

WHAT YOU NEED TO KNOW ABOUT LIVING TRUSTS

Living Trusts. Living trusts are trusts that are created during the lifetime of the persons creating them. The creators of a trust are usually called the “settlers,” “grantors,” or “trustors” of the trust. The trust creators are generally also the original trustees. The trustees control the trust, and when the original trustees die, the trust remains in existence under the control of a successor trustee appointed by the creators of the trust.

Primary Purpose. The primary purpose of living trusts is to avoid probate by creating a legal entity, the trust, which is separate from the creators of the trust. The trust can hold title to assets that the creators would otherwise hold. Then when the trust creators die, those assets are not subject to probate, because the trust creators do not legally own them, the trust does.

Probate Avoidance. Probate is a court proceeding to distribute property owned by a person who has died. Probate costs generally greatly exceed the costs to administer a trust after someone dies. A probate proceeding can take up to a year or more to complete, and is open to the public. Trusts can usually be administered in a few months after death, with lower costs and attorneys fees than probate, and with little or no public scrutiny. For those reasons, many people choose to create living trusts in order to avoid probate costs and delays when they die.

Estate Tax Planning. Living trusts can also be used to minimize estate taxes, by establishing sub-trusts that come into effect when one or both of the creators pass away, and by including provisions that will help the surviving spouse or successor trustee to allocate assets in ways that will reduce or eliminate taxes.

Related Documents. When an attorney prepares a living trust for a person or couple, the attorney usually also prepares a will, a property management power of attorney, and an advance health care directive for each person. The attorney also prepares documents to place assets into the trust’s ownership or control (called “funding” the trust), and assists in completing the funding of the trust. Some of the additional documents which may be prepared include deeds, assignments of business interests, and transfer letters to financial institutions, insurance companies and retirement account administrators. The trust must be funded to be valid or to avoid probate and fulfill its other purposes.

Creating a Trust. The process of creating a living trust is fairly simple. The attorney meets with the persons who want to create the trust to find out about them, their family, and their estate. Their estate includes their real estate, personal property, investments, business interests, retirement accounts, life insurance, and debts and other obligations. The attorney also finds out how they would like to distribute their estate after they pass away and who they would like to act as their successor trustees, executors, guardians of their minor children, and agents under their powers of attorney and health care directives. Once the attorney has the necessary information, drafts of documents are prepared and forwarded for review, and once the documents are in final form, they are executed. The original documents generally go into a safe deposit box or other safe place, and copies are kept in a trust binder for easy review. Real property deeds are recorded, and other assets are placed in the trust in a process called trust funding.

Questions. If you have any questions about living trusts, the process of creating one for yourself or your family, or the costs involved, please feel free to contact the Law Office of Bradley Smith, 1754 Technology Drive, Suite 229, San Jose, CA 95110, phone 408-573-1010, fax 408-573-1099, email brad@bsmithlaw.com, or web www.bsmithlaw.com. There is no charge for the initial discussions.

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Law Office of Bradley Smith, 1754 Technology Drive, Suite 229, San Jose, CA 95110, (408) 573-1010
brad@bsmithlaw.com