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ASSET PROTECTION ATTORNEYS

Can a living trust lawsuit-proof your assets?



No. The living trust is a good way to avoid the cost and delay of probate and it can also avoid the problems of joint ownership. However, living trusts are usually revocable, and therefore they give you, as the grantor, no asset protection because they are revocable. If you can revoke your trust, your creditors can 'step into your shoes' and also unwind the trust. If you have a living trust or any other revocable trust your creditors can claim its assets. Moreover, living

trusts can cause you to lose your lawsuit protection in those few states that don't extend their homestead protection to homes that are titled to a living trust. Similarly, assets that are protectively owned as tenants-by-the-entirety lose this form of protection when those same assets are titled to a living trust.

The most common trust is the living trust, which is also known as the Family Trust, Loving Trust, or Revocable Inter Vivos Trust. As mentioned previously, the living trust's primary goal is to avoid probate of the grantor's assets when he or she dies, as well as provide for a means of managing the grantor's assets if the grantor becomes incapacitated. Avoiding the time and hassle of the court supervised process of distributing a deceased person's (decedent's) assets to their heirs may sound desirable, but are living trusts for everyone? The answer depends on the decedent's state of residence and the size of their estate. Some states, such as California, Delaware, Florida, and New York, have a relatively long and expensive probate process. However, other states, such as North Carolina, have a streamlined process. A small, simple estate in a state such as North Carolina may be inexpensively settled in as little as two to four weeks. However, probate of a more complex, large estate in a state such as California could drag out for a couple years, and legal and other costs could reach into the hundreds of thousands of dollars. Perhaps, one drawback of probate that's universal to all states is the fact that anyone who wants to may access the probate records (including a list of estate assets) during probate.

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The Presser Law Firm, P.A.

Asset Protection Attorneys

561-953-1050 (w)

(800)999-9992 (tf)

