

Why should I have a Trust?

There are many advantages to having a Living Trust some of which are:

1. Probate

It is possible to avoid probate and the cost of Probate with the use of a Living Trust. When a trust is properly drafted, your assets may be passed to your beneficiaries more quickly and without Probate costs, therefore, more of your estate is passed to your beneficiaries.

2. Estate Taxes

With a Living Trust, the Federal Government's gives you a death tax exclusion. Call the office to learn more about this exclusion.

3. Minor Children, Elderly and the Incapacitated

Anyone who cannot manage their personal, financial or medical matters, under current California law, must have court supervision through an appointed guardian or conservator. Proper construction of a Living Trust can avoid court supervision in these matters by designating a conservator or guardian of your choice, if one becomes a necessity.

How do I set up a Living Trust?

To set up a Living Trust, you may make an appointment with the Law Office of Dale E. Rose. Prior to an appointment, you will be asked to provide certain pertinent information such as:

1. The name of the Trust.
2. Your full name, Social Security Number, date of birth, birthplace.
3. Your beneficiaries' full names, addresses, social security numbers, dates of birth, and birthplaces.
4. How do you want the estate divided between your beneficiaries?
5. Guardian of any minor children.
6. Successor trustee(s), executor(s) of your pour-over will, and agents(s) for your durable power of attorney for health care and property management.
7. What are your anatomical and health care desires?
8. You need to make a list of all your assets including all your real and personal property.

What documents are included in a Living Trust?

The following is a list of documents which are included in the Living Trust you will receive:

1. The Living Trust

You will receive a document entitled, "Declaration of Trust" which will control your assets during your lifetime, upon your death, and control the distribution of those assets to your beneficiaries. It may be modified or revoked at any time, but only by you.

2. Durable Power of Attorney for Health Care and for Property Management

These two powers of attorney allow your agent to manage both your health care and financial matters if you are unable to do so.

3. Pour-Over Will

This transfers to your trust, upon your death, assets that you own but have failed to place into the trust.

4. Certification of Trust

This Document is a legal statement that verifies the existence of the trust and designates the power you have as Trustee.

What happens if I do nothing?

In California, if your estate is under \$100,000 in gross value, the estate will not be required to go through probate. However, if Probate is required, the courts will determine who gets what and it may not be to your desires. In a blended family situation, your heirs may not receive what you intended to give them or possibly receive anything at all.

Should you purchase a Trust Package consisting of blank forms or seek to accomplish your estate planning through an unlicensed source, you may not receive the estate plan that expresses your desires or accomplishes your purposes.

At what point should I consider having a trust?

You should seriously consider a Living Trust if you either:

1. Own your own home or any other real property, or
2. Own over \$100,000 in investments and
3. Own other valuable personal property.

What is a Living Trust?

A Living Trust is a legal document that replaces what you think of as your will. The Living Trust makes sure your assets go to the people you choose. It also avoids probate upon death, or a conservatorship proceeding if you become incapacitated. Moreover, it allows couples to eliminate or reduce taxes. In addition, setting up a Living Trust gives you a complete picture of your assets and compels you to get your "financial house in order" to transfer the assets into the Living Trust.

Do I lose any control of my assets?

Absolutely not. You name yourself as trustee of your Living Trust. You report to no one. You continue to control all of your assets as before in order to buy, sell, borrow against, give away, or do anything else you want to with your assets. In addition, you may change the Living Trust at any time.

What happens if I cannot act as a Trustee?

In the Living Trust, you will name someone, typically a family member or close friend, to take over if something happens to you. We call this person the “successor trustee.” This person, however, has no responsibilities with your Living Trust and the assets it owns unless you become incapacitated or pass away.

What is Probate?

Probate is a court supervised transfer of your property to your heirs. Many people mistakenly think that having only a will avoids probate. The opposite is generally true. Having only a will almost guarantees that your assets will have to be probated.

Why are so many people setting up Living Trusts to avoid probate?

1. A Probate Is Expensive. Attorneys love probate because we are entitled to charge large fees on a probate. However, what is good for attorneys is not what is best for your heirs. The attorney’s fees range from 2-4% of the gross value of your estate. The executor’s fees will be the same amount unless the executor waives them. Also, court costs and appraisal fees are added.

On the other hand, a properly created and maintained Living Trust avoids probate. When you are gone, your successor trustee simply pays your last bills, reads your Living Trust document to see who gets your property, and then distributes the property. This all occurs without reporting to the probate court.

2. A Probate Means Delay. A probate takes at least six months to get your assets to your heirs. We feel this delay is actually worse than the expense of a probate because of the potential hardship and emotional drain. On the other hand, property in a Living Trust generally can be distributed in a short time span.

3. A Probate Invades Your Privacy. A probate is open to the public, allowing anyone to go to the court clerk’s office and find out a surprising amount of information about the deceased and his or her family. A Living Trust, on the other hand, avoids such an invasion of privacy. No probate is needed if the Living Trust is set up and maintained properly. With a Living Trust, only your heirs and your attorney will know about your affairs.

What if I own real estate in another state?

If you do not have a Living Trust, your heirs will likely have to go through two probates, one in the state you reside in, and one in the other state where you own real estate. A Living Trust allows you to avoid probates in both states.

Does a Living Trust avoid probate?

A Living Trust enables you to avoid probate if you set it up correctly and make sure all your assets are in the Living Trust.

Can’t I just avoid probate with joint tenancy?

For a married couple, holding their assets as joint tenants together does avoid probate upon the death of the first spouse. However, as is explained below, joint tenancy may very well have a high income tax cost to the surviving spouse. Furthermore, a major problem will arise when the second spouse dies, or if both spouses die together a probate will be required at that point.

Additionally, many problems are caused by owning property in joint tenancy with a child. For example, your child's creditors might try to seize your property. Furthermore, at your death, your property could end up going to only one of your children at the expense of your other children or grandchildren. A Living Trust can avoid these problems.

Why does joint tenancy cause capital gains tax problems for a couple?

In short, if a couple holds appreciated property as joint tenants, such as real estate, and one of them passes away, the surviving spouse may have capital gains tax to pay if the property is sold. This occurs because of a doctrine called "capital gain tax basis" The cost may be tens of thousands of dollars or even more. On the other hand, if the same couple were to set up a Living Trust and transfer the appreciated asset to the Living Trust as community property, on the death of the first spouse the survivor could sell the asset and have no capital gains tax to pay.

Why should I want to avoid having a court set up a conservatorship?

Medical science is making great strides, but an unfortunate consequence of longer life spans is that many older people cannot manage their own affairs. If you become incapacitated by a stroke or another cause and do not have a Living Trust and Durable Powers of Attorney, your family may have to petition the court to have a conservator appointed for you. As with a probate, the purpose of a conservatorship is actually quite simple because it enables someone to make decisions for you. The problem is that as with a probate, having the court set up a conservatorship is an expensive and complicated procedure.

Having a Living Trust and Durable Power of Attorney almost always avoids the need for the court to appoint a conservator. If you become incapacitated, whomever you have named in the Living Trust and Durable Power of Attorney takes over for you without having to go to court. In particular, the "Durable Power of Attorney for Health Care," a basic estate planning document, will give your family the power to make health care decisions for you, including the power to "pull the plug."

How does a Living Trust eliminate death taxes in many cases?

A living trust may allow a couple to effectively double the basic estate tax exemption. Under current law, a husband and wife may use what is called an AB Trust which would allow both the husband and the wife to each pass to the beneficiaries up to the federal estate tax exclusion. For example purposes only, assume the exclusion was \$1,000,000. The husband could pass up to a million dollars and the wife could pass up to a million dollars with no estate tax. With the estate tax currently at approximately 48 cents on the dollar, using the example above, without the AB Trust, the estate would be required to pay almost a half million dollars in death taxes. Living Trusts help avoid death taxes.

Is a Living Trust hard to set-up?

No. We can help you set it up as quickly as you want, that is, as soon as we have received the information needed in order to set up a Living Trust.

Does a Living Trust cost much?

No. However, the fee includes these basic estate planning documents: The Living Trust, a Certification of Trust, The Durable Power of Attorney for health care and financial management, Pour-Over Will, Assignment of Furniture, Furnishing and Personal Property, Deeds to all your real state and if needed, a Community Property Agreement.

Are there any ongoing costs?

No. A Living Trust does not cause any ongoing costs of management or administration. There will be no additional fees once the Living Trust has been set up, unless later you want to amend the terms of the Living Trust. You do not need to let us know if you buy or sell trust assets in the future.

In addition, please note that currently transferring assets to your Living Trust does not change your property taxes or how you file your income taxes.

Is a Living Trust hard to maintain?

No. After your Living Trust has been properly set up, all you have to do is be diligent in putting new assets into your Living Trust.

How about the case of a second marriage?

The Living Trust is especially necessary when a husband and wife have children from prior marriages. Without proper estate planning, it is possible that the children of one of the spouses will end up with all of the couple's property and the children of the other spouse will get nothing. A properly drawn Living Trust not only assures that the surviving spouse will be cared for, but that both sets of children will receive their inheritance. A Living Trust is the one way to accomplish such goals and still avoid probate.

How stable are Living Trusts?

They have been around since the end of the Middle Ages in England. They were developed for a familiar reason; to avoid taxes which were the king's death taxes. Living Trusts have become increasingly popular over the last few years for the reasons discussed above. We strongly believe nothing will change the clear advantages of using a Living Trust as one of the keys to effective estate planning.

The above information is not meant to be construed as legal advice. It is for informational purposes only. However, if the information presented is fully understood and you wish to pursue having a Living Trust prepared for you, call 619-441-7500 and ask for Dale.