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I Have a Will, Why Do I Need a Trust?

A Presentation By
Hornstein Law Offices

First, What Is an Estate?

An Estate is simply everything you have accumulated during your life.

What Is Estate Planning?

Estate Planning is arranging to have everything you own pass to your heirs as easily and inexpensively, and with as few legal and bureaucratic delays, as possible.

What Is a Will?

A Will is a basic legal document that tells your family and beneficiaries what you want done with your possessions.

It also can specify who will be the guardian of your minor children.

In your Will you also appoint someone to carry out your wishes, usually a family member or close friend. This person is called an Executor. A Will may be subject to a Probate proceeding.

What Is a Probate?



Probate is a legal process in which the Court oversees the distribution of your assets by the Executor in accordance with your Will or if you don't have one, the laws of intestacy.

When Do You Have To Go Through Probate?

If your house is worth more than \$20,000 or everything else you own is worth more than \$100,000, California requires that your Will be probated, that is, go through a thorough judicial review in Probate Court.



The judge decides if your Will is legal and proper, and instructs the Executor in how and when to distribute your property, hopefully, in accordance with the instructions in your Will.



The public must be notified of the Probate proceedings and the date of the hearing must be published in a newspaper, to assure that all creditors and interested persons can attend the hearing.

Even with a properly drafted Will,
during Probate the judge
“controls” the disposition of the
property.

Nothing can be given to your heirs
without the judge’s permission.

How much does Probate cost?

The State of California decides.



4% of first \$100,000

3% of next \$100,000

2% of the next \$800,000, declining thereafter for estates over \$1 million.

If you leave a \$400,000 house to your children, they will pay \$11,000 to the attorney and \$11,000 to the executor of your Will.



Plus court filing fees, fees to publish the date of the hearing in a local newspaper, and a bond fee if the Court requires it.

But wait, it gets worse.

If you have a \$1 million home with a \$900,000 mortgage, the probate fees are based on the \$1 million gross value, not the \$100,000 net value.

How can I avoid putting my heirs through Probate and all of the extra cost and bureaucracy it entails?

If you do not want your heirs to go through Probate, the best alternative is to plan ahead with a **Revocable Living Trust.**

Less Expensive. Does not have to go through Probate process to settle the Trust and distribute assets to beneficiaries. **Faster, too.**

Private. No public notice through publication in a newspaper is required.

But a Trust Must Be Expensive?



No, a basic Revocable Living Trust for a couple at Hornstein Law Offices costs about \$2,150, plus notary and recording fees (about \$250).

Hornstein Law Offices Estate Plan

Includes:

- Trust
- Wills
- Durable Powers of Attorney
- Advanced Medical Directive
- Deeds to fund the Trust with your real property
- And More...

What Is a Trust?

What Does It Do?

A Trust is the legal entity we set up to hold your property.



Who are the parties to the Trust?

- * Settlor – The “Owner”
- * Trustee – The “Manager”
- * Beneficiary – The “Winner!”



While alive, you do everything the same, except, and this is very important, you re-title all your assets—home, rental property, bank accounts, brokerage and mutual fund accounts—into the Trust.

* But not retirement accounts! (This gets complicated and needs to be reviewed carefully.)

After you die, the Trustee's job is to distribute your assets to your beneficiaries in accordance with the instructions in your Trust.

So it is very important who you choose as a Trustee.



Two types of Trusts --

Revocable and Irrevocable



A Revocable Trust can be changed or revoked at any time, assets may be added or removed at will and the Settlor (you) as the owner pay taxes on the Trust's earnings.

An Irrevocable Trust **cannot** be changed or revoked. Assets placed in it are permanently transferred to the Trust and removed from the Settlor's Estate.

The Trust will then pay taxes on its own, separate from your personal tax return.

Which Type of Trust
Best Replaces a Will?

A Revocable Living Trust generally is the best substitute for a Will.

It can be changed easily as your circumstances change.

Assets may be added or removed quickly and easily.



Your assets go directly to your beneficiaries after your death according to your instructions.

No delays while the judge decides if everything is in order.

Your instructions are private.

Much less expensive.

Setting Up a Revocable Living Trust
Is Not Difficult.



- * Complete a questionnaire
- * Consult with Hornstein Law Offices about what instructions you want to put in your Trust.

Things to Consider

1. Who will be Trustee (after you)?
2. How will your assets be distributed?
3. Special needs and Circumstances (e.g. special needs child)?
4. Transferring assets to your Trust.

What Happens If I Do Not Put All
My Assets Into My Trust During My
Lifetime?



If you don't fund your assets into your Trust during life, it will cost more in attorney fees to transfer it later... and may require a judge's approval.

Do You Give Up Control
of Your Assets By Putting Them
Into Your Trust?



No. In a Revocable Living Trust, you decide what to put in the Trust, who manages those assets and who benefits from their earnings and use.

Moreover, you decide who gets each asset after your death.

Furthermore, you decide who will be your Successor Trustee, that is, the person who will carry out your instructions.

How Do You Choose A Successor Trustee?

You can choose anyone you want to be your Successor Trustee, that is, divide and distribute your assets to your heirs and Beneficiaries.

The Successor Trustee manages your assets, but does not own them.

What Should You Do If You Become a Successor Trustee?

The first thing you want to do is to
call a good estate attorney,
such as....

Hornstein Law Offices!

(818) 887-9401

Even if we did not prepare the
original Trust, we can help.

The three responsibilities of a Successor Trustee are

- Gather all the assets,
- Pay the outstanding bills, and
- Distribute assets in accordance with the Trust's instructions.

Does a Successor Trustee Get Paid?

Generally, a Trust will allow for a Trustee fee of about 1.5% of the total value of the Trust.

A Trustee may, however, waive the fee.

To reiterate, a Trust gives you

- More control of your assets,
- Costs much less to implement,
and
- Is private



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