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Living Trusts Can Now Exempt Assets from Medi-Cal Recovery

By [Sharon Anderson](#)

On June 27, 2016, Governor Brown signed SB833: legislation which reduces Medi-Cal Estate Recovery's ability to seek reimbursement from the estate of a surviving spouse. In short, this means that you can now use a revocable living trust to protect your assets from being clawed back by Medi-Cal after you or your loved one passes away.

Currently, Medi-Cal Estate Recovery has the right to seek recovery for any benefits paid from assets in which the surviving spouse of recipient had an interest at the time of their death, **including** assets held in living trusts or in joint tenancy. While the formation of a revocable living trust, under the current law, was effective to avoid probate, it did not offer any protection against Medi-Cal's ability to seek reimbursement from your assets for benefits Medi-Cal paid for the medical or long-term care costs they paid during your or your spouse's life. This recovery mechanism was criticized for its devastating effect on families of recipients who were forced to sell a family home to pay for Medi-Cal benefits received by family members.

Under the new law, for decedents dying after January 1, 2017, assets held in a living trust would be immune from recovery. Under SB 833, Medi-Cal's ability to seek reimbursement for amounts paid from a Medi-Cal recipient's estate would be limited to assets which pass as part of the deceased Medi-Cal recipients "probate estate" – the assets outside a trust, in other words.

Assets that would typically be a part of a person's [probate estate](#) and therefore, would be subject to reimbursement, are those which are either (1) held in the decedent's name alone or (2) designated to pass pursuant to a decedent's Last Will and Testament. Assets that would **not** typically require a probate and **which will avoid the devastating Medi-Cal clawback**, include assets held in a living trust and assets held in joint tenancy, as they pass to beneficiaries outside of probate.

Since assets held in a decedent's revocable living trust will, as of January 1, 2017, avoid both probate and Medi-Cal recovery and, as a result, preserve your estate for your loved ones – it is now, more than ever, important to plan for your loved ones by establishing a revocable living trust

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