

Understanding Living Trusts

(an excerpt from the book "How to Keep what is yours" by Gregory R. Beyer, Esq.)

*How you can Avoid Probate, Save
Taxes, and More.*



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This Pamphlet entitles holder to a FREE consultation

What is a living trust?

A living trust is a legal document that, just like a will, contains your instructions for what you want to happen to your assets when you die. But, unlike a will, a living trust avoids probate at death, can control all of your assets, and prevents the court from controlling your assets at incapacity.

Are living trusts new?

No, they've been used successfully for hundreds of years.

Who should have a living trust?

Age, marital status and wealth don't really matter. If you own titled assets like a house or a bank account, or if you have more than \$166,400.00, and want your loved ones (spouse, children or parents) to avoid court interference at your death or incapacity, you will definitely want to consider using a living trust. You may also want to strongly encourage other family members to have a trust and have their estate documents in order so you won't have to deal with the courts at their incapacities or deaths.

Does my trust end when I die?

Unlike a will, a trust doesn't have to end when you die. Assets can stay in your trust and managed by the person you have chosen to be in charge after you are gone, your successor trustee until your beneficiaries (including minor children)

reach the age(s) you want them to inherit, or to provide for a loved one with special needs over an extended period of time.

Is a living trust expensive?

Not at all, especially when compared to all the costs of court interference at incapacity and death. How much you pay will depend on how complicated your plan is and how informed and complete your legal council is. Be sure to get an estimate of the cost for your whole estate plan. The plan should include the following documents:

1. A Living Trust
2. An Abstract of Trust
3. A Pour Over Will, one for each living spouse
4. A Power of Attorney over Asset Management issues, one for each living spouse
5. An Advanced Healthcare Directive to take care of health care needs, one for each living spouse.
6. And all of the Funding documents to fund your trust, including deeds, funding letters to banks, investment accounts and the like.

When choosing a legal professional to help you with your work, make sure that he or she is not going to charge you extra for phone calls or questions, or reviews of your documents, which will need to be done every 4-5 years. Also, make sure to ask how much it will cost for your Successor Trustee to meet with your Estate Attorney after you are gone. This should be at no charge to you. Unfortunately, some attorneys make up the loss of their Probate fees by charging large fees to consult with your family after you are gone.

Another thing to look out for are companies or individuals who try to sell you other products by offering you Their version of estate documents at a “discount” because they will make large commissions by selling you insurance or annuity products, or try to take over the management of your investments or the like. These all end up costing you extra when it is many times not needed or inappropriate.

How long does it take to get a living trust?

It will generally take between Three to Six weeks to have custom legal documents prepared for you after you make the basic decisions about your plan.

I have a will. Why would I want a living trust?

Contrary to what you’ve probably heard, a will may not be the best plan for you and your family---primarily because a will does not avoid probate when you die. In addition, a will does not generally allow you to choose when and how your estate will be distributed. The basic rule is that if a child or an heir of your estate is not yet 18 years of age, the inheritance must stay in a blocked account until the child or heir reaches majority. It cannot even be used for regular fees to raise the minor child without a court order. On the other hand, if your child has reached the age of 18, they will receive the inheritance whether or not they are mature or mentally sound enough in order to use the inheritance wisely. You can count on that child buying a car or wasting their inheritance within a short period of Time.

A will must be verified by the probate court before it can be enforced. Also, because a will can only go into effect after you die, it provides no protection if you become physically or mentally incapacitated. So the court could easily take control of your assets before you die---a concern of millions of older Americans and their families. Fortunately, there is a simple and proven alternative to a will---the Family Revocable Living trust. It avoids probate, allows you to determine when and how and to whom your estate will transfer, and it lets you keep control of your assets while you are living---even if you become incapacitated—and after you die.

Doesn't a trust and a will do the same thing?

Not quite. A will can, but does not usually, contain wording to create a testamentary trust (a trust created by the Probate Court after you are deceased) to save estate taxes, care for minors, etc. But, because it's part of your will, this trust is controlled by the Probate Court (we want to stay out of Probate, so this is not the best way to handle this situation). In addition, the will cannot go into effect until after you die and the will is probated. So it does not avoid probate and provides no protection at incapacity.

If I have a living trust, do I still need a will?

Yes, you need a special type of a will called a "Pour-Over" will which acts as a safety net if you forget to transfer an asset to your trust. When you die, this type of will "catches" any forgotten assets and transfers them into your trust. The assets may have to go through probate first, but at least the assets

will be transferred into your trust and they can then be distributed as part of your living trust plan.

The Pour Over will is also used to set forth who will act as Guardians over any minor children you may have. Without your input of who you would like to raise your minor children, the court will be required to determine who should raise your children and they often split them up and may put them into the Foster Care System, thus, it is important to have this Pour Over Will as part of your estate documents.

Is a “living will” the same as a living trust?

No. A living trust is for financial affairs. A living will was for medical affairs – it was to let others know how you felt about life support in terminal situations. The Living Will or as some call it Declaration or Declaration to Physician was done away with in California in July of 2000, with these type of decisions now a part of the Advanced Healthcare Directive. If your current estate documents include this document, you should have them reviewed and updated as soon as possible.

What is probate?

Probate is the legal process through which the court sees that, when you die, your debts are paid and your assets are distributed according to your will. If you don't have a valid will your assets are distributed according to state law which is rarely the way you would want them distributed.

What's so bad about probate?

- It can be very expensive. In California, in addition to court costs and fees, along with notice costs and other fees, the Attorney Probating your estate as well as the Executor or manager assigned to Probate your estate each will get a percent of the gross value of the estate and possibly special fees on top of that. The Legal fees and Executor fees along with other costs must be paid before your assets can be fully distributed to your heirs. If you own property in other states, your family could face multiple probates, each one according to the laws in that state. Because these costs can vary widely, be sure to get an estimate of costs and expenses.
- It takes time, usually 1 to 3 years. During part of this time, assets are usually frozen so an accurate inventory can be taken. Nothing can be distributed or sold without court and/or executor approval. If your family needs money to live on, they must request a living allowance, which may be denied.
- Your family has no privacy. Probate is a public process, so any “interested party” can see what you owned and who you owed. The process “invites” disgruntled heirs to contest your will and can expose your family to unscrupulous solicitors.
- Your family has no control. The probate process determines how much it will cost, how long it will take, and what information is made public. Your family will not have the opportunity to choose how things should be done or distributed.

How does a living trust avoid probate and prevent court control of assets at incapacity?

When you set up a living trust, you transfer assets from your name to the name of your trust, which you control – such as from “Bob and Sue Smith, husband and wife” to “Bob and Sue Smith, trustees under trust dated 1/1/00.” Legally you no longer own anything (don’t panic: everything now belongs to your trust which you own and control), so there is nothing for the courts to control or transfer when you die or become incapacitated. The concept is very simple, but this is what keeps you and your family out of the courts.

Doesn’t joint ownership avoid probate?

Not really—it usually just postpones it. With most jointly owned assets, when one owner dies, full ownership does transfer to the surviving owner without probate. But if that owner dies without adding a new joint owner, or if both owners die at the same time, the asset must be probated before it can go to the heirs. But watch out for other problems. When you add a co-owner, you lose control. Your chances of being named in a lawsuit and of losing the asset to a creditor are increased. There could be gift and/or income tax problems. And since a will does not control most jointly owned assets, you could disinherit your family. With some assets, especially real estate, all owners must sign to sell or refinance. So if a co-owner becomes incapacitated, you could find yourself with a new “co owner”—the court—even if the ill owner is your spouse.

Is it hard to transfer assets into my trust?

No, and your attorney, trust officer, financial adviser and insurance agent can help. If The Law Offices of Beyer, Pongratz & Rosen are the ones to help you set up your estate plan, if you desire us to, we will also help you fund your trust for you. Either you or our office will need to change title on real estate (in- and out-of-state) and other titled assets (stocks, CDs, bank accounts, other investments, insurance, etc.). Most living trusts also include jewelry, clothes, art, furniture, and other assets that do not have titles. Also, beneficiary designations on some assets (such as insurance) should be changed to your trust so the court can't control them if a beneficiary is incapacitated or no longer living when you die. (IRA, 401(k), etc., may be exceptions.)

Doesn't this take a lot of time?

It will take some time – but you can do it now, or you can pay the courts and attorneys to do it for you later. One of the benefits of a living trust is that all your assets are brought together under one plan. Don't delay "funding" your trust. It can only protect assets that have been transferred into it.

Do I lose control of the assets in my trust?

Absolutely not. You keep full control. As trustee of your trust, you can do anything you could do before – buy or sell assets, change or even cancel your trust (that's why it's called a revocable living trust). You will even file the same tax

returns as you did before, and the Property taxes on your home and other properties will not go up because of this transfer. Nothing changes but the names on the titles.

If something happens to me, who has control?

If you and your spouse are co-trustees, either of you can act and have instant control if one becomes incapacitated or dies. If something happens to both of you, or if you are the only trustee, your hand-picked successor trustee will step in. If a corporate trustee is already your trustee or co-trustee, they will continue to manage your trust for you.

The Successor Trustee can be a child or other relative, it could be an advisor, a friend, or a bank or investment company. Many times it may be what we call a Professional Fiduciary, which is a person who does this for a living.

What does a Successor Trustee do?

If you become incapacitated, your Successor Trustee looks after your care and manages your financial affairs for as long as needed, using your assets to pay your expenses. If you recover, you automatically resume control. When you die, your successor trustee pays your debts and distributes your assets. All this is done quickly and privately, according to instructions in your trust, without court interference.

Should I consider a Corporate Trustee or Professional Fiduciary?

You may decide to be the trustee of your trust. However, some people select a corporate trustee (bank or trust company) to act as trustee or co-trustee (bank, financial company, professional fiduciary or trust company) to act as trustee or co-trustee now, or in the future, especially if they don't have the time, ability or desire to manage their trusts, or if one or both spouses are ill. Corporate trustees are experienced investment managers, they are objective and reliable, and their fees are usually very reasonable. Corporate trustees have been known to refuse to take on the position as trustee, so make sure you have a secondary person or entity chosen to act as your trustee - just in case.

Who can be successor trustees?

Successor trustees can be individuals (adult children, other relatives, or trusted friends) and/or a corporate trustee or professional fiduciary. Whether you choose an individual, corporate trustee or professional fiduciary, you should always name more than one in case your first choice is unable to act.

How can a living trust save on estate taxes?

If you die in 2020 and the net value of your estate is more than \$11,580,000, Federal Estate taxes (starting at 40%) must be paid within 9 months of the date of death. If married, your living trust can include a provision that will let you and your spouse leave up to about \$23,160,000 estate tax-free, saving

millions in Federal Estate taxes. This amount went up in 2017 to \$11,200,000 but may roll back to its original amount of \$5,400,000 in 2024.

Why would the court get involved with incapacity?

If you can't conduct business due to mental or physical incapacity (Alzheimer's, stroke, heart attack, etc.) only a person appointed by the court, called a court appointee can sign for you—even if you have a will. (Remember, a will only goes into effect after you die.) Once the court gets involved, it usually stays involved until you recover or die. The court, not your family, controls how your assets are used to care for you. This public process can be expensive, embarrassing, time consuming and difficult to end if you recover. In addition, it does not replace probate at death—your family could have to go through the court system twice!

In a Nutshell, what are the Benefits of a Living Trust

- Avoids probate at death, including multiple probates if you own property in other states
- Prevents court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Provides quicker distribution of assets to beneficiaries
- Assets can remain in trust until you want beneficiaries to inherit
- You can reduce or eliminate estate taxes
- Inexpensive and easy to set up and to maintain
- Can be changed or canceled at any time

- Is much more difficult to contest
- Prevents court control of minors' inheritances
- Can protect dependents with special needs so they do not need to lose their government benefits
- Prevents unintentional disinheritance and other problems of joint ownership
- Professional management with corporate trustee
- Peace of mind
- Protects your beneficiary's inheritances from their own creditors
- can keep the state from taking your home or other assets if you enter a skilled nursing home
- can distribute your assets when, how and to whom you desire

Should I have an attorney do my trust?

Yes, but you need the right one. An attorney with considerable experience in living trusts can provide valuable guidance and peace of mind that yours is prepared properly. The Law Office of Beyer, Pongratz & Rosen, a Professional Law Corporation has over a Quarter Century of experience in ensuring that things go exactly as you want when you are gone, in protecting your family and reducing taxation on estates. When you work with us on your estate planning, you can feel assured it will be done correctly and specifically to take care of your needs and desires.

	With No Will	With a Will	With a Living Trust
At Incapacity (Unable to handle your financial affairs)	Court Control: Court appointee oversees your care, must keep detailed records to court, and usually must post bond (even if appointee is your spouse). Court approves all expenses, oversees financial affairs.	Court Control: Same as No Will	No court Control: Your successor Trustee manages your financial affairs according to instructions in your trust for as long as necessary. (In some states, court intervention may be required for health care decisions.)
At Death	Probate: Court Orders your Debt paid and assets distributed according to state law.	Probate: Same as No Will, but assets distributed per your will (if Valid and any contests are unsuccessful).	No probate: Debts paid and assets distributed by successor trustee according to instructions in your trust.
Court Costs, Legal & Executor Fees	At Death: Often estimated at a 3-8% of Estate's value. At Incapacity: Impossible to estimate.	Same as No Will. Costs can increase if will is contested.	At Death: Usually none if no estate taxes. At Incapacity: None (Attorney can be helpful for larger estates).
Time	At Death: Often 1 to 3 years before heirs can inherit. At Incapacity: Court involved until recovery or death.	Same as No Will	At Death: Usually 40 to 90 days (Larger estates may take longer for estate tax filing). At Incapacity: No Delays
Flexibility & Control	None: Court processes, not your family, have control at incapacity and death. When you die, assets are distributed according to state law.	Limited: Same as no will except, when you die, assets are distributed according to your will (if valid and any contests are unsuccessful). You can change your will at any time.	Maximum: You can change/ discontinue your trust at any time. Assets stay under control of your trust, even at incapacity and after your death. More difficult than a will to contest
Privacy	None: Court proceedings are public record. Family can be exposed to disgruntled heirs, unscrupulous solicitors	None: Same as No Will	Maximum: Living trusts are not public record. Your family can take care of your financial affairs privately.

WARNING

This packet must not be construed as legal advice by the reader. This information is only a brief outline of how a Living Trust can be an important part in some people's estate planning. Actual estate planning can only be recommended after analyzing the entire estate, present marital status, family structure, age, general health, present wealth and asset ownership, type of major assets owned, abilities, present tax levels, present structuring or estate planning already in effect, employee status, personal income need, your specific desires and other important and vital information. Set up a free consultation to speak to one of our representatives so that we can help you to determine what would be best for you.

Call 1 (916) 645-9529 To Schedule your free consultation now.

Biography of GREGORY R. BEYER, Esq.



Gregory R. Beyer is a Practicing California Attorney and for 30 years, has had as the emphasis of his personal practice of law primarily revolving around Estate Planning, Elder Law, Medi-Cal Planning, Asset Protection Planning, and Business Structuring. Mr. Beyer was the Salutatorian, Parliamentarian, and Honor Graduate of his class, and is authorized to practice law before the courts of the State of California and Federal District Courts. He is a Certified Estate Planner in Legal Concepts (CEP-L) and one of a very few select Certified Senior Advisor Attorneys (CSA) in the United States. He has been listed in Who's Who and was President of the California Estate Planning Council for 2 terms. He is a member of the J. Reuben Clark Law Society and is a member of the National Association of Elder Law Attorneys.

Mr. Beyer enjoys speaking on Elder Law and Estate Planning principles to small groups as well as a speaker for national legal seminar providers. The Law Offices of Beyer, Pongratz, & Rosen has been a member of the Lincoln Chamber of Commerce, the Rancho Cordova Chamber of Commerce, and the

United State Chamber of Commerce. He enjoys spending time with his Wife of over 43 years, 6 children and 11 grandchildren, working with his garden and fruit trees, and working on projects around the house.