give you limited protection. For instance, each state sets a time limit for creditors to file claims against an estate. With your assets titled to a living trust, you avoid probate. Avoid probate, and your potential litigants may be less aware of your death. They are then less likely to file a timely claim.