

**THE LAW FIRM OF
HERRING & HERRING, APC**

The partners of the law firm are a father/daughter team comprised of C. David Herring and Margaret K. Herring. David has over 39 years experience in all areas of civil litigation, including real estate and business issues.

Margaret has been working in the legal profession with David since 1989, and has been a licensed attorney since 1996.

In addition to estate planning and probate, her practice encompasses civil litigation, including probate and trust litigation.



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**Is A Living
Trust Right
For You?**



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IS A LIVING TRUST RIGHT FOR YOU?

Today Living Trusts are promoted as the solution all for every estate planning need. As with anything else in life, there is no single solution to all problems.

When you establish a Living Trust (also referred to as an Inter Vivos Trust) you transfer all of your property into the trust and you hold title as a trustee of the trust. During your lifetime, you are the beneficiary of the trust and upon your death, the title passes to the person that you have designated as the alternate trustee and beneficiary.

During your lifetime the trust can be changed or terminated at any time. Upon your death it becomes irrevocable and the property held in the trust will be distributed as set forth in the trust agreement without the necessity of any court proceedings.

Living Trusts are extremely worthwhile estate planning devices. However, the decision to establish a Living Trust should be made only after determining if it is right for you.

The Benefits of a Living Trust

► *Avoiding Formal Probate Proceedings in court*

In the absence of a living trust, property

usually will be transferred under the supervision of a probate court. If a living trust has been established and if all of your property has been properly transferred to the trust prior to your death, then your assets will be transferred as described in the trust and without the supervision of any court.

► *Ease of Administration in the event of Incapacity*

If you do become disabled, your assets will be managed by the person you designated in your trust without the need to seek judicial assistance.

► *Estate Tax Savings*

A living trust does not save you any estate taxes by itself. Although tax savings can be obtained with proper planning, a living trust is not necessary to obtain the tax benefits. While the trust may be written in such a way as to minimize estate taxes, the estate tax savings can normally be achieved with a properly drafted Will.

Disadvantages of a Living Trust

► *Lack of Protection Against Creditors' Claims*

When an estate is probated in California, creditors must file a claim in the Probate Court within a limited period of time. If they do not do so, their claims will be barred.

Thus, a probate can effectively cut off certain contingent claims such as personal injury or property damage claims which the deceased person may not have known about at the time of his or her death. Since a living trust is not probated, creditors' claims will not be barred so quickly, nor will they be subject to the court's supervision.

► *Initial Cost of the Trust*

In most cases, the initial cost of a Living Trust will be higher than the cost of merely establishing a Will.

► *Lack of Court Supervision*

An advantage of a probate is that the activities of the executor (the person managing the estate) are supervised by the court. This type of supervision is not present with a Living Trust. If a substantial portion of the assets are going to someone other than the surviving trustee, it may be important to have the judicial supervision for the protection of the beneficiaries.

CONCLUSION

While Living Trusts are often a desirable and necessary estate planning device, you should not make an automatic assumption that it is right for you. Each person and family is different, with different needs and concerns.

