Asset Protection Planning for Physicians

In this litigious era, individuals who are in high-risk professions, such as physicians, should consider asset protection strategies to safeguard their financial well-being.

According to a recent study in the New England Journal Of Medicine, 75% of physicians in low-risk specialties have faced a malpractice claim by age 65.

Read this paper to learn how to protect yourself. This paper covers:

- Asset Protection Strategies Defined
- How Trusts Fit Into an Asset Protection Plan
- The Myths and Realities of Using Trusts for Asset Protection
- The Best Jurisdictions for an Asset Protection Trust

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Asset Protection Strategies Defined

Asset protection strategies are methods of protection physicians can employ in order to maintain their wealth. One tool to protect your assets is an irrevocable trust. Keep in mind that an irrevocable trust is different than a revocable trust which serves more as a will substitute, for more information on these differences please see the below section (Trust 101).

A will is an absolutely essential part of any estate plan, without which, any property not held in the trust when you pass would be distributed according to state law without regard to your wishes. However, a will does not provide an element of asset protection.

How Trusts Fit Into an Asset Protection Plan

Trusts are a protected safeguard for maintaining funds in the event of unfortunate circumstances. Should a physician find themselves facing a malpractice claim, divorce or other creditor issue, funds which are held in specific trusts may be protected from creditors and lawsuits.

One of the most important factors to consider when creating a trust, especially for asset safeguarding purposes, is the jurisdiction where you choose to set up a trust. It is a common misconception that you need to live in the state where you set up a trust. This is false. You can reside in any state and still benefit from the laws and jurisdictions of another state for the purposes of setting up a trust.

Alaska and Nevada are states which passed laws specifically designed to protect the individual, both professional and citizen, from this sort of funds depletion. This is a legally recognized and accepted way to defend your assets.

Trusts 101:

Trusts are one of the least understood items in both financial planning and estate planning. The two most common trusts are irrevocable trusts and living (revocable) trusts. Here, we will discuss what they are designed to do and how they differ.

Living Trust Defined:

The easiest way to understand a living trust is to imagine it as a box that holds assets while you are living. Since you retain the right to put various assets in and out of the trust box during your lifetime, it is considered a “revocable”trust.

This is a crucial understanding. While these trusts afford the greatest amount of personal control, it also means that you can be compelled (by a judge) to remove assets from the trust in order to satisfy a creditor or malpractice judgment. The majority of individuals with a living trust believe that it provides some asset protection, but it provides none, even with regard to divorcing spouses. This is the most important thing to understand from an asset protection point of view.

The major difference between a living trust and an irrevocable trust comes down to control.

Key differences between a living and irrevocable trust

Every trust has a trustee (or trustees), who are empowered by the trust document to follow the instructions on how to maintain and distribute the assets in a trust. There are also trust beneficiaries, those who are intended to benefit from the assets managed by the trustee. In fact, there are five elements that must be present to form a trust: grantor, trustee, beneficiaries, trust document and assets (corpus).

The major difference between a living trust and an irrevocable trust comes down to control. A revocable trust allows the grantor, the person who created the trust and placed assets inside of it, to act as trustee and have virtually unlimited control over the trust, including distributions from the trust, and the trust can be terminated at any time.

Whereas, with an irrevocable trust, the grantor can only have limited control and, once it has been created, the grantor cannot revoke or terminate it, thus "irrevocable." An irrevocable trust can be created from the onset or a revocable trust can become irrevocable upon the occurrence of a specified event, i.e. grantor's death. The trustee of an irrevocable trust is typically an independent, third-party trustee. The assets of these trusts are not considered to be owned by the grantor or the beneficiary, instead they legally belong to the trust.

In this scenario, the trustee would be the person(s)/entities designated by the grantor when he/she created the trust. In either case, the trust assets are now totally controlled by the trust document and the trustee(s) that administer it.

The Myths and Realities of Using Trusts for Asset Protection

An irrevocable trust provides for some interesting features. Due to the lack of control, these trusts can be used for more advanced estate/financial planning, including the avoidance of estate/gift taxes and asset protection. This feature is crucial to the most common uses of irrevocable trusts.

Since these trusts are not owned by the grantor, they can be used to shield assets. The most common asset preservation trust is a self-settled trust. This structure is an irrevocable trust, where the grantor is an eligible beneficiary of the trust. Even though the grantor has given away ownership of the assets, he/she can still be a permissible beneficiary without being considered the owner for legal purposes, thus shielding the assets.

When properly drafted and administered, irrevocable trusts can be a great tool to use when considering asset protection; however, a self-settled trust may not be the best option. You may want to consider strategies that provide asset protection, but where you are not the grantor or a beneficiary. Such strategies include using powers of appointment and decanting. To learn more about these strategies please call us.

The Best Jurisdictions for an Asset Protection Trust

As previously mentioned, one of the most important factors to consider when creating an irrevocable trust is the jurisdiction in which it is governed. You have likely heard of "offshore" or "foreign" trusts. One of the benefits that was touted by those creating these trusts was their asset protection. This was largely due to the fact that they were not governed by US law.

Offshore trusts come with a high cost to create, administer and are subject to heavy scrutiny. Most importantly, they are not governed by US law. You do not have the same rights and privileges as you are afforded by US law and could find yourself in a difficult and expensive situation if the foreign trustee proves to be difficult.

If you want to consider a domestically governed irrevocable trust, you will want to compare the different jurisdictions available and the benefits of each. While many states may offer some form of "new age" trust laws, only a few offer a complete package.

Want to discuss how an asset protection plan might help you?
Need help determining the right jurisdiction for you? We are here to help.
Please feel free to visit us at: **www.peaktrust.com**, or call us at **844.391.2789**.

The material provided is for information purposes only and should not be considered investment, tax or legal advice. Please seek competent counsel to discuss your particular situation.

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