

The Living Trust

*Most of us know why we **ought** to make a Will.
How few of us know why we **really ought** to make a Trust instead of
a Will?*

The revocable inter vivos trust (Living Trust) is hardly a familiar term but this vehicle is becoming frequently used in place of the traditional Last Will and Testament.

The concept is straightforward: During your lifetime, you create the Trust by executing a trust agreement which names you and/or your spouse as the sole trustees. You then transfer title of your assets to your trust.

- With a Living Trust you control your finances just as you are now accustomed.
- Creating a Living Trust neither saves nor causes taxes.
- Creating a Living Trust does not affect tax filing requirements whatsoever as long as you or your spouse is trustee. You file your 1040 as usual. At death a final 1040 income tax and the Estate Tax return is filed.
- On your death your Living Trust distributes your Trust Estate to your named beneficiaries and charitable organizations, just as your Will would distribute your Probate Estate.
- A Living Trust may be modified, amended, or revoked.

And now for the real advantages.....

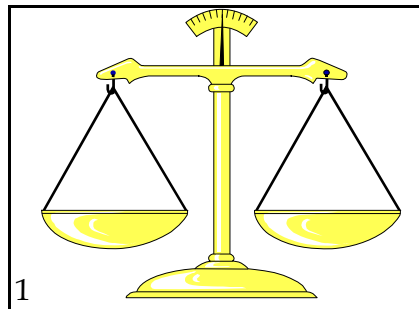
Privacy

The post-death administration of a Living Trust maintains family privacy.

Unlike a Living Trust, your Will becomes a public document once filed in probate court. Anyone may examine it. Additionally, probate procedures require that a detailed inventory of all your property be filed with the court. No property inventory is filed for a Living Trust, therefore your privacy and the privacy of your beneficiaries is protected.

Management of Assets

A Living Trust provides management of your assets if you become physically or mentally incapacitated.



While you are able-minded, you designate in the Trust Agreement a successor trustee who assumes responsibility for managing your assets should you become incapacitated. At the time of incapacity only simple documentation is required for the successor trustee to assume his/her responsibilities and no "conservatorship" resulting from court intervention is needed.

- A court-supervised conservatorship is an expensive, public proceeding, which can be offensive to those who wish to keep personal family financial affairs out of the public eye. Note: Even without a Living Trust, a properly executed Durable Power of Attorney may enable an incapacitated person to avoid a "conservatorship."
- In both cases, a Durable Power of Attorney for Healthcare should be executed so that health care decisions may be effectively made in your incapacity.

- At some point, you may wish to authorize your successor trustee to serve as trustee to manage your financial affairs even though you are perfectly capable. Some people come to the point where they prefer not to deal with paying recurring bills, reconciling statements, or other detailed bookkeeping chores. The Living Trust allows you to designate a co-trustee who will manage your financial matters for you.

Post-Death

The Living Trust estate is settled quickly, with simplicity, and with considerably less expense.

Unlike the drawn out nature of most probate proceedings, a trust estate often settles virtually as soon as the successor trustee acts, thereby assuring distribution of proceeds to loved ones. Whereas probate sales are subject to court oversight, trust estate sales are not. It is quite possible that trust assets can be sold, if appropriate, within days after death.

- Unlike a Living Trust, the cost of administering a probate estate is set by law. For example, the California statutory attorney fee for:

<u>Probate estate of</u>	<u>Fee*</u>
\$100,000	\$4,000
\$200,000	\$7,000
\$500,000	\$13,000
\$700,000	\$17,000
\$1,000,000	\$23,000

**Does not include preparation of final tax returns.*

By contrast, a Living Trust is administered on a time basis which often would be considerably less, thereby increasing your net estate.

Estate under \$250,000	\$320
Estate of at least \$250,000 and under \$500,000	\$385
Estate of at least \$500,000 and under \$750,000	\$485
Estate of at least \$750,000 and under \$1,000,000	\$635
Estate of at least \$1,000,000 and under \$1,500,000	\$1,135
Estate of at least \$1,500,000 and under \$2,000,000	\$2,135
Estate of at least \$2,000,000 and under \$2,500,000	\$2,635
Estate of at least \$2.5M and under \$3.5M	\$2,635
Estate of \$3,500,000 and over the excess over \$3.5M	\$3,635 plus .2% of the excess over \$3.5M

Balanced against the post-death cost savings are the legal costs incurred in the creation of the trust agreement. The cost to prepare a Trust agreement is generally considerably less than the filing fees and probate fees.

Must Transfer Titles

An unfunded Living Trust is as good as a Will, but no better.

There is paperwork required to fund a Living Trust. You must transfer your assets to the trust. If you do not wish to take the time and effort to transfer your assets to the trust, or pay an attorney to do it, then a Living Trust is not the correct estate planning vehicle for you.

Most title transfers are as easy as:

- Opening a bank account...
- Registering an automobile...
- Buying or selling stock
- Or designating a new beneficiary on an insurance policy or retirement plan.

Because of the complexities involved in the transfer of real property to your Trust and to avoid errors, it may be advisable to consult and retain an attorney to transfer real property titles to your trust, rather than doing these yourself.

Note: The creation of a Living Trust always entails the creations of a companion "pour-over will" to "catch" those assets which may not yet be in your trust at the time of death, so you have the luxury of funding your trust over time until all

your assets are transferred, knowing that the "pour-over" Will operates to place the untransferred assets into the Trust. Of course, to the extent the pour-over Will has untransferred assets, a probate estate would be created, with its statutory fee and possible delay.

**HOPKINS
&
CARLEY**
A LAW CORPORATION

The Letitia Building
70 South First Street
San Jose, CA 95113-2406
Phone: 408.286.9800
Facsimile: 408.998.4790
Mailing Address:
P.O. Box 1469
San Jose, CA 95109-1469
www.hopkinscarley.com