

Why your revocable trust is not protecting your assets

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Strategies to avoid loss to creditors and lawsuits



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Everyone should be concerned with asset protection, which involves taking legal steps to keep assets safe from creditors or civil

judgments against you. It is especially important for wealthy people because they have more assets at risk and could be more frequent targets of large lawsuits.

Unfortunately, in my experience, people tend to confuse certain tools used for estate planning — which is the process of determining what will happen with your assets when you die — with asset-protection tools. That can lead to large gaps in asset protection. The most commonly misunderstood tool is the revocable living trust.

Understanding revocable trusts

It seems that many people who see an attorney for estate planning may walk out with a revocable living trust, a false sense of security (because of said trust), and no idea what the trust does. They often believe that their assets are protected by their living revocable trust, when in reality they may have significant assets that are completely exposed to creditors.

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A revocable trust essentially is a bucket to hold assets while you are alive. You can move assets in and out of the trust as you please, and when you die, the trust assets avoid probate, the lengthy and costly legal process of distributing your property. Avoiding probate is the main benefit of placing assets in a revocable trust.

It is not an effective safeguard of your assets from creditors or civil judgments. Nor is it a vehicle to help you escape paying taxes. A revocable trust offers your assets no more protection than they would have if you simply owned them outright.

Asset-protection strategies

So what do you do with assets that you would like to keep safe (legally, of course) from potential creditors and lawsuits?

One of the best tools to help protect your assets is liability insurance. You can get a personal [liability umbrella policy](#) through your [auto](#) or [homeowner's insurer](#), and it shouldn't cost more than about \$300 a year per million dollars of coverage. But be careful when considering how much liability insurance to purchase. Don't just look at the dollar amount of the assets you have, but also take into account the amount of a potential judgment against you in the case of incidents such as a fatal car crash.

Another option is owning property with your spouse as “tenants by the entirety,” if you are lucky enough to live in a state that has this type of property law (“property” may refer to real estate or, in some states, the money in certain types of savings accounts). In this case, you

and your spouse both would be deemed to own 100% of the asset under the law. It means that a creditor of either one of you as individuals cannot touch that asset. If this option is available, I recommend you take advantage of this form of ownership for homes, nonretirement investment accounts and bank accounts.

For more complex situations — for example, if you are wealthy or have high exposure to liability (such as doctors do) or both — you can integrate other asset-protection strategies into the estate planning process. If you are interested in exploring these other options, see a reputable estate planning attorney. But at the very least, know that your revocable living trust is not an asset-protection tool.

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