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Many living trusts set up wrong Experts blame failure, fee-padding on lawyers' part

By [Andrea Coombes](#), CBS MarketWatch.com
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SAN FRANCISCO (CBS.MW) – Most people who created highly popular "living trusts to assume their estate planning is complete, yet their heirs may well end up in probate because of their attorney's incompetence or unethical behavior, experts say.

Many living trusts – up to 75 percent by one expert's estimate – are put together wrong. An estate's assets must belong to the trust, so everything must be retitled to the plan's name. It's called "funding" the trust, but many attorneys fail to direct their clients through that process, experts say, due to oversight or to generate more legal fees to remedy the problem later.

"That is definitely the number-one problem happening with trusts," said Mike Janko, executive director of the National Association of Financial and Estate Planning. "It is fairly uncommon for us to find a client that has their assets titled in the name of the trust," he said.

Any assets not titled to a living trust are subject to probate, and avoiding that often costly and time-consuming process is one of the main drivers of living trusts' popularity. People also like the greater asset control trusts offer compared to wills.

Janko estimates there are "several million" living trusts now in effect, and that number is increasing 10 percent every year. But about three-fourths won't work as intended, he said.

The reason trusts are not funded varies. Some attorneys mislead their clients by telling them funding the trust is unnecessary, according to financial advisers. The lawyers can then collect both the trust set-up fee and the



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