

REVOCABLE LIVING TRUST IN NEW YORK DOES IT PROVIDE ASSET PROTECTION?

Get A Better Understanding of Revocable Living Trusts in New York – What They Are and Whether or Not They Protect Assets



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Various different types of trusts are used in the field of estate planning. Trusts are not akin to all-in-one tools. Different trusts serve different purposes.

With this in mind, let's look at revocable living trusts.

REVOCABLE LIVING TRUSTS ENABLE PROBATE AVOIDANCE

A revocable living trust can be a very good alternative to a last will as a vehicle of asset transfer. This is because these trusts enable probate avoidance.



Probate is a legal process that your estate must pass through before the assets that comprise the estate are distributed to the heirs. The process can be time-consuming. This can present a problem, because some families have immediate financial need.

Even if there is no immediate need, no one wants to wait for months or even years to receive an inheritance.

Why is probate time-consuming? Interested parties are given some time to seek satisfaction from the estate. And if anyone wanted to challenge the will, they could do so during probate.

Disputed estate cases can get lengthy. Even if there are no disputes, it can take a considerable amount of time to liquidate property so that multiple heirs can get

a share of its value.

There are also costs that are going to accumulate during the probate process. If liquidation of property is called for, an appraiser may be necessary, and there are liquidation expenses.



Someone has to actually take on the administrative tasks that go along with conducting the business of the estate. This individual is called the executor. The executor is entitled to payment for his or her time and effort. The executor is generally going to call in a probate attorney, so there will be legal fees.

Final taxes and other bills must be paid during probate. As a result, the estate will often pay for the services of an accountant.

When you add up all of these expenses, you are looking at a significant amount of money that could have otherwise gone to the heirs.

If you use a revocable living trust to arrange for the transfer of your assets rather than a last will, probate expenses can be avoided. The time lag will be avoided as well, because assets can be transferred by the trustee to the beneficiaries in a timely manner outside of probate.

PROBATE & ASSET PROTECTION

You may assume that you are surrendering personal possession of assets when you convey them into any type of a trust.

In fact, if you use a revocable living trust you are retaining incidents of ownership. This is actually part of the appeal of a revocable living trust.

You retain control of assets that you convey into a revocable living trust while you are alive. In most cases, the grantor of the trust chooses to act as the beneficiary and the trustee while he or she is still living.

As such, you as the creator of the trust have the power to do whatever you want to do with the assets that you have placed into the trust. You can take distributions as you see fit. You can also manage the trust's investments.

When you create a revocable living trust you include a trust agreement. This document is going to contain the terms that the trustee must follow after your passing. Of course it will include your choice of beneficiary.

You have the right to change these terms as you see fit. You can add a beneficiary, subtract a beneficiary, and/or change the trustee if you choose to do so. In fact, because the trust is revocable, you can dissolve the trust entirely and



do whatever you want to do with the money.

Since you can do what you want to do with the money at any time, you could certainly pay valid debts or judgments against you. Because of this, assets that have been conveyed into a revocable living trust are not protected from creditors or claimants.

EFFECTIVE ASSET PROTECTION VEHICLES



Although a revocable living trust is not going to provide you with asset protection, there are other legal devices that can be utilized for asset protection purposes.

One of these is a limited liability company. Simply put, the company assumes liability for its actions. Claims against the company don't extend to individuals associated with the company.

Family limited partnerships are also used to protect assets. The personal actions of a partner are not going to jeopardize the assets that are owned by the partnership.

Personal assets can be protected through the utilization of certain types of asset protection trusts.

These are just a few of the ways that you can protect your assets.

CONCLUSION

Revocable living trusts are very effective if you want to arrange for asset transfers outside of probate. However, they do nothing to protect assets.

There are viable asset protection strategies that can be implemented. To explore your options, arrange for a consultation with a licensed estate planning attorney.

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About the Author



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Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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