Does it take a lot of time to set up a living trust?
It takes a little time, but not a lot. And remember, it will always cost more if you have to have a "rush job" from your attorney, so if you think you want to create a living trust see your attorney sooner rather than later.

Should I consider a corporate trustee?
Most people want and should be the trustee of their trust. However, some people select a corporate trustee (bank or trust company) to act as trustee or co-trustee now, 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. Most corporate trustees require a minimum sized estate to manage, but California also licenses Professional Fiduciaries who can serve as a trustee and are unaffiliated with a bank or investment company.

If something happens to me, who has control?
If you and your spouse are co-trustees, either 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, the successor trustee you personally selected will step in. If a corporate trustee is already your trustee or co-trustee, they will continue to manage your trust for you.

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 resume control. When you die, your successor trustee pays your debts, files your tax returns and distributes your assets. All can be done quickly and privately, according to instructions in your trust, without court interference.

Who can be successor trustees?
Successor trustees can be individuals (adult children, other relatives, or trusted friends) and/or a corporate trustee. If you choose an individual, you should also name some additional successors in case your first choice is unable to act.

Does my trust end when I die?
Unlike a will, a trust doesn't have to die with you. Assets can stay in your trust, managed by the trustee you selected, until your beneficiaries reach the age(s) you want them to inherit. Your trust can continue longer to provide for a loved one with special needs, or to protect the assets from beneficiaries' creditors, spouses and future death taxes.

How can a living trust save estate taxes?
Your estate will have to pay federal estate taxes if its net value when you die is more than the "exempt" amount at that time (currently $5.4 million). If you are married, your living trust can include a provision that will let you and your spouse use both of your exemptions and leave over $10 million estate tax-free to your loved ones, saving over $1,750,000 in federal taxes.

Doesn't a trust in a will do the same thing?
Not quite. A will can contain wording to create a testamentary trust to save estate taxes, care for minors etc. But, because it's part of your will, this trust 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.

Is a living trust expensive?
Not when compared to the alternatives of probate and guardianship. How much you will pay will depend primarily on your goals and what you want to accomplish.

How long does it take to get a living trust?
It should only take a few weeks to prepare the legal documents after you make the basic decisions.

Should I have an attorney do my trust?
Yes, but you need the right attorney. A local attorney who has considerable experience in living trusts and estate planning will be able to give you valuable guidance and peace of mind that your trust is prepared and funded properly.

If I have a living trust, do I still need a will?
Yes, you need a "pour-over" will that acts as a safety net if you forget to transfer an asset to your trust. When you die, the will "catches" the forgotten asset and it "pours over" into your trust. The asset may have to go through probate first, but it can then be distributed as part of your overall living trust plan. If you have minor children, you must use the "pour-over" will to name the guardian for them after your death.

Is a living will the same as a living trust?
No. A living trust is for financial affairs. A living will is for medical affairs—it identifies who you want to make medical decisions for you if you cannot and whether you want the doctor to "pull the plug" if you are in an irreversible coma. In California, a living will is called an Advanced Health Care Directive.

How can I find out more about living trusts?
Attorney Robert l. Firth frequently gives both public and private seminars on the subject of living trusts. If you would like to attend his next seminar or if you'd like to schedule a meeting with Attorney Robert L. Firth to discuss setting up a living trust call the Law Offices of Robert L. Firth at (760) 770-4066 to schedule an appointment today.

At the Law office of Robert L. Firth you can rest assured that every option will be covered and considered to help with your specific circumstance. Contact me today for a no pressure, free consultation.

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 of your assets together under one plan
- » Provides maximum privacy
- » Quicker distribution of assets to beneficiaries
- » Assets can remain in trust until you want beneficiaries to inherit
- » Can reduce or eliminate estate taxes
- » Inexpensive, easy to set up and maintain
- » Can be changed or cancelled at any time
- » Difficult to contest
- » Prevents court control of minors' inheritances
- » Can protect dependents with special needs
- » Prevents unintentional disinheriting and other problems of joint ownership
- » Professional management with corporate trustee
- » Protects your children's and grandchildren's inheritance from divorce, creditors and gold diggers
- » Peace of mind

ABOUT ATTORNEY ROBERT FIRTH

I am all about integrity, trust and doing the right thing to help my clients solve their problems.

I have over forty years of experience in law, business, real estate, government and politics. I am a member of the bar in California and Missouri (inactive), and a graduate of the American Bankers Association Graduate Trust and Fiduciary Tax School. I also received the Client Satisfaction Award from AVVO. I have drafted almost three thousand Living Trusts.

Robert L. Firth is ranked as one of the top estate planning attorneys in the Coachella Valley by Palm Springs Life magazine. He is rated "Superb" by AVVO online legal services.

IS A LIVING TRUST *RIGHT FOR YOU?*

How To Avoid Probate,
Save Taxes And Protect Your Family

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Estate Planning FAQs

Do I need a Living Trust?
It depends. Estate Planning is not a one size fits all proposition, but for most families a Living Trust is very effective. Ask yourself these questions: (1) Do I own a home? (2) Do I own property in another state? (3) Do I own more than $100,000 in assets? (4) Do I have children? (5) Do I want the government out of my life? If you answered yes to any of the above, you probably need a living trust.

What is a living trust?
A living trust is a document that, just like a will, contains instructions for what you want to happen to your assets when you die. But unlike a will, a living trust can avoid probate at death, while allowing you to give what you have, to whom you want, the way you want and when you want. More importantly, a living trust prevents the court from controlling your assets should you become incapacitated.

I have a will, do I need a living trust?
A will does not avoid probate when you die. To the contrary, a will guarantees that your family will be subjected to the cost, fees and delays that are associated with probate. A will must be validated 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 revocable living trust. It avoids probate and lets you keep control of your assets while you are living—even if you become incapacitated—and after you die.

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. That is called intestate succession, and it is usually more expensive than probate with a will.

What's so bad about probate?
It can be expensive. Legal fees, executor fees and 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. These costs can vary widely; it would be a good idea to find out what they are now. It takes time, usually nine months to two years, but often longer. 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. Probate is a public process, so any "interested party" can see what you owned, whom you owed, who will receive your assets and when they will receive them. The process "invites" disgruntled heirs to contest your will and can expose your family to unscrupulous solicitors. In probate, your family has no control. The court process determines how much it will cost, how long it will take, and what information is made public.

Doesn't joint tenancy avoid probate?
Not really. Using joint tenancy usually just postpones probate. 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. Watch out for other problems. When you add a co-owner, 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 members of your family inadvertently. 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 incapacitated owner is your spouse.

Why does the court get involved if I am incapacitated?
If you can't conduct business due to mental or physical incapacity (dementia, stroke, heart attack, etc.), only a court appointee can sign for you—even if you have a will (remember, a will only goes into effect when you die) and even if you own your property with your spouse. Once the court gets involved, it usually stays involved until you recover or die and the court, not your family, will control how your assets are used to care for you. This "living probate" process can be expensive, embarrassing, time consuming and difficult to end. It is also public! It does not replace probate at death, so your family may have to go through probate court twice!

Does a durable power of attorney prevent this?
A durable power of attorney lets you name someone to manage your financial affairs if you are unable to do so. However, many financial institutions will not honor one unless it is on their form, or if it is more than six months old. If accepted, it may work too well, giving someone a "blank check" to do whatever he/she wants with your assets. It can be very effective when used with a living trust, but risky when used alone.

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 "John and Mary Jones, husband and wife" to "John and Mary Jones, trustees U/T/A dated (month/day/year)." Legally you no longer own anything; everything now belongs to your trust. So there is nothing for the courts to control when you die or become incapacitated. It is a simple concept that keeps you and your family out of the courts.

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 and sell assets, change or even cancel your trust. That's why it's called a revocable living trust, you even file the same tax returns. Nothing changes but the names on the titles.

Can a living trust protect my assets from my creditors?
Unfortunately, no. Because you can change the terms of your trust and can put property into and out of your trust at your discretion, a living trust will not protect your assets from your creditors. But it may protect the property that your heirs inherit from their creditors after you die. See your attorney for more details.

Is it hard to transfer assets into my trust?
It's easy, and your attorney, financial adviser and/or insurance agent can help. Typically, you will change titles on real estate, stocks, CDs, bank accounts, investments, insurance and other assets with titles. A simple assignment form can take care of personal items such as jewelry, clothes, household possessions and other assets that do not have titles. Some beneficiary designations (for example, insurance policies) should also be changed to your trust so the court can't control them if a beneficiary is incapacitated or no longer living when you die. (Retirement plans such as IRA, 401(k), etc. can be exceptions.)

ESTATE PLANNING QUICK REFERENCE GUIDE

What Happens...	WITH NO WILL	WITH A WILL	WITH A LIVING TRUST
If I cannot handle my financial affairs	*Probate Court takes control of your property:* Someone is appointed your Conservator who must keep detailed records and reports for the Probate Judge, who approves all expenses. Bond required and Lawyers fees involved.	*Same as no will:* Probate Court takes control of your property.	*No Court Control:* Your successor trustee manages your financial affairs according to your instructions as set forth in your trust for as long as necessary.
At My Death	*Probate Court takes Control of your property:* Orders your debts paid and your assets distributed according to State Law of Intestate Succession.	*Probate Court* Takes Control of your property: Orders your debts paid and your assets distributed according to your will, *if the Court validates it.*	*No Probate:* Debts paid and assets distributed by successor trustee according to your instructions in your trust.
Court Costs, Legal Executor & Other Fees	*At Death:* 4-10% of Estates' Gross Value *At Incapacity:* $2,500 to much more	*At Death:* Same as No Will. Costs can increase for will contests or other complications.	Minimal or no court costs. Reduced legal fees (minimal or none for small estates; larger/complex estates may require more).
Time	*Death:* Usually 9 months to 2 years or longer before heirs inherit. *Incapacity:* Court involved until recovery or death.	Same as no will.	*At Death:* Often just weeks. Larger/complex estates may take longer for tax returns, asset division, *At Incapacity:* No delays
Flexibility & Control	*None:* The Court, not your family, has control at incapacity and death. When you die, assets are distributed according to state law of Intestate Succession.	*Limited:* Same as no will except, when you die, assets are distributed according to your will (if validated by the Court). You can change your will prior to your death or incapacity.	*Maximum Flexibility and Control:* You can change/discontinue your trust at any time. Assets in your Trust stay under your control.
Privacy	*None:* Court proceedings are public record. Family can be exposed to disgruntled heirs, unscrupulous solicitors.	*None:* Same as no will.	*Maximum Privacy:* Living trusts are not public record. Your financial affairs remain private.