Law Offices of
Hale Kronenberg

Wells Fargo Bank Building
2140 Shattuck Ave., Suite 608
Berkeley, CA 94704

510- 526-5054
Fax 510-526-1062
E-mail: hale@halekronenberg.com

Certified Specialist: Probate, Estate Planning & Trust Law
The State Bar of California Board of Legal Specialization

1 What is a trust?

A trust is an arrangement under which one person holds and manages property on behalf of another person.

The person who creates the trust is called the Settlor or Trustor. The Settlor or Trustor is the maker of the trust.

The person who holds and manages the property is called the Trustee.

The person for whose benefit the trust is managed is called the Beneficiary.

2 Can the same person be the Settlor, Trustee, and Beneficiary?

Yes. This is usually the case with living trusts. One person (or a husband or wife) creates, manages, and benefits from the trust while they are alive.

Settlor
Trustee
Beneficiary

When you establish a living trust, typically you wear three hats. You are the Settlor, Trustee, and Beneficiary.

3 Why is it called a "living" trust?

The trust comes into existence right now, while you are still alive. This is different from a "testamentary" trust, which comes into existence only after you die, under the terms of your will.

4 Why is it called a "revocable" living trust?

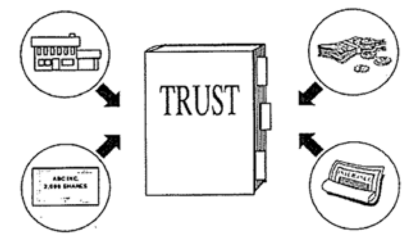
Because, while you are alive, you can revoke or cancel the trust. You can also change or amend it.

5 How is a living trust established?

The trust is established under a written document, much like a contract. The document is usually drafted by a lawyer, and you usually sign it before a notary public.

6 What happens after the trust is established?

After the trust is established, your assets are transferred to the trust.



You now hold title to the assets "as Trustee." You have the same control over your assets as you did before establishing the trust.

7 What happens after you die?

The living trust designates the persons who will receive the trust assets after your death. In this way, the trust functions like a will.

8 What are the advantages of a living trust?

Probate Avoidance. Assets in a living trust can be transferred to your beneficiaries after your death without the necessity of probate. This generally results in a saving of time and money for your beneficiaries.

Privacy. Unlike a will, which may be filed in a probate proceeding and become a public document, a living trust is a private document.

Conservatorship Avoidance. A living trust can provide for a successor trustee to handle your affairs if you become incompetent or unable to handle your own affairs. This can avoid having to go to court to establish a conservatorship.

Family Business; Investments. The operation of a family business can be restricted in a probate proceeding. With a living trust, the business can proceed with greater continuity. Similarly, your executor's ability to make new investments, and to buy and sell securities to take advantage of market conditions, is restricted in a probate proceeding. The trustee of a living trust may buy and sell securities at any time.

Estate Tax Savings. A living trust can be used as a vehicle for saving estate taxes. With proper planning, estate taxes on an estate of several million dollars can be totally avoided. A will can also accomplish this.

Trustees. You can designate another person or institution to handle the trustee's duties, freeing yourself of these chores. You can change trustees at any time, and can assume the duties of trustee yourself.

Out-of-State Property. A living trust can be used to provide a uniform plan of distribution for property located in more than one state. With proper planning, probate can be avoided in all states.

9 Will a living trust save income taxes?

No. The living trust generally is disregarded for income tax purposes. You don't have to file additional income tax returns, and you report all trust income and expenses on your regular income tax returns.

10 Do all my assets have to go into a living trust?

No. Generally, you can keep your personal possessions, your everyday checking accounts, and smaller savings accounts outside the trust and still enjoy the trust benefits described above.

11 What are the disadvantages of a living trust?

Paperwork. There's some paperwork to handle in setting up the trust and transferring assets to it.

Trust Concept. Some people are uncomfortable with the concept of a trust and cannot understand it.

Fees. There may be additional attorneys' fees and costs in setting up a living trust, as compared to simpler estate planning documents.

Supervision. A probate proceeding is subject to court supervision. The administration of a living trust generally is not. Selection of a competent and trustworthy trustee can minimize this disadvantage.

All About LIVING TRUSTS

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